

HB

23

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 23
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to restitution BRU Legal and Advocacy Service
 Component Public Defender Agency
 Sponsor Rep. Weyhrauch
 Requester (H) JUD Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill would amend the criminal statutes to expand restitution orders and restitution as a condition of probation to include compensation for the value of labor and goods provided by volunteers to victims that are nonprofit organizations, when the volunteer labor or goods are necessary to alleviate or mitigate the effects of a crime. This bill would not have a significant fiscal impact on the operations of the Agency. The Agency represents indigent defendants in contested restitution hearings, a part of the sentencing process. This bill would authorize a sentencing judge to order a defendant to pay restitution to a nonprofit organization victim for the value of volunteer labor or goods provided to it when necessary to alleviate or mitigate the effects of a crime. This limited expansion of the statute will not noticeably increase the workload of the Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division Public Defender Agency Date/Time 3/3/03 9:35 AM
 Approved by: Mike Miller, Commissioner Date 3/3/2003
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

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OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would amend the criminal statutes to expand restitution orders and restitution as a condition of probation to include compensation for the value of volunteer work.

This bill would have a fiscal impact on the operations of the Agency. The Agency represents indigent defendants in contested restitution hearings, a part of the sentencing process. This bill would authorize a sentencing judge to order a defendant to pay restitution to relatives, friends, co-workers and neighbors of a crime victim who spent time consoling the victim, helped clean up after a crime, or assisted the victim with tasks because the victim was too upset to attend to them. It is likely that more contested restitution hearings would result with the enactment of this proposed legislation. Some of the newly contested issues might be the value of the volunteer labor, whether the volunteer labor was directly related to the defendant's crime, or whether it alleviated or mitigated the effects of the crime. However, the Agency cannot accurately predict the increase in its workload. Therefore, an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division: Public Defender Agency Date/Time 2/14/03 11:16 AM
 Approved by: Mike Miller, Commissioner Date 2/14/2003
 Agency: Department of Administration

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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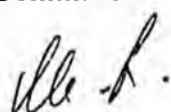
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 24, 2003

SUBJECT: Crime victim restitution (CSHB 23(JUD))

TO: Representative Lesil McGuire, Chair
House Judiciary Committee
Attn: Vanessa

FROM: Michael F. Ford 
Legislative Counsel

The final CS you requested is attached. I wanted to point out that, as introduced, HB 23 made parallel changes to AS 12.55.045(a) and AS 12.55.100(a), intended to address restitution to certain crime victims. In the CS, the committee made changes to both provisions, but only part of the changes to AS 12.55.045(a) were also made to AS 12.55.100(a). The result is that now the two provisions no longer contain parallel provisions and the changes made to AS 12.55.045(a) have resulted in a very cumbersome clause in a subsection that probably should be rewritten. I understand that the committee has passed the bill out, so perhaps the next committee of referral, which I understand is to be the Rules Committee, can address these issues.

Please contact me if you have further questions.

MFF:med
03-182.med

Enclosure

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Jim Holm
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: February 21, 2003
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1341\S, HB 23: Restitution for Crime Victims. The bill passed out of committee today.

If you have any questions, please call me at 4990. Thank you very much!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

23-LS0134S
Ford
2/26/03

CS FOR HOUSE BILL NO. 23()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES WEYHRAUCH, Gatto, Gara

A BILL

FOR AN ACT ENTITLED

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

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 12.55.045(a) is amended to read:

5 (a) The court may order a defendant convicted of an offense to make
6 restitution as provided in this section, including restitution to the victim or other
7 person injured by the offense, to a public, private, or private nonprofit organization
8 that has provided or is or will be providing counseling, medical, or shelter services to
9 the victim or other person injured by the offense, or as otherwise authorized by law.

10 **The court may also order a defendant convicted of an offense to compensate a**
11 **victim that is a nonprofit organization for the value of labor or goods provided by**
12 **volunteers if the labor or goods were necessary to alleviate or mitigate the effects**
13 **of the defendant's crime.** In determining the amount and method of payment of
14 restitution **or compensation**, the court shall take into account the

1 (1) public policy that favors requiring criminals to compensate for
2 damages and injury to their victims; and

3 (2) financial burden placed on the victim and those who provide
4 services to the victim and other persons injured by the offense as a result of the
5 criminal conduct of the defendant.

