

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

COÖS, SS

FEBRUARY TERM, 2026

STATE OF NEW HAMPSHIRE
V.
DUSTIN MARK DUREN

214-2024-CR-00028

STATE'S MEMORANDUM IN SUPPORT OF RESTITUTION AWARD

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and files this motion in support of its request for restitution. The State requests that this Court award restitution in the amount of \$12,007.69 for expenses caused by the death of Caitlyn Naffziger. In support of the State's motion, the State submits the following:

1. On October 28, 2025, a jury unanimously found the defendant guilty of alternative counts of second-degree murder, knowing, and second-degree murder, reckless for killing Caitlyn Naffziger on February 29, 2024, in Berlin, New Hampshire. The defendant was also convicted of reckless conduct with a deadly weapon and child endangerment related to his actions in the homicide.
2. Prior to the sentencing hearing, the State provided the defendant with a letter which indicated that the New Hampshire Victims' Compensation Fund paid a total amount of \$12,007.69 in restitution related to the murder of Caitlyn Naffziger. This amount includes \$5,002.00 for funeral expenses, as well as \$4,737.60 in lost wages for the claimant, and \$2,268.00 for mental health services for the claimant. The claimant in this case is Ms. Naffziger's mother, Lori Smith.

3. The State has attached the following materials related to restitution to this filing:¹

Attachment A: November 20, 2025, restitution claim letter,
Attachment B: Claim payment summary for claim #35490,
Attachment C: Claim payment summary for claim #35202,
Attachment D: Funeral Invoice,
Attachment E: Wage Verification Form,
Attachment F: Lost Wages Calculation,
Attachment G: Mental Health Treatment Invoices, and,
Attachment H: Mental Health Treatment Bills Sept 6 & 11 – Pmt by LS

4. The claimant has received payment from the New Hampshire Victims' Compensation Fund ("the Fund"). Therefore, the State requests that any restitution amount ordered by the Court be made payable to the Fund to reimburse it for monies already paid in this case. RSA 21-M:8-1 provides that "a court may order restitution to the victims' assistance fund as part of a sentence," and that "the amount of assistance provided by the fund shall be established by copies of bills submitted to the victims' assistance commission." *See* RSA 651:63, III (providing that "the offender shall reimburse the victims' assistance fund for any payments made by the fund to the victim pursuant to RSA 21-M:8-h.")

5. During the status hearing on January 23, 2026, defense counsel indicated that they were not challenging the restitution amount of \$5,002.00 related to funeral expenses. As such, that amount is not in dispute. The State asks that this Court order the defendant to pay \$5002.00 to the Fund to reimburse it for funeral expenses paid as a result of the murder of Caitlyn Naffziger.

6. It is the State's understanding that the defendant is, however, challenging the remainder of the restitution sought by the State. Specifically at issue is restitution of \$4,737.60 in lost wages resulting from the claimant taking leave from work in order to care for Ms. Naffziger's

¹ All documents were previously provided to counsel for the defendant. The State notes that the documents being submitted as attachments have been redacted in accordance with RSA 21-M:8-1.

children in the aftermath of Ms. Naffziger’s murder, and \$2,268.00 for mental health services for grief counseling provided to the claimant.

7. RSA 651:61-a provides a presumption that “the victim will be compensated by the offender who is responsible for the loss.” As expressed therein, the intent of the legislature is that restitution be paid by an offender as rehabilitation, to reinforce the offender’s sense of responsibility for the offense, and as a chance for the offender to pay back their debt to society and the victim. See RSA 651:61-a.

8. For the purposes of restitution, a victim is a “a person or claimant who suffers economic loss as a result of an offender’s criminal conduct.” See RSA 651:62, VI. For a definition of economic loss, RSA 651:62 provides that “[e]conomic loss means out-of-pocket losses or other expenses incurred as a direct result of a criminal offense, including:

(a) Reasonable charges incurred for reasonably needed products, services and accommodations, including but not limited to charges for medical and dental care, rehabilitation, and other remedial treatment and care including mental health services for the victim or, in the case of the death of the victim, for the victim's spouse and immediate family; (b) Loss of income by the victim or the victim's dependents; (c) The value of damaged, destroyed, or lost property; (d) Expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured or deceased victim would have performed, if the crime had not occurred, for the benefit of the victim or the victim's dependents; [and/or] (e) Reasonable expenses related to funeral and burial or crematory services for the decedent victim.”

