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**YOU DRINK, YOU DRIVE, YOU PAY:
AN ANALYSIS OF VICTIM COMPENSATION METHODS ACROSS THE
UNITED STATES IN LIGHT OF THE INCREASING STATE INTEREST IN
BENTLEY’S LAW**

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INTRODUCTION

The epidemic of drunk driving has reared its monstrous head across the nation’s highways for years.¹ Approximately thirty-two people die in drunk-driving crashes every day in the United States alone, amounting to the loss of a human life “every 45 minutes.”² Not only has drunk-driving had deleterious effects on the safety of those on our roadways, but it has been felt in the pockets of our government, costing the United States approximately “\$44 billion [dollars] annually.”³ States have responded to this growing crisis through legislation in a number of ways, spanning from the mandatory placement of ignition interlock device in the vehicles of DUI offenders to a conditional release from custody pending completion of a rehabilitation program.⁴

However, the families of deceased victims are often left to pick up the pieces on their own, usually with little assistance from state entities. For those who were dependent on the victim, such as young children, civil recourse is typically limited

¹ *The Drunk Driving Epidemic*, ROBERT J. DEBRY & ASSOCS., <https://robertdebry.com/drunk-driving-epidemic/> (last visited Jan. 15, 2023).

² *Drunk Driving*, NHSTA, <https://www.nhtsa.gov/risky-driving/drunk-driving> (last visited Jan. 15, 2023).

³ *Id.*

⁴ See *State Ignition Interlock Laws*, NAT’L CONF. STATE LEGIS. (Sept. 24, 2021), <https://www.ncsl.org/transportation/state-ignition-interlock-laws> (“As of 2021, thirty states and the District of Columbia have implemented laws “requiring all offenders, including first-time offenders, to install an IID.”); see also ALA. CODE § 32-5A-191(k) (2022) (requiring any person convicted of driving while under the influence to “complete a DUI or substance abuse court referral program”); ARIZ. REV. STAT. ANN. § 28-1381(j) (2022) (allowing “all but one day” of a DUI offender’s sentence to be suspended if the offender agrees to participate in and successfully completes a “court ordered alcohol or other drug screening, education or treatment program”).

to wrongful death actions, funds obtained from a state Victim’s Compensation Fund, or through court-ordered restitution to be paid by the convicted DUI offender. While no form of civil recovery can ever fully replace the loss of the victim, each of these forms of compensation carry with them a suite of issues for the families of DUI victims that generally render them unable to even come close to partial compensation.

This Note will proceed in four parts. Part I of this Note will discuss the history of one piece of legislation challenging the current state of victim’s compensation for fatal drunk driving collisions, known as “Bentley’s Law,”⁵ will lay out the requirements of bringing a successful claim under the law, and will explain how it differs from current forms of compensation. Next, Part II will briefly discuss the current state of victim compensation available for children of DUI victims in the states that have yet to adopt Bentley’s Law. With this background, Part III will compare the shortcomings of these current avenues of compensation with the existing statutory requirements of Bentley’s Law and will discuss how Bentley’s Law will aid victims in ways other methods of victim compensation do not. Finally, due to the novelty of the law, Part IV will discuss questions raised on aspects of Bentley’s Law and will examine how the legislation will be utilized in the judicial system.

I. THE BACKGROUND, POLICY, AND PROCEDURE OF BENTLEY’S LAW

As an extremely new legislation spreading across the United States, Bentley’s Law requires additional explanation of its policy and requirements before it can be compared to existing forms of victim’s compensation. As of August 2023, Tennessee, Kentucky, Texas, and Maine have passed Bentley’s Law through their state legislature.⁶ However, only Tennessee has fully enacted a codified version of the law.⁷ Thus, this Note will focus on Bentley’s Law as enacted in Tennessee, its

⁵ In the first district to have adopted Bentley’s Law, the Tennessee legislature has amended the law to be formally known as the “Ethan’s, Hailey’s and Bentley’s Law” to honor the children of Missouri couple Cordell Shawn Michael Williams and Lacey Williams as well as “fallen Chattanooga Police Officer Nicholas Galinger[,]” all three of whom were victims of drunk driving collisions. *Tennessee Governor Bill Lee Signs Ethan’s, Hailey’s and Bentley’s Law*, MOTHERS AGAINST DRUNK DRIVING (July 7, 2022), <https://madd.org/press-release/tennessee-governor-bill-lee-signs-ethans-haileys-and-bentleys-law>. Because of its wide recognition in the media as “Bentley’s Law,” it will be addressed as such in this Note.

⁶ S.B. 268, 2023 Gen. Assemb., 2023 Reg. Sess. (Ky. 2023); TENN. CODE ANN. § 39-13-219 (2023); H.B. 393, 88th Leg., 1st Sess. (Tx. 2023); L.D. 1512, 131st Leg., 1st Spec. Sess. (Me. 2023).

⁷ TENN. CODE ANN. § 39-13-219 (2023).

requirements for asserting a valid claim, and the state’s own policy discussions for adopting the law.

A. History and Policy of Bentley’s Law

Bentley’s Law was created in 2021 on behalf of Missouri grandmother Cecilia Williams, who was left raising her three grandchildren after her son and his partner were tragically killed by a drunk driver.⁸ The law itself was named after Ms. William’s five-year-old grandson, Bentley, one of those three young children now left without their parents.⁹ Ms. Williams was cognizant of the fact that she would not benefit from the law she created, but still tirelessly advocates Bentley’s Law for future families affected by drunk drivers.¹⁰

Tennessee’s version of Bentley’s Law is the first statute of its kind in the United States. Prior to its enactment in 2022, no state law existed pertaining to the maintenance of a victim’s minor dependents throughout the remainder of their childhood.¹¹ However, despite its previous absence from any state legislature, Bentley’s Law, or a variation of the law, has become a hotbed of legal discourse in at least twenty states and one U.S. territory as of March 2023.¹² Despite its widespread consideration across the United States, the law has remained true to its core purpose, according to its chief advocate, Cecilia Williams: “‘The main aspect of Bentley’s Law is financial responsibility by the offender,’ [Ms. Williams] told CBS

⁸ *Proposed ‘Bentley’s Law’ would made drunk drivers pay child support if parent is killed*, CBS19 NEWS (Nov. 6, 2022), <https://www.cbs19news.com/story/45133140/proposed-bentleys-law-would-make-drunk-drivers-pay-child-support-if-parent-is-killed>.

⁹ *Id.*

¹⁰ Eileen Finan, *Grandma Raising Late Son’s Kids Fights to Make Drunk Drivers Pay Child Support: ‘I’m Not Going to Sit Back’*, PEOPLE (Sept. 23, 2022), <https://people.com/human-interest/grandma-raising-late-sons-kids-fights-to-make-drunk-drivers-pay-child-support>.

¹¹ *See Tennessee First In Nation To Have Bentley’s Law*, 92.3 WNPC, <https://923wnpc.com/tennessee-first-in-nation-to-have-bentleys-law> (last visited Jan. 14, 2022).

¹² S.B. 193, 2023 Gen. Assemb., Reg. Sess. (Ky. 2023); S.B. 182, 2023 Leg., 2023 Sess. (Kan. 2023); H.B. 195, 102d Gen. Assemb., 1st Reg. Sess. (Mo. 2023); H.B. 1107, 94th Gen. Assemb., Reg. Sess. (Ark. 2023); H.B. 554, 2023 Gen. Assemb., Reg. Sess. (Miss. 2023); H.B. A3568, 2023 Gen. Assemb., Reg. Sess. (N.J. 2023); H.B. 2130, 2023 Gen. Assemb., Reg. Sess. (Okla. 2023); H.B. 1003, 2023 Gen. Assemb., Reg. Sess. (Okla. 2023); H.B. 2707, 82d Leg., 2023 Reg. Sess. (Or. 2023); H.B. 210, 2023 Leg., 88th Sess. (Tex. 2023); H.B. 1549, 2023 Gen. Assemb., 2023 Reg. Sess. (Va. 2023); H.B. 844, 2023 Gen. Assemb., 2023 Sess. (Conn. 2023); H.B. 683, 2023 Gen. Assemb., Reg. Sess. (Haw. 2023); H.B. A01776, 2023 Gen. Assemb., Reg. Sess. (N.Y. 2023); H.B. 3707, 2023 Gen. Assemb., 125th Sess. (S.C. 2023); H.B. 47, 2023 Gen. Assemb., Reg. Sess. (Ga. 2023); Assemb. B. 87, 2023 Gen. Assemb., Reg. Sess. (Wis. 2023); H.B. 1668, 68th Gen. Assemb., Reg. Sess. (Wash. 2023); S.B. 3095, 102d Gen. Assemb., Reg. Sess. (Ill. 2022); Assemb. B. 1551, 2023 Gen. Assemb., Reg. Sess. (Cal. 2023); H.B. 91, 2023 Leg., Reg. Sess. (La. 2023); B. 84-37 (LS), 37th Leg., Reg. Sess. (Guam 2023).

News in November [2021], adding that surviving children ‘deserve to get that compensation because you’re talking about raising children [whose] parents are no longer here.’”¹³ Tennessee was one of the first states to agree with Ms. Williams, enacting a version of her proposal in May 2022 and calling it “Ethan’s, Hailey’s, and Bentley’s Law.”¹⁴

Bentley’s Law passed every stage of the Tennessee legislature unanimously.¹⁵ At no point did a House representative or a state senator question the law with such skepticism that they were unwilling to allow it to advance to the next stage of enactment.¹⁶ In fact, while the bill was being voted upon in a House Floor Session, many Representatives spoke in support of its enactment, with one even stating that he only wished the legislature had “thought of [Bentley’s Law] years ago.”¹⁷ In its introduction to the Tennessee House of Representatives, the bill’s then-sponsor Representative Mike Hall even called Bentley’s Law “the most effective and efficient” legislation drafted during that season, expounding on its purpose to “protect [the state’s] most valuable resource[]: the children.”¹⁸

B. The Requirements of Asserting a Claim Under Bentley’s Law

¹³ Charmaine Patterson, *Grieving Mother Pushes Tenn. Bill to Make Drunk Drivers Pay Child Support If Parents Are Killed in Crash*, PEOPLE (Mar. 14, 2022), <https://people.com/crime/grieving-mother-pushes-tennessee-bill-to-make-drunk-drivers-pay-child-support-if-parents-are-killed-in-crash>.