6 * Sec. 2. AS 12.55.100(a) is amended to read:

7 (a) While on probation and among the conditions of probation, the defendant
8 may be required

9 (1) to pay a fine in one or several sums;

10 (2) to make restitution or reparation to aggrieved parties for actual
11 damages or loss caused by the crime for which conviction was had, including
12 compensation to a victim that is a nonprofit organization for the value of labor or
13 goods provided by volunteers if the labor or goods were necessary to alleviate or
14 mitigate the effects of the defendant's crime;

15 (3) to provide for the support of any persons for whose support the
16 defendant is legally responsible;

17 (4) to perform community work in accordance with AS 12.55.055;

18 (5) to participate in or comply with the treatment plan of an inpatient
19 or outpatient rehabilitation program specified by either the court or the defendant's
20 probation officer that is related to the defendant's offense or to the defendant's
21 rehabilitation; and

22 (6) to satisfy the screening, evaluation, referral, and program
23 requirements of an agency authorized by the court to make referrals for rehabilitative
24 treatment or to provide rehabilitative treatment.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Jim Holm
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: February 21, 2003
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0134\D, HB 23: Restitution for Crime Victims, incorporating the attached four amendments. The bill was passed out of committee today.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

23-LS0134D
Ford
1/29/03

CS FOR HOUSE BILL NO. 23()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES WEYHRAUCH, Gatto

A BILL

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2 conviction."

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4 * Section 1. AS 12.55.045(a) is amended to read:

5 (a) The court may order a defendant convicted of an offense to make
6 restitution as provided in this section, including restitution to the victim or other
7 person injured by the offense, restitution to a public, private, or private nonprofit
8 organization that has provided or is or will be providing counseling, medical, or
9 shelter services to the victim or other person injured by the offense, compensation to
10 the victim for the value of volunteer labor incurred to alleviate or mitigate the
11 effects of the defendant's crime, or as otherwise authorized by law. In determining
12 the amount and method of payment of restitution or compensation, the court shall
13 take into account the

14 (1) public policy that favors requiring criminals to compensate for

1 damages and injury to their victims; and

2 (2) financial burden placed on the victim and those who provide
3 services to the victim and other persons injured by the offense as a result of the
4 criminal conduct of the defendant.

5 * Sec. 2. AS 12.55.100(a) is amended to read:

6 (a) While on probation and among the conditions of probation, the defendant
7 may be required

8 (1) to pay a fine in one or several sums;

9 (2) to make restitution or reparation to aggrieved parties for actual
10 damages or loss caused by the crime for which conviction was had, including
11 compensation to the victim for the value of volunteer labor incurred to alleviate
12 or mitigate the effects of the defendant's crime;

13 (3) to provide for the support of any persons for whose support the
14 defendant is legally responsible;

15 (4) to perform community work in accordance with AS 12.55.055;

16 (5) to participate in or comply with the treatment plan of an inpatient
17 or outpatient rehabilitation program specified by either the court or the defendant's
18 probation officer that is related to the defendant's offense or to the defendant's
19 rehabilitation; and

20 (6) to satisfy the screening, evaluation, referral, and program
21 requirements of an agency authorized by the court to make referrals for rehabilitative
22 treatment or to provide rehabilitative treatment.

AMENDMENT 1
to HB 23

By Rep. GRUENBERG

Section 1. AS 12.55.045(a)

- 1 Page 1, line 10, delete *volunteer*
- 2 Page 1, line 10, after "value of" insert *voluntarily provided goods or*

AMENDMENT 2
to HB 23

By Rep. GRUENBERG

Section 1. AS 12.55.045(a)

1 Page 1, line 10, after "victim" insert *if the victim is a nonprofit organization*

AMENDMENT 3
to HB 23

By Rep. GRUENBERG

Section 1. AS 12.55.045(a)

- 1 Page 1, line 10, after "incurred" insert *that was necessary*
- 2 Page 2, line 11, after "incurred" insert *that was necessary*

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

MEMORANDUM

DATE: January 28, 2003
TO: Rep. McGuire
FROM: Rep. Bruce Weyhrauch
SUBJECT: HB 23 – Restitution for Volunteer's Damages

Attached are materials in support of HB 23. At this time I respectfully request a hearing before your committee on this very important piece of legislation.

This issue came to my attention last winter, when the Court of Appeals felt they lacked standing in the statutes to allow monetary restitution for the hundreds of hours expended by volunteers of a local folk music organization when faced with reconstructing the crime of embezzlement perpetrated by a trusted volunteer accountant. Since I've been working on this issue, numerous other situations have come to my attention, making HB 23, a simple statement that reaffirms the Legislature's intent to the Judiciary Branch, extremely timely.

If you have any questions or need further information, I invite you to contact myself, or my aide, Linda Sylvester.

Thank you for your kind attention to this matter.

