

SECOND REGULAR SESSION

# HOUSE BILL NO. 1373

## 100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ELLEBRACHT.

3375H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 577.010, RSMo, and to enact in lieu thereof one new section relating to the offense 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Section A. Section 577.010, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 577.010, to read as follows:

577.010. 1. A person commits the offense of driving while intoxicated if he or she operates a vehicle while in an intoxicated condition.

2. The offense of driving while intoxicated is:

(1) A class B misdemeanor;

(2) A class A misdemeanor if:

(a) The defendant is a prior offender; or

(b) A person less than seventeen years of age is present in the vehicle;

(3) A class E felony if:

(a) The defendant is a persistent offender; or

(b) While driving while intoxicated, the defendant acts with criminal negligence to cause physical injury to another person;

(4) A class D felony if:

(a) The defendant is an aggravated offender;

(b) While driving while intoxicated, the defendant acts with criminal negligence to cause physical injury to a law enforcement officer or emergency personnel; or

(c) While driving while intoxicated, the defendant acts with criminal negligence to cause serious physical injury to another person;

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.

18 (5) A class C felony if:

19 (a) The defendant is a chronic offender;

20 (b) While driving while intoxicated, the defendant acts with criminal negligence to cause  
21 serious physical injury to a law enforcement officer or emergency personnel; or

22 (c) While driving while intoxicated, the defendant acts with criminal negligence to cause  
23 the death of another person;

24 (6) A class B felony if:

25 (a) The defendant is a habitual offender;

26 (b) While driving while intoxicated, the defendant acts with criminal negligence to cause  
27 the death of a law enforcement officer or emergency personnel;

28 (c) While driving while intoxicated, the defendant acts with criminal negligence to cause  
29 the death of any person not a passenger in the vehicle operated by the defendant, including the  
30 death of an individual that results from the defendant's vehicle leaving a highway, as defined in  
31 section 301.010, or the highway's right-of-way;

32 (d) While driving while intoxicated, the defendant acts with criminal negligence to cause  
33 the death of two or more persons; or

34 (e) While driving while intoxicated, the defendant acts with criminal negligence to cause  
35 the death of any person while he or she has a blood alcohol content of at least  
36 eighteen-hundredths of one percent by weight of alcohol in such person's blood;

37 (7) A class A felony if the defendant has previously been found guilty of an offense  
38 under paragraphs (a) to (e) of subdivision (6) of this subsection and is found guilty of a  
39 subsequent violation of such paragraphs.

40 3. Notwithstanding the provisions of subsection 2 of this section, a person found guilty  
41 of the offense of driving while intoxicated as a first offense shall not be granted a suspended  
42 imposition of sentence:

43 (1) Unless such person shall be placed on probation for a minimum of two years; or

44 (2) In a circuit where a DWI court or docket created under section 478.007 or other  
45 court-ordered treatment program is available, and where the offense was committed with  
46 fifteen-hundredths of one percent or more by weight of alcohol in such person's blood, unless  
47 the individual participates and successfully completes a program under such DWI court or docket  
48 or other court-ordered treatment program.

49 4. If a person is found guilty of a second or subsequent offense of driving while  
50 intoxicated, the court may order the person to submit to a period of continuous alcohol  
51 monitoring or verifiable breath alcohol testing performed a minimum of four times per day as  
52 a condition of probation.

53           5. If a person is not granted a suspended imposition of sentence for the reasons described  
54 in subsection 3 of this section:

55           (1) If the individual operated the vehicle with fifteen-hundredths to twenty-hundredths  
56 of one percent by weight of alcohol in such person's blood, the required term of imprisonment  
57 shall be not less than forty-eight hours;

58           (2) If the individual operated the vehicle with greater than twenty-hundredths of one  
59 percent by weight of alcohol in such person's blood, the required term of imprisonment shall be  
60 not less than five days.

61           6. A person found guilty of the offense of driving while intoxicated:

62           (1) As a prior offender, persistent offender, aggravated offender, chronic offender, or  
63 habitual offender shall not be granted a suspended imposition of sentence or be sentenced to pay  
64 a fine in lieu of a term of imprisonment, section 557.011 to the contrary notwithstanding;

65           (2) As a prior offender shall not be granted parole or probation [~~until he or she has served~~  
66 ~~a minimum of ten days imprisonment~~] **unless as a condition of such parole or probation the**  
67 **offender:**

68           (a) [~~Unless as a condition of such parole or probation such person performs~~] **Is required**  
69 **to serve a minimum of ten days imprisonment;**

70           **(b) Is required to perform** at least thirty days of community service under the  
71 supervision of the court in those jurisdictions which have a recognized program for community  
72 service; or

73           ~~[(b) The offender]~~ **(c) Participates in and successfully completes a program established**  
74 **under section 478.007 or other court-ordered treatment program, if available, and as part of either**  
75 **program, the offender performs at least thirty days of community service under the supervision**  
76 **of the court;**

77           (3) As a persistent offender shall not be [~~eligible for~~] **granted** parole or probation [~~until~~  
78 ~~he or she has served a minimum of thirty days imprisonment~~] **unless as a condition of such**  
79 **parole or probation the offender:**

80           (a) [~~Unless as a condition of such parole or probation such person performs~~] **Is required**  
81 **to serve a minimum of thirty days imprisonment;**

82           **(b) Is required to perform** at least sixty days of community service under the  
83 supervision of the court in those jurisdictions which have a recognized program for community  
84 service; or

85           ~~[(b) The offender]~~ **(c) Participates in and successfully completes a program established**  
86 **under section 478.007 or other court-ordered treatment program, if available, and as part of either**  
87 **program, the offender performs at least sixty days of community service under the supervision**  
88 **of the court;**

89 (4) As an aggravated offender shall not be ~~[eligible for]~~ **granted** parole or probation  
90 ~~[until he or she has served]~~ **unless as a condition of such parole or probation the offender is**  
91 **required to serve** a minimum of sixty days imprisonment;

92 (5) As a chronic or habitual offender shall not be eligible for parole or probation until  
93 he or she has served a minimum of two years imprisonment; and

94 (6) Any probation or parole granted under this subsection may include a period of  
95 continuous alcohol monitoring or verifiable breath alcohol testing performed a minimum of four  
96 times per day.

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