

SECOND REGULAR SESSION

SENATE BILL NO. 975

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDGEWAY.

Read 1st time January 17, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4401S.02I

AN ACT

To repeal section 577.023, RSMo, and to enact in lieu thereof one new section relating to 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Section A. Section 577.023, RSMo, is repealed and one new section
2 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
2 indicates otherwise:

3 (1) An "aggravated offender" is a person who:

4 (a) Has pleaded guilty to or has been found guilty of three or more
5 intoxication-related traffic offenses; or

6 (b) Has pleaded guilty to or has been found guilty of one or more
7 intoxication-related traffic offense and, in addition, any of the following:
8 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section
9 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where
10 the underlying felony is an intoxication-related traffic offense; or assault in the
11 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or
12 assault of a law enforcement officer in the second degree under subdivision (4) of
13 subsection 1 of section 565.082, RSMo;

14 (2) A "chronic offender" is:

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

17 (b) A person who has pleaded guilty to or has been found guilty of, on two
18 or more separate occasions, any combination of the following: involuntary
19 manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024,

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

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

25 (c) A person who has pleaded guilty to or has been found guilty of two or
26 more intoxication-related traffic offenses and, in addition, any of the following:
27 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section
28 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where
29 the underlying felony is an intoxication-related traffic offense; assault in the
30 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or
31 assault of a law enforcement officer in the second degree under subdivision (4) of
32 subsection 1 of section 565.082, RSMo;

33 (3) **"Continuous alcohol monitoring", automatically testing breath,**
34 **blood, or transdermal alcohol concentration levels and tampering**
35 **attempts, regardless of the location of the person being monitored, at**
36 **least once each hour through a remote device worn by the person and**
37 **regularly transmitting the data;**

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

48 [(4)] (5) A "persistent offender" is one of the following:

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

51 (b) A person who has pleaded guilty to or has been found guilty of
52 involuntary manslaughter pursuant to subdivision (2) or (3) of subsection 1 of
53 section 565.024, RSMo, assault in the second degree pursuant to subdivision (4)
54 of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in
55 the second degree pursuant to subdivision (4) of subsection 1 of section 565.082,

56 RSMo; and

57 [(5)] **(6)** A "prior offender" is a person who has pleaded guilty to or has
58 been found guilty of one intoxication-related traffic offense, where such prior
59 offense occurred within five years of the occurrence of the intoxication-related
60 traffic offense for which the person is charged.

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

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

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

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

73 6. No state, county, or municipal court shall suspend the imposition of
74 sentence as to a prior offender, persistent offender, aggravated offender, or
75 chronic offender under this section nor sentence such person to pay a fine in lieu
76 of a term of imprisonment, section 557.011, RSMo, to the contrary
77 notwithstanding. No prior offender shall be eligible for parole or probation until
78 he or she has served a minimum of five days imprisonment, unless as a condition
79 of such parole or probation such person performs at least thirty days of
80 community service under the supervision of the court in those jurisdictions which
81 have a recognized program for community service **and abstains from**
82 **consuming or using alcohol or any products containing alcohol as**
83 **demonstrated by continuous alcohol monitoring or by verifiable breath**
84 **alcohol testing performed a minimum of four times per day as**
85 **scheduled by the court, for not less than thirty days but not more than**
86 **ninety days, as determined by the court.** No persistent offender shall be
87 eligible for parole or probation until he or she has served a minimum of ten days
88 imprisonment, unless as a condition of such parole or probation such person
89 performs at least sixty days of community service under the supervision of the
90 court **and abstains from consuming or using alcohol or any products**
91 **containing alcohol as demonstrated by continuous alcohol monitoring**

92 **or by verifiable breath alcohol testing performed a minimum of four**
93 **times per day as scheduled by the court, for not less than sixty days nor**
94 **more than one hundred eighty days, as determined by the court. No**
95 **aggravated offender shall be eligible for parole or probation until he or she has**
96 **served a minimum of sixty days imprisonment; however, the court may**
97 **suspend execution of not more than thirty days of such term if, as a**
98 **condition of such parole or probation, such person abstains from**
99 **consuming or using alcohol or any products containing alcohol as**
100 **demonstrated by continuous alcohol monitoring or by verifiable breath**
101 **alcohol testing performed a minimum of six times per day as scheduled**
102 **by the court, for not less than one hundred twenty days but not more**
103 **than two hundred seventy days, as determined by the court. No chronic**
104 **offender shall be eligible for parole or probation until he or she has served a**
105 **minimum of two years imprisonment; however, the court may suspend**
106 **execution of not more than one year of such term if, as a condition of**
107 **such parole or probation, such person abstains from consuming or**
108 **using alcohol or any products containing alcohol as demonstrated by**
109 **continuous alcohol monitoring or by verifiable breath alcohol testing**
110 **performed a minimum of six times per day as scheduled by the court,**
111 **for not less than one year nor more than two years, as determined by**
112 **the court.**

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

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

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

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

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

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

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

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

131 12. Nothing in this section shall prevent the use of presentence
132 investigations or commitments.

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

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

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

142 16. Evidence of prior convictions shall be heard and determined by the
143 trial court out of the hearing of the jury prior to the submission of the case to the
144 jury, and shall include but not be limited to evidence of convictions received by
145 a search of the records of the Missouri uniform law enforcement system
146 maintained by the Missouri state highway patrol. After hearing the evidence, the
147 court shall enter its findings thereon. A conviction of a violation of a municipal
148 or county ordinance in a county or municipal court for driving while intoxicated
149 or a conviction or a plea of guilty or a finding of guilty followed by a suspended
150 imposition of sentence, suspended execution of sentence, probation or parole or
151 any combination thereof in a state court shall be treated as a prior conviction.

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