23-LS0134D
Ford
1/29/03

CS FOR HOUSE BILL NO. 23()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES WEYHRAUCH, Gatto

A BILL

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8 organization that has provided or is or will be providing counseling, medical, or
9 shelter services to the victim or other person injured by the offense, compensation to
10 the victim for the value of volunteer labor incurred to alleviate or mitigate the
11 effects of the defendant's crime, or as otherwise authorized by law. In determining
12 the amount and method of payment of restitution or compensation, the court shall
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4 criminal conduct of the defendant.

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12 or mitigate the effects of the defendant's crime;

13 (3) to provide for the support of any persons for whose support the
14 defendant is legally responsible;

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16 (5) to participate in or comply with the treatment plan of an inpatient
17 or outpatient rehabilitation program specified by either the court or the defendant's
18 probation officer that is related to the defendant's offense or to the defendant's
19 rehabilitation; and

20 (6) to satisfy the screening, evaluation, referral, and program
21 requirements of an agency authorized by the court to make referrals for rehabilitative
22 treatment or to provide rehabilitative treatment.

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
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HB 23

Sponsor Statement

In 1992, the Legislature adopted a statute to allow the court to order a convicted defendant to pay restitution to the victims of their crime. The Legislature also gave the court discretion to require a convicted person to pay restitution as a condition of probation. The Legislature intended that a court would "make full restitution available to all persons who have been injured as a result of criminal behavior to the greatest extent possible."

Flash Forward...

In December of 2000, the former treasurer for the Alaska State Folk Festival was convicted of embezzling \$13,000 over a four-year period and he was ordered to pay restitution. In addition to the actual cash that was robbed, restitution included \$5,400, or an approximate value for the 200-hours of accounting costs expended by the six-member board to reconstruct and audit the books that the defendant had absconded with.

The defendant objected to the restitution award for the volunteer-accountants and appealed. In February, 2002, the Court of Appeals ruled that the victim, a non-profit organization, did not incur any actual damages or loss caused by crimes when its board members volunteered 200 hours of work auditing and reconstructing the organization's records, and thus was not entitled to restitution for that volunteer work. (Demers v. State, 42 P.3d. 1 Alaska App. 2002).

HB 23 clarifies the clear intent of the Legislature that a court may order restitution to a non-profit corporation (or any other victim, for that matter) as a part of a sentence or probation if the facts and the record support the restitution. This is an obvious fact considering that the Legislature intended for the court "to make full restitution available to all persons who have been injured as a result of criminal behavior to the greatest extent possible."

In the real world, HB 23 simply enables the court to consider documented volunteer labor as a factor in the process of determining restitution.

Updated: January 28, 2003

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

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HB 23

Sectional Analysis

Section 1. Expands the type of restitution that a court can order a defendant convicted of an offense can be ordered to make. Specifically, the court would have the power to order restitution equal to the value of volunteer labor incurred to alleviate or mitigate the effects of the crime.

Section 2. Expands the type of restitution that a court can order a defendant convicted of an offense can be ordered to make while the defendant is on probation. Specifically, the court would have the power to order restitution equal to the value of volunteer labor incurred to alleviate or mitigate the effects of the crime.

These changes would specifically reverse the view of the Alaska Court of Appeals, expressed in Demers v. State, 42 P.3d 1, (Alaska App. 2002), that Alaska statutes do not specifically allow a court to consider the value of volunteer labor as an element of restitution.

Updated: January 28, 2003



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Former fire chief sentenced to 2 years

Sunday, February 17, 2002

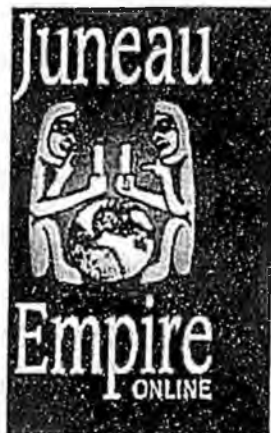
FAIRBANKS - The former chief of the Ester Volunteer Fire Department has been sentenced to two years in prison for embezzling more than \$56,000 from the department.

Mike Oden, 50, also was placed on 10 years probation and ordered to pay \$55,591 in restitution.

Oden was convicted of one count of first-degree theft after a two-week jury trial in September. The charges against Oden date from between March 1996 and June 2000, during which time he also worked as a senior safety management officer for UAF risk management services.

Oden was charged with double-billing the Ester Fire Department for trips that were paid for by UAF; charging other personal travel expenses to the department; using department funds to pay for the maintenance of his own vehicles and those of his family; using Ester department funds to finance a visit to Alaska by a firefighting expert, a trip that was actually sponsored by another organization; and buying a number of personal items with department money.

