

SECOND REGULAR SESSION

# HOUSE BILL NO. 2203

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BARTELSMEYER.

Read 1<sup>st</sup> time March 14, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4963L.011

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### AN ACT

To repeal section 577.023, RSMo, and to enact in lieu thereof one new section relating to prior and persistent alcohol offenders, with penalty provisions.

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*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Section A. Section 577.023, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 577.023, to read as follows: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 "intoxication-related traffic offense" is driving while intoxicated, driving with excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) of subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state law or a county or municipal ordinance, where the judge in such case was an attorney and the defendant was represented by or waived the right to an attorney in writing;

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

(a) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses[, where such two or more offenses occurred within ten years of the occurrence of the intoxication-related traffic offense for which the person is charged];

(b) A person who has pleaded guilty to or has been found guilty of involuntary manslaughter pursuant to subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section  
18 565.082, RSMo; and

19 (3) A "prior offender" is a person who has pleaded guilty to or has been found guilty of  
20 one intoxication-related traffic offense[, where such prior offense occurred within five years of  
21 the occurrence of the intoxication-related traffic offense for which the person is charged].

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

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

28 4. No court shall suspend the imposition of sentence as to a prior or persistent offender  
29 under this section nor sentence such person to pay a fine in lieu of a term of imprisonment,  
30 section 557.011, RSMo, to the contrary notwithstanding. No prior offender shall be eligible for  
31 parole or probation until he has served a minimum of five days imprisonment, unless as a  
32 condition of such parole or probation such person performs at least thirty days of community  
33 service under the supervision of the court in those jurisdictions which have a recognized program  
34 for community service. No persistent offender shall be eligible for parole or probation until he  
35 or she has served a minimum of ten days imprisonment, unless as a condition of such parole or  
36 probation such person performs at least sixty days of community service under the supervision  
37 of the court.

38 5. The court shall find the defendant to be a prior offender or persistent offender, if:

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

42 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding  
43 beyond a reasonable doubt the defendant is a prior offender or persistent offender; and

44 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt  
45 by the court that the defendant is a prior offender or persistent offender.

46 6. In a jury trial, the facts shall be pleaded, established and found prior to submission to  
47 the jury outside of its hearing.

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

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

52 9. The defendant may waive proof of the facts alleged.

53           10. Nothing in this section shall prevent the use of presentence investigations or  
54 commitments.

55           11. At the sentencing hearing both the state and the defendant shall be permitted to  
56 present additional information bearing on the issue of sentence.

57           12. The pleas or findings of guilty shall be prior to the date of commission of the present  
58 offense.

59           13. The court shall not instruct the jury as to the range of punishment or allow the jury,  
60 upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of  
61 prior offenders or persistent offenders.

62           14. Evidence of prior convictions shall be heard and determined by the trial court out of  
63 the hearing of the jury prior to the submission of the case to the jury, and shall include but not  
64 be limited to evidence of convictions received by a search of the records of the Missouri uniform  
65 law enforcement system maintained by the Missouri state highway patrol. After hearing the  
66 evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal  
67 or county ordinance in a county or municipal court for driving while intoxicated or a conviction  
68 or a plea of guilty or a finding of guilty followed by a suspended imposition of sentence,  
69 suspended execution of sentence, probation or parole or any combination thereof in a state court  
70 shall be treated as a prior conviction.