

SENATE BILL NO. 1135

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR HENDERSON.

3858S.011

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 454, RSMo, by adding thereto one new section relating to child maintenance orders for certain persons convicted of driving while intoxicated.

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

Section A. Chapter 454, RSMo, is amended by adding thereto
2 one new section, to be known as section 454.1050, to read as
3 follows:

454.1050. 1. This section shall be known and may be
2 cited as "Bentley's Law".

3 2. If a person is convicted of the offense of driving
4 while intoxicated, such offense caused the death of a parent
5 or parents of a child or children, and a surviving parent or
6 guardian files a petition to receive child maintenance from
7 the person convicted of such offense, such person shall be
8 ordered by the court to pay child maintenance to the child
9 or children until the child or children:

10 (1) Die;

11 (2) Marry;

12 (3) Enter active military duty;

13 (4) Reach eighteen years of age unless the provisions
14 of subsection 3 of this section apply; or

15 (5) Reach twenty-one years of age unless the
16 provisions of the maintenance order specifically extend
17 beyond the child's or children's twenty-first birthdays for

18 reasons provided under subdivision (1) of subsection 3 of
19 this section.

20 3. (1) If the child or children are physically or
21 mentally incapacitated from supporting themselves and
22 insolvent and unmarried, the court may extend the
23 maintenance obligation past the child's or children's
24 eighteenth birthday.

25 (2) (a) If the child or children reach eighteen years
26 of age and are enrolled in and attending a secondary school
27 program of instruction, maintenance shall continue, if the
28 child or children continue to attend and progress toward
29 completion of such program, until the child or children
30 complete such program or reach twenty-one years of age,
31 whichever first occurs.

32 (b) If the child or children are enrolled in an
33 institution of vocational or higher education no later than
34 October first following graduation from a secondary school
35 or completion of a graduation equivalence degree program and
36 so long as the child or children enroll for and complete at
37 least twelve hours of credit each semester, not including
38 the summer semester, at an institution of vocational or
39 higher education and achieve grades sufficient to reenroll
40 at such institution, maintenance shall continue until the
41 child or children complete their education or until the
42 child or children reach twenty-one years of age, whichever
43 first occurs. To remain eligible for such continued
44 maintenance, at the beginning of each semester the child or
45 children shall submit to the court a transcript or similar
46 official document provided by the institution of vocational
47 or higher education that includes the courses the child or
48 children are enrolled in and have completed for each term,
49 the grades and credits received for each such course, and an

50 official document from the institution listing the courses
51 that the child or children are enrolled in for the upcoming
52 term and the number of credits for each such course. When
53 enrolled in at least twelve credit hours, if the child or
54 children receive failing grades in half or more of the
55 child's or children's courseload in any one semester,
56 payment of maintenance for the child or children receiving
57 the failing grades may be terminated and shall not be
58 eligible for reinstatement. Upon request for notification
59 of the child's or children's grades by the court, the child
60 or children shall produce the required documents to the
61 court within thirty days of receipt of grades from the
62 education institution. If the child or children fail to
63 produce the required documents, payment of maintenance may
64 terminate without the accrual of any maintenance arrearage
65 and shall not be eligible for reinstatement. If the
66 circumstances of the child or children manifestly dictate,
67 the court may waive the October first deadline for
68 enrollment required by this subdivision. As used in this
69 subdivision, "institution of vocational education" means any
70 postsecondary training or schooling for which the child is
71 assessed a fee and attends classes regularly. "Higher
72 education" means any community college, college, or
73 university at which the child attends classes regularly. A
74 child or children who have been diagnosed with a
75 developmental disability, as defined under section 630.005,
76 or whose physical disability or diagnosed health problem
77 limits the child's or children's ability to carry the number
78 of credit hours prescribed in this subdivision, shall remain
79 eligible for maintenance so long as such child or children
80 are enrolled in and attending an institution of vocational
81 or higher education and the child or children continue to

82 meet the other requirements of this subdivision. A child or
83 children who are employed at least fifteen hours per week
84 during the semester may take as few as nine credit hours per
85 semester and remain eligible for maintenance so long as all
86 other requirements of this subdivision are complied with.

87 4. The court shall order the person convicted of the
88 offense of driving while intoxicated as provided under
89 subsection 2 of this section to pay maintenance in an amount
90 that is reasonable or necessary for the maintenance of the
91 child or children after considering all relevant factors,
92 including:

93 (1) The financial needs and resources of the child or
94 children;

95 (2) The financial resources and needs of the surviving
96 parent or, if no other parent is alive or capable of caring
97 for the child or children, the guardian of the child or
98 children, including the state if the state is the guardian;

99 (3) The standard of living the child or children would
100 have enjoyed;

101 (4) The physical and emotional condition of the child
102 or children and the child's or children's educational needs;

103 (5) The child's or children's physical and legal
104 custody arrangements; and

105 (6) The reasonable work-related child care expenses of
106 the surviving parent or guardian.

107 5. In addition to the relevant factors listed under
108 subsection 4 of this section, the court shall consider the
109 guidelines set out under subsection 8 of section 452.340 and
110 Missouri supreme court civil procedure rule form 14 in
111 determining the amount reasonable or necessary for the
112 maintenance of the child or children.

113 6. (1) The court shall order that child maintenance
114 payments be made to the circuit clerk as trustee for
115 remittance to the surviving parent or guardian entitled to
116 receive the payments. The circuit clerk shall remit such
117 payments to the surviving parent or guardian within three
118 working days of receipt by the circuit clerk. Circuit
119 clerks shall deposit all receipts no later than the next
120 working day after receipt.

121 (2) As an alternative to subdivision (1) of this
122 subsection, the court may, upon its own motion, order that
123 maintenance payments be made to the family support payment
124 center established under section 454.530 as trustee for
125 remittance to the surviving parent or guardian. However,
126 the court shall not order payments to be made to the payment
127 center if the family support division notifies the court
128 that such payments shall not be made to the center. In such
129 cases, payments shall be made to the clerk as trustee until
130 the division notifies the court that payments shall be
131 directed to the payment center.

132 7. In addition to any other remedy provided by law for
133 the enforcement of child maintenance, if a maintenance order
134 has been entered, the director of the family support
135 division or the director's designee shall issue an order
136 directing any employer or other payer of the person required
137 to pay child maintenance under this section to withhold and
138 pay over to the family support division or the clerk of the
139 circuit court in the county in which a trusteeship is or
140 will be established moneys due or to become due to the
141 surviving parent or guardian for the child or children in an
142 amount not to exceed federal wage garnishment limitations.

143 8. If a person ordered to pay child maintenance under
144 this section is incarcerated and unable to pay the required

145 maintenance, the person shall have up to one year after the
146 release from incarceration to begin payment, including any
147 arrearage. If any obligation under this section is to
148 terminate as provided under subsection 2 of this section but
149 the person's obligation is not paid in full, payments shall
150 continue until the entire arrearage is paid.

151 9. (1) If the surviving parent or guardian of the
152 child or children brings a civil action against the person
153 convicted of driving while intoxicated prior to any child
154 maintenance order under this section and the surviving
155 parent or guardian obtains a judgment in his or her favor in
156 the civil suit, no maintenance shall be ordered under this
157 section.

158 (2) If the court orders child maintenance under this
159 section but the surviving parent or guardian brings a civil
160 action and obtains a judgment in his or her favor, the child
161 maintenance order shall offset the judgment awarded in the
162 civil action.

163 10. The provisions of any order respecting maintenance
164 under this section may be modified only upon a showing of
165 changed circumstances so substantial and continuing as to
166 make the terms unreasonable.

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