¹⁴ *HB 1834 Bill History*, TENN. GEN. ASSEMB., <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB2103&ga=112> (last visited Mar. 14, 2023).

¹⁵ *See HB 1834: Votes*, TENN. GEN. ASSEMB., <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB1834&GA=112> (last visited Mar. 21, 2023); *see also SB 2103: Votes*, TENN. GEN. ASSEMB., <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB2103&GA=112> (last visited Mar. 21, 2023).

¹⁶ *See HB 1834: Votes*, TENN. GEN. ASSEMB., <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB1834&GA=112> (last visited Mar. 21, 2023); *see also SB 2103: Votes*, TENN. GEN. ASSEMB., <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB2103&GA=112> (last visited Mar. 21, 2023).

¹⁷ Tenn. H., *House Floor Session – 51st Leg. Day*, 112th Assemb. at 1:26:30, GRANICUS (Feb. 28, 2022), https://tnga.granicus.com/player/clip/26316?view_id=610&redirect=true&h=706230032fc9cd795c2a7604b2972ae7.

¹⁸ Tenn. H., *H.B. 1834 before the H. Subcomm. on Crim. Just.*, 112th Assemb. at 10:07, 11:01, GRANICUS (Feb. 9, 2022), https://tnga.granicus.com/player/clip/26854?view_id=610&redirect=true&h=3f17eca83808115e7c989e42d8dc86d8.

First introduced in Missouri in late 2021,¹⁹ Bentley’s Law seeks to obtain “financial restitution from DUI offenders whose actions result[] in the death of a parent or guardian.”²⁰ However, rather than supplying families with another broad avenue for seeking restitution from a DUI offender, Bentley’s Law specifically provides for restitution in the form of “child maintenance payments” to be paid to the children of deceased DUI crash victims, which continue until the child turns eighteen-years-old.²¹

In more detail, Tennessee law states that a defendant who has been convicted of vehicular homicide or aggravated vehicular homicide becomes liable upon conviction to the minor children of his victim for these “child maintenance payments” until, as mentioned, the child turns eighteen and has graduated from high school, or until the grade level of which the child is supposed to be a member turns eighteen or has graduated from high school.²² Bentley’s Law is heavily reliant on judicial decision-making through fact-specific inquiries, as courts are responsible for determining the “reasonable and necessary amount of restitution for maintenance of the victim’s child.”²³ The court is required to consider all factors relevant to this standard, such as “[t]he financial needs and resources of the child, . . . [t]he standard of living to which the child is accustomed[,]” and the physical, mental, and educational needs of the child.²⁴ Incarcerated offenders are given up to one year post-release to begin payments and must continue to make court-ordered restitution payments until the child or children are paid in full, “even if their payments were set to terminate” at an earlier date.²⁵

The initiation of Bentley’s Law proceedings is markedly dissimilar to those in restitution hearings across the country. A far cry from general court-ordered restitution as it is conducted throughout the nation, Bentley’s Law operates as a statutory requirement to be ordered by the court without a victim’s explicit request.²⁶ Bentley’s Law also does not base the amount of the award on the financial

¹⁹ H.B. 1954, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022).

²⁰ Catherine Stoddard, *Bentley’s law: Grandma aims to make DUI offenders pay victims’ orphaned kids*, FOX29 PHILADELPHIA (Nov. 17, 2021), <https://www.fox29.com/news/bentleys-law-grandma-aims-to-make-dui-offenders-pay-victims-orphaned-kids>.

²¹ TENN. CODE ANN. § 39-13-219(a) (2023); *see also* Patterson, *supra* note 13.

²² TENN. CODE ANN. § 39-13-219(a) (2023).

²³ MARYBETH SULLIVAN, OFF. LEGIS. RSCH., BENTLEY’S LAW, 2022-R-0171, at 2 (2022) (internal quotation omitted) (citing TENN. CODE ANN. § 39-13-219(b) (2023)).

²⁴ *Id.*; TENN. CODE ANN. § 39-13-219(b)(1)-(6) (2023).

²⁵ SULLIVAN, *supra* note 23 at 2; *see also* TENN. CODE ANN. § 39-13-219(d) (2023).

²⁶ *Compare* TENN. CODE ANN. § 39-13-219(a) (emphasis added) (“[I]f a defendant is convicted of a violation of § 39-13-213(a)(2) or § 39-13-218 and the deceased victim of the offense was the parent of a minor child, then the sentencing court *shall* order the defendant to pay restitution in the form of child maintenance to each of the victim’s children until each child reaches eighteen

resources of the defendant, but rather on the financial resources of the child's surviving parent in reference to the financial needs of the child.²⁷

The only requirement Bentley's Law places on the surviving parent is to choose between first pursuing court-ordered child maintenance payments or a civil wrongful death claim.²⁸ If the parent or guardian wishes to bring "a civil action against the defendant" prior to the court ordering child maintenance payments under Bentley's Law and actually obtains a judgment in said suit, no maintenance payments shall be awarded under Bentley's Law.²⁹ However, if the parent or guardian decides to wait until after child maintenance payments are ordered by the Court pursuant to Bentley's Law and subsequently brings a civil action against the defendant, any amount awarded in the suit shall offset the payments to be made by the defendant under Bentley's Law.³⁰

II. COMPARATIVE METHODS OF VICTIMS COMPENSATION

In states which Bentley's Law has not yet been adopted, minor children who have lost a parent or guardian in a drunk-driving crash are generally presented with three options to pursue compensation for their loss: a court may order general restitution to be paid to the dependents or immediate family of the victim, their state may provide them assistance through a Crime Victim's Compensation Fund,³¹ or a guardian or surviving parent may initiate a wrongful death suit.

(18) years of age and has graduated from high school . . ."), *with* TENN. CODE ANN. § 40-35-304(a),(b) (2023) (emphasis added) ("A sentencing court *may* direct a defendant to make restitution to the victim of the offense as a condition of probation. . . . Whenever the court believes that restitution may be proper *or the victim of the offense or the district attorney general requests*, the court shall order the presentence service officer to include in the presentence report documentation regarding the nature and amount of the victim's pecuniary loss.").

²⁷ *Compare* TENN. CODE ANN. § 40-35-304(c) (2023) ("In determining the amount and method of payment or other restitution, the court may consider the financial resources and future ability of the defendant to pay and perform."), *with* TENN. CODE ANN. § 39-13-219(b)(1)-(6) (2023) ("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 children's 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.").

²⁸ TENN. CODE ANN. § 39-13-219(e) (2023).

²⁹ *Id.* § 39-13-219(e)(1).

³⁰ *Id.* § 39-13-219(e)(2).

³¹ A Victim's Compensation Fund is "a direct reimbursement [on behalf of the State] to or on behalf of a crime victim for a wide variety of crime-related expenses such as medical costs,

The following section will detail the processes of each of these compensation methods as they pertain to the dependents of victims killed in drunk-driving collisions. This section will proceed in three parts. Part A will discuss the current state of general restitution and the ways in which it fails to support the dependents of DUI victims. Part B will discuss the requirements for the family of a DUI victim to receive compensation from a state Crime Victim's Compensation Fund. Part C will discuss the makings and requirements of the average wrongful death lawsuit as it relates to the direct family members of the DUI decedent.

A. General Restitution

One of the main purposes of restitution is to enable “restorative justice,” which means, in its simplest form, to make the victim or victims of a defendant’s criminal conduct whole again.³² In the context of DUI crashes resulting in death, this is an inherently equitable concept, as it eases the financial concerns of the surviving parent trying to support their minor children with the sudden loss of their spouse’s income. However, under general restitution laws across the United States, this concern is all too common.

General restitution in the United States often fails victims in more ways than one. For instance, only victims residing in eleven states can be sure they will receive restitution of some sort, with the rest leaving the determination to award restitution in the sole discretion of the judge.³³ Of the remaining thirty-nine states, many require victims or prosecutors to advocate to the court for restitution to be considered.³⁴ These requests to the court may require some sort of victim statement

mental health counseling, lost wages, and funeral and burial costs.” *Victim Compensation*, OFF. FOR VICTIMS OF CRIME, <https://ovc.ojp.gov/topics/victim-compensation> (last visited Jan. 22, 2023).

³² Dana A. Waterman, *A Defendant’s Ability to Pay: The Key to Unlocking the Door of Restitution Debt*, 106 IOWA L. REV. 455, 462 (2020).

³³ Erica L. Green, *For Young Offenders, Restitution Debts Can Present Crippling Obstacles*, N.Y. TIMES (July 14, 2022), <https://www.nytimes.com/2022/07/14/us/politics/juvenile-restitution-debts.html?smid=url-share>. The article does not list which states mandate restitution, but examples of states with such requirements are Alabama and Alaska. *See* ALA. CODE § 15-18-65 (“The Legislature hereby finds, declares and determines that it is essential . . . that all perpetrators of criminal activity or conduct be required to fully compensate all victims of such conduct or activity for pecuniary loss, damage or injury as a direct or indirect result thereof.”); *See also* ALASKA STAT. ANN. § 12.55.045(a) (2022) (emphasis added) (“The court *shall*, when presented with credible evidence, unless the victim or other person *expressly declines restitution*, order a defendant convicted of an offense to make restitution as provided in this section[.]”).

