

**2021 HOUSE JUDICIARY**

**HB 1393**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Judiciary

Room JW327B, State Capitol

HB 1393

2/2/2021

Relating to sentencing alternatives.
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**Chairman Klemin** called the hearing to order at 9:02 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

**Rep. Schneider:** Introduced the bill. Testimony #4889

**Megan Price:** Testimony # 4748 9:10

**Joel Friesz, Employed with Lutheran Social Services of ND:** Testimony #4736 9:13

### Discussion Topics:

- Restored justice is to provide an opportunity for someone that has been impacted by a crime.

**Sister Kathleen Atkinson, Ministry on Margins:** Testimony # 4891 9:18

**Christopher Dobson, ND Catholic Conference:** 9:26

Chairman Klemin closed the hearing at 9:29.

Representatives	Vote
Chairman Klemin	
Vice Chairman Karls	
Rep Becker	
Rep. Christensen	
Rep. Cory	
Rep T. Jones	
Rep Magrum	
Rep Paulson	
Rep Paur	
Rep Roers Jones	
Rep B. Satrom	
Rep Vetter	
Rep Buffalo	

Rep K. Hanson	
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**Additional written testimony:** #4798 and # 4896

DeLores D. Shimek and Donna Whetham  
Committee Clerk

## **Judiciary Committee**

### **Representative Lawrence R. Klemin, Chairman**

#### **Testimony Introducing HB1393—Restorative Justice Sentencing Alternative**

By

**Rep. Mary Schneider, District 21**

*February 2, 2021*

Chairman Klemin and Members of the House Judiciary Committee:

I am Mary Schneider and I represent District 21, the Heart of Fargo. I'm here to introduce HB 1393—Restorative Justice as a sentencing alternative.

HB 1393 only adds six words to the Century Code on page 2 of the bill at line 7, but it adds an important addition to the eight categories of choices now used in sentencing convicted persons. You'll see the current alternatives beginning on page 1, line 10 of the bill. This bill would add letter "i." on page 2, line 7.

A restorative justice program aims to have offenders do something they often avoid--take responsibility for the harm they have caused by their actions. They learn the consequences of their actions to the victims, and sometimes also to the community. Components of restorative justice often include:

- Bringing together the victim and perpetrator in some form.
- Making clear the harm that has been caused by discussing who was hurt and how.
- Having the offender understand the harm caused and its effects on the victim and community.
- Promoting empathy where possible.
- Creating a consensus about what can be done by the offender to repair the harm.
- Giving the offender the opportunity to repair the harm and redeem themselves.
- Reducing the anger, thirst for retribution, or feelings of powerlessness in the victim, and giving them the opportunity for active participation in the provision of justice.
- Holding the offender accountable in a way that will make it less likely that person will reoffend.

Restorative justice is based on the principal that if crime hurts, justice should heal—the victim and sometimes the larger community. A plan is often developed to do that. It won't replace the other sentencing alternatives, but it might dovetail with them. For instance, restitution might be part of the plan. The process may serve as punishment, or it may be ordered with imprisonment. Repairing or replacing damaged property might be one of a plan's components. A plan of work or service might be incorporated to undo part of the harm. Commitment to treatment could be required. Overall, restorative justice is flexible enough to incorporate duties by the offender, to promote needed outcomes for the victim(s).

Restorative justice can serve as a diversion from prison. It has also worked well in prisons and with prisoners while they serve their sentences. It has been particularly effective in the juvenile system with young offenders, and it has been used that way across our state. But as we know, youthful brains and their decision-making executive functions often don't develop fully until age 25 for males. That means 18-25-year-olds could likely benefit as much as those juvenile court offenders if we incorporate it in adult sentencing.

I first encountered restorative justice as part of my advanced international law studies. I got to travel to Northern Ireland and to Rwanda on American Bar Association legal exchange programs while those countries were working to advance peace and reconciliation. There had been centuries of violence in Ireland, and in Rwanda a brief but violent massacre that killed a half million people in 100 days. The principles of restorative justice, however, can be equally effective with individuals in Bismarck or Beach, Minot or Milnor, Williston or Washburn, Casselton or Carrington, Fargo or Fairmont, Grand Forks or Gwinner. Understanding, making amends, and changing behavior can happen anywhere, and can happen more frequently here, if we add it to the mix of sentencing choices, and educate justice system personnel on its availability.

Will this alternative be appropriate for all crimes? No.

Will it be an option for all offenders? No.

Will a judge be required to impose it, or even consider it? No.

