

SENATE BILL REPORT

SB 5841

As Reported by Senate Committee On:
Law & Justice, January 18, 2024

Title: An act relating to requiring individuals convicted of offenses related to driving under the influence to pay financial support to minor children and dependents when the offense results in the death or disability of a parent.

Brief Description: Requiring individuals convicted of offenses related to driving under the influence to pay financial support to minor children and dependents when the offense results in the death or disability of a parent.

Sponsors: Senators Lovick, Boehnke, Braun, Dhingra, Hasegawa, Kuderer, Liias, Lovelett, McCune, Padden, Randall and Valdez.

Brief History:

Committee Activity: Law & Justice: 1/16/24, 1/18/24 [DPS].

Brief Summary of First Substitute Bill

- Allows a court to order additional restitution in the form of financial support for a minor until the age of 18 when a person is sentenced for a crime involving driving under the influence that results in the death or permanent disability of the parent or guardian of a minor.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5841 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: Kevin Black (786-7747)

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: Driving Under the Influence. Driving under the influence of intoxicating liquor, cannabis, or any drug is a gross misdemeanor unless the person has three or more prior offenses within ten years, in which case it is a class B felony. A person commits this crime by driving with an alcohol concentration of 0.08 or higher, a THC concentration of 5.00 or higher, or either driving under the influence of or being affected by intoxicating liquor, cannabis, or any drug.

Vehicular Homicide. Vehicular homicide is a class A felony. A person commits this crime when the death of a person ensues within three years as the result of an injury proximately caused by the person's driving while the person was under the influence of intoxicating liquor or any drug, or while the person was operating the vehicle in a reckless manner or with disregard for the safety of others.

Vehicular Assault. Vehicular assault is a class B felony. A person commits this crime by driving a vehicle and causing substantial bodily harm to another in a reckless manner, or while under the influence of intoxicating liquor or any drug, or with disregard for the safety of others.

Restitution. Under the Sentencing Reform Act, a sentencing court may order restitution only for:

- easily ascertainable damages for injury to or loss of property;
- actual expenses incurred for treatment for injury to persons; or
- lost wages resulting from injury.

Restitution may not include damages for mental anguish, pain and suffering, or other intangible losses, but may include the cost of counseling related to the offense. The court must take into consideration the total amount of restitution owed, the defendant's past, present, and future ability to pay, and any assets the defendant may have. An exception applies to restitution ordered for the crime of rape of a child in the first, second, or third degree which results in pregnancy of the victim, which allows the court to order restitution both for the expenses of the pregnancy and for child support for any child born as a result of the crime if child support has been ordered pursuant to a civil superior court or administrative order.

Melanie's Law. This bill is similar to Melanie's Law, SB 268, enacted in Kentucky in June 2023.

Summary of Bill (First Substitute): When a defendant is sentenced for the crimes of driving under the influence, vehicular homicide while under the influence of intoxicating liquor or any drug, or vehicular assault while under the influence of intoxicating liquor or any drug, if the crime caused the death or permanent disability of a parent or guardian of a minor child, the court may order restitution in the form of financial support for each child or dependent of the victim in an amount calculated to provide financial support until the child or dependent reaches 18 years of age.

To determine the amount of restitution, the court must consider all relevant factors, including the financial needs and resources of the child and surviving parent or guardian, the standard of living to which the child is accustomed, and the reasonable child care expenses of the parent or guardian. The amount of restitution ordered must be offset by amounts paid to the victim by the defendant or the defendant's insurance as the result of any civil judgment or settlement addressing lost wages or impairment of future earnings. If the child becomes a ward of the state, restitution amounts paid must be held in trust for the child and not retained by the state to defray costs of dependency.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

If the child becomes a ward of the state, restitution amounts paid must be held in trust for the child and not retained by the state to defray costs of dependency.

Appropriation: None.

Fiscal Note: Requested on January 9, 2024. Partial fiscal note available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: I heard about this idea at the National College of State Legislators. I spent 31 years as a state trooper and hated having to knock on doors after fatal accidents. My younger cousin was the namesake of Melanie's Law in Kentucky. We sometimes forget about survivors, who struggle who make ends meet. It is not just fairness to the child, but accountability for the offender. There is also a deterrence effect, because people talk about the law. The judge has discretion to manage restitution payments. Although the checks offenders are able to write may be small, having to write them may reduce recidivism.

Persons Testifying: PRO: Senator John Lovick, Prime Sponsor; David Yates, Kentucky State Senate, District 37.

Persons Signed In To Testify But Not Testifying: No one.