³⁴ *See, e.g.*, CONN. GEN. STAT. § 53a-28(c)(2) (2022) (requiring a victim to request restitution for any such proceedings to be brought); *see also, e.g.*, MD. CODE ANN. CRIM. PROC. §

from a member of the grieving family,³⁵ which potentially can prolong emotional trauma for the families forced to engage with the process.³⁶

Even if a victim successfully persuades the court to consider restitution, the victim may encounter problems with the state's restitution statute as well. Some restitution statutes are worded too ambiguously to expressly apply to the victim's family,³⁷ and some are so narrow in their terms of compensation that judgments awarded pursuant to them rarely make up for the victim's lost income.³⁸ Issues relating to the amount of compensation granted can exist even where the family is granted the maximum of what is allotted for many restitution statutes. With most states attaching restitution as a condition of probation, defendants are able to avoid payment or even see a large reduction in restitution owed based upon their future

11-614 (“If practical, the State’s Attorney should: notify an eligible victim of the victim’s right to request restitution”).

³⁵ *Understanding Restitution*, U.S. DEP’T OF JUSTICE (Apr. 6, 2022), <https://www.justice.gov/usao-cdca/victimwitness/understanding-restitution>.

³⁶ Kim ME Lens et al., *Delivering a Victim Impact Statement: Emotionally effective or counter-productive?*, 12 EUR. J. CRIMINOLOGY 17, 30 (2015) (“[V]ictims who experience higher feelings of control over their recovery process experience a relatively stronger reduction in feelings of anger and anxiety. . . . However, we found no evidence that delivering a VIS results in significantly higher feelings of control over the recovery process as such.”).

³⁷ For the children who Bentley’s Law wishes to protect, those who will endure future financial loss as a result of losing a parent’s income, but who may not have yet accumulated any “financial loss” at the time of the parent’s death, general restitution law such as that in Illinois fails them. *See People v. Danenberger*, 848 N.E.2d 637, 644 (Ill. App. Ct. 2006) (“[A] ‘victim’ [under the restitution statute] must be someone who has suffered property damages, personal injury, or financial loss[.]”).

³⁸ *See* ARK. CODE ANN. § 5-4-205(C)(i)-(ii),(D) (limiting restitution for lost income to \$50,000 and compensating the family for “an amount equal to the cost of a necessary funeral and related services.”). In 2019, the average middle-class family spent “approximately \$12,980 annually per child,” not including the cost of saving for a college fund. *The Cost of Raising a Child*, U.S. DEP’T AGRIC. (Feb. 18, 2020), <https://www.usda.gov/media/blog/2017/01/13/cost-raising-child>. Therefore, at least under for middle-class families raising only one child, general restitution law in Arkansas would compensate for the childrearing expenses of the victim’s child for exactly three years and ten months.

earning capacities.³⁹ Additionally, restitution is oftentimes diminished during its calculation based upon the defendant's ability to pay.⁴⁰

Unfortunately, the aforementioned restrictions placed on general restitution have not succeeded in ensuring the overall stability of the restitution system, as victims still struggle to collect court-ordered payments at all. In a study conducted by the United States Government Accountability Office which examined the restitution awards from federal cases spanning from 2014 to 2016, only \$2.95 billion out of \$33.9 billion ordered restitution was collected.⁴¹ At the end of the 2016, "\$110 billion in previously ordered restitution remained outstanding," and the United States Attorney's Office identified \$100 billion of that outstanding debt as uncollectible.⁴² States and their individual counties have also struggled immensely in collecting its restitution for their victims as well.⁴³ For example, "in a single Nevada county, \$70 million in victim restitution went uncollected during an eight-year period."⁴⁴ Thus, even after enduring a long and potentially emotionally traumatic examination into the necessities of the victim's dependents in comparison to the defendant's ability to pay, families could still end up with nothing more than an empty and unfilled promise of compensation for their past, present, and future suffering.

B. State Crime Victim's Compensation Funds

³⁹ See, e.g., ME. STAT. tit. 17, § 1502(4) (2022) (restitution as a condition of probation); COLO. REV. STAT. § 18-1.3-205 (2022) ("As a condition of every sentence to probation, the court shall order that the defendant make full restitution . . ."); NEV. REV. STAT. § 176A.430(1) (2022) ("The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant make full or partial restitution to the person or persons named in the order"); see also, e.g., *Wisconsin v. Van Ert*, 743 N.W.2d 166, 167 (Wis. Ct. App. 2007) (internal quotation marks omitted) ("[R]estitution is limited by the defendant's present and future earning ability no matter what the amount of loss suffered by the victims.").

⁴⁰ See, e.g., WISC. STAT. § 973.20(13)(a) (2022) (restitution calculations must consider a defendant's ability to pay); ALA. R. CRIM. P. 26.11(g) (The court can conduct an inquiry into the defendant's ability to pay the restitution once the defendant "fails to pay a fine or restitution as directed"); but see ALASKA STAT. § 12.55.045(g) (The Court may not consider a defendant's ability to pay).

⁴¹ U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-203, FEDERAL CRIMINAL RESTITUTION: MOST DEBT IS OUTSTANDING AND OVERSIGHT OF COLLECTIONS COULD BE IMPROVED 2 (2018), <https://www.gao.gov/assets/gao-18-203.pdf>.

⁴² *Id.* at 25.

⁴³ NAT'L CTR. VICTIMS CRIME, MAKING RESTITUTION REAL: FIVE CASE STUDIES ON IMPROVING RESTITUTION COLLECTION 3 (2011), <https://ovc.ojp.gov/library/publications/making-restitution-real-five-case-studies-improving-restitution-collection>.

⁴⁴ *Id.*

For those who do not find relief in restitution, dependents or immediate family members of those killed in drunk driving collisions may also receive assistance from their state’s Crime Victim’s Compensation Fund.⁴⁵ Dependents of deceased DUI crash victims are near-guaranteed to be eligible for some sort of compensation from their state’s Crime Victim Compensation Fund, with very few state funds being so ambiguous or exclusive as to shut out families of the DUI victim.⁴⁶ For dependents left behind by a deceased victim, support received from these compensation funds are often limited to recovery for direct costs such as funeral and medical expenses,⁴⁷ and thereafter to a very broad category of compensation known in many states as “loss of support.”⁴⁸ As defined by one jurisdiction, “[c]ompensation for loss of support covers income or financial support provided by either the victim or offender at the time of crime that is no longer available because of the crime.”⁴⁹

These funds represent a pool of money paid by convicted offenders who are compelled to pay into them as part of their sentence.⁵⁰ As a result, these

⁴⁵ OFF. FOR VICTIMS OF CRIME, *supra* note 31.

⁴⁶ *See, e.g.*, ALA. CODE § 262-X-4-0.4(c)-(d) (1995) (allowing payment of future economic loss to a dependent spouse where the parent was the parent of “all of the victim’s dependent children,” but requiring funeral expenses to be paid for prior to disbursement if the deceased leaves behind no dependent spouse and only dependent children). *But see, e.g., Crime Victim Compensation Facts*, IOWA DEP’T JUST., <https://www.iowaattorneygeneral.gov/for-crime-victims/crime-victim-compensation-program/crime-victim-compensation-facts> (last visited Jan. 23, 2023) (allowing recovery for “[v]ictims injured in crimes of drunk, hit and run, or recklessness driving or boating; vehicular homicide, or the use of a vehicle as a weapon [and a] victim’s spouse, children, parents, siblings, and person(s) residing in the household at the time of the crime[.]” but also allowing recovery for any “survivors of a homicide victim”).

⁴⁷ *See, e.g., Victim Compensation & Restitution*, ARIZ. ATT’Y GEN., <https://www.azag.gov/criminal/victim-services/victim-compensation-restitution> (last visited Jan. 22, 2023) (allowing recovery for medical and funeral expenses); *see also, e.g., How to Apply*, ALA. CRIME VICTIMS COMP. COMM’N, <https://acvcc.alabama.gov/faq.htm> (last updated Sept. 27, 2023) (allowing recovery for “medical care” and “funeral expenses”).

⁴⁸ *See, e.g., Victim Compensation & Restitution*, ARIZ. ATT’Y GEN., <https://www.azag.gov/criminal/victim-services/victim-compensation-restitution> (last visited Jan. 22, 2023) (allowing dependent recovery for “loss of support”); *see also, e.g., Compensation for Victims of Crime*, OR. DEP’T OF JUST., <https://www.doj.state.or.us/crime-victims/victims-resources/victims-services/compensation-for-victims-of-crime> (last visited Jan. 22, 2023) (allowing recovery for “loss of financial support to dependents of homicide victims” but requiring the lost earnings to be verified); *Victim Compensation*, OFF. OF VICTIM SERVS., <https://ovs.ny.gov/victim-compensation> (last visited Jan. 22, 2023) (allowing recovery for loss of support but limiting recovery to \$30,000).

⁴⁹ *Loss of Support*, TEX. ATT’Y GEN., <https://www.texasattorneygeneral.gov/crime-victims/crime-victims-compensation-program/loss-of-support> (last visited Jan. 22, 2023).

⁵⁰ The Federal Crime Victims Compensation Fund was created by the Victims of Crime Act (VOCA) of 1984 and is “financed by fines and penalties paid by convicted federal offenders,

compensation funds are normally capped at such low amounts that no dependent could reasonably rely on the money as a counterbalance for the loss of parental support.⁵¹ Though these funds often consider future economic loss,⁵² these recovery caps limit a dependent's ability to collect a sum even modestly surmisable to the earnings of their lost parent or guardian.⁵³

Additionally, though not a government-funded method of compensation, a Crime Victim's Compensation Fund can have its own issues with underfunding and communication. In early February of 2022, crime victims in Alabama demanded answers from state officials on the official status of their compensation and when they could expect to receive it.⁵⁴ Victims alleged "significant delays in response [from the Alabama Crime Victim's Compensation Commission (ACVCC)], mixed messages on what [expenses would] be approved, and in some cases, a complete lack of response."⁵⁵ Alabama officials responded that they simply did not have enough employees to process all the incoming claims.⁵⁶ However, it was not only a lack of employees that the agency was suffering from, but a lack of funds as well. Alabama verified that funding for the ACVCC is currently "half of what it was [ten]

not from tax dollars." *Crime Victims Fund*, OFF. OF VICTIMS OF CRIME, <https://ovc.ojp.gov/about/crime-victims-fund> (last updated Sept. 26, 2023). This is the same method of funding used by most states. The VOCA of 1984 also provides grants to states to finance their own Funds. See Tennessee, OFF. OF VICTIMS OF CRIME, <https://ovc.ojp.gov/states/tennessee> (last visited Oct. 12, 2023). If these grants are insufficient, states can also procure financing through court fees assessed against certain convicted defendants. See *Where Does The Money Come From?*, OKLA. CRIME VICTIMS COMP., <https://www.okvictimscomp.com/funding/> (last visited Oct. 12, 2023).

