

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 14, 2003

1:04 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative John Coghill
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Jim Holm

COMMITTEE CALENDAR

HOUSE BILL NO. 23

"An Act relating to court-ordered restitution and compensation following a criminal conviction."

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 7

Relating to urging the United States Congress to amend the tax code to permanently repeal the federal estate and generation-skipping transfer tax.

- BILL HEARING POSTPONED

PREVIOUS ACTION

BILL: HB 23

SHORT TITLE: RESTITUTION FOR CRIME VICTIMS

SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH

Jrn-Date	Jrn-Page		Action
01/21/03	0037	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0037	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0037	(H)	JUD
01/21/03	0037	(H)	REFERRED TO JUDICIARY
02/14/03		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BRUCE WEYHRAUCH

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 23.

DOUG WOOLIVER, Administrative Attorney

Administrative Staff

Office of the Administrative Director

Alaska Court System (ACS)

Anchorage, Alaska

POSITION STATEMENT: Provided a comment during discussion of HB 23.

LINDA WILSON, Deputy Director

Public Defender Agency (PDA)

Department of Administration

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 23.

ROBERT BUTTCANE, Legislative & Administrative Liaison

Division of Juvenile Justice (DJJ)

Department of Health & Social Services (DHSS)

Juneau, Alaska

POSITION STATEMENT: Testified in support of the concept of HB 23, suggested an amendment, and responded to questions.

RILEY WOODFORD

Alaska Folk Festival, Inc.

Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 23.

ACTION NARRATIVE

TAPE 03-7, SIDE A

Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives McGuire, Anderson, Coghill, Samuels, Gara, and Gruenberg were present at the call to order. Representative Holm was excused.

HB 23 - RESTITUTION FOR CRIME VICTIMS

Number 0022

CHAIR McGUIRE announced that the only order of business would be HOUSE BILL NO. 23, "An Act relating to court-ordered restitution and compensation following a criminal conviction."

Number 0057

REPRESENTATIVE BRUCE WEYHRAUCH, Alaska State Legislature, sponsor, said that HB 23 was introduced to address the 2002 Alaska Court of Appeals case, Demers v. State of Alaska. He explained that the difference between the original bill and a proposed committee substitute (CS) is that the words, "to the victim" have been added after "compensation" on page 1, line 9, and page 2, line 11. As background for HB 23, he explained that [a former] Alaska Folk Festival, Inc., treasurer, James G. Demers, had been convicted of embezzling funds from the Alaska Folk Festival, a nonprofit corporation. Mr. Demers was ordered by the Alaska Superior Court to pay restitution to the Alaska Folk Festival for the work of volunteers who incurred time, money, and effort to uncover that crime. He said that according to his understanding, the police said, "We don't have the ability, ... time, and resources to do all the work that needs to be done, so you figure out what happened here and present us with the evidence of the crime so we can then prosecute it and give it to the district attorney."

REPRESENTATIVE WEYHRAUCH said that in collecting this evidence, the volunteers spent a substantial amount of time, money, and effort. He remarked that oftentimes, white-collar crimes are more difficult to uncover because the perpetrators are professional people who are more versed in ways of hiding their crimes. He said that the Alaska Court of Appeals reversed the sentencing court's decision regarding paying restitution to the Alaska Folk Festival, and that the reason for the reversal was based on a narrow interpretation of the language in the legislative intent section of the statute pertaining to compensation and recovery. He opined that in the Alaska Court of Appeals decision, the dissenting opinion of [Chief Judge Robert G. Coats] was the correct opinion. Representative Weyhrauch said that the purpose of HB 23 is to reverse the Alaska Court of Appeals decision and adopt the dissenting opinion, which read in part:

Alaska Statute 12.55.045 directs a sentencing court that orders restitution to take into account the "[1)] public policy that favors requiring criminals

to compensate for damages and injury to their victims." ... One of the purposes of [AS] 12.55.045(a) is "to make full restitution available to all persons who have been injured as a result of the criminal behavior, to greatest extent possible." ... This legislative intent seems to me to support the conclusion that the legislature favors restitution awards as part of criminal sentences.

