

HOUSE BILL NO. 1558

Introduced by

Representatives Schauer, D. Anderson, Ista, J. Johnson, Jonas, Richter, Beltz, Heinert,
Schreiber-Beck

Senators Clemens, Conley, Wanzek

1 A BILL for an Act to create and enact a new subdivision to subsection 4 of section 12.1-32-07, a
2 new subsection to section 12.1-32-08, and a new section to chapter 39-08 of the North Dakota
3 Century Code, relating to restitution for the child of a victim of criminal vehicular homicide and
4 conditions of probation; to amend and reenact subsection 5 of section 12.1-32-06.1 of the North
5 Dakota Century Code, relating to probation and parental loss restitution; to provide a penalty;
6 and to provide for application.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Subsection 5 of section 12.1-32-06.1 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 5. If the defendant has pled or been found guilty of abandonment or nonsupport of
11 spouse or children or of criminal vehicular homicide in violation of section 39-08-01.2,
12 the period of probation may be continued for as long as responsibility for support or
13 parental loss restitution continues.

14 **SECTION 2.** A new subdivision to subsection 4 of section 12.1-32-07 of the North Dakota
15 Century Code is created and enacted as follows:

16 Pay parental loss restitution. When parental loss restitution is a condition of
17 probation, the court shall proceed as provided in chapter 39-08.

18 **SECTION 3.** A new subsection to section 12.1-32-08 of the North Dakota Century Code is
19 created and enacted as follows:

20 When sentencing a person adjudged guilty of criminal vehicular homicide in violation
21 of section 39-08-01.2, the court may order, in accordance with the provisions of
22 section 4 of this Act, parental loss restitution.

1 **SECTION 4.** A new section to chapter 39-08 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Parental loss restitution payments for criminal vehicular homicide.**

- 4 1. As used in this section, "incarcerated" means confined or imprisoned in a jail, prison,
5 penitentiary, juvenile facility, or other correctional institution or facility, or a place or
6 condition of confinement or forcible restraint regardless of the nature of the institution
7 in which the individual serves a sentence for a conviction.
- 8 2. If an individual pleads guilty or nolo contendere to, or is found guilty of criminal
9 vehicular homicide under section 39-08-01.2 and the deceased victim of the offense
10 was the parent or legal guardian of a minor child, the court may order the individual to
11 pay restitution monthly to each of the victim's children until each child reaches
12 eighteen years of age.
- 13 3. The court may order the parental loss restitution at the time of sentencing or within
14 sixty days of sentencing, unless that period is extended for good cause. A hearing
15 must be held at the time of sentencing or another time, unless the individual waives
16 the right to a hearing.
- 17 4. The prosecutor shall notify the individual of the recommended amount of parental loss
18 restitution before the hearing under subsection 3.
- 19 5. The court may consider all relevant factors in determining a parental loss restitution
20 amount that is reasonable and necessary for the maintenance of each child, including:
- 21 a. The financial needs and resources of the child;
- 22 b. The financial needs and resources of the surviving parent, or if no other parent is
23 alive or capable of caring for the child, the legal guardian of the child;
- 24 c. The standard of living to which the child is accustomed;
- 25 d. The physical and emotional condition of the child and the child's educational
26 needs;
- 27 e. The child's physical and legal custody arrangements;
- 28 f. The reasonable work-related child care expenses of the surviving parent or legal
29 guardian; and
- 30 g. Any monetary settlement, amount, damages, or award received or anticipated
31 arising from the criminal vehicular homicide incident.

- 1 6. In an initial order for parental loss restitution, or in an amendment to a parental loss
2 restitution order, the court may subtract from the total amount of parental loss
3 restitution ordered under subsection 5, any monetary settlement, amount, damages, or
4 civil award received by the child's surviving parent or legal guardian arising from the
5 criminal vehicular homicide incident.
- 6 7. The court may order the parental loss restitution payments be made to the clerk of
7 court as trustee for remittance to the state's attorney's office. The clerk shall remit the
8 payments to the state's attorney's office within ten working days of receipt by the clerk.
9 The state's attorney's office shall deposit all payments no later than the next business
10 day after receipt. The state's attorney's office shall remit payments to the surviving
11 parent or legal guardian within ten working days.
- 12 8. If the individual ordered to pay parental loss restitution under this section is
13 incarcerated and unable to pay the required amount, the individual shall begin
14 payment, including entering a payment plan to address any arrearage, within one year
15 from the date of the individual's release from incarceration. If the individual's parental
16 loss restitution payments are set to terminate but the individual's obligation is not paid
17 in full, the parental loss restitution payments continue until the arrearage is paid in full.
- 18 9. Upon thirty days' written notice to the surviving parent or legal guardian's last-known
19 address, the court may order the judgment imposing a duty to pay parental loss
20 restitution be docketed in the same manner as a civil judgment under section
21 29-26-22.1.
- 22 10. Except as provided under subsection 6, an order for parental loss restitution may not
23 be modified.

24 **SECTION 5. APPLICATION.** This Act applies to a criminal charge for criminal vehicular
25 homicide filed on or after the effective date of this Act.