



2024 South Dakota Legislature

House Bill 1195

SENATE JUDICIARY ENGROSSED

Introduced by: **Representative Wittman**

1 **An Act to provide authority for a court to order offenders convicted of vehicular**
 2 **homicide to pay restitution to a victim's children until age eighteen.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That chapter 23A-28 be amended with a NEW SECTION:**

5 If a defendant is convicted of vehicular homicide pursuant to § 22-16-41 and the
 6 deceased victim of the offense was a parent of a minor child, the sentencing court may
 7 order the defendant to pay restitution to each of the victim's children until each child
 8 reaches age eighteen, or age nineteen if the child is a full-time student in a secondary
 9 school.

10 The court shall consider all relevant factors in determining a support amount that
 11 is reasonable and necessary for the maintenance of each child, including:

- 12 (1) The financial needs and resources of the child;
 13 (2) The financial needs and resources of the surviving parent, or if no other parent is
 14 alive or capable of caring for the child, the guardian of the child, including the state
 15 if the state is the guardian;
 16 (3) The standard of living to which the child is accustomed;
 17 (4) The physical and emotional condition of the child;
 18 (5) The child's educational needs;
 19 (6) The child's physical and legal custody arrangements; and
 20 (7) The reasonable work-related childcare expenses of the surviving parent or
 21 guardian.

22 Pursuant to § 23A-28-7, a defendant ordered to pay support under this section
 23 shall make payments to the clerk of courts as trustee for remittance to the child's surviving
 24 parent or guardian. The child's surviving parent or guardian must expend the moneys for
 25 the benefit of the child. The clerk shall remit payment to the surviving parent or guardian

1 within thirty business days of receipt by the clerk. The clerk shall deposit all payments no
2 later than the next business day after receipt.

3 If a defendant ordered to pay support under this section is incarcerated and unable
4 to pay the required support while incarcerated, the defendant has up to one year after
5 release from incarceration to begin payment, including entering a payment plan to address
6 any arrearage. If the defendant's support payments are set to terminate but the
7 defendant's obligation is not paid in full, the support payments must continue until the
8 entire arrearage is paid.

9 If a civil action is brought on behalf of a child against the defendant prior to a
10 sentencing court ordering support payments as restitution under this section, and the child
11 obtains a judgment in the civil action, the court may not order support under this section.
12 If the sentencing court orders support under this section and the child later obtains a
13 judgment in a civil action brought on behalf of the child, the court must offset the support
14 order by the amount of the judgment awarded in the civil action pursuant to § 23A-28-9.