But will it provide a choice that may be best in producing long term change, reducing recidivism, providing needed healing for victims, and involve the community in addressing issues of concern? Yes, Yes, Yes, and Yes.

You will hear more from those who follow me and have worked with restorative justice. After you do, please pass this small change in the law that can yield big results. Thank you, and I'll try to answer your questions.

**TESTIMONY BY MEGAN PRICE**  
**IN SUPPORT OF HB 1393**  
**TUESDAY, FEBRUARY 2, 2021 | 9:00AM**

Chairman Klemin and House Judiciary Committee Members. My name is Megan Price. I am providing testimony today in support of adding Restorative Justice to the list of sentencing alternatives for individuals who are convicted and sentenced for an offense. I am a clinical social worker who has worked in trauma and crisis for 7 years. Survivors of trauma process and heal in a number of ways, sometimes including confronting their offender. Restorative justice provides a safe and controlled environment for them to fulfill this need.

Almost 11 years ago, my older brother was killed in a drunk driving accident. He and a young woman both lost their lives while the other two in the car had severe injuries. Initially, I was filled with anger and sadness that I thought would never go away and I hated the man responsible. However, as time went on and we went through the criminal justice process, I found myself remembering that he was human. I wanted to know if he was sincere, if he knew what he had taken, and for him to know my brother's name. Through a list of incredibly helpful advocates, I found my way to the restorative justice process.

To give you the cliff note's version of this story- I met with someone from the program for months to decide whether this process would be appropriate for me and help me figure out what exactly I was hoping for from this meeting. By the time I finally got to the meeting, I was both terrified and excited. I was going to have an answer to all of my questions. I sat across

from this man for about two and a half hours discussing his and my life and how everything would look moving forward. He looked at pictures I brought, he asked thoughtful questions, he was very willing to answer my questions, and I can honestly say that by the time I left, I could feel his sincerity. While I can't promise you that everyone would have my experience, I found forgiveness and peace that I never would have elsewhere.

Thank you for the opportunity to speak with you today. I am happy to answer any questions or provide additional information.

Megan Price

**TESTIMONY BY JOEL FRIESZ****IN SUPPORT OF HB 1393****TUESDAY, FEBRUARY 2, 2021 | 9:00AM**

Chairman Klemin and House Judiciary Committee Members. My name is Joel Friesz. I am providing testimony today in support of adding Restorative Justice to the list of sentencing alternatives for individuals who are convicted and sentenced for an offense. I have worked in the field of Restorative Justice for 16 years through my role at Lutheran Social Services of North Dakota (LSSND). I most recently served as the Director of Youth Interventions until LSSND's closure in January 2021. In addition to my work with LSSND, I currently serve on the ND Juvenile Justice State Advisory Group (since 2014) and the Executive Committee of the National Association of Community and Restorative Justice (since 2017). I am a lifelong North Dakotan and have resided in Fargo for the past 23 years.

North Dakota Court System ("Juvenile Court") and North Dakota Department of Corrections and Rehabilitation ("Division of Juvenile Services") have a long history of utilizing Restorative Justice programs for youth involved in the juvenile justice system. These programs stem from North Dakota's embracing of the 1990s national movement in juvenile justice reform titled Balanced and Restorative Justice (BARJ) Project. LSSND began contracting with the state in 1999 to provide these services. Although LSSND will no longer exist, these programs will continue with different service providers. As I have gotten more involved with justice improvements on a national level through my role with National Association of Community and Restorative Justice, North Dakota's utilization of Restorative Justice is frequently commented on and commended by others across the country working in the justice field.

In addition to sanctions imposed by legal systems, Restorative Justice seeks to hold the person who committed the offense (“offender”) directly accountable to the person and/or community that they victimized. Restorative Justice places emphasis on having the offender accept accountability for their behaviors and make amends whenever possible, moving the offender from a passive role to an active role in reparation. As for crime victims, a Restorative Justice option offers them more opportunities to regain and restore the power that was taken away from them by the offender. Restorative Justice emphasizes the needs of the victim and allows for victim involvement in determining how those needs can best be met. One of the core restorative processes utilized to achieve desired outcomes for both the offender and victim is Restorative Conferencing.

Restorative Conferencing is a process that provides an opportunity for a face-to-face meeting, in the presence of a trained facilitator, between the victim of an offense and the person who committed the offense. Participation is voluntary for all participants. Upon referral, careful preparation is done with each participant to ensure a safe and neutral setting for the parties to come together to discuss what happened and the impact it has had on their lives. If a face-to-face meeting is not desired, other options may be available to the parties. An agreement to repair harm, reached by consensus between the parties, is often an outcome of the conferencing process. A signature aspect of the agreement is that it is developed *by the parties*. Agreement conditions are unique to every case as the specific needs of the parties vary person by person. Financial restitution is sometimes part of the agreement, but not always. From the program I oversaw at LSSND, in any given year 55%-75% of referred victims chose to participate in the process which highlights the need and demand for this type of process for crime victims.