Number 0293

REPRESENTATIVE WEYHRAUCH offered that the public policy decision before the committee is, "Do we, as a legislature, intend for the court of appeals to tell the legislature what its intent is?" He reiterated that he agrees with the dissenting opinion, that the legislature intended to favor restitution awards as part of criminal sentences. He also reiterated that in adopting HB 23, the minority decision would be adopted and the majority decision would be overturned. He again referred to the dissenting opinion, which also read in part:

On the other hand, if victims of a crime, rather than hiring someone else, spend their own time and effort to fix damages caused by a criminal act and can clearly establish the value of the efforts, I see no reason to preclude a court from awarding restitution. Such a rule seems to me to be consistent with the legislative policy of these statutes and the past interpretations by this court.

REPRESENTATIVE WEYHRAUCH said he believes that as a public policy, the legislature should ensure that a sentencing court has the broad tools to award restitution to victims of crimes; hence the addition of the words "to the victim" in the proposed CS. He remarked that both he and the Department of Law (DOL) want to clarify that the victims referred to in the proposed CS are the nonprofit victims, not the individual members of the nonprofits. He continued:

I think [that it] is the legislature that defines what its policy is and its intent is, and then a court - legitimately, under our constitutional form of government - interprets that. When the court makes a mistake, it's up to the legislature to clarify what its intent is. And our intent, I believe, as a legislative body, should be [to ensure] that a white-collar criminal that creates a crime that causes harm

is fully liable for all the damages they cause, and that a sentencing judge - both ... [as] part of a sentence and part of probation - requires that defendant to pay back the full measure of the impact they caused to entities.

Number 0447

REPRESENTATIVE WEYHRAUCH listed some of the nonprofit organizations that he has been a part of, and remarked that many nonprofits are not well funded. Because of funding limitations, he pointed out, it is often not possible for nonprofits to simply hire professionals on retainer to gather the evidence of wrongdoing; nonprofits have to rely on volunteer efforts for this task just as they do for most of their tasks. He reiterated that he wants to ensure that when an individual in a nonprofit organization incurs costs or expenses because of a crime, and is able to provide reasonable documentation of such costs or expenses, that the court can order the defendant, either as part of a sentence or as part of probation, to pay restitution to a nonprofit victim. He opined that the majority opinion in Demers v. State takes away the court's discretion to do so.

Number 0621

REPRESENTATIVE ANDERSON moved to [adopt the proposed CS for HB 23, Version 23-LS0134\D, Ford, 1/29/03, as a work draft].

Number 0625

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He surmised that the language change being proposed by Version D would provide that only the victim could be compensated for volunteer labor, and would preclude compensation to any other person providing volunteer services. He asked whether such was the sponsor's intent.

REPRESENTATIVE WEYHRAUCH remarked that the wording in Version D was suggested by the DOL. He said he wanted to allay any concern that there would be "a whole bunch of people in front of court asking for restitution." The compensation, he pointed out, has to be related to the nonprofit, to the crime, and to the injury to the nonprofit. He elaborated:

The nonprofit ... finds evidence of something that happened. They use the individual to document that

the crime happened. The individual incurs expense on behalf of the nonprofit. The victim stays the nonprofit. If you make the victim those who are broader than the nonprofit in this specific case - and in this bill ... I intentionally wanted to keep it very narrow to this specific instance - ... then you do maybe open up a can of worms for a sentencing judge ... [to] sort ... out.

And I believe that it was important for the legislature to give the tools to the ... sentencing court to make sure that the victim nonprofit has to present the evidence of the damage that was incurred to discover the crime and maybe bring the crime to the authorities' attention and to document the crime, and then once the restitution was paid, the money goes to the victim, so that the court is not left as a referee to all the other people that may be deciding they want money, too, from this defendant.

REPRESENTATIVE WEYHRAUCH observed that if individuals want funds from a defendant, they may pursue the issue via a civil procedure. Version D simply provides that the restitution will be paid to the nonprofit.

Number 0891

REPRESENTATIVE GRUENBERG withdrew his objection. [Subsequently, Version D was treated as adopted].

Number 0995

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said simply that the sponsor, in his testimony, has adequately addressed some of the ACS's concerns.

REPRESENTATIVE ANDERSON, referring to Section 2, proposed AS 12.55.100(a)(2), asked whether the term "volunteer labor" could be interpreted so expansively as to include the volunteer labor of his family and friends should his house be burglarized and vandalized. He expressed the concern that HB 23 could be abused, and pondered whether the definition of "nonprofit entity" should be added in order to restrict how the term "victim" is interpreted.