⁵¹ For a short survey of the low recovery caps on state Victim's Compensation Funds, see *Violent Crimes Compensation Board*, ALASKA DEP'T. OF PUB. SAFETY, <https://dps.alaska.gov/VCCB/Home> (last visited Jan. 22, 2023) (Maximum award for Alaska Victim Compensation Fund is \$40,000); *About CVRB*, ARK. DEP'T OF PUB. SAFETY, <https://www.dps.arkansas.gov/crime-info-support/crime-victims-reparations-board/about-cvrb> (last visited Jan. 22, 2023) (Maximum award for dependents under the Arkansas Victim Compensation Fund is \$10,000); *Crime Victim Compensation*, COLO. DEP'T OF CRIM. JUST., <https://dcj.colorado.gov/dcj-offices/victims-programs/crime-victim-compensation> (last visited Jan. 22, 2023) (Maximum award for Colorado Victim Compensation Fund is \$30,000); Conn. Office of Leg. Research, *Victim Compensation Laws*, OLR No. 94-R-0888 (Nov. 15, 1994), available at www.cga.ct.gov/PS94/rpt/olr/htm/94-R-0888.htm (Maximum award for dependents under the Connecticut Victim Compensation Fund is \$25,000).

⁵² See ALA. CODE § 262-x-4-0.4(4) (2023) (future economic loss).

⁵³ *Compare Income and Poverty in the United States: 2020*, U.S. CENSUS (Sept. 14, 2021), <https://www.census.gov/library/publications/2021/demo/p60-273.html> ("Median household income was \$67,521 in 2020"), with *supra* note 500.

⁵⁴ Ashley Bowerman, *Crime victims demand action on alleged missing funds from state agency*, WSFA12 NEWS (Feb. 24, 2023), <https://www.wsfa.com/2023/02/25/crime-victims-demand-action-alleged-missing-funds-state-agency>.

⁵⁵ *Id.*

⁵⁶ *Id.*

years ago[,]” though claims for compensation have steadily increased in that time.⁵⁷ In recent years, it has become relatively clear that the current structure and operation of these Funds are simply unequipped to keep up with the growing number of claimants.

C. Wrongful Death Lawsuits

For dependents who cannot rely on court-ordered restitution or their state’s Crime Victim Compensation Fund, one of the last available methods of compensation is a wrongful death suit against the drunk driver. This method of compensation, as compared to its counterparts, is not woefully deficient nor does it fail to account for victims in ways that general restitution and Victim’s Compensation Funds do. In fact, wrongful death lawsuits have provided relief to countless families each year, with median awards at jury trials ranging from \$969,457 for adult men to \$845,994 for adult women for the years between 2007 and 2017.⁵⁸

For dependents and immediate family members of victims killed in drunk-driving collisions, these awards can be comprised of the victim’s associated medical and funeral expenses,⁵⁹ lost income,⁶⁰ pain and suffering felt prior to death,⁶¹ and, on rare occasions, the theory of loss of consortium,⁶² though the

⁵⁷ *Id.*

⁵⁸ W. Kip Viscusi & Scott Jeffrey, *Damages to Deter Police Shootings*, 2021 U. ILL. L. REV. 741, 774 (2021); Thomson Reuters, *Basic Injury Values for Wrongful Death of Adult Males*, 4 PERSONAL INJURY VALUATION HANDBOOK 4.10.6-4.20.6 (2017); Thomson Reuters, *Basic Injury Values for Wrongful Death of Adult Females*, 4 PERSONAL INJURY VALUATION HANDBOOK 4.20.6-4.30.6 (2017).

⁵⁹ *See, e.g.*, *Thomas v. Crawford*, 223 So. 3d 1163, 1170 (La. Ct. App. 2017) (emphasis added) (“The elements for wrongful death are loss of love, affection, companionship, services, and support, *as well as medical and funeral expenses.*”); *see also* *Dubaniewicz v. Houman*, 910 A.2d 897, 903 (Vt. 2006) (Vermont wrongful death statute permits recovery for funeral expenses).

⁶⁰ *See, e.g.*, *Fernandez v. Jimenez*, 253 Cal. Rptr. 3d 236, 242 (Cal. Ct. App. 2019) (citing *Nelson v. County of Los Angeles*, 6 Cal. Rptr. 3d 650 (Cal. Ct. App. 2003)) (“A plaintiff in a wrongful death action is entitled to recover damages for his or her pecuniary loss, ‘which may include . . . the loss of the decedent’s financial support, services, training and advice[.]’”).

⁶¹ *See, e.g.*, *McDavid v. United States*, 584 S.E.2d 226, 238 (W. Va. 2003) (holding that West Virginia’s wrongful death statute allows for damages “for the decedent’s pain and suffering endured between the time of injury and the time of death, where the injury resulted in death but the decedent did not institute an action for personal injury prior to his or her death[.]” so long as there is “evidence of conscious pain and suffering of the decedent prior to death.”).

⁶² Loss of consortium is a related, though independent claim from wrongful death. George L. Blum, J.D., Annotation, *Action by or on Behalf of Minor Child, or Presumed Minor Child, for Loss of Parental Consortium—Impact of Other Legal Concepts and Theories of Recovery*, 6 A.L.R.7th § 4 (2023). This theory is meant to compensate for the “deprivation of aid, comfort,

damages recoverable in a wrongful death claim are dependent on the jurisdiction's corresponding wrongful death statute.⁶³ In some jurisdictions, the loss of a victim's income is calculated to include not only the lost earnings themselves, but the loss of the victim's fringe benefits and other beneficial services as well.⁶⁴ Put in more general terms, a wrongful death action seeks to fully compensate the surviving family members of the victim for the defendant's tortious conduct of which, had the victim survived, would have provided the victim a right to bring suit herself.⁶⁵

Each state has its own requirements to prevail in a wrongful death claim.⁶⁶ Although even with variations in elemental requirements,⁶⁷ each statute places the onus on the claimant to show that the defendant committed a wrong which in turn caused the death of the decedent.⁶⁸ The requirements of bringing a wrongful death claim do not end with the satisfaction of the requisite elements, however. Just as there are limits to recovery, there are limits on *who* may recover. Each jurisdiction has their own rules governing who may bring a claim, but the majority of states allow claims to be brought by the executor of the victim-decedent's estate,⁶⁹ or by

companionship, loss of services, and earnings of the parent[.]” *Id.* Courts are split on whether this claim is available to children who have lost a parent, as the traditional loss of consortium claim was meant to compensate for the loss of a spousal relationship and was thereby only available to the spouse of the victim. *Compare* *Forte v. Connerwood Healthcare, Inc.*, 745 N.E.2d 796, 802 n. 8 (Ind. 2001) (quoting *Dearborn Fabricating & Eng'g Corp., Inc. v. Wickham*, 551 N.E.2d, 1135, 1136 (Ind. 1990) (“[A] child cannot recover for loss of consortium damages for the death of a parent because “the predominant element in the concept of consortium has been described as the loss of the sexual relationship.”)), *with* *Hines v. Insouth Bank*, Case No. 1:21-cv-01209-STA-jay, 2022 WL 16752984, at *12 (Tenn. Oct. 17, 2022) (citing TENN. CODE ANN. § 20-5-113) (“In Tennessee, a child-plaintiff may recover for loss of consortium of a deceased parent.”).

⁶³ For a brief survey of states' wrongful death statutes, *see* *Wrongful Death Lawsuits: 50-State Survey*, JUSTIA, <https://www.justia.com/injury/wrongful-death/wrongful-death-lawsuits-50-state-survey> (last visited Mar. 16, 2023).

⁶⁴ W. Kip Viscusi & Scott Jeffrey, *Damages to Deter Police Shootings*, 2021 U. ILL. L. REV. 741, 772-73 (2021) (citing Joseph E. Johnson, *Economic Valuation for Wrongful Death*, 6 CAMPBELL L. REV. 47, 49 (1984)).

⁶⁵ *See, e.g.*, N.J. STAT. ANN. § 2A:31-1 (2023).

⁶⁶ *Wrongful Death Lawsuits: 50-State Survey*, *supra* note 63.

⁶⁷ For differences in elemental requirements, *compare* *Rodgers v. Cook Cnty.*, 998 N.E.2d 164, 173 (Ill. App. Ct. 2013) (citation omitted) (“In order to maintain a claim under the Wrongful Death Act, [740 ILCS 180/0.01 et. seq. (2008)], the plaintiff must allege: (1) defendant owed a duty to the decedent; (2) defendant breached that duty; (3) the breach of duty proximately caused the decedent's death; and (4) pecuniary damages occurred to persons designated under the Wrongful Death Act.”), *with* *Schippers v. Mazak Props.*, 350 S.W.3d 294, 298 (Tex. Ct. App. 2011) (citation omitted) (“In a wrongful death action, a plaintiff must show (1) wrongful or negligent conduct of the defendant, and (2) the proximate cause resulting in death.”).

⁶⁸ *See, e.g.*, N.Y. EPTL LAW § 5-4.1 (Consol. 2023).