See RSA 651:62, III.

9. During the January 23, 2026, status hearing, defense counsel advised the Court that “Gibson” was directly on point to their challenge to the claimed restitution. The State infers that the defendant is thereby challenging whether the claims for restitution for lost wages and mental health treatment were economic losses incurred as a **direct result** of a criminal offense. In *State v. Gibson*, 160 N.H. 445 (2010), the New Hampshire Supreme Court remanded a restitution

order for further proceedings. There, the trial court had failed to find on the record that the State had shown by a preponderance of the evidence that “the victim’s loss or damage [was] causally connected to the offense for which the defendant was convicted.” *Id.* at 451. The facts in *Gibson* are distinct and dissimilar from the facts in this case, however, and thus provide no guidance for this court.

10. In *Gibson*, the defendant was convicted of two counts of felonious sexual assault related to sexual contact with his daughters.² The defendant was originally charged, however, with 97 separate counts of either felonious sexual assault or aggravated felonious sexual assault related to the two girls. All but eight of those counts were dismissed prior to trial. *Id.* at 446-447. After a restitution hearing, the trial court ruled that “it was not possible to apportion the counseling required for K.G. between counseling necessitated by the abuse [that resulted] in the defendant’s conviction and other similar alleged abuse perpetrated by the defendant upon K.G. for which he was not convicted.” *Id.* at 447.

11. The Supreme Court in *Gibson* vacated the trial court’s order of restitution because that order covered all counseling costs of the victims despite the fact that 89 counts of abuse had been dismissed, and only two of eight counts had been sustained at trial. There, the State had the burden to prove that the counseling costs in the restitution request were “causally connected to the offense [for which the defendant was convicted] and [bore] a significant relationship to the offense [for which the defendant was convicted].” *Id.* at 451. The court remanded for further proceedings for the State to “prove that the conduct for which the defendant was convicted was a substantial factor in producing the injury that required the treatment.” *Id.* at 451.

² After trial, Gibson was convicted of one count of sexual contact with his daughter, K.G., and one count of sexual contact with his daughter, M.G.

12. There is no such issue of causation in this case. The defendant has been convicted of second-degree murder and related charges for the singular act of murdering Ms. Naffziger; it is this act which directly caused the losses for which restitution is sought. The economic losses are not linked to any other conduct by the defendant, whether charged or uncharged. The Supreme Court's ruling in *Gibson* is inapposite and provides no basis for the defendant to argue against the award of restitution.

13. There is no established test to determine the connection between "harm or loss, on the one hand, and criminal conduct, on the other, to support an order of restitution" The Supreme Court instead has "recognize[d] that [t]he plain language of the restitution statute clearly and unambiguously requires a causal connection between the criminal act and the economic loss or damage." *State v. Gedney*, 174 N.H. 508, 511(2021) citing *State v. Pinault*, 168 N.H. 28, 32 (2015) (internal quotations omitted).

14. The defendant's murder of Caitlyn Naffziger has a direct, causal connection to each of the requested restitution claims. The trial record supports that causal connection. There is no other intervening offense or trauma that caused financial losses to claimant. As discussed *herein*, but for the defendant's actions, claimant would have had no need to pay for a funeral for her daughter, would have suffered no lost wages due to providing care for her grandchildren, and would have had no trauma that required mental health services to cope with the murder of her 31-year-old child.

Restitution for Lost Wages

15. As indicated *supra*, the State is seeking \$4,737.60 in lost wages for the loss of wages suffered by the claimant. *See* Payment Summary. Here, the claimant took time away from her employment to provide necessary services, *i.e.* childcare, to the victim's dependents.

