

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]

HOUSE BILL NO. 199

96TH GENERAL ASSEMBLY

0533L.01T

2011

AN ACT

To repeal section 577.023, RSMo, and to enact in lieu thereof one new section relating to community service requirements for intoxication-related traffic offenses, with existing penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 577.023, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 577.023, to read as follows:

577.023. 1. For purposes of this section, unless the context clearly indicates otherwise:

(1) An "aggravated offender" is a person who:

(a) Has pleaded guilty to or has been found guilty of three or more intoxication-related traffic offenses; or

(b) Has pleaded guilty to or has been found guilty of one or more intoxication-related traffic offense and, in addition, any of the following: involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024; murder in the second degree under section 565.021, where the underlying felony is an intoxication-related traffic offense; or assault in the second degree under subdivision (4) of subsection 1 of section 565.060; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082;

(2) A "chronic offender" is:

(a) A person who has pleaded guilty to or has been found guilty of four or more intoxication-related traffic offenses; or

(b) A person who has pleaded guilty to or has been found guilty of, on two or more separate occasions, any combination of the following: involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024; murder in the second degree under

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 section 565.021, where the underlying felony is an intoxication-related traffic offense; assault
19 in the second degree under subdivision (4) of subsection 1 of section 565.060; or assault of a law
20 enforcement officer in the second degree under subdivision (4) of subsection 1 of section
21 565.082; or

22 (c) A person who has pleaded guilty to or has been found guilty of two or more
23 intoxication-related traffic offenses and, in addition, any of the following: involuntary
24 manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024; murder in the
25 second degree under section 565.021, where the underlying felony is an intoxication-related
26 traffic offense; assault in the second degree under subdivision (4) of subsection 1 of section
27 565.060; or assault of a law enforcement officer in the second degree under subdivision (4) of
28 subsection 1 of section 565.082;

29 (3) "Continuous alcohol monitoring", automatically testing breath, blood, or transdermal
30 alcohol concentration levels and tampering attempts at least once every hour, regardless of the
31 location of the person who is being monitored, and regularly transmitting the data. Continuous
32 alcohol monitoring shall be considered an electronic monitoring service under subsection 3 of
33 section 217.690;

34 (4) An "intoxication-related traffic offense" is driving while intoxicated, driving with
35 excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) or (3) of
36 subsection 1 of section 565.024, murder in the second degree under section 565.021, where the
37 underlying felony is an intoxication-related traffic offense, assault in the second degree pursuant
38 to subdivision (4) of subsection 1 of section 565.060, assault of a law enforcement officer in the
39 second degree pursuant to subdivision (4) of subsection 1 of section 565.082, or driving under
40 the influence of alcohol or drugs in violation of state law or a county or municipal ordinance;

41 (5) A "persistent offender" is one of the following:

42 (a) A person who has pleaded guilty to or has been found guilty of two or more
43 intoxication-related traffic offenses;

44 (b) A person who has pleaded guilty to or has been found guilty of involuntary
45 manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, assault in the
46 second degree pursuant to subdivision (4) of subsection 1 of section 565.060, assault of a law
47 enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of section
48 565.082; and

49 (6) A "prior offender" is a person who has pleaded guilty to or has been found guilty of
50 one intoxication-related traffic offense, where such prior offense occurred within five years of
51 the occurrence of the intoxication-related traffic offense for which the person is charged.

52 2. Any person who pleads guilty to or is found guilty of a violation of section 577.010
53 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A
54 misdemeanor.

55 3. Any person who pleads guilty to or is found guilty of a violation of section 577.010
56 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D
57 felony.

58 4. Any person who pleads guilty to or is found guilty of a violation of section 577.010
59 or section 577.012 who is alleged and proved to be an aggravated offender shall be guilty of a
60 class C felony.

61 5. Any person who pleads guilty to or is found guilty of a violation of section 577.010
62 or section 577.012 who is alleged and proved to be a chronic offender shall be guilty of a class
63 B felony.

64 6. No state, county, or municipal court shall suspend the imposition of sentence as to a
65 prior offender, persistent offender, aggravated offender, or chronic offender under this section
66 nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011 to the
67 contrary notwithstanding.

