

Good morning, Madam Chair Larson and members of the Senate Judiciary Committee.

My name is Austen Schauer, representing District 13 in West Fargo.

On July 6, 2012, Aaron Deutscher, his wife Allison (who was three and a half months pregnant), along with their 18-month-old daughter Brielle packed their vehicle in West Fargo for a family reunion in Bismarck.

The Deutschers never arrived. They were killed by a drunk driver. Unfortunately, this tragedy is not uncommon.

Over the last five years, there have been 172 fatal crashes in North Dakota killing 191 people and injuring nearly two thousand others. 35% of those fatalities involved alcohol abuse.

House Bill 1558 is **not** intended to solve the drunk driving problem in North Dakota, but it is intended to **help children** who lose a parent in a fatal accident when the driver is found guilty of **criminal vehicular homicide**.

HB 1558 gives judges the authority to order **child restitution payments** when the person killed in the crash was a parent or guardian of a minor child.

Let me walk you through the **amended** version (5001) of **HB 1558**.

This amended version came after **HB 1558** was passed. It is the result of discussions with Cass County District Judge Reid Brady, State Constitutional expert Travis Fink, the State's Attorneys' Association representative Jonathan Byers, the executive director of the ND Association for Justice, Jaci Hall and Legislative Council.

Sections 1 and 2 place the parental loss restitution under the probation code of State law.

Section 3, page 2, lines 1-3 is the essence of the bill. ***"When sentencing a person found guilty of criminal vehicular homicide, the court may order parental loss restitution."***

Section 4, page 2, has several sub-sections:

Subsection one gives the definition of "incarcerated."

Subsection two says once the offender is found guilty of criminal vehicular homicide, the court "may" order restitution for a child to be received until he/she reaches 18 years old.

Subsection three says restitution may be ordered at the time of sentencing or within 60 days.

Subsection four says the surviving parent or legal guardian seeking restitution may submit a claim affidavit to the prosecutor at least ten days before a hearing on restitution.

Subsection five outlines the factors to determine parental loss restitution. There are seven factors to be used by the court.

Read bill

***One of the issues that came up in working on this bill was how the States Attorney would gather this information.

We believe it could function much like existing restitution where the SA sends a form to the victim's family to complete and supplement with any additional documents and return it.

The SA then provides the completed form and any supplemental information to the defense and, ultimately, the court.

In similar fashion, a parental loss restitution form could set out each of the statutory factors and invite the victim's insights on each, as well as a monthly amount.

The parental loss restitution form and any supplemental information could then be returned to the SA, provided to defense and ultimately, the court.

Subsection six gives the court the ability to subtract a civil settlement amount from the total amount of restitution ordered.

Subsection seven sets the parameters for when the offender begins payments. Payments must be paid in full.

Subsection eight says the court may order a civil judgment for the amount docketed in the same manner as a civil judgment if the offender doesn't pay the restitution.

Subsection nine says the only exception to modifying a restitution order is found in subsection 6 dealing with a civil settlement.

By establishing clear guidelines for calculating child restitution, **HB 1558** provides consistency and fairness to ensure children who have lost mom, or dad receive adequate financial support as determined by the judge.

Having an offender pay child restitution doesn't help the child overcome their tragic loss, but it will help the remaining parent or guardian raise the child.

Madam Chair, members of the Senate Judiciary Committee, we seek your support for **HB 1558**.

Thank you for your consideration and I stand open to questions.

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.

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, ~~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 3 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 | ~~40.9.~~ Except as provided under subsection 6, an order for parental loss restitution may not
2 | be modified.

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

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10.9. Notwithstanding any other provision of law, if the court orders an individual to a make parental loss restitution payments under this section and the surviving parent or guardian subsequently obtains a civil judgement resulting from the criminal vehicular homicide incident, the court may not consider the parenatal loss restitution amount in determining the amount to be awarded in the civil judgement. CJF JURY

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



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

- 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.~~ 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.~~ 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.