

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 297**  
**100TH GENERAL ASSEMBLY**

1589H.03C

DANA RADEMAN MILLER, Chief Clerk

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**AN ACT**

To repeal sections 494.430, 559.016, 559.600, 565.030, and 577.010, RSMo, and to enact in lieu thereof five new sections relating to court proceedings, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 494.430, 559.016, 559.600, 565.030, and 577.010, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections 494.430, 559.016,  
3 559.600, 565.030, and 577.010, to read as follows:

494.430. 1. Upon timely application to the court, the following persons shall be excused  
2 from service as a petit or grand juror:

3 (1) Any person who has served on a state or federal petit or grand jury within the  
4 preceding two years;

5 (2) Any nursing mother, upon her request, and with a completed written statement from  
6 her physician to the court certifying she is a nursing mother;

7 (3) Any person whose absence from his or her regular place of employment would, in  
8 the judgment of the court, tend materially and adversely to affect the public safety, health,  
9 welfare or interest;

10 (4) Any person upon whom service as a juror would in the judgment of the court impose  
11 an undue or extreme physical or financial hardship;

12 (5) Any person licensed as a health care provider as such term is defined in section  
13 538.205, but only if such person provides a written statement to the court certifying that he or  
14 she is actually providing health care services to patients, and that the person's service as a juror  
15 would be detrimental to the health of the person's patients;

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 (6) Any employee of a religious institution whose religious obligations or constraints  
17 prohibit their serving on a jury. The certification of the employment and obligation or constraint  
18 may be provided by the employee's religious supervisor;

19 **(7) Any person who is seventy-five years of age or older.**

20 2. A judge of the court for which the individual was called to jury service shall make  
21 undue or extreme physical or financial hardship determinations. The authority to make these  
22 determinations is delegable only to court officials or personnel who are authorized by the laws  
23 of this state to function as members of the judiciary.

24 3. A person asking to be excused based on a finding of undue or extreme physical or  
25 financial hardship must take all actions necessary to have obtained a ruling on that request by no  
26 later than the date on which the individual is scheduled to appear for jury duty.

27 4. Unless it is apparent to the court that the physical hardship would significantly impair  
28 the person's ability to serve as a juror, for purposes of sections 494.400 to 494.460 undue or  
29 extreme physical or financial hardship is limited to circumstances in which an individual would:

30 (1) Be required to abandon a person under his or her personal care or supervision due  
31 to the impossibility of obtaining an appropriate substitute caregiver during the period of  
32 participation in the jury pool or on the jury; or

33 (2) Incur costs that would have a substantial adverse impact on the payment of the  
34 individual's necessary daily living expenses or on those for whom he or she provides the  
35 principal means of support; or

36 (3) Suffer physical hardship that would result in illness or disease.

37 5. Undue or extreme physical or financial hardship does not exist solely based on the fact  
38 that a prospective juror will be required to be absent from his or her place of employment.

39 6. A person asking a judge to grant an excuse based on undue or extreme physical or  
40 financial hardship shall provide the judge with documentation as required by the judge, such as,  
41 but not limited to, federal and state income tax returns, medical statements from licensed  
42 physicians, proof of dependency or guardianship, and similar documents, which the judge finds  
43 to clearly support the request to be excused. Failure to provide satisfactory documentation shall  
44 result in a denial of the request to be excused. Such documents shall be filed under seal.

45 7. After two years, a person excused from jury service shall become eligible once again  
46 for qualification as a juror unless the person was excused from service permanently. A person  
47 is excused from jury service permanently only when the deciding judge determines that the  
48 underlying grounds for being excused are of a permanent nature.

559.016. 1. Unless terminated as provided in section 559.036 or modified under section  
2 217.703, the terms during which each probation shall remain conditional and be subject to  
3 revocation are:

4 (1) A term of years not less than one year and not to exceed five years for a felony;

5 (2) A term not less than six months and not to exceed [~~two years~~] **eighteen months** for  
6 a misdemeanor **or municipal ordinance violation**;

7 (3) A term not less than six months and not to exceed one year for an infraction.

8 2. The court shall designate a specific term of probation at the time of sentencing or at  
9 the time of suspension of imposition of sentence. Such term may be modified by the division  
10 of probation and parole under section 217.703.

11 3. The court may extend a period of probation[~~s~~] ; however, no more than one extension  
12 of any probation may be ordered, except that the court may extend the total time on probation  
13 by one additional year by order of the court if the defendant admits he or she has violated the  
14 conditions of his or her probation or is found by the court to have violated the conditions of his  
15 or her probation. Total time on any probation term, including any extension, shall not exceed  
16 the maximum term as established in subsection 1 of this section plus one additional year if the  
17 defendant admits or the court finds that the defendant has violated the conditions of his or her  
18 probation.

559.600. 1. In cases where the board of probation and parole is not required under  
2 section 217.750 to provide probation supervision and rehabilitation services for misdemeanor  
3 offenders, the circuit and associate circuit judges in a circuit may contract with one or more  
4 private entities or other court-approved entity to provide such services. The court-approved  
5 entity, including private or other entities, shall act as a misdemeanor probation office in that  
6 circuit and shall, pursuant to the terms of the contract, supervise persons placed on probation by  
7 the judges for class A, B, C, and D misdemeanor offenses, specifically including persons placed  
8 on probation for violations of section 577.023. Nothing in sections 559.600 to 559.615 shall be  
9 construed to prohibit the board of probation and parole, or the court, from supervising  
10 misdemeanor offenders in a circuit where the judges have entered into a contract with a  
11 probation entity.

