

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 330
95TH GENERAL ASSEMBLY

1016L.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 577.023, RSMo, and to enact in lieu thereof one new section relating to continuous alcohol monitoring, with 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Section A. Section 577.023, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 577.023, to read as follows: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, 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;

(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, RSMo; murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic

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.

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) **"Continuous alcohol monitoring", means automatically testing breath, blood,**
30 **or transdermal alcohol concentration levels and tamper attempts at least once every hour,**
31 **regardless of the location of the person who is being monitored, and regularly transmitting**
32 **the data. Continuous alcohol monitoring is an electronic monitoring service as provided**
33 **in subsection 3 of section 217.690, RSMo;**

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, RSMo, murder in the second degree under section 565.021,
37 RSMo, where the underlying felony is an intoxication-related traffic offense, assault in the
38 second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of
39 a law enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of
40 section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state
41 law or a county or municipal ordinance, where the defendant was represented by or waived the
42 right to an attorney in writing;

43 [(4)] (5) A "persistent offender" is one of the following:

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

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

51 [(5)] (6) A "prior offender" is a person who has pleaded guilty to or has been found
52 guilty of one intoxication-related traffic offense, where such prior offense occurred within five
53 years of the occurrence of the intoxication-related traffic offense for which the person is charged.

54 2. Any person who pleads guilty to or is found guilty of a violation of section 577.010

55 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A
56 misdemeanor.

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

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

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

66 6. No state, county, or municipal court shall suspend the imposition of sentence as to a
67 prior offender, persistent offender, aggravated offender, or chronic offender under this section
68 nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo,
69 to the contrary notwithstanding. No prior offender shall be eligible for parole or probation until
70 he or she has served a minimum of five days imprisonment, unless as a condition of such parole
71 or probation such person performs at least thirty days of community service under the
72 supervision of the court in those jurisdictions which have a recognized program for community
73 service. No persistent offender shall be eligible for parole or probation until he or she has served
74 a minimum of ten days imprisonment, unless as a condition of such parole or probation such
75 person performs at least sixty days of community service under the supervision of the court. **In**
76 **addition to any other terms or conditions of probation or parole the court shall consider**
77 **as a condition of parole or probation, for any person who pleads guilty to or is found guilty**
78 **of an intoxication-related traffic offense, requiring the offender to abstain from consuming**
79 **or using alcohol or any products containing alcohol as demonstrated by continuous alcohol**
80 **monitoring or by verifiable breath alcohol testing performed a minimum of four times per**
81 **day as scheduled by the court for such duration as determined by the court.** No aggravated
82 offender shall be eligible for parole or probation until he or she has served a minimum of sixty
83 days imprisonment. **However, the court may suspend execution of up to thirty days of this**
84 **term if, as a condition of such parole or probation, such person abstains from consuming**
85 **or using alcohol or any products containing alcohol as demonstrated by continuous alcohol**
86 **monitoring or by verifiable breath alcohol testing performed a minimum of six times per**
87 **day as scheduled by the court, for not less than sixty days nor more than one hundred**
88 **twenty days as determined by the court.** No chronic offender shall be eligible for parole or
89 probation until he or she has served a minimum of two years imprisonment. **However, the court**
90 **may, acting under section 559.115, RSMo, grant probation if as a condition of such parole**

91 or probation such person abstains from consuming or using alcohol or any products
92 containing alcohol as demonstrated by continuous alcohol monitoring or by verifiable
93 breath alcohol testing performed a minimum of six times per day as scheduled by the court,
94 for not less than six months nor more than two years as determined by the court. The
95 court may, in addition to imposing any other fine, costs, or assessments provided by law,
96 require the offender to bear any costs associated with continuous alcohol monitoring or
97 verifiable breath alcohol testing.

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

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

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

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

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

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

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

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

116 12. Nothing in this section shall prevent the use of presentence investigations or
117 commitments.

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

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

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

125 16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an
126 intoxication-related traffic offense shall be heard and determined by the trial court out of the

127 hearing of the jury prior to the submission of the case to the jury, and shall include but not be
128 limited to evidence of convictions received by a search of the records of the Missouri uniform
129 law enforcement system maintained by the Missouri state highway patrol. After hearing the
130 evidence, the court shall enter its findings thereon. A plea of guilty or a finding of guilt followed
131 by incarceration, a fine, a suspended imposition of sentence, suspended execution of sentence,
132 probation or parole or any combination thereof in any intoxication-related traffic offense in a
133 state, county, or municipal court, or any combination thereof, shall be treated as a prior plea of
134 guilty or finding of guilt for purposes of this section.

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