

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 4965**

By Delegate Steele

[Introduced January 22, 2024; Referred to the  
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §17C-5-2c, related to mandating restitution to children of victims of negligent  
 3 homicide or driving under the influence causing death.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

**§17C-5-2c. Mandatory restitution for child of victim of negligent homicide and driving under  
 the influence of alcohol or controlled substances causing death.**

1 (a) The court shall order a defendant convicted of an offense under 17C-5-1 of this code  
 2 and 17C-5-2(b) of this code, to pay restitution for a child whose parent or guardian was the victim  
 3 of the offense.

4 (b) The court shall determine an amount to be paid monthly for the support of the child until  
 5 the child reaches 18 years of age or has graduated from high school, whichever is later.

6 (c) The defendant may not be required to pay restitution under this article to an individual  
 7 who is 19 years of age or older unless that individual has not yet graduated from high school.

8 (d) The court shall determine an amount for restitution under this article that is reasonable  
 9 and necessary to support the child, considering all relevant factors including:

10 (1) The financial needs and resources of the child that existed prior to the death of the  
 11 victim of the offense;

12 (2) The financial needs and resources of the surviving parent or guardian or other current  
 13 guardian of the child or, if applicable, the financial resources of the state if the Department of  
 14 Human Services has been court ordered or otherwise appointed to act as temporary or permanent  
 15 guardian or custodian of the child;

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

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

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

19 (6) The reasonable work-related childcare expenses of the surviving parent, guardian, or

20 other current guardian, if applicable; and

21 (7) The financial resources of the defendant.

22 (e) The order must require restitution payments to be:

23 (1) Delivered in a specific manner as directed by the court; and

24 (2) Directed to the parent or guardian of the child or the Department of Human Services, as  
25 applicable.

26 (f) If a defendant ordered to pay restitution under this article is unable to make the required  
27 restitution payments because the defendant is confined or imprisoned in a correctional facility, the  
28 defendant shall begin payments not later than six months after the date of the defendant's release  
29 from the facility. The defendant may enter into a payment plan to address any arrearage that exists  
30 on the date of the defendant's release. The defendant must pay all arrearages regardless of  
31 whether the restitution payments were scheduled to terminate while the defendant was confined  
32 or imprisoned in the correctional facility.

33 (g) A restitution order issued under this article may be enforced by the office of the  
34 prosecuting attorney that secured the underlying conviction, or by a person, or a parent or  
35 guardian of the person named in the order to receive the restitution, in the same manner as a  
36 judgment in a civil action.

NOTE: The purpose of this bill is to mandate restitution to children of victims of negligent homicide or driving under the influence causing death.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.