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Web posted **Wednesday, January 3, 2001**

Demers' bill comes due: \$16,238

Former folk festival treasurer ordered to pay for embezzlement

By ANN CHANDONNET
THE JUNEAU EMPIRE

A judge has ordered the Alaska Folk Festival's former treasurer to pay \$16,283.17 in restitution for falsifying checks, taking gate receipts and other embezzlements during his five years with the nonprofit group.

Juneau resident James Demers, 49, already has repaid \$7,743.14 of the total due.

"This (restitution total) seems fair from our point of view," said festival board member Mike Sakarias. "I hope it puts some finality on this so we can move ahead."

Superior Court Judge Patricia Collins detailed the total to be paid in an order issued Dec. 26. She also told Demers, a former Juneau Assembly candidate, to pay interest on unpaid restitution.

Demers served as volunteer treasurer from 1994 to 1999. After he resigned his position, he failed to return many of the financial records of the festival, board members said. When members looked carefully at the records that were returned, they found many inconsistencies.

Following a confession to police in which he said he might have stolen \$3,000 or \$4,000, Demers was found guilty of two felonies - second-degree theft and falsifying business records. He was sentenced Nov. 3 and began serving his sentence the next day. For the theft charge, he was sentenced to two years in prison with 18 months suspended and five years probation. He was to pay cost of incarceration up to \$2,500 and to perform 100 hours community work service.

For the charge of falsifying records, Collins gave him an identical sentence to be served concurrently.

In November, she capped restitution at \$24,000, to which Demers objected, and asked for more information before making a final determination.

In her 12-page judgment, Collins noted that "restitution awards in criminal

cases are expressly limited to actual damages." She did not honor folk festival requests for future lost income and for printing a letter advising members of Demers' conduct. However, she did allow accounting costs and record duplication costs.

Collins noted that the work of board members to piece together "a five-year pattern of thefts" and their "remarkable volunteer efforts ... saved the membership a great deal of money that would otherwise have been spent on accounting costs associated with an audit."

The festival board "remains free to seek additional civil damages" from Demers, Collins noted.

Ann Chandonnet can be reached at achandonnet@juneauempire.com

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Friday, March 27, 1998

Judge orders payment in embezzlement case

Last modified at 2:43 p.m. on Friday, March 27, 1998

By SVEND HOLST
THE JUNEAU EMPIRE

Jennifer Bell, former director of AWARE, said at a hearing Thursday that she couldn't find a job because of her bad reputation.

Bell, 45, broke probation for an embezzlement conviction by not making a restitution payment and not getting a job.

Juneau Superior Judge Walter Carpeneti ordered her Thursday to make \$300 per month payments toward paying restitution, but didn't send her to jail for breaking the terms of her probation. The probation was a result of her 1995 conviction for embezzling almost \$70,000 from AWARE - the Aiding Women in Abuse and Rape Emergencies shelter.

Three years ago, Bell pleaded no contest to felony theft in exchange for reduced charges, and was sentenced to serve 20 months in jail, with another 40 months suspended.

Rick Svobodny, Juneau's district attorney, said Bell appeared to think she was too good to work a menial job, and needed supervision to assure she got one, kept one and paid her restitution. After 15 months, he said, she hadn't paid a penny. Her probation called for her to make annual payments of almost \$7,000.

AWARE was insured for the lost money, so Bell's payments are going to an insurance company, according to Kevin Shores, the assistant public defender representing Bell.

"Jennifer Bell is working now after a long and frustrating job search," Shores said. "She never had it in her head that she'd not pay restitution. She is definitely suffering from the reputation that resulted from her offense."

Bell said she didn't take a minimum-wage job because the pay wasn't enough to support her family. She'd tried, she said, applying for administrative assistant openings and clerk positions, but wasn't hired.

Carpeneti revoked Bell's probation, but said he believed she had been trying to get a job. He accepted an agreement reached by Bell's attorney and Svobodny.

Under the agreement, Bell won't be sent back to prison, but must make the restitution payments and will be on supervised probation for five years and on informal probation for another five.

Bell's job, which she's had for two months, involves leading talking groups for Natives For Sobriety. If Bell loses her job, her probation officer can have her spend up to three months at the Glacier Manor Half-Way House to assure she tries to get another one.

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42 P.3d 1, *; 2002 Alas. App. LEXIS 18, **

JAMES G. DEMERS, Appellant, v. STATE OF ALASKA, Appellee.