In my work with LSSND, our Restorative Justice program served hundreds of offenders

and victims each year. Restorative Justice programs can receive referrals at all stages of the court process: Diversion, Informal, and Adjudication. The most common offenses referred in the juvenile justice system are Criminal Mischief, Disorderly Conduct, Simple Assault, Theft, and Burglary. In the early years of North Dakota's utilization of Restorative Justice programs, restorative services may have seemed most suitable for low-level, non-violent offenses. While those types of offenses remain suitable, restorative processes have since proven suitable for all forms of crime, even crimes resulting in serious injury or death. Over the years, I have personally facilitated numerous cases in which there was a death caused by an offense of Negligent Homicide which typically involved distracted driving or driving under the influence of drugs or alcohol. These types of cases are typically driven by the victim's family requesting the service and require a high degree of preparation of all parties involved. Additionally, the process was conducted post-conviction and did not lessen or change the terms of sentencing.

Restorative Justice aims to 1) put decisions into the hands of those most affected by crime, 2) make justice more healing for all parties involved, and 3) reduce the likelihood of future offenses. Nationally, in the past several decades, restorative processes have shown tremendous promise in helping victims feel satisfied with the justice process and helping offenders fully understand how their actions have affected other people. A victim's sense of healing, and an offender's development of empathy, are both critical when our desired outcome is a true sense of justice for all parties impacted by crime. A victim-centered approach also aligns with research that shows most people who become engaged with the justice system have experienced previous forms of victimization prior to committing an offense.

Restorative Justice continues to be highlighted nationally as a promising approach to justice that ties together best practices for holding offenders accountable to those they

victimized, meeting the needs of crime victims, decreasing recidivism, and creating safe communities.

Thank you for the opportunity to speak with you today. I am happy to answer any questions or provide additional information.

Joel Friesz

Email: [joelfriesz@outlook.com](mailto:joelfriesz@outlook.com)

Phone: 701-799-0387

Kathleen Atkinson, osb  
701.426.8747

**Committee Testimony for House Bill 1393**  
**Judiciary Committee**  
**9 am February 2, 2021**

Mister Chairman and Members of the Judiciary Committee.  
Thank you for the opportunity to speak today.

My name is Sister Kathleen Atkinson. I serve as the director of *Ministry on the Margins*, an ecumenical, volunteer-based program serving over 1000 people a week. Along with a food pantry, street outreach, and emergency sheltering; we're involved with spiritual groups in the men's penitentiary, women's penitentiary and Missouri River Correctional Center, the *Free Through Recovery* Program, a Families of the Incarcerated Support Group, the DOCR Children of the Incarcerated Initiative, and two Prison2Society transition groups. I've been blessed to do this work full time for 8 years.

In October 2018, I was invited to participate with 20 others from around the nation in a pilot certification program in Restorative Justice at Loyola University, Chicago.

We spent days in seminars by psychologists, theologians, community leaders law enforcement, prosecuting and defense attorneys, etc. etc. etc.

**More profoundly,**

We spent a day at Cook County Jail with Sheriff Tom Dart, staff and inmates listening to how participation in Restorative Justice **was seeking to change the mission of the system from punishment to healing and convert the procedure from adversarial to collaborative.**

We spent a day in US District Court with the Honorable Nan Nolan and defendants participating in Restorative Justice "Sentencing Circles." **They spoke about crime as a violation of people and relationships rather than breaking a law. They focused on putting things right (restoration) rather than blame and punishment.**

***Even more profoundly,***

We spent an afternoon with a family who had lost a loved one in a brutal drug-induced murder by their neighbor; a boy who had grown up with their boy. A family whose close friendship they didn't want to lose in the midst of the devastating loss of both their sons – One to murder. One to prison.

All of these people were participating in Restorative Justice as part of their criminal justice system and this is what House Bill 1393 asks you to do – to give those involved in the sentencing of an individual **one more tool to incorporate into the corrections and rehabilitation process:**

A tool that seeks to bring people back into relationship with one another and with the broader community; a tool that seeks to bring healing to the victim by including him or her in the sentencing process, not arbitrarily but face to face and eye to eye.

