



BURKE COUNTY STATES ATTORNEY'S OFFICE

AMBER J. FIESEL, STATE'S ATTORNEY

PO Box 190  
Bowbells, ND 58721



amfiesel@nd.gov

Phone (701) 377-4358

DATE: March 25, 2025

TO: Senate Judicial Committee

RE: House Bill 1558  
Letter in Opposition

Chair Larson and Members of the Senate Judiciary Committee:

I am writing in opposition to House Bill 1558. As a prosecutor for over 15 years, I have prosecuted many cases involving both parent victims as well as child victims of many crimes. This bill would place a specific subset of victims above other victims of crimes and would turn prosecutor's offices into civil personal injury attorneys which would increase costs tremendously. I will address each of these issues separately.

First, this would make prosecutors into civil personal injury attorneys. The relevant factors listed in the bill are not items that a prosecutor would readily know without obtaining, at county expense, an expert opinion as to the amounts of restitution. As a prosecutor I have no specialized knowledge of the financial needs and resources of the child, the financial needs and resources of the surviving parent, the standard of living, etc. Therefore, in order to enforce this restitution, I would need to hire outside experts to determine the correct amount of the restitution sought or I would have to bring experts in to support the victim's amount of requested restitution. As prosecutors we are responsible for proving restitution requested to the court. This is done at a restitution hearing. At the hearing, prosecutor presents evidence to support the amount of restitution sought. In order to do this in this case, I would need to bring in experts to support the amounts. This expert testimony and expert fees would be solely at the cost to the county. Additionally, the bill provides for the deduction of the civil damages or insurance payouts. In most cases, the civil cases are not decided until after the criminal case – because the civil standard (preponderance of the evidence) is lower than the standard in a criminal case (beyond a reasonable



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doubt). So if a person is convicted in criminal court, generally, they are held liable in a civil case where damages are provided. Because the criminal case is concluded first, if this bill is passed there likely won't be a civil award and all the damages will be requested in the criminal case. This is not the function of the criminal courts and will lead to more trials, more expert witnesses, and significant added costs to the counties. This all leads to a large increase in costs to the counties that are prosecuting these cases. Many of these counties are like mine with a single part-time prosecutor with a part-time secretary. A case like this could put my office way, way over budget just with one case.

I also want to point out an issue with Subsection 7 of Section 3 (Page 2 lines 30-31 and Page 3 line 1-4). My office, like many offices, does not handle any of the restitution monies that come into the county. All payments are handled by the clerk of court's office. I do not have a bank account or any access to one. Therefore, this bill is unworkable for my office and would force our offices to create these accounts just in case we would have one of these crimes.

Second, this bill creates a new type of restitution available only for parents who are victims of vehicular homicide. The restitution statute that governs our restitution for all crimes is located in NDCC § 12.1-32-08, which states "The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court." Subsection 4 of 12.1-32-08 states "In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually sustained as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care." The statute currently allows restitution



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for items *directly* related to the criminal offense. This change in the law would treat a victim who is a parent differently if that person was murdered versus if they were killed by vehicular homicide. This does not make sense.

Anytime there is a victim of a crime it is a terrible crime. As a prosecutor I fight every day to get justice and restitution for these victims. However, this bill separates out a subset of victims and would cause an additional significant financial burden on the counties. Therefore, I urge a do not pass on House Bill 1558.

Please feel free to contact me if you should have any questions. Thank you.

Sincerely,

Amber J. Fiesel  
Burke County State's Attorney