REPRESENTATIVE WEYHRAUCH opined that the legislature's policy should be to ensure that any victim of criminal behavior is compensated to the greatest extent possible, that the courts have the ability, when presented with reasonable, documented evidence that expenses associated with the crime were incurred, to make the victim whole. He stressed that the costs associated with the volunteer labor must be properly documented, and surmised that this won't include compensating someone simply for taking time off [from his/her regular job]. He posited that sentencing judges will still have the discretion to disallow speculative damages. He remarked that he did not feel that nonprofit entities should be the only ones compensated for documented costs incurred by volunteers.

REPRESENTATIVE GARA surmised that HB 23 is a good bill that addresses a situation which should be addressed. He expressed concern, however, that without some additional language, HB 23 will not accomplish what the sponsor intends. He elaborated:

The reason we got into this mess in the first place is, when we write a criminal law, the courts have always, in every state, interpreted the law very narrowly. And that's because in criminal laws, we take away peoples' liberty, and ... we intend to take away peoples' liberty as punishment, and one of your [punishments] is that you lose the amount of liberty that the state or the federal government have said you should lose. The courts, when they decide how much liberty to take away from somebody, always want to be careful that they're not taking more than the legislature intended for them to take away. They don't want to start inventing new punishments, so they interpret criminal statutes narrowly. They say to the legislature, "You have to say what you mean so we don't start making things up, essentially, so we don't start expanding things beyond what you intended; so we're going to interpret your words very narrowly."

That's probably why the [Alaska] Court of Appeals did what they did. The appropriate remedy was for [Representative] Weyhrauch to come in here and come up with a bill that now addresses the situation clearly. And here's where I'm concerned that we're not addressing the situation clearly. We want nonprofits to be able to recover the fair value of volunteer labor that goes into remedying the crime; in the situation you discussed, that's what we wanted to

happen. But, really, the victim in our situation here is a nonprofit. It was the nonprofit's agents, their employees, that came in and did the work. We want the nonprofit to be able to recover for the work of their agents.

Number 1429

REPRESENTATIVE GARA continued:

In Representative Anderson's example, let's say it was the KKK [Ku Klux Klan] that comes in and destroys somebody's house and paints it with swastikas all over the place, and the community comes in and spends a week repairing the house. If we wanted the community members to have the value of their time compensated for - and probably in most circumstances community members would say, "I don't really want compensation for this," and they would leave it at that, but maybe they put in a lot of time and maybe the victim wants to honor the people who helped with the house project by getting them compensation for their time - we would have to say that this [proposed] statute allows the victim to recover compensation for their time or their agent's time.

So, in both Representative Anderson's situation, which I embellished a little bit by making the perpetrator the KKK, and in Representative Weyhrauch's situation, we're really compensating for the time of the victim's agents. And I think we might have to put in, in order to effectuate the intent here, ... on page 2 on line 11 of the CS, that we're compensating "the victim for the value of the victim's or their agent's volunteer labor". And so I'm offering for a discussion the idea of a friendly amendment. And certainly if that's not the sponsor's intention, I won't push it. If the sponsor believes that we don't want to expand the law that far, then that's fine. But I worry that the sponsor's intentions won't be honored when this statute then goes to another court and the court is charged to interpret the statute as narrowly as possible. I wonder, when they apply that rule of construction that the law has to be interpreted narrowly, if, again, we'll go up there and they won't be constrained the same way.

REPRESENTATIVE WEYHRAUCH replied that Representative Gara's [suggested] amendment has purchase with him because he believes that the legislature's intent is that the court be given the discretion to make full restitution available, to the greatest extent possible, to all persons who have been injured as a result of criminal behavior. He mentioned, however, that although he does not have any specific problem with broadening the bill in that fashion, doing so may make it difficult to pass HB 23 on the House floor. He indicated that he would be willing to work with Representative Gara on that point after hearing further testimony.

Number 1588

LINDA WILSON, Deputy Director, Public Defender Agency (PDA), Department of Administration, relayed that some of the PDA's concerns have been addressed by Version D. She said that the PDA has submitted an indeterminate fiscal note, and offered the following explanation.

The [PDA] represents indigent defendants in contested restitution hearings, which are a part of the sentencing process. This bill would authorize a sentencing judge to order a defendant to pay restitution - originally, before you added the language "to the victim" - to relatives, friends, coworkers, neighbors of a crime victim who spent time consoling the victim or helping clean up after the crime or assisting the victim with tasks that they might be too upset to attend to. And with that language, "the value of ... volunteer labor," there could be more contested restitution hearings, which would result from the enactment of this legislation, that might center around what was the value of the volunteer labor.