Restorative Justice is a process that is familiar in our state Juvenile System and to those of us who follow Dr Bill:

**Step 8**

Made a list of all persons we had harmed and became willing to make amends to them

**Step 9**

Made direct amends to such people wherever possible, except when to do so would injure them or others.

Restorative Justice absolutely *doesn't* work for every person, every community, or in every situation; it *is* about relationships and relationships are messy in the best of times. **It is about changing lives rather than doing time** and that's hard work.

But it's worth it and I ask you to support House Bill 1393 with Restorative Justice as an addition to the sentencing alternatives available. Because people are worth it.

Testimony on HB 1393  
Brandi Hardy  
Legislative Coordinator  
North Dakota Human Rights Coalition

February 2nd, 2021

Greetings Chairman Klemin and Committee Members,

I am Brandi Hardy, the Legislative Coordinator for the North Dakota Human Rights Coalition (NDHRC).

NDRHC was founded in 2002, to increase the awareness of human rights needs and raise visibility on human rights violations. As a statewide, membership-based organization, we advocate for good policies and against restrictive policies that create barriers so all North Dakota residents can enjoy their full rights in the state.

We stand in favor of HB 1393. Restorative Justice provides an opportunity for healing for a victim or a community that has been victimized, to seek justice and receive closure.

According to the Center for Justice and Reconciliation, an organization that has been advocating for justice reform for over twenty years, "restorative justice repairs the harm caused by crime. When victims, offenders, and community members meet to decide how to do that, the results can be transformational."

In 2019, the North Dakota Advisory Committee to the U.S. Commission on Civil Rights, found ND to have notoriously high occurrences of hate crimes. Many of which impact more than a single victim. HB 1393 could help educate the offender and mend broken communities to create a more meaningful and unified transformation from such crimes.

On behalf of the North Dakota Human Rights Coalition, I strongly urge the committee to vote a DO PASS on HB 1393.

I can be reached via email for further questions. Thank you.

Brandi Hardy  
Bismarck, ND  
[brandihardy60@gmail.com](mailto:brandihardy60@gmail.com)

**Grand Forks Herald** November 22, 2018

## **Restorative Justice program helps sisters find forgiveness.**

Written by Tess Williams



Desiree and Megan Price pose near a memorial sign for their brother James Freestone at the intersection of Columbia Road and 17th Avenue South. Freestone was killed by a drunk driver fleeing the police in 2010. Both sisters sat down with the man who ended their brother's life and now forgive him. Photo by Tess Williams/Grand Forks Herald

**It's the little things.**

Sometimes Desiree Price will see a science fiction book and she'll buy it even though she knows she won't read it-but James would have liked it. Or it's photos. James was "a camera guy," always trying to capture the beauty in everyday life. Even little electric candles can remind her of June 5, 2010. That night hundreds of people held up the little flickering lights while huddled on the corner of Columbia Road and 17th Avenue South to mourn two young people killed in a crash.

Desiree and her sister Megan took different paths toward grief but both ended in the same place-sitting in the state penitentiary across from the man who took their brother's life. And with time, they've both done something they once thought was impossible-they've forgiven him.

### **June 5, 2010**

Twenty-one year old James Freestone was headed home from the Relay for Life cancer walk with three friends the night he died.

Megan remembers him as a goofball. He was heavily involved in theater and music and studying at Northland Community College to be a music teacher.

When she was 16, she moved in with him. He was her best friend and the ever-protective big brother.

Desiree remembers the chapters James would share with her from the science-fiction trilogy he'd begun to write. She said he was endlessly patient and helped her overcome dyslexia to develop a love for books.

While going to college, James worked at Hugo's, where he quickly became friends with coworkers Katie Olson, Tasha Brenno and Michael Badurek.

The group went to the Relay for Life on June 5 and left University Park around 2 a.m.

About a mile away, police tried to pull over Celso Garza near Columbia Road and University Avenue after he ran a red light. Court documents say he sped away as an officer approached his 1995 Chevrolet Lumina. He reached speeds of around 100 mph. Garza had been drinking that night and also had a warrant for his arrest. He made it only about a mile before he smashed into another car at the intersection of Columbia Road and 17th Avenue South.

James was pronounced dead on scene. Tasha died at the hospital. Katie suffered severe injuries and Michael's arm was broken. Police arrested Garza, who had 11 charges filed against him, including homicide.

### **'James didn't make it'**

It was about 6 a.m. when officers knocked on the door. It was the beginning of summer and then 16-year-old Desiree remembered waking up to commotion.

