

FIRST REGULAR SESSION

HOUSE BILL NO. 195

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HENDERSON.

0411H.011

DANA RADEMAN MILLER, Chief Clerk

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 one new section, to be known as section 454.1050, to read as follows:

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

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

(1) Die;

(2) Marry;

(3) Enter active military duty;

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **(2) (a) If the child or children reach eighteen years of age and are enrolled in**
19 **and attending a secondary school program of instruction, maintenance shall continue, if**
20 **the child or children continue to attend and progress toward completion of such**
21 **program, until the child or children complete such program or reach twenty-one years**
22 **of age, whichever first occurs.**

23 **(b) If the child or children are enrolled in an institution of vocational or higher**
24 **education no later than October first following graduation from a secondary school or**
25 **completion of a graduation equivalence degree program and so long as the child or**
26 **children enroll for and complete at least twelve hours of credit each semester, not**
27 **including the summer semester, at an institution of vocational or higher education and**
28 **achieve grades sufficient to reenroll at such institution, maintenance shall continue until**
29 **the child or children complete their education or until the child or children reach**
30 **twenty-one years of age, whichever first occurs. To remain eligible for such continued**
31 **maintenance, at the beginning of each semester the child or children shall submit to the**
32 **court a transcript or similar official document provided by the institution of vocational**
33 **or higher education that includes the courses the child or children are enrolled in and**
34 **have completed for each term, the grades and credits received for each such course, and**
35 **an official document from the institution listing the courses that the child or children are**
36 **enrolled in for the upcoming term and the number of credits for each such course.**
37 **When enrolled in at least twelve credit hours, if the child or children receive failing**
38 **grades in half or more of the child's or children's courseload in any one semester,**
39 **payment of maintenance for the child or children receiving the failing grades may be**
40 **terminated and shall not be eligible for reinstatement. Upon request for notification of**
41 **the child's or children's grades by the court, the child or children shall produce the**
42 **required documents to the court within thirty days of receipt of grades from the**
43 **education institution. If the child or children fail to produce the required documents,**
44 **payment of maintenance may terminate without the accrual of any maintenance**
45 **arrearage and shall not be eligible for reinstatement. If the circumstances of the child or**
46 **children manifestly dictate, the court may waive the October first deadline for**
47 **enrollment required by this subdivision. As used in this subdivision, "institution of**
48 **vocational education" means any postsecondary training or schooling for which the**
49 **child is assessed a fee and attends classes regularly. "Higher education" means any**
50 **community college, college, or university at which the child attends classes regularly. A**
51 **child or children who have been diagnosed with a developmental disability, as defined**
52 **under section 630.005, or whose physical disability or diagnosed health problem limits**
53 **the child's or children's ability to carry the number of credit hours prescribed in this**
54 **subdivision, shall remain eligible for maintenance so long as such child or children are**

55 enrolled in and attending an institution of vocational or higher education and the child
56 or children continue to meet the other requirements of this subdivision. A child or
57 children who are employed at least fifteen hours per week during the semester may take
58 as few as nine credit hours per semester and remain eligible for maintenance so long as
59 all other requirements of this subdivision are complied with.

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

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

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

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

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

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

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

74 5. In addition to the relevant factors listed under subsection 4 of this section, the
75 court shall consider the guidelines set out under subsection 8 of section 452.340 and
76 Missouri Supreme Court Civil Procedure Rule Form 14 in determining the amount
77 reasonable or necessary for the maintenance of the child or children.

78 6. (1) The court shall order that child maintenance payments be made to the
79 circuit clerk as trustee for remittance to the surviving parent or guardian entitled to
80 receive the payments. The circuit clerk shall remit such payments to the surviving
81 parent or guardian within three working days of receipt by the circuit clerk. Circuit
82 clerks shall deposit all receipts no later than the next working day after receipt.

83 (2) As an alternative to subdivision (1) of this subsection, the court may, upon its
84 own motion, order that maintenance payments be made to the family support payment
85 center established under section 454.530 as trustee for remittance to the surviving
86 parent or guardian. However, the court shall not order payments to be made to the
87 payment center if the family support division notifies the court that such payments shall
88 not be made to the center. In such cases, payments shall be made to the clerk as trustee
89 until the division notifies the court that payments shall be directed to the payment
90 center.

91 **7. In addition to any other remedy provided by law for the enforcement of child**
92 **maintenance, if a maintenance order has been entered, the director of the family**
93 **support division or the director's designee shall issue an order directing any employer or**
94 **other payer of the person required to pay child maintenance under this section to**
95 **withhold and pay over to the family support division or the clerk of the circuit court in**
96 **the county in which a trusteeship is or will be established moneys due or to become due**
97 **to the surviving parent or guardian for the child or children in an amount not to exceed**
98 **federal wage garnishment limitations.**

99 **8. If a person ordered to pay child maintenance under this section is**
100 **incarcerated and unable to pay the required maintenance, the person shall have up to**
101 **one year after the release from incarceration to begin payment, including any arrearage.**
102 **If any obligation under this section is to terminate as provided under subsection 2 of this**
103 **section but the person's obligation is not paid in full, payments shall continue until the**
104 **entire arrearage is paid.**

105 **9. (1) If the surviving parent or guardian of the child or children brings a civil**
106 **action against the person convicted of driving while intoxicated prior to any child**
107 **maintenance order under this section and the surviving parent or guardian obtains a**
108 **judgment in his or her favor in the civil suit, no maintenance shall be ordered under this**
109 **section.**

110 **(2) If the court orders child maintenance under this section but the surviving**
111 **parent or guardian brings a civil action and obtains a judgment in his or her favor, the**
112 **child maintenance order shall offset the judgment awarded in the civil action.**

113 **10. The provisions of any order respecting maintenance under this section may**
114 **be modified only upon a showing of changed circumstances so substantial and**
115 **continuing as to make the terms unreasonable.**

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