

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

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Legislative Document

No. 1870

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S.P. 754

In Senate, May 2, 2023

**An Act to Require the Payment of Child Support by an Intoxicated  
Driver Who Kills a Parent**

(AFTER DEADLINE)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator STEWART of Aroostook.  
Cosponsored by Representative ARATA of New Gloucester.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 17-A MRSA §2020** is enacted to read:

3 **§2020. Child whose parent is killed during an operating under the influence offense**

4 **1. Restitution required.** In addition to any other restitution ordered under this chapter,  
5 if a defendant is convicted of an offense under Title 12, section 10701, subsection 1-A,  
6 paragraph B, C or D or Title 29-A, section 2411 that results in the death of a person and  
7 the person is the parent of a minor, the court shall order restitution in the form of  
8 maintenance for each child of the person until each child reaches 18 years of age and has  
9 graduated from secondary school or the majority of the class of which each child is a  
10 member when the child reaches 18 years of age has graduated from secondary school.

11 **2. Amount of restitution.** The court shall determine the amount of restitution under  
12 this section that is reasonable and necessary for the maintenance of a child under subsection  
13 1 considering all relevant factors, including:

14 A. The financial needs and resources of the child;

15 B. The financial needs and resources of any surviving parent or guardian of the child,  
16 including the State if the child is in the custody of the Department of Health and Human  
17 Services;

18 C. The standard of living to which the child is accustomed;

19 D. The physical and emotional condition of the child and the child's emotional needs;

20 E. The child's physical and legal custody arrangements; and

21 F. The reasonable work-related child care expenses of any surviving parent or guardian  
22 of the child.

23 **3. Payments to clerk.** The defendant shall make restitution payments to the clerk of  
24 the court as trustee for remittance to the child's parent or guardian under subsection 2,  
25 paragraph B. The clerk shall deposit a payment no later than the next business day after  
26 receipt of the payment and remit the payment to the surviving parent or guardian designated  
27 by the court within 10 business days of receipt of the payment.

28 **4. Incarcerated defendant.** If the defendant under subsection 1 is incarcerated and  
29 unable to pay the restitution, the defendant has up to one year after release from  
30 incarceration to begin payment, including entering into a payment plan, of the arrearage. If  
31 the restitution period under subsection 1 ends and the restitution is not paid in full,  
32 payments must continue until the arrearage is paid.

33 **5. Civil action by surviving parent or guardian.** If a surviving parent or guardian  
34 brings a civil action against the defendant prior to the court's ordering restitution under  
35 subsection 1 and the parent or guardian obtains a favorable judgment in the civil action, the  
36 court may not order the restitution. If a surviving parent or guardian brings a civil action  
37 against the defendant and obtains a favorable judgment subsequent to the court's ordering  
38 restitution under subsection 1, the restitution must be offset by the amount of the judgment  
39 awarded in the civil action.

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## SUMMARY

This bill requires that a defendant convicted of operating under the influence, when the crime resulted in the death of a person who is a parent of a minor, pay restitution to the surviving parent or guardian for each child of the person killed until each child reaches 18 years of age and graduates, or the classes in which the children are members graduate, from secondary school. The amount of restitution is based upon relevant factors regarding the child's needs and accustomed standard of living. Any arrearage accumulated due to the defendant's being incarcerated is required to be paid after the defendant is released from incarceration. The court is prohibited from ordering restitution if a surviving parent or guardian obtains a civil judgment against the defendant prior to sentencing, and any civil judgment obtained after restitution is ordered offsets the restitution.