"I woke up annoyed. I was like, this is the summer and you guys are being really loud," she said. When she walked out of her room, her irritation melted into concern. There was still a police officer standing outside the open doorway, her brother was standing in the doorway of her parents' bedroom, her father was rushing to get dressed, her little brother was under a blanket crying, Megan was crying on the couch with her boyfriend and her mother was on her knees in the bedroom floor.

Desiree asked three times before the news came out. "There was a car accident. James didn't make it," her father told her. Megan said she couldn't accept it at first. She called his phone on repeat. "I just didn't get it. I was like, no, this is a mistake, I'm supposed to get lunch with him today," she said. Desiree said the rest of the day is a blur. She remembers calling family members and people showing up throughout the day. Megan remembers people trying to feed her all day to comfort her. The family headed to the accident scene that morning.

"I hadn't realized how big of a scale it was on, because at that point I'd just knew that a drunk driver hit them," Desiree said. "But it was pretty bad. There were full on skid marks in the grass."

She remembers kicking at sand on the sidewalk and seeing red underneath. She learned later that was the exact spot James died.

Hundreds of people stood on the corner that night enveloping the family with hugs and crying for the lives lost.

And then there was just time and so much waiting-the sisters said it felt like forever.

### **'A weight off of my heart'**

Garza's bond was set at \$105,000 when he appeared in court two days after the crash. He didn't enter a plea until Aug. 18 and it wasn't until April that the family had final answers.

Garza changed his plea to guilty on five charges-two for homicide while fleeing police, two of assault while fleeing police and one for drunken driving.

In total he was sentenced to 20 years in prison. With good time, his expected release date is April 13, 2026.

"I don't think that anyone who has ever lost someone ever thinks that the person gets enough time," Desiree said. "But I was happy that he was going to go away and that he was going to have to face the consequences of his actions."

Megan said she knew she wanted to meet Garza as the court process wrapped up. She'd looked at his Facebook profile and saw pictures of him smiling proudly with his daughter.

"For me, it was never like he was a horrible person. He didn't set out to kill anyone that night," she said. "I knew that he had kids and we're taking their dad away and that's not a happy thing, but at the same time you can't just say 'All right, you can go now.' So for me it was this really weird internal struggle the entire time of really caring about what happened to him, but at the same time not wanting James and Tasha to have died for nothing."

"It's not like it just impacted just our family, it impacted Tasha's and Michael's and Katie's-and his. His kids by the time he gets out are going to be grownups and very likely not have any relationship with him for the remainder of their life. And they have to deal with that and they didn't do anything, they had no part in this."

Desiree's decision was not as instantaneous. She said she held onto more anger than Megan and needed to look Garza in the eyes to understand if he was really sorry for his actions.

"We both wanted to go for different reasons and wanted different things out of it," she said.

A victim advocate from the court connected Megan to Joel Friesz, and she began working up to the meeting. Friesz is the leader of Lutheran Social Services' Restorative Justice Program. The agency collaborates with the Department of Corrections and Rehabilitation to offer victim-initiated meetings. Friesz said both parties must agree to meet and are counseled beforehand to prepare them for what might happen. The sisters said their family and friends were conflicted about their decision to visit Garza. "I was OK with him (Garza) when I left and it was hard to find a way to explain that knowing what everyone else was feeling," Megan said. "And not to make him come off as like this really good guy that they needed to get to know, but it was a struggle between knowing how my family felt and knowing that was super-justified and knowing that I couldn't feel that way for the rest of my life."

Megan met Garza first, and Desiree scheduled a meeting about a month later. Both sisters said the meeting was one of the scariest and hardest things they have ever done. Megan said she remembered showing Garza photos of the candlelight vigil and her family and being surprised by how thoughtful and truly sorry he was. "Talking and humanizing him really helped me," she said. "It wasn't this boogeyman in the dark who accidentally killed my brother. It was this human who made a wrong choice and knows that." Desiree said she needed to understand that Garza knew the depth of their loss and was also relieved by his sincerity.

"I think the biggest thing goes back to the hate. You don't realize how much you're carrying until it's gone and you're able to start letting it go. And it's definitely because of the restorative justice program that I was able to move on and continue on with my grieving process and healing process. Obviously it's still hard to talk about some days. You have some days where all you want to do is look at pictures and cry, but it's more days than not now that you're looking back on memories you can smile about, not just that he's not here anymore, but looking back at what a great life he had and what a great person he was and how you got to be a small part of your life."

The process gave them closure and the opportunity to do something bigger than they'd ever planned-forgiveness.

"It definitely took a weight off of my heart," Desiree said.

