

CHAPTER 174

(SB 268)

AN ACT relating to financial support of a child or dependent after driving under the influence.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Disabled":*

1. *Means a legal disability as is measured by functional incapacities; and*
2. *Includes incapacities caused by psychological, psychiatric, or stress-related trauma, and refers to any person seventeen (17) years of age or older who is unable to make informed decisions with respect to his or her personal affairs to the extent that he or she lacks the capacity to provide for his or her physical health and safety or the physical health and safety of a minor child, including but not limited to health care, food, shelter, clothing, or personal hygiene; and*

(b) *"Totally and permanently disabled":*

1. *Means the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months; and*
2. *Includes a finding of permanent total disability by the Social Security Administration that a person is disabled and qualifies for benefits or a finding by an administrative law judge under KRS Chapter 342.*

(2) (a) *Notwithstanding any law to the contrary, if a defendant is convicted of a violation of KRS 189A.010 and the violation caused the death of a parent or guardian of a minor child or dependent or resulted in a finding by the court that a parent or guardian of a minor child or dependent is disabled or totally and permanently disabled, then the sentencing court may order the defendant to pay restitution in the form of financial support for the child or dependent to each child or dependent of the victim until the child or dependent reaches:*

1. *Eighteen (18) years of age; or*
2. *Nineteen (19) years of age if the child or dependent is still enrolled in high school.*

(b) *In determining an amount that is reasonable and necessary for the financial support of the victim's child or dependent, the court shall consider all relevant factors, including the:*

1. *Financial needs and resources of the child or dependent;*
2. *Financial resources and needs of the surviving parent or guardian of the child or dependent;*
3. *Standard of living to which the child or dependent is accustomed;*
4. *Physical and emotional condition of the child or dependent and the child's or dependent's educational needs;*
5. *Child's or dependent's physical and legal custody arrangements; and*
6. *Reasonable child care expenses of the surviving parent or guardian.*

(3) *The court shall order that payments made to financially support the child or dependent be made to the clerk of court as trustee for remittance to the child or dependent's surviving parent or guardian. The clerk shall remit the payments to the surviving parent or guardian within three (3) working days of receipt by the clerk. The clerk shall deposit all payments no later than the next working day after receipt.*

(4) *If a defendant who is ordered to pay restitution in the form of financial support for the child or dependent under this section is incarcerated and unable to pay the required restitution, the defendant shall have up to*

one (1) year after the release from incarceration to begin payment, including entering into a payment plan to address any arrearage.

- (5) *If a defendant's payments to financially support the child or dependent are set to terminate but the defendant's obligation is not paid in full, the payments to financially support the child or dependent shall continue until the entire arrearage is paid.*
- (6)
 - (a) *If the surviving parent or guardian of the child or dependent brings a civil action against the defendant before the sentencing court orders restitution to financially support the child or dependent and the surviving parent or guardian obtains a judgment and full satisfaction of damages in the civil suit, restitution shall not be ordered under this section.*
 - (b) *If the court orders the defendant to pay restitution to financially support the child or dependent under this section and the surviving parent or guardian subsequently brings a civil action and obtains a judgment, the restitution order shall be offset by the amount of the judgment awarded and paid by the defendant or the defendant's insurance for lost wages or permanent impairment of the power to work and earn money in the civil action.*

➔ Section 2. This Act may be cited as Melanie's Law.

Signed by Governor April 4, 2023.