



January 26, 2024

Support HB 1104 to require child restitution payments in fatal impaired driving crashes

The Honorable Marcus Simon
Chair, House Courts of Justice – Civil Committee

Dear Chair Simon and Civil Committee Members,

Mothers Against Drunk Driving (MADD) urges you to support and advance HB 1104 by Representative Walker to require impaired drivers who cause a fatal crash to pay restitution in the form of child support to a surviving spouse or other relatives who are raising the children of impaired driving victims until the children turn 18. The proposal appears modeled after four similar laws enacted in Tennessee, Kentucky, Texas and Maine. The national movement around this proposal is entitled Bentley's Law. HB 1104 is scheduled for a hearing on January 29.

The problem of impaired driving is not going away. Drunk driving is still a deadly crime. According to the National Highway Traffic Safety Administration (NHTSA) in 2021 in Virginia, 281 people were killed in drunk driving crashes—a 19% increase from 2019.

HB 1104 better ensures justice and accountability. MADD believes that passing this proposal will make people think twice before getting behind the wheel impaired. If a person makes the choice to drive impaired and kills a parent, the person will encounter another consequence for their deadly decision. To the victims of the impaired drivers, this proposal allows for another avenue of restitution to help ensure justice.

MADD urges you to please advance HB 1104. Enclosed is more information relating to the implementation of this proposal. If you have any questions or need more information, please contact me at bryna.clarkbraverman@madd.org or 410-964-5757 Ext 2453. Thank you in advance for your prompt consideration of this important request.

Sincerely,

Bryna Clark-Braverman
MADD Mid-Atlantic Regional Executive Director



Q and A on the Implementation of Bentley's Law

Question: Who would determine the child support amount and how? Determining the amount will require additional information and expertise. How often should the amount be reviewed?

Answer: How is child support currently figured out in family law cases? The thought is that these payments would be based off of the person's income level, much like that in child support payment claims.

Question: Is there fairness? e.g. – should the child of a doctor be compensated more for losing a parent than the child of someone who earns a lower wage?

Answer: The goal is deterrence and justice for victims. The issue of fairness could be applicable to current civil cases and whether a third party has insurance or no insurance, is a large corporate restaurant or not.

Question: Is there any consideration of the individual's ability to pay? Traditional child support is determined by the parents' income rather than a child's current standard of living.

Answer: The area to look at initially is child support in family cases and the amount of income should be determined by the drunk driver's income no later than one year after release from incarceration.

Question: If the person owes restitution from previous cases, those would get paid first and it could take a very long time to get to this case.

Answer: How often does an offender have multiple pending restitution cases? The pending other multiple restitutions or debts could be included to determine the offender's ability to make monthly payments (again like child support payments in family law).

Question: Who will monitor the payments? This is not something that Superior Court or Family Court currently does for child support.

Answer: These payments would be through the civil court process.

Question: Would this be faster than the current remedy (civil suits)?

Answer: It might be quicker to obtain a remedy from a third party (not the offender) in some cases. The Bentley's Law payment would run concurrently to any third party civil remedies.

Question: Would it limit recovery in wrongful death suits?

Answer: No. A victim could still obtain recovery from third parties (not the offender). The payments made by the offender via Bentley's Law would offset any civil lawsuits against the offender from the Victim Survivors (So the offender would not have Double Jeopardy)

Question: Resources will be necessary for DOJ and and Superior Court due to additional hearings, and to determine the restitution amount. May need expert testimony. I think the bottom line is that restitution and VCAP (Victim Compensation Assistance Program) work very differently than child support. We see this as kind of a hybrid between all of those systems, which would require new processes.

Answer: MADD cannot speak for state or local entities charged with implementing Bentley's Law but there are pathways to utilize to ensure it is implemented already in-place in current law (child support payments in family law cases).

Question: If a defendant is ordered to pay child support through Bentley's Law, will the yearly amount change depending on the offender's wages? Will there be additional hearings as a result if a defendant's ability to pay changes? Will these hearings overburden the court?

Answer: Due process should be afforded to all defendants. If the defendant is unable to pay due to changes in their wages, then the person should have the ability to make such a claim in child support levels as a person currently does in the child support payment system. In current child support payment amounts, how often do payees contest the amount they are ordered to pay through court.