12 2. In all cases, the entity providing such private probation service shall utilize the cutoff  
13 concentrations utilized by the department of corrections with regard to drug and alcohol  
14 screening for clients assigned to such entity. A drug test is positive if drug presence is at or  
15 above the cutoff concentration or negative if no drug is detected or if drug presence is below the  
16 cutoff concentration. **No client shall be required to submit to an alcohol or drug test unless  
17 the client is on probation for an offense that involved either alcohol or a controlled  
18 substance or unless ordered by the judge for good cause shown.**

19 3. In all cases, the entity providing such private probation service shall not require the  
20 clients assigned to such entity to travel in excess of fifty miles in order to attend their regular  
21 probation meetings.

565.030. 1. Where murder in the first degree is charged but not submitted or where the state waives the death penalty, the submission to the trier and all subsequent proceedings in the case shall proceed as in all other criminal cases.

2. Where murder in the first degree is submitted to the trier without a waiver of the death penalty, the trial shall proceed in two stages before the same trier. At the first stage the trier shall decide only whether the defendant is guilty or not guilty of any submitted offense. The issue of punishment shall not be submitted to the trier at the first stage. If an offense is charged other than murder in the first degree in a count together with a count of murder in the first degree, the trial judge shall assess punishment on any such offense according to law, after the defendant is found guilty of such offense and after he finds the defendant to be a prior offender pursuant to chapter 558.

3. If murder in the first degree is submitted and the death penalty was not waived but the trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed as in all other criminal cases. The attorneys may then argue as in other criminal cases the issue of punishment, after which the trier shall assess and declare the punishment as in all other criminal cases.

4. If the trier at the first stage of a trial where the death penalty was not waived finds the defendant guilty of murder in the first degree, a second stage of the trial shall proceed at which the only issue shall be the punishment to be assessed and declared. Evidence in aggravation and mitigation of punishment, including but not limited to evidence supporting any of the aggravating or mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be presented subject to the rules of evidence at criminal trials. Such evidence may include, within the discretion of the court, evidence concerning the murder victim and the impact of the offense upon the family of the victim and others. Rebuttal and surrebuttal evidence may be presented. The state shall be the first to proceed. If the trier is a jury it shall be instructed on the law. The attorneys may then argue the issue of punishment to the jury, and the state shall have the right to open and close the argument. The trier shall assess and declare the punishment at life imprisonment without eligibility for probation, parole, or release except by act of the governor:

(1) If the trier finds by a preponderance of the evidence that the defendant is intellectually disabled; or

(2) If the trier does not find beyond a reasonable doubt at least one of the statutory aggravating circumstances set out in subsection 2 of section 565.032; or

(3) If the trier concludes that there is evidence in mitigation of punishment, including but not limited to evidence supporting the statutory mitigating circumstances listed in subsection 3 of section 565.032, which is sufficient to outweigh the evidence in aggravation of punishment found by the trier; or

37 (4) If the trier decides under all of the circumstances not to assess and declare the  
38 punishment at death. If the trier is a jury it shall be so instructed.

39

40 If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set out  
41 in writing the aggravating circumstance or circumstances listed in subsection 2 of section  
42 565.032 which it found beyond a reasonable doubt. If the trier is a jury, it shall be instructed  
43 before the case is submitted that if it is unable to decide or agree upon the punishment the court  
44 shall assess and declare the punishment at life imprisonment without eligibility for probation,  
45 parole, or release except by act of the governor [~~or death~~]. The court shall follow the same  
46 procedure as set out in this section whenever it is required to determine punishment for murder  
47 in the first degree.

48 5. Upon written agreement of the parties and with leave of the court, the issue of the  
49 defendant's intellectual disability may be taken up by the court and decided prior to trial without  
50 prejudicing the defendant's right to have the issue submitted to the trier of fact as provided in  
51 subsection 4 of this section.

52 6. As used in this section, the terms "intellectual disability" or "intellectually disabled"  
53 refer to a condition involving substantial limitations in general functioning characterized by  
54 significantly subaverage intellectual functioning with continual extensive related deficits and  
55 limitations in two or more adaptive behaviors such as communication, self-care, home living,  
56 social skills, community use, self-direction, health and safety, functional academics, leisure and  
57 work, which conditions are manifested and documented before eighteen years of age.

58 7. The provisions of this section shall only govern offenses committed on or after August  
59 28, 2001.

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

3 2. The offense of driving while intoxicated is:

4 (1) A class B misdemeanor;

5 (2) A class A misdemeanor if:

6 (a) The defendant is a prior offender; or

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

8 (3) A class E felony if:

9 (a) The defendant is a persistent offender; or

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

12 (4) A class D felony if:

13 (a) The defendant is an aggravated offender;

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

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

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~~]  
44 **eighteen months**; or

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

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

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

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

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

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

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

66           (2) As a prior offender shall not be granted parole or probation until he or she has served  
67 a minimum of ten days imprisonment:

68           (a) Unless as a condition of such parole or probation such person performs at least thirty  
69 days of community service under the supervision of the court in those jurisdictions which have  
70 a recognized program for community service; or

71           (b) The offender participates in and successfully completes a program established under  
72 section 478.007 or other court-ordered treatment program, if available, and as part of either  
73 program, the offender performs at least thirty days of community service under the supervision  
74 of the court;

75           (3) As a persistent offender shall not be eligible for parole or probation until he or she  
76 has served a minimum of thirty days imprisonment:

77           (a) Unless as a condition of such parole or probation such person performs at least sixty  
78 days of community service under the supervision of the court in those jurisdictions which have  
79 a recognized program for community service; or

80           (b) The offender participates in and successfully completes a program established under  
81 section 478.007 or other court-ordered treatment program, if available, and as part of either  
82 program, the offender performs at least sixty days of community service under the supervision  
83 of the court;

84           (4) As an aggravated offender shall not be eligible for parole or probation until he or she  
85 has served a minimum of sixty days imprisonment;

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

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

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