

1 State of Arkansas As Engrossed: H1/24/23 H1/25/23

2 94th General Assembly

A Bill

3 Regular Session, 2023

HOUSE BILL 1131

4

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

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For An Act To Be Entitled

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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.

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Subtitle

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:

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27 SECTION 1. DO NOT CODIFY. Title.

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

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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 under Supreme Court Administrative Order No. 10.

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

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

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

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

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

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

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

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

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

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

29 (A) The defendant;

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

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

33 (D) The prosecuting attorney.

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

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

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

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

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

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

21 (i) Unless otherwise provided in or in conflict with this section, §§
22 5-4-205 and 5-4-206 apply to restitution ordered under this section.

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25 /s/Hawk
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