⁶⁹ *See, e.g.*, N.J. STAT. ANN. § 2A:31-2 (2023); *see also, e.g.*, G.A. CODE ANN. § 51-4-5(a) (2022).

one of few select family members,⁷⁰ such as spouse or adult child. Minor children must rely on these adults to bring a claim, as a minor does not possess the ability to bring a wrongful death claim on their own.⁷¹ Those who qualify to bring suit are also further limited by time restraints, as most wrongful death statutes have limitations on how long after the decedent’s death a claim may be brought.⁷²

Alongside these barriers, a 2005 study conducted by the U.S. Department of Justice found that only 35% of wrongful death claims brought in state courts “received [] compensatory damages,” and 2.3% received punitive damages.⁷³ Additionally, due to the relative importance of retaining representation for the litigation, parties must generally pay out a portion of this award to an attorney.⁷⁴ Of course, as is the case in many civil claims, attorneys representing plaintiffs in wrongful death suits work on contingency, meaning that up a percentage of the award must be paid out of a judgment to satisfy their fee.⁷⁵

This percentage is determined by the attorney and client before a case is begun and will be forfeited to the attorney upon the successful completion of the case.⁷⁶ Though the percentage of a contingency fee is sensitive to the facts of each case, plaintiff’s attorneys in wrongful death suits take a fee, on average, of approximately 33% of the ultimate damages award, though some might take as much as forty percent depending on the rules of the jurisdiction.⁷⁷ The agreed upon fee is usually commensurate with the amount of work an attorney puts into the case, as some wrongful death lawsuits can go on for years before being resolved.⁷⁸

⁷⁰ See, e.g., TEX. CIV. PRAC. AND REM. CODE ANN § 71.004(a),(b) (West 2023); see also, e.g., N.D. CENT. CODE § 32-21-03 (2023).

⁷¹ See, e.g., *Busby v. Massey*, 686 S.W.2d 60, 62 (Tenn. 1984) (“A court-appointed general guardian or next friend may sue for minors as provided in Tenn. R. Civ. P. 17.03 since a minor cannot maintain a suit in his own name.”); see also, e.g., Fed. R. Civ. P. 17(c).

⁷² N.Y. PUB. HEALTH LAW § 2981 (Consol. 2023) (two-year statute of limitations for wrongful death claims); COLO. REV. STAT. § 13-80-102(1)(d),(2) (2023) (wrongful death claims must be brought with two years of decedent’s death, but if a drunk driver hits the decedent and leaves the scene of the accident, the statute of limitations for the wrongful death claim increases to four-years following the decedent’s death); S.D. CODIFIED LAWS § 21-5-3 (2023) (wrongful death claims must be brought within three years of decedent’s death).

⁷³ W. Kip. Viscusi & Scott Jeffrey, *supra* note 58 at 776.

⁷⁴ *How Much Does a Wrongful Death Lawsuit Cost?*, MCMULLIN INJ. L., <https://stgeorgeutahattorneys.com/how-much-does-a-wrongful-death-lawsuit-cost> (last visited Mar. 17, 2023).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Christy Bieber, J.D., & Adam Ramirez, J.D., *Wrongful Death Lawsuit Guide 2023*, FORBES (Mar. 7, 2023, 1:39 PM), <https://www.forbes.com/advisor/legal/personal-injury/wrongful-death-lawsuit/>.

Regardless of these efforts to hold the defendant monetarily accountable, the ultimate collection of a wrongful death judgment is often disconnected from the actual defendant. Once the defendant is found at fault for wrongful death following a drunk driving collision, it is usual practice for the defendant's car insurance to compensate the claimants for the damages alleged, rather than the defendant to do so personally.⁷⁹ Though, if the defendant is responsible for any portion of the judgment and fails to pay, that sum can be enforced against the defendant as a civil judgment.⁸⁰ This would potentially open a defendant up to having a portion of his wages garnished, his possessions forfeited, or even being found in contempt of court, in order to satisfy the unpaid damages.⁸¹

III. HOW BENTLEY'S LAW ADDRESSES THE INADEQUACIES OF CURRENT METHODS OF VICTIM COMPENSATION FOR FATAL DRUNK DRIVING COLLISIONS

A. Tennessee's Bentley's Law Compared to General Restitution

The statutory language of Bentley's Law makes clear that the family need not advocate or petition for restitution under the statute for child maintenance proceedings to be brought.⁸² Rather, proceedings for child maintenance begin immediately following a defendant's conviction of any of the enumerated offenses

⁷⁹ "Liability coverage has two components: bodily injury liability and property damage liability. Both coverages are required by law in most states." Allstate, *Bodily Injury Liability Insurance: What it is and what it covers*, ALLSTATE, <https://www.allstate.com/resources/car-insurance/bodily-injury-liability-insurance> (last visited Mar. 17, 2023); *See also, e.g., Bodily Injury Liability Coverage (BI)*, PROGRESSIVE: INSURANCE TERMS & CONDITIONS, <https://www.progressive.com/answers/glossary> (last visited Mar. 17, 2023) ("If an insured person is legally liable for an accident, BI coverage pays for the death or injuries to people involved in the accident other than the insured driver. BI also pays for legal defense costs if [the insured] is sued."); *What does liability insurance cover?*, STATEFARM, <https://www.statefarm.com/insurance/auto/coverage-options/liability-coverage> (last visited Mar. 17, 2023) ("Bodily Injury liability coverage . . . [p]ays for costs associated to [sic] injuries for which you are legally liable. This means that your actions caused injury to another person and you were found legally responsible for those injuries.").

⁸⁰ *See, e.g., Collecting Money in a Civil Case*, N.J. COURTS, <https://www.njcourts.gov/self-help/collecting-money-civil> (last visited Mar. 17, 2023).

⁸¹ *Id.*; *See also How Do I Collect on a Judgement?*, N.Y. COURTS, <https://ww2.nycourts.gov/courts/6jd/tompkins/ithaca/webpageJudgement.shtml> (last visited Mar. 17, 2023).

⁸² Bentley's Law as enacted in Tennessee states that a court *shall* order child maintenance payments following a defendant's conviction of vehicular manslaughter or aggravated vehicular manslaughter. TENN. CODE ANN. § 39-13-219(a) (2023). No other criteria are necessary for the proceedings to be initiated. *Id.*

associated with a fatal DUI crash.⁸³ Furthermore, should the family be asked to complete a Declaration of Victim Loss Statement detailing the expenses to be considered by the judge when calculating child maintenance, they need not detail every minute expense for which they require compensation.⁸⁴ Rather, Bentley's Law makes clear in its statute exactly what criteria shall be considered when calculating child maintenance, thereby awarding a surviving parent or guardian immense clarity on exactly what their award will entail.⁸⁵ Moreover, as a rare 'restitution statute' not considering the defendant's ability to pay nor allowing its order to become a condition of the defendant's probation,⁸⁶ Bentley's Law, as Missouri House Representative Mike Henderson puts it, strictly compels payment from its defendants in order to "take care of these kids who are orphaned[.]" and those families now left without a parent and provider.⁸⁷

There is no guarantee that Bentley's Law will differ from restitution in the success rates of its collection. However, with its deadline for defendants to begin payments and its apparent separation from conditions of parole, Bentley's Law undoubtedly takes a much more proactive approach to the collection of its awards than many states.⁸⁸ This proactive approach is essential to the crafting and adoption

⁸³ *Id.*

⁸⁴ As previously stated, many general restitution proceedings require victims to compile a list of "all expenses" which the victim has paid as a result of the crime and of which they wish to be compensated for through restitution. *How do I request restitution from the offender?*, MCVRC, <https://www.mdcrimevictims.org/know-your-rights/your-rights-as-a-victim-to-restitution> (last visited Jan. 22, 2023).

⁸⁵ An award based upon Bentley's Law shall include: "(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 children's 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." TENN. CODE ANN. § 39-13-219(b)(1)-(6) (2023).

⁸⁶ Terry E. Wood, TSRP & Linda D. Sharer, TSRP, DUI NEWS, TENN. HIGHWAY SAFETY OFF., Jan. 2023, at 6.

⁸⁷ Catherine Stoddard, *Bentley's law: Grandma aims to make DUI offenders pay victims' orphaned kids*, FOX29 PHILADELPHIA (Nov. 17, 2021, 9:50 PM), <https://www.fox29.com/news/bentleys-law-grandma-aims-to-make-dui-offenders-pay-victims-orphaned-kids>.

⁸⁸ Rather than setting a strict deadline to begin payments as Bentley's Law does, most jurisdictions seem to wait until a victim or the State complains of nonpayment. The court will then consider whether to revoke the defendant's parole if such payments were a condition of release, or whether the award was too high for a defendant to realistically satisfy. *See, e.g.*, Robertson v. State, 2015 Ark. App. 113 (Ark. Ct. App. 2015) (a 2013 failure to pay action concerning nonpayment from 2006 – 2010); *see also, e.g.*, Commonwealth v. Bruno-O'Leary, 111 N.E.3d 1095 (Mass. App. Ct. 2018) (failure to pay action in which the appellate court reversed the trial court's decision to revoke

of Bentley's Law across jurisdictions, along with its separation from probation, clear and concise elements, and lack of consideration of the defendant's ability to pay. All these things, together, are what fulfill the purpose of Bentley's Law: to place upon the convicted DUI offender the unwavering responsibility of providing the financial support the dependents of the victim would have received from the deceased had they not died at the hands of the defendant.

B. Bentley's Law Compared to Crime Victim Compensation Funds

Compared to the generality of coverage from a Victim's Compensation Fund's for "loss of support,"⁸⁹ Bentley's Law narrows this broad category to a set of defined criteria which accounts not only for the dependents' overall "loss of support" from their deceased guardian, but also for the financial needs of the child themselves, spanning from medical and educational needs to extracurricular activities and childcare expenses.⁹⁰ Going beyond the scope of immediate costs and into the realm of future financial burdens placed upon the family of the deceased, Bentley's Law appreciates the additional needs of any dependents left behind where a Victim's Compensation Fund does not and cannot.

By allowing a court to consider the costs of education, extra-curricular activities, and the maintenance of the lifestyle to which the child was accustomed to prior to the decedent's death, Bentley's Law widens the narrow road of compensation set by Crime Victim's Compensation Funds to consider each cost placed upon the decedent's minor children, branching out from the generalized, and often limited, lost "income or financial support provided by . . . the victim []." ⁹¹ Even further, Bentley's Law does not place a financial cap upon its awards to minor children, thereby expanding the possible recovery from the restrictive award caps imposed by Victim's Compensation Funds.⁹²

parole for nonpayment and found the trial court erred in determining that the defendant had failed to prove her inability to pay restitution).