Court of Appeals No. A-7916, No. 1788

COURT OF APPEALS OF ALASKA

42 P.3d 1; 2002 Alas. App. LEXIS 18

February 8, 2002, Decided

PRIOR HISTORY: [**1] Appeal from the Superior Court, First Judicial District, Juneau, Patricia A. Collins, Judge. Trial Court No. 1JU-S00-844 CR.

DISPOSITION: Affirmed in part and vacated in part.

CASE SUMMARY

PROCEDURAL POSTURE: The defendant pled no contest to one count each of second-degree theft and falsifying business records. The Superior Court, First Judicial District, Juneau (Alaska) amended the judgment to provide as a condition of probation that the defendant pay restitution in the amount of \$ 16,283, to his former employer, which included \$ 5,400 for "accounting costs." The defendant appealed the amount awarded for awarded for accounting costs.

OVERVIEW: After the defendant resigned as treasurer for his employer, a non-profit organization, a \$ 13,000 discrepancy was discover in the employer's business records, which led to the charges against the defendant. The challenged \$ 5,400 of the restitution order included \$ 400 paid to the employer's accountants for reviewing the books and \$ 5,000 for 200 hours of volunteer work performed by two of the employer's board members, who audited and reconstructed the business records. The appellate court affirmed in part and reversed in part. The court found that the employer clearly incurred a loss as a result of the defendant's theft and falsification. The employer not only lost the stolen funds, but also incurred other expenses, such as the \$ 400 expense for accounting services. This evidence supported the trial court's probation condition ordering restitution of \$ 400 for the accounting services. The court, however, reversed the award of \$ 5,000 of restitution for volunteer accounting services. Although injured as a result of the crimes, the employer did not incur any monetary damage or loss when board members volunteered their time to audit and reconstruct the business records.

OUTCOME: The court affirmed the restitution award of \$ 400 as reimbursement to the employer's accountants, and vacated the restitution award of \$ 5,000 for the volunteer time expended by the employer's board members.

CORE TERMS: restitution, sentencing, volunteer, audit, authorize, reimburse, condition of probation, sentence, theft, reconstruct, restitution award, actual damages, accounting, business records, pay restitution, embezzlement, volunteered, accountants, order restitution, ordering, persons injured, person injured, donated, own time, compensated, probationer, reparation, compensate, aggrieved, recipients

LexisNexis(TM) HEADNOTES - Core Concepts - Hide Concepts

Criminal Law & Procedure > Sentencing > Restitution

HN1 Alaska Stat. tit. 12 authorizes courts to award restitution both as a component of the sentence and as a term of probation. Alaska Stat. § 12.55.045(a)(2) provides that when contemplating an order of restitution, a court should consider the financial burden placed on the victim as a result of the criminal conduct of the defendant. The legislature intended that courts should construe § 12.55.045(a) broadly by ordering restitution to all persons who were injured as a result of a defendant's conduct. Alaska Stat. § 12.55.100(a)(2) provides, in part, that a court may order a defendant to make restitution or reparation to a victim for actual damages or loss caused by the crime as a condition of probation.

Criminal Law & Procedure > Sentencing > Restitution

HN2 Alaska Stat. § 12.55.100(a)(2) grants a sentencing court the power to impose restitution as a probation condition when a victim suffers actual damages or loss.

Criminal Law & Procedure > Sentencing > Restitution

HN3 The legislature did not provide a sentencing court with the power to order restitution to a victim who was injured but who did not sustain actual damages or loss because the injury was cured by volunteer efforts.

COUNSEL: James E. Curtain, Juneau, for Appellant.

David Brower, Assistant District Attorney, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

JUDGES: Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges. MANNHEIMER, Judge, concurring. COATS, Chief Judge, dissenting.

OPINIONBY: STEWART

OPINION: [*1]

STEWART, Judge.

From 1994 until 1999, James G. Demers served as treasurer of the Juneau-based Alaska Folk Festival, a non-profit organization. After Demers resigned his position, the new treasurer discovered discrepancies in the Festival's business records. More than \$ 13,000 was unaccounted for in over forty transactions spanning more than four years. After the police investigated, the State filed an information charging Demers with one count each of second-degree theft and falsifying business records. n1

-----Footnotes-----

n1 AS 11.46.130(a)(1) & AS 11.46.630, respectively.

-----End Footnotes----- [**2]

Demers waived indictment by the grand jury and pleaded no contest to the charges. Superior Court Judge Patricia A. Collins imposed 2 years with 18 months suspended on each count and ran the sentences concurrently. At sentencing, Judge Collins ordered Demers to pay restitution of up to \$ 24,000 (with credit for the \$ 7,743.14 he paid before sentencing) as a condition of probation subject to input from Demers after he had reviewed the Festival's records.