And I think that Representative Weyhrauch spoke to that in terms of, you would certainly want to have something that wasn't speculative but that you could have receipts and documentation for. Whether the volunteer labor was directly related to the defendant's crime might be an issue that would be contested. Whether or not it alleviated or mitigated the effect of the crime. Obviously there is no way for us to accurately predict, number one, how many people would come forward that would want to be compensated for volunteer labor, and so it's not

possible to predict. Now, the amendment of adding the language "to the victim" certainly narrows this legislation and certainly is an attempt, I think, to address the concerns from that [Alaska] Court of Appeals decision.

MS. WILSON continued:

I guess my only concern about that change in language is that then you have the money, and I think this was actually brought out in ... the Demers case, is that the money then would go to the victim, in this case, to compensate them for the value of the volunteer labor that they received. So then you have to trust the crime victim to then pay the volunteers for ... the value of their labor in turn. When you're talking about an individual as opposed to a nonprofit, this troubled the [Alaska] Court of Appeals, I believe, because they felt that ... -- the home had been repaired. So let's say it's a burglary, neighbors come in and they repair the house and they fix the windows, you compensate the victim and then the victim is then trusted to then pay the volunteers. I think ... that's probably a good thing, that the victim probably can be trusted to do that, but I don't know if that was intended, to limit it so much. We certainly do support restorative justice - making the victim whole; [we] don't have any problem with this legislation, but just that it may have some fiscal impact on the [PDA]. Thank you.

Number 1764

ROBERT BUTTCANE, Legislative & Administrative Liaison, Division of Juvenile Justice (DJJ), Department of Health & Social Services (DHSS), said that the DJJ supports the concept of HB 23, and asked members to consider extending the same rights and benefits [to] delinquency proceedings. The way the bill is currently structured, he noted, it addresses issues in the criminal court. But there are occasions when juvenile offenders victimize nonprofit organizations. And although it may take a title change, he said he would like victims of juvenile crimes to receive the same benefits as victims of offenders in the adult system. In response to questions, he indicated that he's had some preliminary discussions with the DOL regarding such a change, but does not yet have any specific language ready for the committee.

Number 1871

RILEY WOODFORD, Alaska Folk Festival, Inc., explained that he was "president of the Board of the Alaska Folk festival" for about five years, and that it was he and another who investigated Mr. Demers's embezzlement. He recounted his experience after discovering that a crime had taken place:

We went to the police and were told by the detective that: "We do not have [the] time or resources to be handed a stack of ledgers and reconstruct what happened here. It's your responsibility. If you are able to ... document each individual criminal act and each individual act of theft and of where those crimes are covered up, we'll look at all that and then we'll arrest him - that's what we do - and then ... the prosecution will take it from there."

MR. WOODFORD surmised that such a burden is generally put on the nonprofit, as was done in his case. He noted that his organization was encouraged to be fairly discrete about its investigation in order to lessen the likelihood that Mr. Demers would attempt to sabotage the efforts to bring him to justice. To that end, the Alaska Folk Festival was reluctant to simply use the services of an accounting firm because it might pursue the investigation by making phone calls to different people and, thus, alert Mr. Demers to the fact that his actions were being investigated.

MR. WOODFORD noted that in addition, an accounting firm unfamiliar with the nonprofit might not be able to differentiate between approved items and those of a questionable nature; for example, an accounting firm might not realize that Mr. Demers did not have approval to bill all of his phone calls to the Alaska Folk Festival. He posited that even had an accounting firm done most of the work, the investigation would still have required a lot of additional work from members of the nonprofit, such as the president and treasurer, to help reconstruct a particular crime. In asking for the compensation, he explained, it was not to compensate them as individuals; rather, compensation was sought because of the impact the investigation had in taking so much time - an estimated 200 hours - away from their regular task of putting on the festival.

Number 2025

REPRESENTATIVE GARA posited that it might be helpful if a nonprofit organization could tell its volunteers that there is a possibility that they may be compensated for costs associated with helping alleviate or mitigate the impact of a crime.

MR. WOODFORD relayed that had they known that they could have hired an accounting firm, submitted a bill for those services to the court, and then not had any difficulties getting compensated for that expense, they probably would have gone that route to begin with. Unfortunately, he added, they did not know that that was an option open to them. As it was, the Alaska Folk Festival only hired an accounting firm at the end of the investigation, for the purpose of reviewing and critiquing the volunteer members' work.

REPRESENTATIVE WEYHRAUCH, turning back to the issue of Mr. Buttane's suggested change, indicated that he does not have any objections as long as such a change does not raise other issues that prevent the bill from moving on.