"It's not something I thought about before I actually sat down across from him and had that conversation. But it's not like he got in the car that night thinking 'I'm going to go kill people' or 'I'm going to go get drunk and get in this car.' And that's not something you think about until you're sitting across from them. And he made mistakes and a lot of people make that mistake and it shouldn't happen, but it's something that does. It is his fault but it's not something he meant to do. So I do forgive him, if not as much for him, but for me."

# 2021 HOUSE STANDING COMMITTEE MINUTES

**Judiciary**  
Room JW327B, State Capitol

HB 1393  
2/9/2021

Relating to sentencing alternatives.
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**Chairman Klemin** called the hearing to order at 3:35 PM

**Present:** Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Satrom, and Vetter. **Absent:** Rep. Roers Jones

## Discussion Topics:

- Committee Work

**Rep Becker** moved to amend HB 1393 with LC 21.0540.01001, seconded by **Rep. Vetter**. Voice vote, motion carried.

**Rep Satrom** moved a Do Pass as Amended, seconded by **Rep Magrum**.

## Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	AB
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	Y

Motion carried. 13 – 0 – 1

**Rep Buffalo** is carrier.

**Chairman Klemin** closed the hearing at 4:06 PM.

*DeLores D. Shimek, Committee Clerk*

February 9, 2021

of  
2/9/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1393

Page 2, line 7, after the second underscored period insert "For purposes of this section, "restorative justice program" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1393: Judiciary Committee (Rep. Klemin, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1393 was placed on the Sixth order on the calendar.

Page 2, line 7, after the second underscored period insert "For purposes of this section, "restorative justice program" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large."

Renumber accordingly

**2021 SENATE JUDICIARY**

**HB 1393**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee Peace Garden Room, State Capitol

HB 1393  
3/29/2021

A BILL for an Act to amend and reenact subsection 1 of section 12.1-32-02 of the North Dakota Century Code, relating to sentencing alternatives.

Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, Larson.** [3:16]

### Discussion Topics:

- Juvenile prosecuting procedures
- Statutory provisions related to minors

**Rep. Mary Schneider**, D-Fargo provided testimony in favor #10804 [3:17]

**Kathleen Atkinson**, Ministry on the Margins provided testimony in favor #10973 [3:21]

**Joel Friesz**, Provided testimony in favor #10919 [3:33]

**Senator Myrdal** Moved a DO PASS [3:42]

**Senator Luick** Seconded the Motion

Vote Passed 7-0-0

**Senator Larson** Carried the Bill

DO PASS On HB 1393	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Hearing Adjourned [3:42]

*Jamal Omar, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1393, as engrossed: Judiciary Committee (Sen. Larson, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1393 was placed on the Fourteenth order on the calendar.

**Senate Judiciary Committee****Senator Diane Larson, Chairperson****Testimony Introducing HB1393—Restorative Justice as a Sentencing Alternative****Rep. Mary Schneider, District 21***March 29, 2021*

Chairperson Larson and Members of the Senate Judiciary Committee:

I am Mary Schneider and I represent District 21, the Heart of Fargo. I'm here to introduce HB 1393—Restorative Justice as a sentencing alternative. HB 1393 makes an important addition to the eight categories of choices now used in sentencing persons convicted of a crime. You'll see the current alternatives beginning on page 1, line 10 of the bill. This bill would add letter "i." on page 2, line 7.

A restorative justice program aims to have offenders do something they often avoid--take responsibility for the harm they have caused by their actions. They learn the consequences of their actions to the victims, and sometimes also impacts to the community. Components of restorative justice often include:

- Bringing together the victim and perpetrator in some form.
- Making clear the harm that has been caused by the perpetrator's behavior or actions--discussing who was hurt and how.
- Having the offender understand the harm caused and its effects on the victim and community.
- Promoting empathy where possible.
- Creating a consensus about what can be done by the offender to repair the harm.
- Giving the offender the opportunity to repair the harm and redeem himself or herself.
- Reducing the anger, thirst for retribution, or feelings of powerlessness in the victim, and giving them the opportunity for active participation in the provision of justice.
- Holding the offender accountable in a way that will make it less likely that person will reoffend.

Restorative justice is based on the principal that if crime hurts, justice should heal—the victim and sometimes the larger community. A plan is often developed to do that.

Restorative Justice won't replace the other sentencing alternatives such as imprisonment or fines, but it might dovetail with them. For instance, restitution might be part of the plan. The

process may serve as punishment, or it may be ordered with imprisonment. Repairing or replacing damaged property might be one of a plan's components. A plan of work or service might be incorporated to undo part of the harm. Commitment to treatment could be required. Overall, restorative justice is flexible enough to incorporate duties by the offender, to promote needed outcomes for the victim(s).