Ultimately, Judge Collins amended the judgment to provide as a condition of probation that Demers pay restitution to the Festival in the total sum of \$ 16,283.17. Included in this sum was

\$ 5,400 for the Festival's "accounting costs." In this appeal, Demers challenges only the \$ 5,400 awarded for accounting costs. Those costs included \$ 400 paid to the Festival's accountants for reviewing the Festival's books after the embezzlement [*2] was discovered and \$ 5,000 for 200 hours of volunteer work performed by two of the Festival's board members who audited and reconstructed the Festival's business records.

For the reasons expressed below, we affirm the award of \$ 400 as reimbursement to the Festival's accountants. However, we vacate the [**3] condition of probation that orders \$ 5,000 restitution for the volunteer time expended by the Board members.

Discussion

HN1 Title 12 of the Alaska Statutes authorizes courts to award restitution both as a component of the sentence and as a term of probation. Alaska Statute 12.55.045(a)(2) provides that when contemplating an order of restitution, the court should consider the "financial burden placed on the victim ... as a result of the criminal conduct of the defendant." The legislature intended that courts should construe AS 12.55.045(a) broadly by ordering restitution to all persons who were injured as a result of a defendant's conduct. n2 Alaska Statute 12.55.100(a)(2) provides, in part, that a court may order a defendant to make restitution or reparation to a victim "for actual damages or loss caused by the crime" as a condition of probation.

-----Footnotes-----

n2 In the Alaska Session Laws, Ch. 71, SLA 1992, the legislature announced the purpose of AS 12.55.045(a):

Section 1. PURPOSE. It is the purpose of this Act ... to make full restitution available to all persons who have been injured as a result of criminal behavior, to the greatest extent possible, by

...

(3) allowing courts to order that restitution be made to all persons who have suffered a loss as a result of a defendant's conduct[.]

-----End Footnotes----- [**4]

Clearly, Demers injured the Festival, and the Festival incurred a loss as a result of Demers's theft and falsification. Judge Collins considered the evidence that, in addition to the stolen funds, the Festival incurred other expenses. For example, the State presented evidence that the Festival incurred a \$ 400 expense for accounting services. This evidence supports the court's probation condition ordering restitution of \$ 400 for the accounting services.

A Festival board member also testified that board members volunteered 200 hours of work auditing and reconstructing Festival records. The member valued the volunteer effort at \$ 25 per hour for purposes of seeking restitution.

Judge Collins ordered \$ 5,000 of restitution for accounting services based on the testimony regarding the volunteer efforts of Festival board members. She reasoned that restitution was appropriate because, if she did not order the restitution, Demers would benefit since the Festival "is too poor to afford the costs of a more expensive, but necessary, audit." Judge Collins recognized this was a close issue but reasoned that this amount of restitution was appropriate because a commercial enterprise would have [**5] incurred a monetary cost that, in this case, was met by volunteer efforts.

But the Festival did not expend any money nor receive an invoice for this volunteer effort.

Although the Festival was injured as a result of Demers's crimes, it did not incur any monetary damage or loss when the Festival's board members volunteered their time and effort to audit and reconstruct the Festival's business records.

Obviously, the legislature intended to provide the courts with the authority to order defendants to compensate their victims. But ^{HN2} AS 12.55.100(a)(2) grants a sentencing court the power to impose restitution as a probation condition when a victim suffers "actual damages or loss."

We conclude that ^{HN3} the legislature did not provide a sentencing court with the power to order restitution to a victim who was injured but who did not sustain actual damages or loss because the injury was cured by volunteer efforts. Accordingly, we vacate that portion of the court's probation conditions which ordered \$ 5,000 restitution for the volunteer work performed by the board members.

Conclusion

The judgment of the superior court is AFFIRMED in part and VACATED in part. **[**6]**

CONCURBY: [*3] MANNHEIMER

CONCUR:

MANNHEIMER, Judge, concurring.

Demers embezzled money from the Alaska Folk Festival and, as part of his sentence, he was ordered to pay restitution to the Folk Festival for the money he stole. The question in this case is whether the sentencing court was authorized to order Demers to pay an additional \$ 5000 in restitution to the Folk Festival for the value of labor donated by two of its board members who volunteered their time to reconstruct the Folk Festival's financial records, thus allowing the Folk Festival to ascertain the amount of Demers's embezzlement.

