

SECOND REGULAR SESSION

HOUSE BILL NO. 2567

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SILVEY (Sponsor), BRUNS, KINGERY, DAY, WELLS, DUSENBERG, MAY, BROWN (30), THRELKELD, ERVIN, FUNDERBURK, ICET, NIEVES, PORTWOOD, FLOOK, BIVINS, MOORE, GRISAMORE, DONNELLY, THOMSON, NOLTE, FISHER, WITTE, SCHAAF, WRIGHT, SCHARNHORST, ST. ONGE, PRATT, FAITH, COX, SCAVUZZO, BROWN (50), FALLERT, WILDBERGER, LEMBKE, DEEKEN, STEVENSON, PARSON, ONDER, RICHARD, BAKER (123), SCHOELLER, NANCE, SMITH (150), SCHNEIDER, KELLY, ROBB, SCHAD, FRANZ, STREAM, SANDER, DETHROW, CUNNINGHAM (145), WOOD, DIXON, JONES (117), RUESTMAN, MUNZLINGER, PARKINSON AND LAMPE (Co-sponsors).

Read 1st time April 1, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5640L.011

AN ACT

To repeal section 577.023, RSMo, and to enact in lieu thereof one new section relating to intoxication-related traffic offenses, with penalty provisions and an emergency clause.

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Section A. Section 577.023, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 577.023, to read as follows: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, RSMo; murder in the second degree under section 565.021, RSMo, 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, RSMo; or assault

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.

10 of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of
11 section 565.082, RSMo;

12 (2) A "chronic offender" is:

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

15 (b) A person who has pleaded guilty to or has been found guilty of, on two or more
16 separate occasions, any combination of the following: involuntary manslaughter under
17 subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree
18 under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic
19 offense; assault in the second degree under subdivision (4) of subsection 1 of section 565.060,
20 RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of
21 subsection 1 of section 565.082, RSMo; 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, RSMo; murder in
25 the second degree under section 565.021, RSMo, where the underlying felony is an
26 intoxication-related traffic offense; assault in the second degree under subdivision (4) of
27 subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second
28 degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

29 (3) An "intoxication-related traffic offense" is driving while intoxicated, driving with
30 excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) or (3) of
31 subsection 1 of section 565.024, RSMo, murder in the second degree under section 565.021,
32 RSMo, where the underlying felony is an intoxication-related traffic offense, assault in the
33 second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of
34 a law enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of
35 section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state
36 law or a county or municipal ordinance[, where the defendant was represented by or waived the
37 right to an attorney in writing];

38 (4) A "persistent offender" is one of the following:

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

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

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

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

52 3. 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 persistent offender shall be guilty of a class D
54 felony.

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

58 5. 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 a chronic offender shall be guilty of a class
60 B felony.

61 6. No state, county, or municipal court shall suspend the imposition of sentence as to a
62 prior offender, persistent offender, aggravated offender, or chronic offender under this section
63 nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo,
64 to the contrary notwithstanding. No prior offender shall be eligible for parole or probation until
65 he or she has served a minimum of five days imprisonment, unless as a condition of such parole
66 or probation such person performs at least thirty days of community service under the
67 supervision of the court in those jurisdictions which have a recognized program for community
68 service. No persistent offender shall be eligible for parole or probation until he or she has served
69 a minimum of ten days imprisonment, unless as a condition of such parole or probation such
70 person performs at least sixty days of community service under the supervision of the court. No
71 aggravated offender shall be eligible for parole or probation until he or she has served a
72 minimum of sixty days imprisonment. No chronic offender shall be eligible for parole or
73 probation until he or she has served a minimum of two years imprisonment.

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

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

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

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

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

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

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

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

92 12. Nothing in this section shall prevent the use of presentence investigations or
93 commitments.

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

96 14. The pleas or findings of guilty shall be prior to the date of commission of the present
97 offense.

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

101 16. Evidence of a prior [convictions] **plea of guilty or finding of guilty in an**
102 **intoxication-related traffic offense** shall be heard and determined by the trial court out of the
103 hearing of the jury prior to the submission of the case to the jury, and shall include but not be
104 limited to evidence of convictions received by a search of the records of the Missouri uniform
105 law enforcement system maintained by the Missouri state highway patrol. After hearing the
106 evidence, the court shall enter its findings thereon. [A conviction of a violation of a municipal
107 or county ordinance in a county or municipal court for driving while intoxicated or a conviction
108 or] A plea of guilty or a finding of guilty followed by a **fine, incarceration, a** suspended
109 imposition of sentence, suspended execution of sentence, probation or parole or any combination
110 thereof in **any intoxication-related traffic offense in a state, county, or municipal court, or**
111 **any combination thereof**, shall be treated as a prior [conviction] **plea of guilty or finding of**
112 **guilty for purposes of this section.**

Section B. Because immediate action is necessary to rectify a recent Supreme Court
2 ruling which held that a defendant's prior guilty plea and suspended imposition of sentence in
3 municipal court could not be used to enhance the punishment for the defendant's new
4 intoxication-related traffic offense, section A of this act is deemed necessary for the immediate
5 preservation of the public health, welfare, peace, and safety, and is hereby declared to be an

6 emergency act within the meaning of the constitution, and section A of this act shall be in full
7 force and effect upon its passage and approval.

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