

HOUSE BILL REPORT

HB 1668

As Reported by House Committee On:
Community Safety, Justice, & Reentry

Title: An act relating to restitution for surviving minor children of deceased victims of vehicular homicide.

Brief Description: Concerning restitution for surviving minor children of deceased victims of vehicular homicide.

Sponsors: Representatives Donaghy, Low, Reeves, Ramel, Chambers, Bronoske, Eslick, Chapman, Macri, Schmidt, Kloba, Robertson, Hutchins, Davis and Ryu.

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 2/13/23, 2/16/23 [DPS].

Brief Summary of Substitute Bill

- Establishes a form of restitution that courts must impose when a person is convicted of vehicular homicide by operation of a motor vehicle while under the influence of intoxicating liquor or any drugs, resulting in the death of a parent of a minor child or children, unless a court, in its discretion, relieves a person of the requirement by finding that the person does not or will not have the ability to pay.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse, Graham and Ramos.

Staff: Michelle Rusk (786-7153).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Restitution.

Restitution is a sum ordered by the sentencing court to be paid by an offender over a specified period of time as payment for a victim's damages. A sentencing court must order restitution whenever a victim of a crime is entitled to crime victims' compensation benefits, and when an offense results in injury to any person, or damage to or loss of property, unless a court finds extraordinary circumstances make restitution inappropriate.

A restitution order must be based on easily ascertainable damages for injury to property, expenses incurred for treatment of personal injuries, lost wages, and counseling that is reasonably related to the offense. Restitution may not be imposed for damages for mental anguish, pain and suffering, or other intangible losses, and may not exceed double the amount of an offender's gain or a victim's loss. An award of restitution does not, however, limit civil remedies or defenses available to a victim, a victim's survivors, or a defendant.

The court must set a minimum monthly payment that an offender is required to make towards the restitution ordered. In so doing, the court must consider the total amount of restitution owed, the offender's present, past, and future ability to pay, and any assets the offender may have. The court may modify the terms of a restitution order, but may not reduce the total amount of restitution ordered because an offender lacks the ability to pay the total amount, and may not issue an order postponing restitution payments until after an offender is released from total confinement. An offender will remain under the court's jurisdiction until a restitution obligation is satisfied, regardless of the statutory maximum for the crime.

A court may refrain from imposing, or relieve an offender of the requirement to pay, full or partial restitution and accrued interest on restitution to any insurer or state agency, except restitution owed to the Department of Labor and Industries under the Crime Victims Compensation Program, if the court finds the offender does not have the current or likely future ability to pay. A person does not have the current ability to pay if the person is indigent.

Specific restitution is available for the crime of Rape of a Child in the first, second, or third degree, in which the victim becomes pregnant. This restitution includes: (1) all of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (2) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington child support registry. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount.

Vehicular Homicide.

Vehicular homicide is a class A felony ranked at either seriousness level XI or VII,

depending on the circumstances. A person is guilty of vehicular homicide if the death of any person ensued within three years as a proximate result of injury proximately caused by the driver's operation of a motor vehicle:

- while under the influence of an intoxicating liquor or any drug;
- in a reckless manner; or
- with disregard for the safety of others.

Summary of Substitute Bill:

Restitution.

A new form of restitution is established that courts must impose when a person is convicted of vehicular homicide by operation of a motor vehicle while under the influence of intoxicating liquor or any drugs, resulting in the death of a parent of a minor child. Courts are allowed discretion to determine, at any time including at sentencing, that a convicted person may be relieved of the requirement to pay full or partial restitution if the court finds the person does not or will not have the ability to pay.

If ordered, a convicted person must pay restitution in the form of child maintenance to each of a victim's children until they are 18 and have graduated high school, or the class of which the child is a member has reached 18 and graduated from high school. Restitution must be in an amount reasonable or necessary for maintenance of the children, after considering all relevant factors, including:

- the financial needs and resources of the child or children;
- the financial resources and needs of the surviving parent or guardian(s);
- the physical and emotional condition, and educational needs, of the child or children;
- the child or children's physical and legal custody arrangement; and
- the reasonable work-related child care expenses of the surviving parent or guardians.

Restitution may be offset, or not ordered, if a surviving parent or guardian obtains a civil judgement.

Substitute Bill Compared to Original Bill:

The substitute bill:

- narrows the circumstances in which restitution is required for surviving minor children of deceased parents as a result of vehicular homicide to only when a person is convicted of vehicular homicide from operating a motor vehicle while under the influence of intoxicating liquor or any drug; and
- allows a court the discretion to determine, at any time including at sentencing, that a person convicted of vehicular homicide may be relieved of the requirement to pay full or partial child maintenance restitution if the court finds that the person does not or will not have the ability to pay it.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 16, 2023.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This policy shows that we take care of those lives who have been impacted by people who choose to drive under the influence. The bill is based on *Bentley's law*, which is being considered across the country right now. When someone loses a parent, to no fault of their own because someone chose to drive under the influence, it is devastating. There is nothing we can do to bring a parent back, but one thing we can do is make sure it doesn't have as large of a financial impact on their lives as it might otherwise. This policy recognizes that there is a decision that goes into driving under the influence and that there needs to be responsibility for making that decision. Without this bill, there is no way to compensate someone for pain and suffering without addressing it through a civil lawsuit.

(Opposed) None.

Persons Testifying: Representative Brandy Donaghy, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.