

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED 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 the extension of probation; to provide a penalty; and to
6 provide for application.

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, ~~the period of probation may be continued~~ or of criminal vehicular
12 homicide in violation of section 39-08-01.2, the court may, in addition to an initial
13 period of probation, impose an additional period of unsupervised probation for as long
14 as responsibility for support continues.

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

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

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

1 When sentencing a person adjudged guilty of criminal vehicular homicide in violation
2 of section 39-08-01.2, the court may order, in accordance with the provisions of
3 section ~~34~~ of this Act, parental loss restitution.

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

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

- 7 1. As used in this section, "incarcerated" means confined or imprisoned in a jail, prison,
8 penitentiary, juvenile facility, or other correctional institution or facility, or a place or
9 condition of confinement or forcible restraint regardless of the nature of the institution
10 in which the individual serves a sentence for a conviction.
- 11 2. If an individual pleads guilty or nolo contendere to, or is found guilty of criminal
12 vehicular homicide under section 39-08-01.2 and the deceased victim of the offense
13 was the parent or legal guardian of a minor child, the court may order the individual to
14 pay restitution monthly to each of the victim's children until each child reaches
15 eighteen years of age.
- 16 3. The court may order the parental loss restitution at the time of sentencing or within
17 sixty days of sentencing, unless that period is extended for good cause. A hearing
18 must be held at the time of sentencing or another time, unless the individual waives
19 the right to a hearing.
- 20 4. The surviving parent or legal guardian of the victim's children may make a claim for
21 parental loss restitution and may submit information by a claim affidavit and, as
22 applicable, supporting information. The prosecutor shall ~~notify~~serve the individual ~~of~~
23 ~~the recommended amount of parental loss restitution~~with a copy of the claim affidavit
24 and supporting information at least ten days before the hearing under subsection 3,
25 unless the individual waives the right to service.
- 26 5. The ~~court may consider~~claim affidavit may include all relevant factors in determining a
27 parental loss restitution amount that is reasonable and necessary for the maintenance
28 of each child, including:
- 29 a. The financial needs and resources of the child;
- 30 b. The financial needs and resources of the surviving parent, or, if no other parent is
31 alive or capable of caring for the child, the legal guardian of the child;

- 1 c. The standard of living to which the child is accustomed;
2 d. The physical and emotional condition of the child and the child's educational
3 needs;
4 e. The child's physical and legal custody arrangements;
5 f. The reasonable work-related child care expenses of the surviving parent or legal
6 guardian; and
7 g. Any monetary or insurance settlement, amount, damages, or award received or
8 anticipated arising from the criminal vehicular homicide incident.
9 6. In an initial order for parental loss restitution, or in an amendment to a parental loss
10 restitution order, the court may subtract from the total amount of parental loss
11 restitution ordered under subsection 5, any monetary or insurance settlement, amount,
12 damages, or civil award received by the child's surviving parent or legal guardian
13 arising from the criminal vehicular homicide incident.
14 ~~7. The court may order the parental loss restitution payments be made to the clerk of~~
15 ~~court as trustee for remittance to the state's attorney's office. The clerk shall remit the~~
16 ~~payments to the state's attorney's office within ten working days of receipt by the clerk.~~
17 ~~The state's attorney's office shall deposit all payments no later than the next business~~
18 ~~day after receipt. The state's attorney's office shall remit payments to the surviving~~
19 ~~parent or legal guardian within ten working days.~~
20 ~~8.~~ If the individual ordered to pay parental loss restitution under this section is
21 incarcerated and unable to pay the required amount, the individual shall begin
22 payment, including entering a payment plan to address any arrearage, within one year
23 from the date of the individual's release from incarceration. If the individual's parental
24 loss restitution payments are set to terminate but the individual's obligation is not paid
25 in full, the parental loss restitution payments continue until the arrearage is paid in full.
26 9.8. Upon motion of the prosecutor supported by evidence establishing the amount of
27 unpaid accrued parental loss restitution ordered by the court, the court may order a
28 civil judgment for the amount be docketed in the same manner as a civil judgment
29 under section 29-26-22.1. The motion must be served on the surviving parent or legal
30 guardian at the last known address of the parent or guardian and on the individual
31 subject to the parental loss restitution order.

1 9. Notwithstanding any other provision of law, if a court orders an individual to make
2 parental loss restitution payments under this section and a surviving parent or
3 guardian subsequently obtains a civil judgment related to the same incident, a court or
4 jury may not consider the amount of parental loss restitution when determining the
5 amount awarded in the civil judgment.

6 10. Except as provided under subsection 6, an order for parental loss restitution may not
7 be modified.

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