



2023 ASSEMBLY BILL 87

March 8, 2023 - Introduced by Representatives KITCHENS, TUSLER, SORTWELL, ARMSTRONG, BEHNKE, DITTRICH, DUCHOW, GUSTAFSON, MURPHY, MURSAU, NOVAK, O'CONNOR, RETTINGER and ROZAR, cosponsored by Senators JAMES, CABRAL-GUEVARA, JACQUE and TOMCZYK. Referred to Committee on Judiciary.

1 **AN ACT** *to amend* 973.20 (8); and *to create* 973.20 (4c) of the statutes; **relating**
2 **to:** restitution upon conviction of vehicular homicide.

Analysis by the Legislative Reference Bureau

Under current law, when a defendant is sentenced or placed on probation for any crime, the court is required to order the defendant to pay restitution to the victim of the crime to pay for costs incurred by the victim or the victim's estate as a result of the crime. Under this bill, if a person is convicted of the crime of homicide by intoxicated use of a vehicle, and the victim of the homicide is a parent of a minor child, the restitution order may include the reasonable and necessary costs of maintenance for each child of the victim until the child turns 18 or until the child turns 19 if the child is still enrolled in high school. Under current law, when determining the amount of restitution to order, the court considers the amount of loss sustained by the victim, the financial resources and earning ability of the defendant, the needs of the defendant's dependents, and any other factors the court deems appropriate. Under the bill, when setting restitution paid to a parent or guardian of a victim's child, the court may also consider the financial needs and resources of the child and the surviving parent or guardian, the standard of living that the child is accustomed to, the child's emotional needs and physical and legal custody arrangements, and the reasonable work-related child care expenses of the surviving parent or guardian. Under the bill, this portion of restitution is paid to the surviving parent or guardian of the child instead of to the victim or victim's estate.

Under current law, a restitution order does not affect a victim's right to file a civil lawsuit against a defendant to recover damages. The damages awarded in the

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civil suit are offset by the amount of restitution ordered. The bill specifies that a parent or guardian of a victim's children also retains the right to file a civil suit against the defendant, and that restitution ordered to a parent or guardian of the victim's children will offset any damages awarded in the civil suit. Additionally, if the parent or guardian is awarded civil damages before restitution is ordered, the restitution order will be reduced by the amount of civil damages awarded to the parent or guardian.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 973.20 (4c) of the statutes is created to read:

2 973.20 (4c) (a) If the defendant violated s. 940.09 (1) (a) to (bm) and the
3 violation resulted in the death of a parent of a minor child, the restitution order may
4 require that the defendant pay an amount that is reasonable and necessary for the
5 maintenance of each of the victim's children until each child reaches 18 years of age,
6 or, if the child is pursuing an accredited course of instruction leading to the
7 acquisition of a high school diploma or its equivalent, until the child reaches 19 years
8 of age. Notwithstanding sub. (1r), restitution ordered under this subsection shall be
9 paid to the surviving parent or legal guardian of the child.

10 (b) In addition to the factors under sub. (13) (a), the court may consider all of
11 the following in determining the amount of restitution ordered under this
12 subsection:

13 1. The financial needs and resources of each child.

14 2. The financial needs and resources of the surviving parent or guardian of the
15 child, including the state if the child is in the custody or guardianship of the state.

16 3. The standard of living to which the child is accustomed.

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1 4. The physical and emotional condition of the child and the child's emotional
2 needs.

3 5. The child's physical and legal custody arrangements.

4 6. The reasonable work-related child care expenses of the surviving parent or
5 guardian.

6 (c) Restitution may not be ordered under this subsection if all of the following
7 apply:

8 1. Prior to the sentencing court ordering restitution, the surviving parent or
9 guardian of the child obtains a judgment in a civil action against the defendant
10 arising out of the facts or events that are the basis for a restitution order.

11 2. The judgment in the civil action includes the amounts that may be ordered
12 as restitution under this subsection.

13 (d) A defendant may not be ordered to pay restitution for his or her own child
14 under this subsection.

15 **SECTION 2.** 973.20 (8) of the statutes is amended to read:

16 973.20 (8) Restitution ordered under this section does not limit or impair the
17 right of a victim or the parent or guardian of a victim's child to sue and recover
18 damages from the defendant in a civil action. The facts that restitution was required
19 or paid are not admissible as evidence in a civil action and have no legal effect on the
20 merits of a civil action. Any restitution made by payment or community service shall
21 be set off against any judgment in favor of the victim in a civil action arising out of
22 the facts or events which were the basis for the restitution. The court trying the civil
23 action shall hold a separate hearing to determine the validity and amount of any
24 setoff asserted by the defendant.

25 **SECTION 3. Initial applicability.**

