

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1131

Amendment Number: H2

Bill 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.

Basic Change :

Sponsors: Reps Hawk, Rye, Achor, Brooks, M. Brown, Joey Carr, Duffield, Eaves, McCollum, B. McKenzie, J. Moore, Pilkington, Rose, Underwood, Vaught; Sen. Hammer

House Amendment No. 2 --- HB1131-H2 (engrossed 1/25/2023) removes factors related to the needs and resources of the child and surviving parent or guardian in determining the amount of restitution. The amount ordered would be based on application of Supreme Court Admin. Order No. 10 unless the court determines the same would be unjust or inappropriate.

House Amendment No. 1 --- HB1131-H1 (engrossed 1/24/2023) amends the title and subtitle of the bill to replace the phrase "child support" with "restitution". The same deletions and substitutions are made throughout the bill. As amended, HB1131 would require that the circuit court refer to the Family Support Chart in Supreme Court Admin. Order No. 10 to determine the amount of restitution; create a rebuttable presumption that the amount derived from the Family Support Chart be ordered; and permit modification of restitution based on a material change in circumstances, including a change in the defendant's gross income of at least 20%. The bill is further amended to require restitution payments be made to the entity designated by the county quorum court for the collection of fines pursuant to § 16-13-709 and disbursed by that entity to the surviving parent or guardian. A defendant would not be subject to criminal prosecution for failure to pay restitution unless there was a specific finding the defendant had the ability to pay the amount owed. Restitution under the section would be subject to § 5-4-205 regarding restitution and § 5-4-206 authorizing offset of state tax refunds for failure to comply with a restitution order.

Original Bill --- HB1131 creates a new section in the Arkansas Code, § 5-4-208, to be known as "Bentley's Law", to provide for restitution from a person convicted of a homicide offense under § 5-10-101 et seq. and who was driving or boating while intoxicated under § 5-65-103 at the time of the event, for the financial support of a dependent child until the child is 18 or, if still in high school, the end of the school year following the 19th birthday. An order for support as restitution would be mandatory if sought in the information or indictment in the homicide charge. The amount of financial support to be provided would be based on various factors related to the needs and resources of the child and surviving parent or guardian. Payment would be made through the circuit court clerk for remittance to the surviving parent or guardian. If the person convicted of homicide were incarcerated and unable to pay, he or she would have up to one year after release to begin payment and enter into a payment plan for any arrearage. If a surviving parent or guardian were awarded civil damages against the person convicted, restitution under the section would not be awarded or, if already ordered, would be offset by the amount of the monetary award.

Revenue Impact :

None.

Taxpayer Impact :

The parent or guardians of dependent children whose other parent was killed in an impaired driving or

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boating incident would have an avenue to obtain restitution for the children from the person convicted of the homicide.

Resources Required :

None.

Time Required :

None.

Procedural Changes :

None.

Other Comments :

None.

Legal Analysis :

The financial support proposed in HB1107 is restitution and not child support under domestic relations law. As such, collections tools and resources, including the services of the Office of Child Support Enforcement, used to collect child support from a parent in a domestic relations case would not generally be available to collect an obligation resulting from an order under the bill if enacted.