

SECOND REGULAR SESSION

# HOUSE BILL NO. 1318

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES LIPKE, BROWN (30), EMERY, DIXON, ROORDA, PAGE,  
PARSON AND YOUNG (Co-sponsors).

Read 1st time January 10, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3949L.01I

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### 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.

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Section A. Section 577.023, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 577.023, to read as follows: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

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

**b. Any offense committed in another state, or any federal offense, or any military offense which, if committed in this state, would be a violation of any offense listed in subparagraph a. of paragraph (b) of this subdivision;**

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.

15 (2) A "chronic offender" is:

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

18 (b) A person who has pleaded guilty to or has been found guilty of, on two or more  
19 separate occasions, any combination of the following:

20 **a.** Involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section  
21 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where the  
22 underlying felony is an intoxication-related traffic offense; assault in the second degree under  
23 subdivision (4) of subsection 1 of section 565.060, RSMo; or assault of a law enforcement  
24 officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo; [or]

25 **b. Any offense committed in another state, or any federal offense, or any military**  
26 **offense which, if committed in this state, would be a violation of any offense listed in**  
27 **subparagraph a. of paragraph (b) of this subdivision; or**

28 (c) A person who has pleaded guilty to or has been found guilty of two or more  
29 intoxication-related traffic offenses and, in addition, any of the following:

30 **a.** Involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section  
31 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where the  
32 underlying felony is an intoxication-related traffic offense; assault in the second degree under  
33 subdivision (4) of subsection 1 of section 565.060, RSMo; or assault of a law enforcement  
34 officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo; **or**

35 **b. Any offense committed in another state, or any federal offense, or any military**  
36 **offense which, if committed in this state, would be a violation of any offense listed in**  
37 **subparagraph a. of paragraph (c) of this subdivision;**

38 (3) An "intoxication-related traffic offense" is:

39 **(a)** Driving while intoxicated, driving with excessive blood alcohol content, involuntary  
40 manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo,  
41 murder in the second degree under section 565.021, RSMo, where the underlying felony is an  
42 intoxication-related traffic offense, assault in the second degree pursuant to subdivision (4) of  
43 subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second  
44 degree pursuant to subdivision (4) of subsection 1 of section 565.082, RSMo, or driving under  
45 the influence of alcohol or drugs in violation of state law or a county or municipal ordinance,  
46 where the defendant was represented by or waived the right to an attorney in writing; **or**

47 **(b) Any offense committed in another state, or any federal offense, or any military**  
48 **offense which, if committed in this state, would be a violation of any offense listed in**  
49 **paragraph (a) of this subdivision;**

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

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

53 (b) A person who has pleaded guilty to or has been found guilty of:

54 **a.** Involuntary manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section  
55 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of  
56 section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to  
57 subdivision (4) of subsection 1 of section 565.082, RSMo; [and] **or**

58 **b. Any offense committed in another state, or any federal offense, or any military**  
59 **offense which, if committed in this state, would be a violation of any offense listed in**  
60 **subparagraph a. of paragraph (b) of this subdivision; and**

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

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

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

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

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

76 6. No state, county, or municipal court shall suspend the imposition of sentence as to a  
77 prior offender, persistent offender, aggravated offender, or chronic offender under this section  
78 nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo,  
79 to the contrary notwithstanding. No prior offender shall be eligible for parole or probation until  
80 he or she has served a minimum of five days imprisonment, unless as a condition of such parole  
81 or probation such person performs at least thirty days of community service under the  
82 supervision of the court in those jurisdictions which have a recognized program for community  
83 service. No persistent offender shall be eligible for parole or probation until he or she has served  
84 a minimum of ten days imprisonment, unless as a condition of such parole or probation such  
85 person performs at least sixty days of community service under the supervision of the court. No  
86 aggravated offender shall be eligible for parole or probation until he or she has served a

87 minimum of sixty days imprisonment. No chronic offender shall be eligible for parole or  
88 probation until he or she has served a minimum of two years imprisonment.

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

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

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

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

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

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

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

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

107 12. Nothing in this section shall prevent the use of presentence investigations or  
108 commitments.

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

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

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

116 16. Evidence of prior convictions shall be heard and determined by the trial court out of  
117 the hearing of the jury prior to the submission of the case to the jury, and shall include but not  
118 be limited to evidence of convictions received by a search of the records of the Missouri uniform  
119 law enforcement system maintained by the Missouri state highway patrol. After hearing the  
120 evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal  
121 or county ordinance in a county or municipal court for driving while intoxicated or a conviction  
122 or a plea of guilty or a finding of guilty followed by a suspended imposition of sentence,

123 suspended execution of sentence, probation or parole or any combination thereof in a state court  
124 shall be treated as a prior conviction.

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