⁸⁹ TEX. ATT'Y GEN., *supra* note 49.

⁹⁰ TENN. CODE ANN. § 39-13-219(b)(1)-(6) (2023) (considering criteria for the calculation of child maintenance payments to be paid by defendant such as "the financial needs and resources of the child[,] . . . [t]he standard of living to which the child is accustomed[,] . . . the child's educational needs; [and] [t]he reasonable work-related child care expenses of the surviving parent or guardian").

⁹¹ TEXAS ATT'Y GEN., *supra* note 49.

⁹² Tennessee's Bentley's Law contains no cap on the award dependents may receive. See TENN. CODE ANN. § 39-13-219 (2023). However, every state's Crime Victim's Compensation Fund places a cap on the amount a victim may recover. For a brief survey of these caps, *see supra* note 50.

Victim’s Compensation Funds are funded by fines collected from offenders, similarly to how Bentley’s Law is collected.⁹³ However, a defendant paying into a Victim’s Compensation Fund will never know exactly what their money pays for.⁹⁴ Instead, Bentley’s Law is personalized to the offender as it creates a more intimate interaction with his or her victims and thus employs a stronger deterrent to future drunk driving. Offenders paying under Bentley’s Law will know they are paying for living expenses a victim can no longer contribute to, for athletic and extracurricular events a victim can no longer attend. As stated by the U.S. Department of Justice, compelling the defendant to directly acknowledge his victims in this way “puts a human face on the crime,” and provides an extremely “powerful form of accountability”⁹⁵—a form that would not only lend to the possible reintegration of the defendant,⁹⁶ but also to the future deterrence of drunk driving.⁹⁷

As discussed, Crime Victim’s Compensation Funds face issues of both chronic underfunding and difficulty in communicating with victims and their families regarding payments.⁹⁸ Bentley’s Law circumvents these concerns. The staff required to handle a claim for support under Bentley’s Law is minimal, as the only officials involved in the calculation and disbursement of the payments are the

⁹³ *Compare Crime Victims Fund*, OFF. FOR VICTIMS OF CRIME, <https://ovc.ojp.gov/about/crime-victims-fund> (last visited Mar. 16, 2023), with TENN. CODE ANN. § 39-13-219(b)(1)-(6) (2023).

⁹⁴ As a part of sentencing, a defendant can be ordered to pay fines to the state. *Glossary of Federal Sentencing-Related Terms-Fines*, U.S. SENTENCING COMM’N, <https://www.ussc.gov/education/glossary> (last visited Mar. 25, 2023). Defendants convicted of federal felonies, for example, are ordered to pay fines to the ‘Crime Victim’s Fund’. *Crime Victims Fund*, OFF. FOR VICTIMS OF CRIME, <https://ovc.ojp.gov/about/crime-victims-fund> (last visited March 16, 2023).

⁹⁵ *Balanced and Restorative Justice Practice: Accountability*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/implementing/accountability.html> (last visited Mar. 25, 2023). This source speaks specifically to juvenile offenders, though the concept is transferable to adult offenders as well. See HOWARD ZEHR, ALASKA DEP’T OF FAM. & CMTY. SERVS., *RESTORATIVE JUSTICE: THE CONCEPT* (1997).

⁹⁶ *Balanced and Restorative Justice Practice: Accountability*, OFF. OF JUV. JUST. AND DELINQ. PREVENTION, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/implementing/accountability.html> (last visited Mar. 25, 2023).

⁹⁷ Yvonne Thomas, ‘Another reason to think twice’: Tennessee bill makes drunk drivers pay child support if parents killed, ABC24 (Mar. 10, 2022), <https://www.localmemphis.com/article/news/politics/tennessee-bill-bentleys-law-drunk-driver-child-support-parents-killed/522-f38fd478-39c3-49ec-b1c4-fbbc4dbdaaa0>; *Restorative Justice: Breaking the Cycle of Crime*, FIRST STEP ALL., <https://www.firststepalliance.org/post/what-is-restorative-justice> (last updated Sept. 23, 2022).

⁹⁸ Bowerman, *supra* note 54.

prosecutor, the judge presiding over the criminal proceedings, and the court clerk, who is chiefly responsible as trustee to collect payment from the defendant and remit the payments “to the child’s surviving parent or guardian.”⁹⁹

Additionally, the predetermination of a statutorily-recognized payment schedule undermines concerns relating to delays in payment and sidesteps issues with communication entirely.¹⁰⁰ Finally, there can also be no concern for a lack of funding because Bentley’s Law child maintenance payments are not pooled like payments to a Crime Victim’s Compensation Fund.¹⁰¹ Thus, an increase in payments under the statute bears no relevance to the funding status of the program, because Bentley’s Law will only ever collect from one individual defendant what he or she owes to his or her victims.¹⁰² Therefore, Bentley’s Law would provide a strong alternative to those dependents endlessly awaiting an award from their state’s Crime Victim’s Compensation Fund, which provides little accountability and deterrence to its payors while taking a long time to come, never fully compensating for the loss of the decedent’s financial support.

C. Bentley’s Law Compared to a Wrongful Death Lawsuit

Bentley’s Law functions as a form of specialized, court-ordered restitution.¹⁰³ Therefore, a victim does not need to secure nor pay representation to receive monetary compensation through Bentley’s Law.¹⁰⁴ Rather, every dollar judged necessary by the court shall go directly to the dependents of the victim.¹⁰⁵ In

⁹⁹ TENN. CODE ANN. § 39-13-219(a), (c) (2023).

¹⁰⁰ A defendant who is ordered to pay child maintenance payments pursuant to Bentley’s Law and is incarcerated and “unable to pay the required maintenance” shall have up one year after release to begin payment, “including entering into a payment plan to address any arrearage.” TENN. CODE ANN. § 39-13-219(d) (2023).

¹⁰¹ Compare Crime Victims Fund, OFF. OF VICTIMS OF CRIME, <https://ovc.ojp.gov/about/crime-victims-fund> (last updated Sept. 26, 2023) (Crime Victims Compensation Funds are funded by fines collected from convicted federal offenders), with TENN. CODE ANN. § 39-13-219(a) (2023) (payment of Bentley’s Law shall be collected from the individual defendant and paid to the minor children of his or her victims).

¹⁰² TENN. CODE ANN. § 39-13-219(a) (2023) (requiring a defendant convicted of vehicular manslaughter or vehicular homicide to pay child maintenance payments to the children of his or her victim(s)).

¹⁰³ *Id.*

¹⁰⁴ The restitution process does not require a victim to obtain separate legal counsel because it is awarded as an extension of the defendant’s criminal trial. *See, e.g., Restitution Process*, U.S. DEP’T OF JUST., <https://www.justice.gov/criminal-vns/restitution-process> (last visited Mar. 26, 2023).

¹⁰⁵ Defendants are responsible solely to his victim’s minor children when paying restitution under Bentley’s Law. TENN. CODE ANN. § 39-13-219(a) (2023).

addition to saving on a fee, the dependents of the victim can also benefit by saving a significant amount of time pursuing Bentley’s Law. Though the length of time to settle a wrongful death action is dependent on each case, some claims take years to settle.¹⁰⁶ In contrast, as an arm of criminal restitution, proceedings to determine a dependent’s eligibility for child maintenance payments under Bentley’s Law occur shortly after a defendant’s conviction, with a judgment being rendered soon thereafter in a restitution hearing.¹⁰⁷ Where a minor child would have to rely on an adult guardian or relative to pursue a claim for wrongful death, the same child and his family need only wait to the conclusion of criminal proceedings before a restitution hearing for child maintenance would be held.

This streamlined procedure also takes the onus off the victim’s grieving family to initiate a civil suit, thus removing a substantial weight and stress from their lives. In fact, the stress associated with civil litigation has become so prevalent in the field that it has earned itself a name in forensic psychiatry: “litigation stress.”¹⁰⁸ Each stage of civil litigation comes with its own stressors, from finding an attorney to bringing the case to trial. Many civil plaintiffs have reported “loss of time at work, sleeplessness, negative health consequences, and disrupted personal relationships” as regularly accompanying the litigation process.¹⁰⁹ Even more so, for plaintiffs with children, the hidden cost of childcare during court proceedings accompanies the regular costs of the civil process, thereby taking additional funds from a family for childcare “they may not otherwise have needed.”¹¹⁰

The criminal process associated with the underlying crimes covered by Bentley’s Law brings with it its own assortment of stressors.¹¹¹ However, its ability to streamline the process of rewarding appropriate compensation can alleviate the stress that comes with litigating a civil case alongside or shortly after the criminal trial. This alone creates a strong incentive for families to rely upon Bentley’s Law

¹⁰⁶ Jonathan Rosenfeld, *How Long To Settle Wrongful Death Suit?*, ROSENFELD INJURY LAWYERS LLC (Sept. 5, 2022), <https://www.rosenfeldinjurylawyers.com/news/how-long-to-settle-wrongful-death-suit>.

¹⁰⁷ TENN. CODE ANN. § 39-13-219(a) (2023) (mandating child maintenance payments for defendants *after* conviction of vehicular homicide or aggravated vehicular homicide); *see also Restitution Process*, U.S. DEPT. OF JUST., <https://www.justice.gov/criminal-vns/restitution-process> (last visited Jan. 20, 2022) (detailing the process of getting a restitution order).

¹⁰⁸ L.H. Strasburger, *The Litigant-Patient: Mental Health Consequences of Civil Litigation*, J. AM. ACAD. PSYCHIATRY & L., June 1999, at 203.

¹⁰⁹ Mary White Stewart & Steven M. Wood, *Civil Plaintiffs, Trauma, and Stress in the Legal System*, in STRESS, TRAUMA, AND WELLBEING IN THE LEGAL SYSTEM 123, 138 (1st ed.).

