

SECOND REGULAR SESSION

# HOUSE BILL NO. 1910

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WILLIAMS.

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JOSEPH ENGLER, Chief Clerk

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### 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.

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*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 and Mason'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.**

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.

16           3. (1) If the child or children are physically or mentally incapacitated from  
17 supporting themselves and insolvent and unmarried, the court may extend the  
18 maintenance obligation past the child's or children's eighteenth birthday.

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

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

53 under section 630.005, or whose physical disability or diagnosed health problem limits  
54 the child's or children's ability to carry the number of credit hours prescribed in this  
55 subdivision, shall remain eligible for maintenance so long as such child or children are  
56 enrolled in and attending an institution of vocational or higher education and the child  
57 or children continue to meet the other requirements of this subdivision. A child or  
58 children who are employed at least fifteen hours per week during the semester may take  
59 as few as nine credit hours per semester and remain eligible for maintenance so long as  
60 all other requirements of this subdivision are complied with.

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

- 65 (1) The financial needs and resources of the child or children;
- 66 (2) The financial resources and needs of the surviving parent or, if no other  
67 parent is alive or capable of caring for the child or children, the guardian of the child or  
68 children, including the state if the state is the guardian;
- 69 (3) The standard of living the child or children would have enjoyed;
- 70 (4) The physical and emotional condition of the child or children and the child's  
71 or children's educational needs;
- 72 (5) The child's or children's physical and legal custody arrangements; and
- 73 (6) The reasonable work-related child care expenses of the surviving parent or  
74 guardian.

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

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

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

90 until the division notifies the court that payments shall be directed to the payment  
91 center.

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

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

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

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

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

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