Restorative justice can serve as a diversion from prison. It has also worked well in prisons and with prisoners while they serve their sentences. It has been particularly effective in the juvenile system with young offenders, and it has been used that way across our state. But as we know, youthful brains and their decision-making executive functions often don't develop fully until age 25 for males. That means 18-25-year-olds could likely benefit as much as those juvenile court offenders if we incorporate it in adult sentencing.

I first encountered restorative justice as part of my advanced international law studies. I got to travel to Northern Ireland and to Rwanda on American Bar Association legal exchange programs while those countries were working to advance peace and reconciliation. There had been centuries of violence in Ireland, and in Rwanda a brief but violent massacre that killed a half million people in 100 days.

The principles of restorative justice, however, can be equally effective with individuals in Bismarck or Beach, Minot or Milnor, Williston or Washburn, Casselton or Carrington, Fargo or Fairmont, Grand Forks or Gwinner. Understanding, making amends, and changing behavior can happen anywhere, and can happen more frequently here, in North Dakota, if we add it to the mix of sentencing choices, and educate judges and justice system personnel on its availability.

Will this alternative be appropriate for all crimes? No.

Will it be an option for all offenders? No.

Will a judge be required to impose it, or even consider it? No.

But will it provide a choice that may be best in producing long term change, reducing recidivism, providing needed healing for victims, and involving the community in addressing issues of concern? Yes, Yes, Yes, and Yes.

You will hear more from those who follow me and have worked with restorative justice. After you do, please pass this small change in the law that can yield big results. Thank you, and I'll try to answer your questions.

Kathleen Atkinson, osb  
701.426.8747

**Committee Testimony for House Bill 1393**  
**Senate Judiciary Committee**  
**2:30 pm March 29, 2021**

Madam Chair and Members of the Judiciary Committee.  
Thank you for the opportunity to speak today.

My name is Sister Kathleen Atkinson. I serve as the director of *Ministry on the Margins*, an ecumenical, volunteer-based program serving over 1000 people a week. Along with a food pantry, street outreach, and emergency sheltering; we're involved with spiritual groups in the men's penitentiary, women's penitentiary and Missouri River Correctional Center, the *Free Through Recovery* Program, a Families of the Incarcerated Support Group, the DOCR Children of the Incarcerated Initiative, and two Prison2Society transition groups. I've been blessed to do this work full time for 8 years.

In October 2018, I was invited to participate with 20 others from around the nation in a pilot certification program in Restorative Justice at Loyola University, Chicago.

We spent days in seminars by psychologists, theologians, community leaders law enforcement, prosecuting and defense attorneys, etc. etc. etc.

**More profoundly,**

We spent a day at Cook County Jail with Sheriff Tom Dart, staff, and inmates listening to how participation in Restorative Justice **was seeking to change the mission of the system from punishment to healing and convert the procedure from adversarial to collaborative.**

We spent a day in US District Court with the Honorable Nan Nolan and defendants participating in Restorative Justice "Sentencing Circles." **They spoke about crime as a violation of people and relationships rather than breaking a law. They focused on putting things right (restoration) rather than blame and punishment.**

***Even more profoundly,***

We spent an afternoon with a family who had lost a loved one in a brutal drug-induced murder by their neighbor; a boy who had grown up with their boy. A family whose close friendship they didn't want to lose in the midst of the devastating loss of both their sons – One to murder. One to prison.

All of these people were participating in Restorative Justice as part of their criminal justice system and this is what House Bill 1393 asks you to do – to give those involved in the sentencing of an individual **one more tool to incorporate into the corrections and rehabilitation process:**

A tool that seeks to bring people back into relationship with one another and with the broader community; a tool that seeks to bring healing to the victim by including him or her in the sentencing process, not arbitrarily but face to face and eye to eye.

Restorative Justice is a process that is familiar in our state Juvenile System and to those of us who follow Dr Bill:

**Step 8**

Made a list of all persons we had harmed and became willing to make amends to them

**Step 9**

Made direct amends to such people wherever possible, except when to do so would injure them or others.

Restorative Justice absolutely *doesn't* work for every person, every community, or in every situation; it *is* about relationships and relationships are messy in the best of times. **It is about changing lives rather than doing time** and that's hard work.

But it's worth it and I ask you to support House Bill 1393 with Restorative Justice as an addition to the sentencing alternatives available. Because people are worth it.

**TESTIMONY BY JOEL FRIESZ****IN SUPPORT OF HB 1393****MONDAY, MARCH 29, 2021**

Chair Larson and Senate Judiciary Committee Members. My name is Joel Friesz.