¹¹⁰ *Id.*

¹¹¹ See Miguel Clemente & Dolores Padilla-Racero, *The effects of the justice system on mental health*, PSYCHIATRY PSYCH. & L., May 5, 2020, at 865.

proceedings rather than pursuing a potentially prolonged and stress-inducing civil experience.

With this all in mind, it is necessary to note that Bentley’s Law is not meant to function as a replacement for the civil resource of wrongful death. As discussed above, built into the Tennessee statute is a clear rule that if a family wishes to bring suit for wrongful death prior to receiving a judgment for child maintenance payments, no such maintenance payments shall be awarded at all.¹¹² Though if a family wishes to bring suit after receiving a judgment for child maintenance payments, those payments shall be offset by whatever award is received in the civil suit.¹¹³ A family need not pick between Bentley’s Law and a civil lawsuit, though they may not receive both tangentially.

IV. THE QUESTIONS LEFT BEHIND BY BENTLEY’S LAW AND THE ANSWERS WE SHOULD EXPECT TO RECEIVE

Bentley’s Law is novel legislation. Naturally, there exists several outstanding questions relating to its terms and policy that are advanced both by legal commentators and state representatives contemplating the law. Subsequent sections focus on select questions asked by these individuals.

A. Why Does This Specialized Form of Restitution Only Cover Drunk Driving Victims, and Not Murder Victims?

As Bentley’s Law passed through the Tennessee House of Representatives, Representative Antonio Parkinson made an important contribution when providing his own support of the law, stating that he wished that the legislature “could add murder to [the bill] and other crimes that . . . removes [sic] a parent [from the household].”¹¹⁴ This is a valid point. Why *should* Bentley’s Law cover the dependents of only one type of crime resulting in the wrongful death of a parent? This question remains unanswered even as varying versions of Bentley’s Law are being considered across the United States, as no other state as of yet has opened the law up to other crimes that result in the death of a supporting parent or guardian.¹¹⁵

¹¹² TENN. CODE ANN. § 39-13-219(e)(1) (2023).

¹¹³ *Id.* § 39-13-219(e)(2) (2022).

¹¹⁴ Tenn. H., *House Floor Session – 51st Leg. Day*, 112th Assemb. at 1:27:16, GRANICUS (Feb. 28, 2022), https://tnga.granicus.com/player/clip/26316?view_id=610&redirect=true&h=706230032fc9cd795c2a7604b2972ae7.

¹¹⁵ *See supra* note 2.

The reason for this omission is simple: Representative Parkinson's viewpoint is a valid one, but it is not realistic.

In 2017, more than one-third of people serving life or virtual life sentences in state prisons were convicted of first-degree murder.¹¹⁶ Another twenty percent were serving sentences for lesser-degrees of the same crime.¹¹⁷ If life sentences, capital punishment, and prison deaths are forgotten for the purpose of determining average sentence length, a defendant convicted of murder should expect to be sentenced to an average of 20.2 years and should be expected to serve at least 53.6% of their sentence before first-release.¹¹⁸ First-release must be noted heavily, because the average recidivism rates for violent offenders less than ten years post-release was over sixty percent in 2010.¹¹⁹ With all things considered, it is simply not practicable to expect a convicted murderer to make significant contributions to their victim's dependents under Bentley's Law, as they will have neither the time nor the resources in most cases to do so.

It is true that many of these offenders will have the opportunity to earn an income while in prison. Roughly two-thirds of incarcerated individuals have reported maintaining employment behind bars.¹²⁰ However, depending on the state of incarceration, a prisoner can expect to make an average of 14 cents to \$2.00 an hour, though some states have prisoners who work for free.¹²¹ Put simply, convicted first- and second-degree murderers en masse cannot satisfy Bentley's Law payments, and a civil judgment to enforce them could do no better. The vast majority have little wages to be garnished, and most do not own property or meaningfully valuable possessions while behind bars.¹²²

¹¹⁶ THE SENTENCING PROJECT, *STILL LIFE: AMERICA'S INCREASING USE OF LIFE AND LONG-TERM SENTENCES* 12 (2017).

¹¹⁷ *Id.*

¹¹⁸ DANIELLE KAEBLE, U.S. DEP'T OF JUST., BUREAU OF JUST. STAT., *TIME SERVED IN STATE PRISON*, 2018 4 (Edrienne Su ed.) (2021).

¹¹⁹ COURTNEY R. SEMISCH, PH.D. ET AL., U.S. SENT. COMM'N, *RECIDIVISM AMONG FEDERAL VIOLENT OFFENDERS RELEASED IN 2010* 5 (2022).

¹²⁰ *U.S. prison labors programs violate fundamental human rights, new report finds*, UCHICAGO NEWS (Jun. 16, 2022), <https://news.uchicago.edu/story/us-prison-labor-programs-violate-fundamental-human-rights-new-report-finds>.

¹²¹ *How Much do Prisoners Make in Each State?*, KENN. STATE ONLINE (Aug. 27, 2021), <https://onlinedegrees.kent.edu/sociology/criminal-justice/community/how-much-do-prisoners-make-in-each-state>.

¹²² See Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned*, PRISON POLICY INITIATIVE (July 9, 2015), <https://www.prisonpolicy.org/reports/income.html>.

Conversely, many drunk drivers escape a sentence comparable to that of a murder in the first- or second-degree. While no studies focusing upon the comprehensive sentence-length in the United States for a charge of vehicular homicide or the like have yet been conducted, a quick survey of recent news speaks for itself. In 2022, a 25-year-old Norfolk, Virginia, woman was sentenced to twelve years in prison following a fiery DUI-crash that killed a twenty-three-year-old woman.¹²³ In March of 2023, a fifty-four-year-old man was sentenced to a maximum of fifteen years for hitting and killing a Utah mother and her unborn child while intoxicated.¹²⁴ Also in March of 2023, a Fairfax, Virginia, woman received the “*maximum possible sentence*” for her DUI crash that caused the death of a sixty-three-year-old grandmother: six years.¹²⁵

Therefore, the answer to the question of “why only DUI offenders” is answered rather simply. DUI offenders are sentenced at much shorter periods than those serving a sentence for other deadly crimes such as first- or second-degree murder. A defendant convicted of vehicular homicide while intoxicated can be released during the remaining childhood of the victim’s dependents and can secure employment to contribute meaningfully to the child’s necessary expenses, whereas a defendant convicted of murder in the first- or second-degree will likely never have the time nor financial resources to do so. By taking into account a defendant’s inability to pay only while his or she is incarcerated, Bentley’s Law proves this very point.¹²⁶

With an average wage at just over three times less than the federal minimum wage, incarcerated individuals cannot be expected to meaningfully contribute to the financial needs of these children.¹²⁷ However, drunk drivers are placed in the unique position of being released from prison earlier than defendants who are convicted of murder and are therefore more equipped to obtain the financial

¹²³ Courtney Ingalls, *25-year-old former Navy sailor sentenced to 12 years in connection to 2021 DUI crash*, 10 WAVY, <https://www.wavy.com/news/local-news/norfolk/25-year-old-navy-sailor-sentenced-to-12-years-in-connection-to-2021-deadly-dui-crash/> (last updated Dec. 18, 2022).

¹²⁴ Emily Ashcraft, *Judge sends Utahn to prison for DUI crash that killed mother, unborn baby in their front yard*, KSLTV5 (Mar. 6, 2023), <https://ksltv.com/530314/judge-sends-utahn-to-prison-for-dui-crash-that-killed-mother-unborn-baby-in-their-front-yard> (last updated Apr. 17, 2023).

¹²⁵ Gary Klien, *Fairfax woman gets prison term for deadly DUI*, MARIN INDEPENDENT JOURNAL (Mar. 10, 2023), <https://www.marini.com/2023/03/10/fairfax-woman-gets-prison-term-for-deadly-dui> (emphasis added).

¹²⁶ TENN. CODE ANN. § 39-13-219(d)(1) (2023).

¹²⁷ Compare KENN. STATE ONLINE, *supra* note 121, with *Minimum Wage*, U.S. DEP’T OF LABOR, <https://www.dol.gov/general/topic/wages/minimumwage> (last visited Mar. 29, 2023).

resources necessary to make payments.¹²⁸ The purpose of Bentley’s Law is sound in the offenders it targets: a victim’s dependents can reasonably expect to see their Bentley’s Law judgment satisfied by a drunk driver, but not by a defendant serving time for first- or second-degree murder.

B. Under Tennessee’s Bentley’s Law, what is the penalty for a person who does not begin payments within one year after release?

Perhaps the most ambiguous section of Tennessee’s Bentley’s Law is its clause covering enforcement of payment. Taken directly from the statute:

If a defendant who is ordered to pay child maintenance under this section is incarcerated and unable to pay the required maintenance, then the defendant must have up to one (1) year after the release from incarceration to begin payment, including entering a payment plan to address any arrearage. If a defendant's child maintenance payments are set to terminate but the defendant's obligation is not paid in full, then the child maintenance payments shall continue until the entire arrearage is paid.¹²⁹

From there, the statute does not expound on the consequences for those who do not begin payment one year after release. Moreover, due to its novelty, no court has yet to consider the possible consequences of delinquent payors, as well. However, a brief overview of Tennessee law shows that none of these remedies may be imprisonment of the offender. The Tennessee Supreme Court has previously held that absent a willful or negligent avoidance of restitution payments, a defendant’s parole may not be revoked because of his indigency.¹³⁰ The United States Supreme Court has agreed with this assertion, as well, making it clear that no state may imprison a defendant for the crime of impoverishment.¹³¹ Bentley’s Law, however

¹²⁸ It is no secret that incarcerated individuals in the United States can experience difficulty with finding employment upon release. Therefore, while a defendant subject to Bentley’s Law might have the time to gain the necessary financial resources after completing his sentence, states should still be prepared to provide defendants with resources on how to gain meaningful employment after prison. These resources can be as simple as pointing these individuals to non-profit programs such as Jail to Jobs, which aids ex-offenders every step of the way in gaining employment. *See* JAILS TO JOBS, <https://jailstojobs.org>.