16. During the status hearing on January 23, 2026, defense counsel told the Court that the amount of lost wages consisted of 246 days, ostensibly arguing that the extent of claimed lost wages was overly broad. While the number of days that the claimant reported having missed from employment was 246 days (*see* Wage Verification Form), the monetary amount sought in restitution is limited to seventy-five percent of the wages that were lost over the course of 60 days. *See* Lost Wages Calculation. The State is requesting that the defendant be ordered to reimburse the Fund for that portion of the 60 days of lost wages, not for 246 days' worth of lost wages.

17. In voicing a challenge to payment of restitution for the claimant's lost wages, defense counsel advised the Court that "*McCarthy*" was directly on point. However, there are stark differences between the restitution claim made in *State v. McCarthy*, 150 N.H. 389 (2003), and the claim at issue in this case. *McCarthy* involved a first-degree assault in which the victim survived. The claimant, for restitution purposes, was the mother of that surviving victim. She took four weeks off from her employment in order to care for the victim, and one week off from her employment to attend court proceedings – losing wages as a result. The New Hampshire Supreme Court rejected her restitution claim under RSA 651:62, III(b) because the claimant was neither the victim nor a dependent of the victim. The Supreme Court analyzed the claim in *McCarthy* under RSA 651:62, III(b); it did not address any other sections of the statute.

18. The lost wages claimed in this case qualify as an economic loss, and the claimant meets the definition of economic loss under RSA 651:62, III(d). Further, the economic loss is causally connected to the offense for which the defendant was found guilty - had the defendant not murdered Ms. Naffziger, the need for services associated with this economic loss would not have arisen.

19. RSA 651:62, III(d) discusses expenses needed to provide services in lieu of those that the deceased victim would have performed for the benefit of the victim's dependents. As defined, a dependent is "any person who was wholly or partially dependent upon the victim for care and support when the crime was committed." RSA 651:62, II. Had Caitlyn Naffziger not been murdered, she would have been available to provide necessary services and care for her minor children, E.D. and V.D. So too, would the defendant have been available to provide these services in the form of care of E.D. and/or V.D. had he not murdered Ms. Naffziger and been arrested for it. But for the defendant's criminal behavior, Ms. Naffziger's mother would not have needed to step away from her employment and suffer the economic loss of wages in order to care for the children. The economic loss is directly and entirely related to the provision of services to the victim's dependents and as such, Caitlyn Naffziger's mother qualifies as a claimant for the purpose of restitution of her lost wages.

20. As this Court is aware, following the murder of Ms. Naffziger, minor children E.D. and V.D. were left without parents to care for them. The children were in New Hampshire while all their available immediate family members were in Minnesota. Ms. Naffziger was deceased, and the defendant was under arrest, held without bail, and charged with her murder. The children were placed into emergency custody of the Department of Children and Family Services. They were then released to Ms. Naffziger's aunt in lieu of an immediate family member. The claimant, the children's maternal grandmother, left her job in Minnesota and flew to New Hampshire to care for them. The claimant provided care for the children in New Hampshire and attended court proceedings related to their custody. As described during her victim impact statement at the sentencing hearing, claimant was in New Hampshire to care for the children

from March 1, 2024, through May 8, 2024, or for 68 days.³ Once the court proceedings concluded and the family was allowed to return home, claimant provided care for the children in Minnesota until approximately June of 2024.⁴

21. But for the defendant's actions in killing Caitlyn Naffziger, claimant would not have needed to provide childcare services for her grandchildren – Caitlyn and/or the defendant would have been available to do so. The claimed restitution here represents a fraction of the loss⁵ that the claimant suffered due to providing care for the victim's dependent children. The defendant's actions created the need for someone to step in and provide such care, and the defendant should be ordered to pay the claimed amount of \$4,737.60 in restitution for lost wages.

Restitution for Mental Health Treatment

22. As indicated *supra*, the State is also seeking \$2,268.00 for mental health services for grief counseling provided to Ms. Naffziger's mother following the murder of Caitlyn Naffziger. *See* Payment Summary.

23. RSA 651:62, III (a) includes mental health services as an economic loss that can be claimed for restitution purposes. Further, the definition specifically includes a murder victim's immediate family as potential claimants for this type of economic loss. The claimant, Caitlyn Naffziger's mother, clearly qualifies for the purpose of restitution of mental health costs.

