**South Carolina General Assembly**

124th Session, 2021-2022

**S. 1301**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Climer, Shealy, Davis, Kimbrell, M. Johnson and Fanning

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Companion/Similar bill(s): 5299

Introduced in the Senate on April 28, 2022

Currently residing in the Senate Committee on **Judiciary**

Summary: DUI vehicular homicide restitution

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/28/2022 Senate Introduced and read first time ([Senate Journal‑page 4](file:///h:\sj\20220428.docx))

4/28/2022 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 4](file:///h:\sj\20220428.docx))

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**VERSIONS OF THIS BILL**

[4/28/2022](file:///p:\pprever\2021-22\1301_20220428.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 56‑5‑2937 SO AS TO PROVIDE PERSONS CONVICTED OF RECKLESS VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE OF ALCOHOL OR ANY OTHER DRUG OR COMBINATION OF DRUGS, OR CONVICTED OF RECKLESS VEHICULAR HOMICIDE AND HAD AT LEAST TWO PRIOR CONVICTIONS FOR DRIVING MOTOR VEHICLES UNDER THE INFLUENCE OF ALCOHOL, ANY OTHER DRUG, OR A COMBINATION OF OTHER DRUGS OR SUBSTANCES, OR DRIVING MOTOR VEHICLES WITH AN UNLAWFUL ALCOHOL CONCENTRATION, OR BOTH, AND WHOSE VICTIMS WERE PARENTS OF MINOR CHILDREN, MUST PAY RESTITUTION IN THE FORM OF CHILD MAINTENANCE TO EACH OF THE VICTIMS’ CHILDREN UNTIL EACH CHILD REACHES EIGHTEEN YEARS OF AGE AND HAS GRADUATED FROM HIGH SCHOOL; AND BY ADDING SECTION 50‑21‑118 SO AS TO PROVIDE PERSONS CONVICTED OF OPERATING MOVING WATER DEVICES WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS WHEN DEATH RESULTS, OR RECKLESS HOMICIDE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND WHOSE VICTIMS WERE PARENTS OF MINOR CHILDREN, MUST PAY RESTITUTION IN THE FORM OF CHILD MAINTENANCE TO EACH OF THE VICTIMS’ CHILDREN UNTIL EACH CHILD REACHES EIGHTEEN YEARS OF AGE AND HAS GRADUATED FROM HIGH SCHOOL.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 23, Chapter 5, Title 56 of the 1976 Code is amended by adding:

“Section 56‑5‑2937. (A) Notwithstanding any other provision of law, if a person is convicted of violating Section 56‑5‑2910 while under the influence of alcohol or any other drug or combination of drugs to the extent that the person’s faculties to drive a motor vehicle were materially and appreciably impaired, or convicted of violating Section 56‑5‑2910 and had at least two prior convictions of violating either Section 56‑5‑2930 or Section 56‑5‑2933, or both, and the deceased victim of the offense was the parent of a minor child, then the court shall order the person to pay restitution in the form of child maintenance to each of the victim’s children until each child reaches eighteen years of age and has graduated from high school, or the class of which the child is a member when the child reached eighteen years of age has graduated from high school.

(B) 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:

(1) the financial needs and resources of the child;

(2) the financial resources and needs of the surviving parent or guardian of the child, including the State if the child is in the custody of the Department of Social Services;

(3) the standard of living to which the child is accustomed;

(4) the physical and emotional condition of the child and the child’s educational needs;

(5) the child’s physical and legal custody arrangements; and

(6) the reasonable work‑related child care expenses of the surviving parent or guardian.

(C) The court shall order that child maintenance 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 working days of receipt by the clerk. The clerk shall deposit all payments no later than the next working day after receipt.

(D) If a person who is ordered to pay child maintenance under this section is incarcerated and unable to pay the required maintenance, the person must have up to one year after the release from incarceration to begin payment, including entering a payment plan to address any arrearage. If a person’s child maintenance payments are set to terminate but the person’s obligation is not paid in full, the child maintenance payments shall continue until the entire arrearage is paid.

(E) If the surviving parent or guardian of the child brings a civil action against the person prior to the court ordering child maintenance payments as restitution and the surviving parent or guardian obtains a judgment in the civil suit, no maintenance shall be ordered under this section.

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

SECTION 2. Article 1, Chapter 21, Title 50 of the 1976 Code is amended by adding:

“Section 50‑21‑118. (A) Notwithstanding any other provision of law, if a person is convicted of violating Section 50‑21‑113 when death results, or Section 50‑21‑115 while under the influence of alcohol, drugs, or the combination of alcohol or drugs and the deceased victim of the offense was the parent of a minor child, then the sentencing court shall order the person to pay restitution in the form of child maintenance to each of the victim’s children until each child reaches eighteen years of age and has graduated from high school, or the class of which the child is a member when the child reached eighteen years of age has graduated from high school.

(B) 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:

(1) the financial needs and resources of the child;

(2) the financial resources and needs of the surviving parent or guardian of the child, including the State if the child is in the custody of the Department of Social Services;

(3) the standard of living to which the child is accustomed;

(4) the physical and emotional condition of the child and the child’s educational needs;

(5) the child’s physical and legal custody arrangements; and

(6) the reasonable work‑related child care expenses of the surviving parent or guardian.

(C) The court shall order that child maintenance 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 working days of receipt by the clerk. The clerk shall deposit all payments no later than the next working day after receipt.

(D) If a person who is ordered to pay child maintenance under this section is incarcerated and unable to pay the required maintenance, the person must have up to one year after the release from incarceration to begin payment, including entering a payment plan to address any arrearage. If a person’s child maintenance payments are set to terminate, but the person’s obligation is not paid in full, the child maintenance payments shall continue until the entire arrearage is paid.

(E) If the surviving parent or guardian of the child brings a civil action against the person prior to the court ordering child maintenance payments as restitution and the surviving parent or guardian obtains a judgment in the civil suit, no maintenance shall be ordered under this section.

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

SECTION 3. This act takes effect upon approval by the Governor.

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