

FIRST REGULAR SESSION

# HOUSE BILL NO. 325

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES JOLLY (Sponsor), ROORDA, BRINGER, HARRIS (23),  
KUESSNER, ZWEIFEL, SCHOEMEHL, CURLS, HARRIS (110), PAGE AND DARROUGH (Co-sponsors).

Read 1<sup>st</sup> time January 26, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0552L.011

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### AN ACT

To repeal section 577.023, RSMo, and to enact in lieu thereof one new section relating to the crime of driving while intoxicated, 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Section A. Section 577.023, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 577.023, to read as follows: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 **or emergency personnel** 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 **second degree murder pursuant to subdivision (2) of subsection 1 of section 565.021, RSMo, where the**

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.

16 **underlying felony is an intoxication-related offense**, involuntary manslaughter pursuant to  
17 subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4)  
18 of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer **or emergency**  
19 **personnel** in the second degree pursuant to subdivision (3) of subsection 1 of section 565.082,  
20 RSMo, **or a violation of section 577.010 or 577.012 in which a person has pleaded guilty or**  
21 **nolo contendere to or has been found guilty of a felony**; and

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

25 2. 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 prior offender shall be guilty of a class A  
27 misdemeanor.

28 3. Any person who pleads guilty to or is found guilty of a violation of section 577.010  
29 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a [class D]  
30 felony **for which the authorized term of imprisonment is a term of years not to exceed five**  
31 **years.**

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

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

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

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

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

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

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

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

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

57           10. Nothing in this section shall prevent the use of presentence investigations or  
58 commitments.

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

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

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

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