

SECOND REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

# SENATE BILL NO. 1135

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR HENDERSON.

3858S.03P

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 and Mason's Law".

3 2. If a person has been convicted of, pled guilty to,  
4 or entered a plea of nolo contendere to an offense under  
5 sections 577.010 or 577.012, such offense caused the death  
6 of a parent or parents of a child or children, and a  
7 surviving parent or guardian files a petition to receive  
8 child maintenance from the person, such person shall be  
9 ordered by the court to pay child maintenance to the child  
10 or children until the child or children:

11 (1) Die;

12 (2) Marry;

13 (3) Enter active military duty;

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

16           (5) Reach twenty-one years of age unless the  
17 provisions of the maintenance order specifically extend  
18 beyond the child's or children's twenty-first birthdays for  
19 reasons provided under subdivision (1) of subsection 3 of  
20 this section.

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

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

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

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

80 eligible for maintenance so long as such child or children  
81 are enrolled in and attending an institution of vocational  
82 or higher education and the child or children continue to  
83 meet the other requirements of this subdivision. A child or  
84 children who are employed at least fifteen hours per week  
85 during the semester may take as few as nine credit hours per  
86 semester and remain eligible for maintenance so long as all  
87 other requirements of this subdivision are complied with.

88 4. The court shall order the person who was convicted,  
89 pled guilty to, or entered a plea of nolo contendere to an  
90 offense under sections 577.010 or 577.012 as provided under  
91 subsection 2 of this section to pay maintenance in an amount  
92 that is reasonable or necessary for the maintenance of the  
93 child or children after considering all relevant factors,  
94 including:

95 (1) The financial needs and resources of the child or  
96 children;

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

101 (3) The standard of living the child or children would  
102 have enjoyed;

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

105 (5) The child's or children's physical and legal  
106 custody arrangements; and

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

109 5. In addition to the relevant factors listed under  
110 subsection 4 of this section, the court shall consider the  
111 guidelines set out under subsection 8 of section 452.340 and

112 Missouri supreme court civil procedure rule form 14 in  
113 determining the amount reasonable or necessary for the  
114 maintenance of the child or children.

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

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

134         7. In addition to any other remedy provided by law for  
135 the enforcement of child maintenance, if a maintenance order  
136 has been entered, the director of the family support  
137 division or the director's designee shall issue an order  
138 directing any employer or other payer of the person required  
139 to pay child maintenance under this section to withhold and  
140 pay over to the family support division or the clerk of the  
141 circuit court in the county in which a trusteeship is or  
142 will be established moneys due or to become due to the

143 surviving parent or guardian for the child or children in an  
144 amount not to exceed federal wage garnishment limitations.

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

153 9. (1) If the surviving parent or guardian of the  
154 child or children brings a civil action against the person  
155 convicted of, pled guilty to, or entered a plea of nolo  
156 contendere to an offense under sections 577.010 or 577.012  
157 prior to any child maintenance order under this section and  
158 the surviving parent or guardian obtains a judgment in his  
159 or her favor in the civil suit, no maintenance shall be  
160 ordered under this section.

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

166 (3) If the surviving parent or guardian obtains a  
167 payment from any motor vehicle liability insurer relating to  
168 the death of the parent or parents, then the child  
169 maintenance order shall be offset by the amount obtained  
170 from such insurer.

171 (4) No funds received under section 595.045 shall  
172 result in a reduction of an amount provided by a child  
173 maintenance order under this section.

174           10. The provisions of any order respecting maintenance  
175 under this section may be modified only upon a showing of  
176 changed circumstances so substantial and continuing as to  
177 make the terms unreasonable.

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