68 (1) No prior offender shall be eligible for parole or probation until he or she has served
69 a minimum of ten days imprisonment:

70 (a) Unless as a condition of such parole or probation such person performs at least thirty
71 days **involving at least two hundred forty hours** of community service under the supervision
72 of the court in those jurisdictions which have a recognized program for community service; or

73 (b) The offender participates in and successfully completes a program established
74 pursuant to section 478.007 or other court-ordered treatment program, if available.

75 (2) No persistent offender shall be eligible for parole or probation until he or she has
76 served a minimum of thirty days imprisonment:

77 (a) Unless as a condition of such parole or probation such person performs at least sixty
78 days **involving at least four hundred eighty hours** of community service under the supervision
79 of the court; or

80 (b) The offender participates in and successfully completes a program established
81 pursuant to section 478.007 or other court-ordered treatment program, if available.

82 (3) No aggravated offender shall be eligible for parole or probation until he or she has
83 served a minimum of sixty days imprisonment.

84 (4) No chronic offender shall be eligible for parole or probation until he or she has
85 served a minimum of two years imprisonment. In addition to any other terms or conditions of
86 probation, the court shall consider, as a condition of probation for any person who pleads guilty
87 to or is found guilty of an intoxication-related traffic offense, requiring the offender to abstain

88 from consuming or using alcohol or any products containing alcohol as demonstrated by
89 continuous alcohol monitoring or by verifiable breath alcohol testing performed a minimum of
90 four times per day as scheduled by the court for such duration as determined by the court, but not
91 less than ninety days. The court may, in addition to imposing any other fine, costs, or
92 assessments provided by law, require the offender to bear any costs associated with continuous
93 alcohol monitoring or verifiable breath alcohol testing.

94 7. The state, county, or municipal court shall find the defendant to be a prior offender,
95 persistent offender, aggravated offender, or chronic offender if:

96 (1) The indictment or information, original or amended, or the information in lieu of an
97 indictment pleads all essential facts warranting a finding that the defendant is a prior offender
98 or persistent offender; and

99 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding
100 beyond a reasonable doubt the defendant is a prior offender, persistent offender, aggravated
101 offender, or chronic offender; and

102 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt
103 by the court that the defendant is a prior offender, persistent offender, aggravated offender, or
104 chronic offender.

105 8. In a jury trial, the facts shall be pleaded, established and found prior to submission to
106 the jury outside of its hearing.

107 9. In a trial without a jury or upon a plea of guilty, the court may defer the proof in
108 findings of such facts to a later time, but prior to sentencing.

109 10. The defendant shall be accorded full rights of confrontation and cross-examination,
110 with the opportunity to present evidence, at such hearings.

111 11. The defendant may waive proof of the facts alleged.

112 12. Nothing in this section shall prevent the use of presentence investigations or
113 commitments.

114 13. At the sentencing hearing both the state, county, or municipality and the defendant
115 shall be permitted to present additional information bearing on the issue of sentence.

116 14. The pleas or findings of guilt shall be prior to the date of commission of the present
117 offense.

118 15. The court shall not instruct the jury as to the range of punishment or allow the jury,
119 upon a finding of guilt, to assess and declare the punishment as part of its verdict in cases of
120 prior offenders, persistent offenders, aggravated offenders, or chronic offenders.

121 16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an
122 intoxication-related traffic offense shall be heard and determined by the trial court out of the
123 hearing of the jury prior to the submission of the case to the jury, and shall include but not be

124 limited to evidence received by a search of the records of the Missouri uniform law enforcement
125 system, including criminal history records from the central repository or records from the driving
126 while intoxicated tracking system (DWITS) maintained by the Missouri state highway patrol, or
127 the certified driving record maintained by the Missouri department of revenue. After hearing the
128 evidence, the court shall enter its findings thereon. A plea of guilty or a finding of guilt followed
129 by incarceration, a fine, a suspended imposition of sentence, suspended execution of sentence,
130 probation or parole or any combination thereof in any intoxication-related traffic offense in a
131 state, county or municipal court or any combination thereof, shall be treated as a prior plea of
132 guilty or finding of guilt for purposes of this section.

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