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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. T. Young and Mathews

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### SUMMARY

- Requires a criminal court to impose child maintenance restitution on an offender who commits a felony violation of aggravated vehicular homicide when the victim's death was proximately caused by an operating a vehicle while intoxicated (OVI) violation and the victim is survived by at least one minor child.
- Prohibits the court from imposing the child maintenance restitution if the parent, legal guardian, or custodian of the child brings a civil action before criminal sentencing and obtains a judgment covering the cost of child maintenance.
- Requires the child maintenance amount ordered by a court to be offset by any amount a parent, legal guardian, or custodian subsequently obtains in a judgment covering the costs of child maintenance.
- Specifies that the offender must pay child maintenance for each of the victim's children until the child reaches age 18.
- Requires the court to consider all relevant factors in determining the amount of child maintenance of each child, including specific factors such as the financial needs and resources of the child and the standard of living to which the child is accustomed.
- Specifies payment procedures for child maintenance restitution.
- Requires an incarcerated offender to begin payment of child maintenance within one year after release and authorizes the offender to do so under a payment plan approved by the court.
- Requires an offender to continue to make payments beyond the date set for the termination of payments until the entirety of the amount of child maintenance owed is paid.
- Applies existing law regarding collection of restitution to the collection of child maintenance.

- Allows a court to award child maintenance in a civil action for wrongful death against a deceased OVI-related vehicular homicide offender when the deceased victim was a minor child's parent.

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## DETAILED ANALYSIS

### **OVI-related aggravated vehicular homicide: child maintenance**

#### **Court ordered maintenance in a criminal trial**

The bill requires a court to impose child maintenance restitution on an offender who commits an OVI-related aggravated vehicular homicide when the deceased victim was a parent, legal custodian, or guardian of a surviving minor child. OVI-related aggravated vehicular homicide occurs when the victim's death was proximately caused by an operating a vehicle while intoxicated (OVI) violation, or a violation of a substantially equivalent municipal ordinance. The type of vehicle involved may include any motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft.<sup>1</sup>

Under current law, OVI-related aggravated vehicular homicide is generally a second degree felony, carrying a mandatory prison term, with a minimum term (selected by the court) of 2, 3, 4, 5, 6, 7, or 8 years and a possible criminal fine of up to \$15,000. Additional financial sanctions (such as restitution) may be imposed and a lifetime driver's license suspension must be imposed.<sup>2</sup> If certain enhancement factors apply (for example, the offender was driving on a suspended license at the time of the offense), the offense is a first degree felony, carrying a longer mandatory prison term and higher criminal fine.<sup>3</sup>

In addition to the sanctions specified above, the bill requires the court to order the offender to pay child maintenance restitution when the victim was the parent of at least one surviving minor child. The court must order child maintenance for each of the victim's surviving children. However, if a surviving parent, legal guardian, or custodian of the child or children obtains a civil judgment covering the cost of child maintenance prior to the disposition of the criminal case, the court may not impose child maintenance. If the civil judgement occurs after the disposition of the criminal case, the child maintenance amount must be offset by the amount of the judgment. For each minor child of the victim, the offender must pay child maintenance until that child reaches age 18.<sup>4</sup>

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<sup>1</sup> R.C. 2929.18(A)(2); see also R.C. 1547.11, 2903.06, 4511.19, and 4561.15, not in the bill.

<sup>2</sup> R.C. 2929.18; see also R.C. 2929.06(B) and (E), 2929.14(A)(2)(a), 2929.15(A), and 4510.02(A)(1). The maximum term of incarceration is determined based on the formula in R.C. 2929.144, not in the bill.

<sup>3</sup> R.C. 2929.18; see also R.C. 2903.06(B)(2)(b) and (c) and 2929.142, not in the bill.

<sup>4</sup> R.C. 2929.18(A)(2)(a).

## Calculation of child maintenance

A court must determine the amount of child maintenance that is reasonable and necessary for the maintenance of each child after considering all relevant factors, including all of the following:

- The financial needs and resources of the child;
- The financial resources and needs of the surviving parent, legal custodian, or guardian of the child, including the state if the child is in the custody of a public children services agency;
- The standard of living to which the child is accustomed;
- The physical and emotional condition of the child and the child's educational needs;
- The child's physical and legal custody arrangements; and
- The reasonable work-related child care expenses of the surviving parent, legal custodian, or guardian.<sup>5</sup>

## Child maintenance restitution procedures

The bill establishes procedures for payment of child maintenance restitution by requiring that payments be made to the clerk of courts as trustee for remittance to the child's surviving parent, legal custodian, or guardian. The clerk must remit the payments to the surviving parent, legal custodian, or guardian within three business days of receipt. The clerk must deposit all payments not later than the next business day after receipt. If an offender is incarcerated and unable to pay, the offender may enter a payment plan with the court and must begin payment no more than one year after the offender's release. If the payments are set to terminate but the offender's obligation is not yet paid in full, the payments must continue until the entirety of the amount owed is paid.<sup>6</sup>

The bill applies existing law regarding collection of restitution to the collection of child maintenance restitution. Under current law, a financial sanction of restitution is an order in favor of the victim and can be collected through a certificate of judgment, execution, or an order, and the offender is considered the judgment debtor. The victim can pursue a number of mechanisms to obtain payment including:

- Obtaining from the clerk of court a certificate of judgment (in the same manner and form as is issued in a civil action); or
- Obtaining an execution of the judgment or order through any available procedure, including proceedings against the debtor's property, person, or garnishment of wages.

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<sup>5</sup> R.C. 2929.18(A)(2)(b).

<sup>6</sup> R.C. 2929.18(A)(2)(c) and (d).

The bill applies this law to allow the surviving parent, legal custodian, or guardian of the surviving minor child to pursue these options to collect child maintenance restitution.<sup>7</sup>

### **Civil wrongful death claim against deceased offender's estate**

In a situation in which an OVI-related vehicular homicide is caused by a defendant who is deceased (in which case, no criminal trial can take place), the bill allows a court to award child maintenance in a civil action for wrongful death. As is required if the offender survived, the wrongful death must (1) have been proximately caused by the deceased offender's OVI-related aggravated vehicular homicide, and (2) the deceased victim must be the parent of at least one surviving minor child. The court's calculation of child maintenance and the procedure for collection of payments are the same as if the offender had survived the OVI-related vehicular homicide offense and child maintenance was determined via a criminal trial.<sup>8</sup>

## **HISTORY**

Action	Date
Introduced	09-18-23

ANHB0270IN-135/ks

<sup>7</sup> R.C. 2929.18(D).

<sup>8</sup> R.C. 2125.05.