

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
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As Engrossed: H1/24/23 H1/25/23
A Bill

HOUSE BILL 1131

By: Representatives Hawk, Rye, Achor, Brooks, M. Brown, Joey Carr, Duffield, Eaves, McCollum, B. McKenzie, Milligan, J. Moore, Pilkington, Rose, Underwood, Vaught

By: Senator K. Hammer

For An Act To Be Entitled

AN ACT TO PROVIDE FOR *RESTITUTION* FOR A HOMICIDE VICTIM'S SURVIVING DEPENDENT CHILD WHEN THE DEFENDANT WAS DRIVING OR BOATING WHILE INTOXICATED AT THE TIME OF THE HOMICIDE; TO ESTABLISH BENTLEY'S LAW; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE FOR RESTITUTION FOR A HOMICIDE VICTIM'S SURVIVING DEPENDENT CHILD WHEN THE DEFENDANT WAS DRIVING OR BOATING WHILE INTOXICATED AT THE TIME OF THE HOMICIDE; AND TO ESTABLISH BENTLEY'S LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as "Bentley's Law".

SECTION 2. Arkansas Code Title 5, Chapter 4, Subchapter 2, is amended to add an additional section to read as follows:

5-4-208. Restitution for surviving dependent child of victim of certain homicide offenses.

(a) As used in this section:

(1)(A) "Dependent child" means the surviving child of a homicide victim if the surviving child is:



(i) Less than eighteen (18) years of age; or
(ii) Eighteen (18) years of age or older, attending high school, and has not reached the end of the school year after the surviving child becomes nineteen (19) years of age.

(B) "Dependent child" does not include a surviving child of a homicide victim if the surviving child is:

(i) Emancipated by a court of competent jurisdiction;

(ii) Married; or

(iii) Adopted by another person pursuant to a final decree of adoption or an interlocutory decree of adoption that has become final under the Revised Uniform Adoption Act, § 9-9-201 et seq.; and

(2) "Homicide victim" means a victim of a homicide offense under § 5-10-101 et seq. in which the actor was driving or boating while intoxicated, § 5-65-103, at the time the homicidal act occurred.

(b)(1) A defendant convicted of a homicide offense under § 5-10-101 et seq. shall be ordered to pay restitution for the benefit of a dependent child of the homicide victim if at the trial for the homicide offense the defendant is shown beyond a reasonable doubt to have been driving or boating while intoxicated, § 5-65-103, at the time the homicidal act occurred.

(2) Before a court issues an order requiring a defendant to pay restitution under this section, the state shall:

(A) Allege facts in the information or indictment supporting the issuance of an order for restitution under this section; and

(B) Specify that an order for restitution under this section is being sought and specify, as appropriate, each dependent child for whom restitution is being sought.

(c) Restitution ordered under this section shall automatically terminate by operation of law when the dependent child is no longer a dependent child or dies.

(d)(1) A court that issues an order for restitution under this section shall refer to the most recent revision of the Family Support Chart under Supreme Court Administrative Order No. 10 in determining the amount of restitution for the benefit of the dependent child after considering all relevant factors under Supreme Court Administrative Order No. 10.

(2) There is a rebuttable presumption for an order of restitution

under this section that the amount contained in the most recent revision of the Family Support Chart under Supreme Court Administrative Order No. 10 is the correct amount of restitution to be ordered under this section.

(3) The presumption in subdivision (d)(2) of this section is rebutted only upon a written finding or a specific finding on the record that the application of the most recent revision of the Family Support Chart under Supreme Court Administrative Order No. 10 would be unjust or inappropriate.

(e)(1) The court that issues an order for restitution under this section shall order that restitution payments be made to the county official, agency, or department responsible for collecting the restitution under § 16-13-709 for remittance to the dependent child's surviving parent or guardian.

(2) The county official, agency, or department responsible for collecting the restitution under § 16-13-709 shall:

(A) Deposit all restitution payments under this section no later than the next working day after receipt; and

(B) Remit the restitution payments under this section to the surviving parent or guardian within three (3) working days of receipt by the county official, agency, or department responsible for collecting the restitution under § 16-13-709.

(f)(1) An order for restitution under this section is subject to modification upon a showing of a material change in circumstances until the restitution is paid in full.

(2) A change in the gross income of the defendant of at least twenty percent (20%) constitutes a material change of circumstances sufficient to petition the court for modification of the restitution order.

(3) The following persons may petition the court for modification of a restitution order under this section:

(A) The defendant;

(B) The surviving parent or guardian of a dependent child;

(C) The dependent child or the dependent child's representative; or

(D) The prosecuting attorney.

(g)(1) If a defendant who is ordered to pay restitution under this section is incarcerated and unable to pay the required restitution, the defendant shall have up to one (1) year after the release from incarceration

to begin payment, including entering a payment plan to address any arrearage.

(2) If a defendant's restitution payments under this section are set to terminate but the defendant's obligation is not paid in full, the restitution payments under this section shall continue until the entire arrearage is paid.

(3) A defendant who is ordered to pay restitution under this section is not subject to criminal prosecution due to his or her arrearage on the restitution payments unless the court makes a written finding or a specific finding on the record that the defendant has the ability to pay the restitution owed.

(h)(1) If a surviving parent or guardian of a dependent child brings a civil action against the defendant before the court orders restitution payments under this section and the surviving parent or guardian obtains a judgment for monetary damages in the civil action, restitution shall not be ordered under this section.

(2) If the court orders the defendant to make restitution payments under this section and the surviving parent or guardian subsequently brings a civil action and obtains a judgment for monetary damages in the civil action, the restitution order shall be offset by the amount of the judgment awarded in the civil action.

(i) Unless otherwise provided in or in conflict with this section, §§ 5-4-205 and 5-4-206 apply to restitution ordered under this section.

/s/Hawk