

1 State of Arkansas
2 94th General Assembly
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4

As Engrossed: H1/24/23

A Bill

HOUSE BILL 1131

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

7 By: Senator K. Hammer
8

For An Act To Be Entitled

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

Subtitle

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

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

26
27 SECTION 1. DO NOT CODIFY. Title.

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

29
30 SECTION 2. Arkansas Code Title 5, Chapter 4, Subchapter 2, is amended
31 to add an additional section to read as follows:

32 5-4-208. Restitution for surviving dependent child of victim of
33 certain homicide offenses.

34 (a) As used in this section:

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



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

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

7 (i) Emancipated by a court of competent
8 jurisdiction;

9 (ii) Married; or

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

13 (2) "Homicide victim" means a victim of a homicide offense under
14 § 5-10-101 et seq. in which the actor was driving or boating while
15 intoxicated, § 5-65-103, at the time the homicidal act occurred.

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

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

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

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

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

31 (d)(1) A court that issues an order for restitution under this section
32 shall refer to the most recent revision of the Family Support Chart under
33 Supreme Court Administrative Order No. 10 in determining the amount of
34 restitution for the benefit of the dependent child after considering all
35 relevant factors, including without limitation:

36 (A) The financial resources and needs of the dependent

1 child;

2 (B) The financial resources and needs of the surviving
3 parent or guardian of the dependent child, including the state if the
4 dependent child is in the custody of the Department of Human Services;

5 (C) The standard of living to which the dependent child is
6 accustomed;

7 (D) The physical and emotional condition of the dependent
8 child;

9 (E) The dependent child's educational needs;

10 (F) The dependent child's physical and legal custody
11 arrangements; and

12 (G) The reasonable work-related child care expenses of the
13 surviving parent or guardian of the dependent child.

14 (2) There is a rebuttable presumption for an order of
15 restitution under this section that the amount contained in the most recent
16 revision of the Family Support Chart under Supreme Court Administrative Order
17 No. 10 is the correct amount of restitution to be ordered under this section.

18 (3) The presumption in subdivision (d)(2) of this section is
19 rebutted only upon a written finding or a specific finding on the record that
20 the application of the most recent revision of the Family Support Chart under
21 Supreme Court Administrative Order No. 10 would be unjust or inappropriate,
22 as determined by the factors listed in subdivision (d)(1) of this section and
23 other factors deemed appropriate for consideration by the court.

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

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

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

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

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

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

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

9 (A) The defendant;

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

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

13 (D) The prosecuting attorney.

14 (g)(1) If a defendant who is ordered to pay restitution under this
15 section is incarcerated and unable to pay the required restitution, the
16 defendant shall have up to one (1) year after the release from incarceration
17 to begin payment, including entering a payment plan to address any arrearage.

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

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

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

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