REPRESENTATIVE GARA asked why juvenile offenders would not already be subject to the provisions of HB 23, even without any changes.

MR. BUTTANE explained that the delinquency chapter is found under Title 47, and that delinquency proceedings are handled in the superior court through that separate chapter - AS 47.12. In those instances, a judge may impose a delinquency disposition, which, he said, is similar to a sentence as stipulated under Title 12. Therefore, he surmised, the delinquency statute - AS 47 - would have to be amended as well, in order for the provisions of HB 23 to apply to victims of juvenile offenders. He suggested that there are a couple of places in the delinquency chapter where such a change could be included, but pointed out that he would still have to do some work with the DOL and the sponsor to ensure that any change does what is intended. In response to a question, he said that restitution is currently permitted in delinquency proceedings.

REPRESENTATIVE COGHILL asked whether there is already a precedent for setting the value of volunteer labor.

Number 2259

REPRESENTATIVE WEYHRAUCH said he was not sure if there was precedent in criminal law, and indicated that he would research that issue.

CHAIR MCGUIRE remarked that the question of how [criminal courts] will determine valuations for volunteer labor is a good one and is a question that she would be interested in having the answer to.

REPRESENTATIVE SAMUELS, after noting that he agrees with the concept of HB 23, asked who would get the compensation in instances where the nonprofit organization is only set up for a limited time and purpose.

REPRESENTATIVE WEYHRAUCH offered that in such instances, perhaps the organization might not exist long enough to even make a claim for compensation. He suggested that perhaps a court might choose to award any compensation owed to a nonexistent entity to a similar nonprofit or to the Office of Victims' Rights instead. That, however, is a question that would fall under the discretion of the sentencing judge on a case-by-case basis, he pointed out. He then opined that the courts should simply interpret HB 23 broadly enough so that defendants are ordered to pay compensation to their victims.

TAPE 03-7, SIDE B

Number 2383

REPRESENTATIVE GRUENBERG remarked that the current title of HB 23 has focused his attention on a variety of different issues with regard to the restitution statute. He opined that the committee could go down one of two roads: "We can do a very, very narrow thing that really won't, necessarily, fully help the situation. Or we can take a look at a few things that I think could really help in this particular area." He posited that his view of the bill is perhaps different from others' views. He elaborated:

Looking at Judge [David] Mannheimer's ... separate opinion here, he raises some issues And in his concurrence, he looks at whether a person who is the defendant would be unjustly harmed by being ordered to pay restitution, and I'm looking at ... [the] last sentence of paragraph four: "Ordering the defendant to pay 'restitution' [to the Folk Festival for the hours of work performed by the insurance company employees] would result in the unjust enrichment of the Folk Festival."

I think that to really understand what's going on here, you have to look at the situation as a triangle. And at one corner of the triangle is the defendant; at the second corner is the victim; the third corner is the third-party provider of the services - or payor of the bill. And the question is, will there be a windfall? And, if so, who, most equitably, should be entitled to the windfall? I would first eliminate the defendant, the tort-feasor, the person who caused the injury; he, in my opinion ..., is the least ... we should be justly concerned with because they're the person who caused the problem.

And the second question is with respect to the other two parties if there is to be a windfall. First of all, is there a windfall and, secondly, if so, who should get it? And, as I thought about this, ... this is where the field of criminal law and tort law intersect. Until maybe 20 years ago there was no such thing as "restitution" in ... criminal law, and if you wanted to get reimbursed, if ... money was stolen and your house was burglarized or vandalized or torched, you had to bring a lawsuit. And so this issue initially didn't arise in the field of criminal law but arose in the field of tort law, and there is something called the "collateral source" rule in tort law. ...

Number 2213

REPRESENTATIVE GRUENBERG went on to say:

I hope Justin [Roberts] gave out a case ... called Beaulieu v. Elliott, and if you look at page 673, ... under "headnote [12]" ... it says, "... Elliot urges the adoption of the collateral source rule, which provides that damages may not be diminished or mitigated on account of payments received by ... [plaintiff] from a source other than the defendant." And this would go to the value of services, too. And I looked on this bill ... as really the first time that I'm aware that this legislature has considered the possibility of engrafting the collateral source rule into the area of criminal-law restitution. And to me it makes a lot of sense to do it because the purpose of a "restitutionary" hearing in ... criminal law is to make it easy, simple, and cheap for the

victim to get some limited kinds of special damages. Special damages are reimbursement for actual expenses - or the value of services, in this particular case.

