STATE OF NEW YORK

1776

2023-2024 Regular Sessions

IN ASSEMBLY

January 20, 2023

Introduced by M. of A. MEEKS -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to requiring intoxicated drivers to pay child support if such intoxicated driving results in the death of the parent or guardian of a minor child

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The vehicle and traffic law is amended by adding a new section 1193-a to read as follows:

§ 1193-a. Offenses resulting in death of parent or guardian of a minor child. In addition to the imposition of any fine or period of imprisonment set forth in this chapter or under the penal law, where an individual is convicted of vehicular manslaughter in the second degree under subdivision one of section 125.12 of the penal law due to the influence of alcohol, vehicular manslaughter in the first degree under subdivision one of section 125.13 of the penal law, or aggravated vehicular homicide under subdivision one of section 125.14 of the penal law, and the deceased victim of such offense was the parent or guardian of a minor child, the sentencing court shall order such individual to pay restitution in the form of child support to each of such victim's children until each such child reaches the age of eighteen and has graduated from high school, or the class of which such child is a member when such child reached the age of eighteen has graduated from high school, in accordance with the following:

1. The court shall determine an amount that is reasonable and necessary for the maintenance of the victim's child after considering all relevant factors, including:

(a) The financial needs of such child;

(b) The financial resources and needs of the surviving parent or guardian of such child, including the state if such child is in the custody of the office of children and family services;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(c) The standard of living to which such child is accustomed;

(d) The physical and emotional condition of such child and such child's educational needs;

(e) Such child's physical and legal custody arrangements; and

(f) The reasonable work-related child care expenses of any surviving parent or guardian of such child.

2. The court shall order that child support payments be made to the clerk of court as trustee for remittance to the child's surviving parent or guardian. The clerk shall remit the payments to the surviving parent or guardian within three business days of receipt by the clerk. The clerk shall deposit all payments no later than the next working day after receipt.

3. If a defendant who is ordered to pay child support under this section is incarcerated and unable to pay such required child support, such defendant shall have up to one year after his or her release from incarceration to begin payment, including entering a payment plan to address any arrearage. If a defendant's child support payments under this section are set to terminate but such defendant's obligation is not paid in full, such child support payments shall continue until the entire arrearage is paid.

4. (a) If the surviving parent or guardian of the child brings a civil action against the defendant prior to the sentencing court ordering child support payments under this section and such surviving parent or guardian obtains a judgment in such civil suit, no such child support shall be ordered under this section.

(b) If the court orders the defendant to make child support payments as restitution under this section and the surviving parent or guardian subsequently brings a civil action and obtains a judgment, such child support order shall be offset by the amount of the judgment awarded in such civil action.

§ 2. This act shall take effect immediately and shall apply to offenses committed on or after such date.