

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 provide a penalty; and to provide for application.

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

6 **SECTION 1.** A new subdivision to subsection 4 of section 12.1-32-07 of the North Dakota
7 Century Code is created and enacted as follows:

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

10 **SECTION 2.** A new subsection to section 12.1-32-08 of the North Dakota Century Code is
11 created and enacted as follows:

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

15 **SECTION 3.** A new section to chapter 39-08 of the North Dakota Century Code is created
16 and enacted as follows:

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

18 1. As used in this section, "incarcerated" means confined or imprisoned in a jail, prison,
19 penitentiary, juvenile facility, or other correctional institution or facility, or a place or
20 condition of confinement or forcible restraint regardless of the nature of the institution
21 in which the individual serves a sentence for a conviction.

- 1 2. If an individual pleads guilty or nolo contendere to, or is found guilty of criminal
2 vehicular homicide under section 39-08-01.2 and the deceased victim of the offense
3 was the parent or legal guardian of a minor child, the court may order the individual to
4 pay restitution monthly to each of the victim's children until each child reaches
5 eighteen years of age.
- 6 3. The court may order the parental loss restitution at the time of sentencing or within
7 sixty days of sentencing, unless that period is extended for good cause. A hearing
8 must be held at the time of sentencing or another time, unless the individual waives
9 the right to a hearing.
- 10 4. The prosecutor shall notify the individual of the recommended amount of parental loss
11 restitution before the hearing under subsection 3.
- 12 5. The court may consider all relevant factors in determining a parental loss restitution
13 amount that is reasonable and necessary for the maintenance of each child, including:
 - 14 a. The financial needs and resources of the child;
 - 15 b. The financial needs and resources of the surviving parent, or if no other parent is
16 alive or capable of caring for the child, the legal guardian of the child;
 - 17 c. The standard of living to which the child is accustomed;
 - 18 d. The physical and emotional condition of the child and the child's educational
19 needs;
 - 20 e. The child's physical and legal custody arrangements;
 - 21 f. The reasonable work-related child care expenses of the surviving parent or legal
22 guardian; and
 - 23 g. Any monetary or insurance settlement, amount, damages, or award received or
24 anticipated arising from the criminal vehicular homicide incident.
- 25 6. In an initial order for parental loss restitution, or in an amendment to a parental loss
26 restitution order, the court may subtract from the total amount of parental loss
27 restitution ordered under subsection 5, any monetary or insurance settlement, amount,
28 damages, or civil award received by the child's surviving parent or legal guardian
29 arising from the criminal vehicular homicide incident.
- 30 7. The court may order the parental loss restitution payments be made to the clerk of
31 court as trustee for remittance to the state's attorney's office. The clerk shall remit the

1 payments to the state's attorney's office within ten working days of receipt by the clerk.

2 The state's attorney's office shall deposit all payments no later than the next business
3 day after receipt. The state's attorney's office shall remit payments to the surviving
4 parent or legal guardian within ten working days.

5 8. If the individual ordered to pay parental loss restitution under this section is
6 incarcerated and unable to pay the required amount, the individual shall begin
7 payment, including entering a payment plan to address any arrearage, within one year
8 from the date of the individual's release from incarceration. If the individual's parental
9 loss restitution payments are set to terminate but the individual's obligation is not paid
10 in full, the parental loss restitution payments continue until the arrearage is paid in full.

11 9. Upon motion of the prosecutor supported by evidence establishing the amount of
12 unpaid accrued parental loss restitution ordered by the court, the court may order a
13 civil judgment for the amount be docketed in the same manner as a civil judgment
14 under section 29-26-22.1. The motion must be served on the surviving parent or legal
15 guardian at the last known address of the parent or guardian and on the individual
16 subject to the parental loss restitution order.

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

19 **SECTION 4. APPLICATION.** This Act applies to a criminal charge for criminal vehicular
20 homicide filed on or after the effective date of this Act.