¹²⁹ TENN. CODE ANN. § 39-13-219(d)(1) (2023).

¹³⁰ *State v. Dye*, 715 S.W.2d 36, 39-40 (Tenn. 1986) (quoting *Bearden v. Georgia*, 461 U.S. 660, 667-68 (1983)) (“[I]f a state initially ‘determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacks the resources to pay it.’”).

¹³¹ *Bearden v. Ga.*, 461 U.S. 660, 667-68 (1983) (emphasis added) (“The state cannot impose a fine as a sentence and then automatically convert it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full. In other words, if the state determines

vague the language, cannot violate this sound and widely accepted law in any state which enacts it.

Without the threat of imprisonment, what *may* the court yield to enforce payment under Bentley’s Law? This is a question for the courts of the near future; though in Tennessee’s case, the answer lies directly in its own general restitution law. As an arm of general restitution, Bentley’s Law would be subject to Tennessee Code § 40-35-304, which allows a restitution order to be converted to a civil judgment once the defendant’s term of probation ends.¹³² A careful reading further shows that a victim may convert restitution into a civil judgment “upon expiration of the time of payment or the payment schedule imposed[.]”¹³³ Once the restitution order is converted into a civil judgment, debtors who have not yet paid may have a portion of their wages garnished, may be found in contempt of court in extreme circumstances, and may have liens placed upon their property in order to satisfy their unpaid judgments.¹³⁴

As previously stated, Tennessee’s Bentley’s Law does not purport itself to be a condition of probation, but is rather an obligation on any defendant convicted of vehicular homicide or aggravated vehicular homicide in which the decedent was the parent of a minor victim.¹³⁵ Therefore, when compared to its own general restitution law, the one-year post-release deadline to begin payments serves a clear purpose: an established deadline for conversion of the restitution order into a civil judgment.¹³⁶ Without this one-year deadline, Tennessee’s restitution law and Bentley’s Law, in conjunction, would force children to wait until their eighteenth birthday or high school graduation to have their orders enforced as civil judgments.¹³⁷

a fine or restitution to be the appropriate and adequate penalty for the crime, *it may not thereafter imprison a person solely because he lacked the resources to pay it.*)”

¹³² Tenn. H., *H.B. 1834 before the H. Subcomm. on Crim. Just.*, 112th Assemb. at 16:55-17:18, GRANICUS (Feb. 9, 2022, 9:00 A.M.), https://tnga.granicus.com/player/clip/26854?view_id=610&redirect=true&h=3f17eca83808115e7c989e42d8dc86d8.

¹³³ TENN. CODE ANN. § 40-35-304(h)(1) (2023).

¹³⁴ See, e.g., *How Do I Collect on a Judgement?*, N.Y. COURTS, <https://ww2.nycourts.gov/courts/6jd/tompkins/ithaca/webpageJudgement.shtml> (last visited Mar. 23, 2023).

¹³⁵ Terry E. Wood, TSRP & Linda D. Sharer, TSRP, *supra* note 86 at 6.

¹³⁶ *Id.*

¹³⁷ Absent this one-year deadline to begin payment, Tennessee’s Bentley’s Law sets the payment schedule of child maintenance payments to terminate once “each child reaches eighteen (18) years of age and has graduated from high school, or the class of which the child is a member when the child reached eighteen (18) years of age has graduated from high school.” TENN. CODE ANN. § 39-13-219(a) (2023). In circumstances where the defendant has not yet made the payments

For the states considering Bentley’s Law, Tennessee should serve as the example of proactive enforcement, though states should make note to specify the consequences of non-payment for added clarity. Many states have similar statutes converting restitution orders into civil judgments upon the expiration of a defendant’s probation, with some also allowing for conversion upon termination of the restitution’s payment schedule.¹³⁸ These statutes must be made to work in conjunction with one another to uphold the very purpose of Bentley’s Law payments—securing the financial stabilization of the victim’s dependents *during the remainder of childhood*.

C. How Will a Court Determine the Financial Measure for the Lifestyle Which a Child is Accustomed to?

When compared to its five companion elements, the child’s standard of living is one of the only elements not immediately financially calculable without additional inquiry into state law.¹³⁹ While this factor may be new to the world of restitution, it is not new to the laws of child support. Many states have used similar language when calculating child support payments,¹⁴⁰ a sect of law which Tennessee Representative Mike Hall admitted Bentley’s Law was mirrored after.¹⁴¹ This element has been used to allow a child to remain in the private school he was already accustomed to prior to his parent’s divorce,¹⁴² continue to participate in a gym membership which the child enjoyed during his parents’ marriage,¹⁴³ and see the maintenance of a college fund established for them prior to termination of the parents’ marriage.¹⁴⁴

in full by the child’s eighteenth birthday or high school graduation, the “payment schedule” continues indefinitely until the defendant *has* paid in full. *Id.* § 39-13-219(c).

¹³⁸ See, e.g., JOHN L. FOSSUM, RICE CNTY. ATT’Y, CIVIL JUDGMENTS: CIVIL JUDGMENTS FROM CRIMINAL RESTITUTION ORDERS AND COLLECTING CIVIL JUDGMENTS 1, <https://www.ricecountymn.gov/DocumentCenter/View/936/Civil-Judgment?bidId=>; see also, e.g., *Enforcing Restitution Orders*, OVC ARCHIVE, https://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin5/4.html (last visited Mar. 23, 2023).

¹³⁹ TENN. CODE ANN. § 39-13-219(b) (2023).

¹⁴⁰ See, e.g., N.H. REV. STAT. ANN. § 458-C:1 (2023); W. VA. CODE § 48-13-102 (2023); N.Y. FAMILY LAW § 413S (2021); N.C. GEN. STAT. § 50-13.4S (2023).

¹⁴¹ Tenn. H., *H.B. 1834 before the H. Subcomm. On Crim. Just.*, 112th Assemb. at 16:21-16:25, GRANICUS (Feb. 9, 2022), https://tnga.granicus.com/player/clip/26854?view_id=610&redirect=true&h=3f17eca83808115e7c989e42d8dc86d8.

¹⁴² *Smith v. Smith*, 786 S.E.2d 12, 18 (N.C. Ct. App. 2016).

¹⁴³ *Jain v. Jain*, 874 S.E.2d 663, 666 (N.C. Ct. App. 2022).

¹⁴⁴ *Smith v. Freeman*, 814 A.2d 65, 68 (Md. Ct. Spec. App. 2002).

The calculation of a child’s standard of living depends on the child support guidelines of each state. However, two popular views reoccur across jurisdictions: (1) looking to the standard of living the child would have enjoyed had the divorce never occurred,¹⁴⁵ or (2) looking to the standard of living the child had already been accustomed to during their parents’ marriage.¹⁴⁶ Even simpler, for those jurisdictions that attach a more formulaic approach to calculating a child’s standard of living,¹⁴⁷ the element as applied under Bentley’s Law would transcend the world of variable compensatory damages and enter a more financially determinative realm, subject only to a methodical calculation just as educational needs or housing costs would be.¹⁴⁸

In any case, it is clear that each state has its own financial calculus to determine how this standard should be exercised. As in Tennessee, it is exceedingly likely that those states which implement Bentley’s Law will refer to their jurisdiction’s case and statutory law on the topic of child support when determining the appropriate financial metric for standard of living that a decedent’s children deserve to maintain.

CONCLUSION

As a budding new piece of legislation, Bentley’s Law has already proved itself a helpful addition to the world of victim’s compensation—to generalized restitution, to each state’s Crime Victim’s Compensation Funds, and to civil actions

¹⁴⁵ See, e.g., *Cameron v. Cameron*, 562 N.W.2d 126, 134 (Wis. 1997) (“The standard of living for children of divorced parents is not capped at the standard of living enjoyed at the time of the divorce. It accommodates the parents’ subsequent financial prosperity or adversity.”); see also, e.g., *Nelson v. Robinson*, 74 So. 3d 979, 982 (Ala. Civ. App. 2011) (citation omitted) (internal quotation marks omitted) (“In an award of postminority educational support for a child of divorced parents, trial courts ... should consider the standard of living that the child would have enjoyed if the marriage had not been dissolved and the family unit had been preserved and the child’s relationship with his parents and responsiveness to parental advice and guidance.”).

¹⁴⁶ *Llewelyn v. Shewchuk*, 111 A.3d 1132, 1136-37 (N.J. Super. App. Ct. 2015) (quoting *Pascale v. Pascale*, 660 A.2d 485 (1995)) (“Children of divorced parents have the right ‘to be supported at least according to the standard of living to which they had grown accustomed prior to the separation of their parents.’”); see also, e.g., *Ciampa v. Ciampa*, 415 S.W.3d 97, 107 (Ky. Ct. App. 2013) (“[C]hildren should continue to live at the standard of living to which they had grown accustomed to prior to the parents’ divorce.”).

¹⁴⁷ D.C. CODE § 16-916.01(p)(6) (2023) (“For the purposes of this paragraph, the standard of living of a household shall be measured by dividing the gross income available to the household from all sources by the federal poverty guideline, as reported by the United States Department of Health and Human Services, for the number of adults contributing to the household, plus the number of children[.]”).

¹⁴⁸ Tennessee’s Bentley’s Law expressly considers “the *financial needs* and resources of the child.” TENN. CODE ANN. § 39-13-219(b)(1) (2023).

for wrongful death. As it makes its way throughout the United States, legislators must be reminded to keep true to the focus of the law: the financial maintenance of those children left without a provider, a parent.¹⁴⁹ If all else is gone, these children deserve to feel financial security in the wake of their parent's untimely death, something which current schemes of victim's compensation often fail to provide.

¹⁴⁹ *Statement on Bentley's Law Requiring Child Support to Surviving Children of Parents Killed by Drunk Drivers*, MOTHERS AGAINST DRUNK DRIVING (Apr. 22, 2022), <https://madd.org/press-release/statement-on-bentleys-law-requiring-child-support-to-surviving-children-of-parents-killed-by-a-drunk-driver>.