And if we're going to do that, the question is, who should get the reimbursement? Or the question, really, in this particular case, in the Demers case, was, should a collateral source payment be allowed, or should the defendant get the windfall by not having to pay for the value of services, which the court made a finding of fact did have a certain value. And in this Demers case, it wasn't an issue as to the value of the services those gentlemen provided, because the court found what they were, and there was no challenge that that finding was clearly erroneous, so we know what the value of the services were. And ... really the most important question that this bill addresses ... is whether we are going to allow the collateral source rule, as in Elliott v. Beaulieu ..., to be engrafted in some manner into the restitutionary statute, and I think it makes a lot of sense for us to do it.

Number 2157

REPRESENTATIVE GRUENBERG continued:

Now, that was the common law rule and it normally applies in contractual situations, like where you have an insurance policy. The victim has an insurance policy, the insurance policy pays for mending the broken leg or pays for restoring Representative Anderson's house or whatever, and ... in that particular case, the insurance policy usually says that if you get money from the tort-feasor, "we get paid back." And so the question is, does the insurance company, the third-party provider, absorb the loss, or does the tort-feasor, the defendant, in this case, skate free. And I think in that case it's not a windfall because otherwise the provider is out the money and there's a contractual obligation there. So, in that case it seems to me that the defendant should clearly have to pay back the insurance company.

And you can do that under this because there's a contractual obligation, then, to be sure that whoever the witness was, that the person does pay because they're under a contractual obligation to the

insurance company to do it. The legislature, in the tort reform legislation, ... has changed that, the collateral source rule, in some manners. It's [AS] 09.17.070, the collateral benefits. And the question is, if we're going to get into this, do we want to ... reference AS 09.17.070? And that is ... the question that ... this bill presents to me.

CHAIR McGUIRE said that Representative Gruenberg is correct in his analysis. She remarked that she wants to ensure that everyone understands the gravity of the precedent that is being set via HB 23.

REPRESENTATIVE GRUENBERG also mentioned that he has some concern with the title of HB 23 as well. He pointed out that the language in AS 12.55.045(b) could cause a great injustice to the defendant in that "An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct". He suggested that perhaps the language could be changed to include something along the lines of "however, any restitution may serve as a partial offset", because they shouldn't be able to recover twice for the same injury for the same damage from the defendant. "That is something that, if we're going to do some [justice] here, we ought to consider," he added.

Number 1975

REPRESENTATIVE WEYHRAUCH remarked that there is a significant distinction between a civil proceeding to collect damages and a criminal one. He recounted some of the processes and costs associated with a civil proceeding and remarked that it is unlikely that anyone going through such a proceeding can be made entirely whole. In a criminal proceeding to collect damages, however, there is the threat of jail time and revocation of probation if the defendant does not pay what he/she is ordered to. He opined that in the latter proceeding, the defendant has a much greater incentive to follow through on paying restitution; hence [HB 23] will give a sentencing court an important tool in helping to make the victim whole. In closing, he asked members to not lose sight of the impetus for HB 23 and the aforementioned policy questions that he feels the committee should address.

REPRESENTATIVE GARA suggested taking a 10-minute at-ease for the purpose of working with the sponsor to develop some possible amendments, which could then be addressed before the meeting

adjourned for the day. He acknowledged that the suggestion proposed by Mr. Buttane, however, raises a complex issue, and he remarked that his inclination is to refrain from addressing that issue. He elaborated:

Juvenile cases are about trying to make a young person understand what they did and trying to ensure that a young person can, at some point, become an adult who becomes a productive member of society, and I don't know that we really need to make the juvenile process more difficult at this point, especially through this bill, especially on such a minor issue.

REPRESENTATIVE SAMUELS said he disagrees with Representative Gara regarding juveniles. He elaborated: "Part of the process of making a juvenile a better person is also to make them realize what they did and make them pay it back, and making the victim whole needs to be priority one."

REPRESENTATIVE WEYHRAUCH indicated that he was willing to take a brief at-ease to work on possible amendments, adding, however, that he was not sure that 10 minutes would be sufficient to address all of Representative Gruenberg's concerns.

The committee took an at-ease from 2:10 p.m. to 2:19 p.m.

CHAIR McGUIRE, upon coming back to order, relayed that members needed more time to work with the sponsor on the issues raised, and announced that HB 23 would be held over for that purpose.

ADJOURNMENT

Number 1693

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:20 p.m.