³ As Ms. Smith stated in her victim impact statement -she and the children remained in New Hampshire until May 6, 2024, even though all their immediate family members resided in Minnesota, because of ongoing custody proceedings. This was because the defendant's parents (also residing in Minnesota) initiated legal proceedings in New Hampshire related to custody of the children. Had the defendant's parents not done so, the children and Ms. Smith likely would have been allowed to return to Minnesota much earlier.

⁴ In June of 2024, the children began residing with the family members who have current legal guardianship of them. *See* Bates 2173.

⁵ The claimant has only requested her lost wages and not expenses for food, clothing, lodging, and airfare that were incurred given that the care was forced to be provided in a place where neither claimant nor the children resided. The request is limited and reasonable.

24. The counseling services sought and received by claimant are directly related to the murder of Caitlyn Naffziger. As described in her victim impact statement, claimant delayed her grief in order to care for her grandchildren and then sought therapy to deal with the trauma of her daughter's murder. In that victim impact statement, Ms. Smith told the Court of her nightmares, of her anxiety, and of PTSD caused by Caitlyn Naffziger's violent death and by the associated trauma to her grandchildren.

25. Based on a review of the billing records, claimant began seeing a licensed therapist for counseling services on or about September 6, 2024. *See* Mental Health Treatment Invoices and Mental Health Treatment Bills Sept 6 & 11 – PMT by LS. The requested restitution is for counseling services provided from that date through June 23, 2025. The request does not include any amount that was paid by claimant's health insurance. *See* Mental Health Treatment Invoices and Mental Health Treatment Bills Sept 6 & 11 – PMT by LS.

26. The defendant was convicted of the murder of Caitlyn Naffziger, of reckless conduct with a deadly weapon for his disregard of the danger in which he placed E.D., and for endangering the welfare of E.D. He is wholly and solely responsible for the murder of Caitlyn Naffziger and the harm caused to E.D. His actions created Lori Smith's grief and formed the basis of her need for counseling. The defendant should be ordered to pay the entirety of the \$2,268.00 in requested restitution.

27. In the event and to the extent that the defendant argues that the requested restitution claims for lost wages and/or mental health treatment be denied or reduced because of the existence of any GoFundMe account created by the family, the existence of such a fund should not be considered by the Court in determining the restitution amount owed by the defendant.

The State notes that it is aware of a publicly accessible GoFundMe account which has a stated purpose to provide resources for the family.

28. First, there are any number of resources outside of the current claimed restitution that are needed by a family where two young children are being cared for by relatives and will need that care for many years. Further, the New Hampshire Supreme Court has held that there is “nothing in the restitution statute, viewed as a whole, [that] evinces the legislature’s intent to preclude victims from receiving both restitution and voluntary public donations.” *State v. Burr*, 147 N.H. 102, 104 (2001).

29. *Burr* was an animal cruelty case in which the defendant was ordered to pay restitution to the humane society that had rescued the affected animals. She challenged the restitution award based on the fact that media attention had functioned to increase donations to that humane society, arguing that the increase in donations should offset her obligation to pay restitution. The Court found that “voluntary public donations are not compensation within the meaning” of RSA 651:63. *Id.* The Court went on to find that the increased donations did not mitigate the claim being made for restitution under RSA 651:62, saying that “to hold otherwise would enable a defendant to escape his or her obligation to make the victim whole simply because the public has sympathy for the victim.” *Id.*

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- (A) Grant the State's motion; and,
- (B) Find that the requested restitution is a direct result of the criminal offense; and,
- (C) Order restitution in the amount of \$5,002.00 for funeral expenses; and,
- (D) Order restitution in the amount of \$2,268.00 for mental health services, and \$4,737.60
in lost wages; and/or,
- (E) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

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Date: February 11, 2026

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was filed through the Court's electronic filing system and will be electronically served by the e-Filing system on counsel for defendant.

February 11, 2026

/s/ Bethany J. Durand
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Assistant Attorney General