A court's sentencing powers are defined by the legislature. n1 The statutes at issue in this case are AS 12.55.045(a) (which authorizes a court to order restitution as a direct component of a sentence) and AS 12.55.100(a)(2) (which authorizes a court to order restitution as a condition of probation). n2 The question is whether the Alaska Legislature intended these statutes to authorize a sentencing court to order a defendant to reimburse a victim for the value of unpaid labor volunteered by other people who wish to assist the victim in coping **[**7]** with the crime.

-----Footnotes-----

n1 See *R.I. v. State*, 894 P.2d 683, 685 (Alaska App. 1995).

n2 Shortly after Demers committed his crime, the legislature amended AS 12.55.045 so that any duty of restitution imposed as a direct component of the defendant's sentence automatically becomes a condition of the defendant's probation. See AS 12.55.045(i), enacted in SLA 2000, ch. 103, § 4.

-----End Footnotes-----

The aim of restitution is to restore victims to their financial condition before the crime. The problem in the present case is that the superior court has ordered "restitution" that makes the Folk Festival \$ 5000 richer than it was before. Demers has been ordered (1) to repay the money he stole and (2) to pay \$ 5000 for the labor donated by the two board members -- labor that the Folk Festival did not have to pay for. Thus, if Demers satisfies both parts of the superior court's restitution order, the Folk Festival will end up with \$ 5000 more than it

possessed before [**8] Demers committed his theft.

If the Folk Festival had been insured against embezzlement, and if the insurance company had paid for an audit, no sentencing judge would order the defendant to "reimburse" the Folk Festival for the money spent by the insurance company. Similarly, if the insurance company had sent its own employees to reconstruct the Folk Festival's records to ascertain the amount of the theft, no sentencing judge would order the defendant to "reimburse" the Folk Festival for the labor performed by the insurance company's employees. The Folk Festival did not pay for this labor; it merely received the benefit of this labor. 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.

The facts of the present case offer another example of the same situation. Two Folk Festival board members reconstructed the Folk Festival's records. The two board members were not employees of the Folk Festival, and they did not charge the Folk Festival for their time. The Folk Festival received the benefit of their labor but incurred no expense. Under these circumstances, [**9] the Folk Festival received a windfall when the superior court ordered Demers to "reimburse" the Folk Festival for the hours of labor donated by the two board members.

If anyone deserves to be compensated for the board members' labor, it is the board members themselves. Arguably, the superior court might simply amend its judgement and name the two board members as the recipients of the restitution. But I conclude that the legislature has not authorized sentencing courts to impose this type of restitution.

AS 12.55.045(a) declares that a sentencing court may order a defendant to pay restitution to three categories of people: (1) "to the victim", (2) to [any] other person injured by the offense", and (3) "to a public, private, or private nonprofit organization that has provided or ... will be providing counseling, medical, or shelter services to the victim or [**4] [any] other person injured by the offense". The Folk Festival board members are not themselves the victims of Demers's embezzlement, nor are they "a public, private, or private nonprofit organization that has provided or ... will be providing counseling, medical, or shelter services to the victim [**10] or [any] other person injured by the offense". So if the board members are to be deemed proper recipients of restitution, they must qualify as "other persons injured by the offense".

The only sense in which the two board members were "injured" by Demers's crime is that they felt duty-bound to conserve the limited financial resources of the Folk Festival by devoting their own time and energy to the reconstruction of the Folk Festival's financial records. And, indeed, this is the "injury" that the sentencing judge ordered Demers to reimburse. But I conclude that the legislature did not intend the phrase "injured by the offense" to be interpreted in so broad a fashion.

AS 12.55.045(a) must be interpreted in light of its companion provision, AS 12.55.100(a)(2), the statute which authorizes a sentencing court to impose restitution as a condition of probation. AS 12.55.100(a)(2) declares that a sentencing court can order a probationer to "make restitution or reparation to aggrieved parties *for actual damages or loss* caused by the [probationer's] crime". Because AS 12.55.045(a) [**11] and AS 12.55.100(a) appear to be designed to give sentencing courts two different methods of achieving the same goal, they should be construed *in pari materia*. That is, we should presume that the legislature intended the phrase "persons injured by the offense" to mean the same thing as the phrase "aggrieved parties [who have suffered] actual damages or loss".

One could argue that volunteers who come to the aid of a victim, and who thereby spare the victim identifiable and measurable financial expense, should be compensated for their time and trouble. Indeed, if I were writing on a clean slate, free to adopt whatever rule I thought best, there is much to commend the position taken by Judge Collins (the sentencing judge) and by

my dissenting colleague, Judge Coats. But I conclude that such an interpretation of AS 12.55.045(a) and AS 12.55.100(a) would expand restitution beyond the scope envisioned by the legislature. It would seemingly authorize a sentencing judge to order a defendant to pay restitution at an hourly rate to relatives, friends, and neighbors of a crime victim who spend time consoling [**12] the victim, or who help clean up the victim's house after a burglary or an assault, or who do the shopping or cooking for a victim who is too distraught to attend to these tasks.