I am providing testimony today in support of adding Restorative Justice to the list of sentencing alternatives for individuals who are convicted and sentenced for an offense. I have worked in the field of Restorative Justice for 16 years through my role at Lutheran Social Services of North Dakota (LSSND). I most recently served as the Director of Youth Interventions until LSSND's closure in January 2021. In addition to my work with LSSND, I currently serve on the ND Juvenile Justice State Advisory Group (since 2014) and the Executive Committee of the National Association of Community and Restorative Justice (since 2017). I am a lifelong North Dakotan and have resided in Fargo for the past 23 years.

North Dakota Court System ("Juvenile Court") and North Dakota Department of Corrections and Rehabilitation ("Division of Juvenile Services") have a long history of utilizing Restorative Justice programs for youth involved in the juvenile justice system. These programs stem from North Dakota's embracing of the 1990s national movement in juvenile justice reform titled Balanced and Restorative Justice (BARJ) Project. LSSND began contracting with the state in 1999 to provide these services. Although LSSND will no longer exist, these programs will continue with different service providers. As I have gotten more involved with justice improvements on a national level through my role with National Association of Community and Restorative Justice, North Dakota's utilization of Restorative Justice is frequently commented on and commended by others across the country working in the justice field.

In addition to sanctions imposed by legal systems, Restorative Justice seeks to hold the person who committed the offense ("offender") directly accountable to the person and/or community that they victimized. Restorative Justice places emphasis on having the offender accept accountability for their behaviors and make amends whenever possible, moving the offender from a passive role to an active role in reparation. As for crime victims, a Restorative Justice option offers them more opportunities to regain and restore the power that was taken

away from them by the offender. Restorative Justice emphasizes the needs of the victim and allows for victim involvement in determining how those needs can best be met. One of the core restorative processes utilized to achieve desired outcomes for both the offender and victim is Restorative Conferencing.

Restorative Conferencing is a process that provides an opportunity for a face-to-face meeting, in the presence of a trained facilitator, between the victim of an offense and the person who committed the offense. Participation is voluntary for all participants. Upon referral, careful preparation is done with each participant to ensure a safe and neutral setting for the parties to come together to discuss what happened and the impact it has had on their lives. If a face-to-face meeting is not desired, other options may be available to the parties. An agreement to repair harm, reached by consensus between the parties, is often an outcome of the conferencing process. A signature aspect of the agreement is that it is developed by the parties. Agreement conditions are unique to every case as the specific needs of the parties vary person by person. Financial restitution is sometimes part of the agreement, but not always. From the program I oversaw at LSSND, in any given year 55%-75% of referred victims chose to participate in the process which highlights the need and demand for this type of process for crime victims.

In my work with LSSND, our Restorative Justice program served hundreds of offenders and victims each year. Restorative Justice programs can receive referrals at all stages of the court process: Diversion, Informal, and Adjudication. The most common offenses referred in the juvenile justice system are Criminal Mischief, Disorderly Conduct, Simple Assault, Theft, and Burglary. In the early years of North Dakota's utilization of Restorative Justice programs, restorative services may have seemed most suitable for low-level, non-violent offenses. While those types of offenses remain suitable, restorative processes have since proven suitable for all forms of crime, even crimes resulting in serious injury or death. Over the years, I have personally facilitated numerous cases in which there was a death caused by an offense of Negligent Homicide which typically involved distracted driving or driving under the influence of drugs or alcohol. These types of cases are typically driven by the victim's family requesting the service and require a high degree of preparation of all parties involved. Additionally, the process was

conducted post-conviction and did not lessen or change the terms of sentencing.

Restorative Justice aims to 1) put decisions into the hands of those most affected by crime, 2) make justice more healing for all parties involved, and 3) reduce the likelihood of future offenses. Nationally, in the past several decades, restorative processes have shown tremendous promise in helping victims feel satisfied with the justice process and helping offenders fully understand how their actions have affected other people. A victim's sense of healing, and an offender's development of empathy, are both critical when our desired outcome is a true sense of justice for all parties impacted by crime. A victim-centered approach also aligns with research that shows most people who become engaged with the justice system have experienced previous forms of victimization prior to committing an offense.

Restorative Justice continues to be highlighted nationally as a promising approach to justice that ties together best practices for holding offenders accountable to those they victimized, meeting the needs of crime victims, decreasing recidivism, and creating safe communities.

Thank you for the opportunity to speak with you today. I am happy to answer any questions or provide additional information.

Joel Friesz

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