Based on the wording of AS 12.55.045(a) and AS 12.55.100(a), I conclude that our legislature did not intend to authorize a sentencing court to order a defendant to reimburse people who volunteer their labor to alleviate or mitigate the effects of the defendant's crime. Accordingly, I join Judge Stewart in reversing the award of \$ 5000 restitution for the labor of the two Folk Festival board members.

DISSENTBY: COATS

DISSENT:

COATS, Chief Judge, dissenting.

In a detailed order, Judge Collins made several factual findings to support her restitution award, and Demers does not contest these findings. Judge Collins found that the \$ 5,000 restitution award was to reimburse the Folk Festival for the efforts of two of its board members to audit and reconstruct the financial records. The audit was required to reconstruct the books after Demers's theft. The audit would have been unnecessary but for the theft. Had the Folk Festival hired accountants to audit the books [**13] and reconstruct the records, it would have been far more expensive for the board. By conducting the audit with volunteers, the Folk Festival saved itself (and Demers if he pays the restitution award) a substantial amount of money. Judge Collins reasoned that if the Folk Festival could recover restitution for money it paid to accountants to conduct an audit, it was reasonable to allow it to recover for the value of the time spent by the volunteers. Judge Collins's reasoning appears to me to be sound.

Alaska Statute 12.55.045 and AS 12.55.100 authorize a sentencing court to make restitution awards, either as part of the defendant's sentence or as a condition of probation. The [*5] Alaska legislature clearly intended courts to construe AS 12.55.045 and AS 12.55.100 broadly to allow courts to order restitution to all persons injured by the defendant's conduct. n1 Alaska Statute 12.55.045 directs a sentencing court that orders restitution to take into account the "public policy that favors requiring criminals to compensate for damages and injury to their [**14] victims." n2 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 criminal behavior, to the greatest extent possible." n3 This expressed legislative intent seems to me to support the conclusion that the legislature favors restitution awards as part of criminal sentences.

-----Footnotes-----

n1 See *Lonis v. State*, 998 P.2d 441, 447 (Alaska App. 2000).

n2 AS 12.55.045(a)(1).

n3 Ch. 71, § 1, SLA 1992 (emphasis added).

-----End Footnotes-----

Judge Collins's restitution award in this case appears to me to be consistent with this legislative policy. The Folk Festival was clearly injured by Demers's thefts. But for the volunteer efforts of the board of directors, the cost of reconstructing the financial records of the Folk Festival would have been much greater. To say that a victim can recover restitution only when he hires

someone else to undo the damage caused by a criminal act appears to violate **[**15]** the policy set by the legislature. Moreover, as a separate policy consideration, if we only allow a victim to recover restitution if he hires a third party to undo the damage, we actually encourage victims to increase the amount of their actual loss.

On the other hand, if the victim of a crime, rather than hiring someone else, spends his own time and effort to fix damages caused by a criminal act and can clearly establish the value of his 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. Accordingly, I would uphold the restitution award. I therefore dissent.

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P.O. Box 21748, Juneau, Alaska 99802

alaska folk
festival inc.

February 12, 2003

Representative Bruce Weyrauch
Alaska State Capitol
Juneau, AK 99801-1182

Re: HB 23

Representative Weyrauch,

I am writing to you on behalf of the Alaska Folk Festival in support of House Bill 23.

As you know, our organization has experienced first hand the trauma caused by embezzlement. When a former treasurer of the Board of Directors absconded with thousands of dollars over a several year period, it was only due to the tireless efforts of dedicated volunteers that the extent of the damage was determined. These volunteers donated hundreds of hours of their time to rectify a terrible situation. Unfortunately, those hours were not counted towards the restitution the organization was entitled to receive.

The Alaska Folk Festival recovered from the crime committed by the former treasurer because of excellent volunteers who were committed to maintaining the integrity of the organization. We are pleased to know you are working to make it easier for other organizations that may be faced with this unfortunate situation in the future. We support your efforts to clarify the intent of the Legislature, that the courts may consider the time and efforts of volunteers as a factor in the process of determining restitution.

Thank you,



Maridon Boario
Board President, Alaska Folk Festival

cc: Representative Leslie McGuire, Chair House Judiciary Committee