

HB

23

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/10/03

REPORTED BY
APR 22 2003
SENATE FINANCE
COMMITTEE

FURTHER:

DATE TURNED
IN TO OFFICE: 4/22/03

Finance Committee considered **CS FOR HOUSE BILL NO. 23(JUD)**

HB 23 RESTITUTION FOR CRIME VICTIMS

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

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
Admin	3/4/03		x	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Adrian Taylor</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>Ben Stuenkel</i>				
COCHAIR: <i>Linda Green</i>				
COCHAIR: <i>[Signature]</i>	✓			

FISCAL NOTE

REPORTED OUT

APR 22 2003

SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 23
(S) Publish Date: 4/10/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to restitution BRU Legal and Advocacy Service
Sponsor Rep. Weyhrauch Component Public Defender Agency
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						
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CHANGE IN REVENUES ()						
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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 3/4/03 12:28 PM
Approved by: Mike Miller, Commissioner Date 3/4/2003
Agency: Department of Administration

SENATE FINANCE COMMITTEE REPORT

DATE: 4/10/03

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APR 22 2003
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- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
Admin	3/4/03		x	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Adrian Taylor</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>Ben Stuenkel</i>			✓	
COCHAIR: <i>Lizdy Green</i>			✓	
COCHAIR: <i>Grant Wells</i>	✓			

APR 22 2003

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 23
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Component Public Defender Agency
Sponsor Rep. Weyhrauch
Requester (H) JUD Component No. 1631

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

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

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1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
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1037 GF/Mental Health						
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TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

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

CS for HB 23 (JUD)

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 volunteer 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).

The undesirable implication of the Demers decision is that contrary to legislative intent, the tireless efforts of the volunteers laboring to mitigate damages ends up as a reward the perpetrator. Because the public, private or non-profit organization relied on volunteer labor, they weren't allowed to claim the value during the restitution determination.

HB 23 clarifies the clear intent of the Legislature that a court may order restitution to a non-profit corporation 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: February 28, 2003

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH
HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

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

CS for HB 23 (JUD)

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 by the public, private, or private non-profit organization 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 include compensation to the victim public, private, or private non-profit organization for the value of volunteer labor incurred to alleviate or mitigate the effects of a defendant' s crime.



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Decision stands not to collect accounting fees from Demers

State's high court decides not to hear appeal for restitution for volunteers' time in folk-festival theft case

Sunday, July 7, 2002

[CORRECTION]

A Juneau man convicted of stealing about \$13,000 from the Alaska Folk Festival won't have to reimburse the nonprofit group for time volunteers spent documenting his crime.

The Alaska Supreme Court recently decided not to hear the case of Jim Demers, who was convicted of felony theft and falsifying business records. As a result, the former folk festival treasurer will not be required to pay \$5,000 to cover some 200 hours of work volunteers put into reviewing the organization's books after the theft was discovered.

Three of the five Supreme Court justices voted to hear the appeal by state prosecutors, who wanted to overturn a lower appeal court's decision against forcing Demers to reimburse the festival for the volunteer work. Two justices supported hearing the case, arguing it could hurt other legal efforts to force criminals to reimburse their victims.

"It can be expected that many other citizens and organizations will be affected by this ruling," wrote Justice Walter Carpeneti in a dissenting opinion opposing the June 13 Supreme Court order not to take up the case.

Demers was accused in 1999 of embezzling the money while acting as treasurer of the group that puts on the annual, week-long, free music event at Centennial Hall. Prosecutors said \$13,000 was taken during more than 40 transactions between 1995 and 1999. Demers admitted taking some money, but claimed it was far less than \$13,000.

Juneau Superior Court Judge Patricia Collins sentenced Demers to serve six months in jail and pay up to \$24,000 in restitution, including the money he took, interest, accounting fees and volunteer time put into straightening out the group's books.

His lawyer appealed the sentence, and the state Court of Appeals struck down the \$5,000 in restitution for the volunteer work. In a 2-1 decision, the court said state law was not written to reimburse unpaid work.

"We conclude that 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," said the majority ruling written by Judge David Stewart.

Chief Judge Robert Coats, in a dissenting opinion, suggested the festival was penalized for trying to save money by having volunteers do the work.

"Had the folk festival hired accountants to audit the books 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" Coats wrote.

Juneau District Attorney Rick Svobodny said his office wants the state Department of Law to try to get the Legislature to change the law so injured parties can be awarded restitution for volunteer work in similar future cases.

An example would be if a vandal broke his car's windshield, he said. If an auto shop did the repairs, a judge would have no problem ordering restitution for the work. But if a friend or relative replaced the window as a favor, the criminal would escape financial responsibility, Svobodny said.

"If I took it to my brother and he fixed it and he didn't charge anything, under the Demers decision, neither one of us would get anything," he said.

Demers' attorney, Philip Pallenberg, said he doubted the court action would impact other cases. He said the Court of Appeals' ruling was narrow, focusing on payment to an organization, not the person who does the work.

"I thought the issue here should be whether the folk festival should be paid for volunteer labor, not whether the people themselves should be paid for that work," he said.

Ed Schoenfeld can be reached at eschoenfeld@juneauempire.com.

*1 42 P.3d 1

Court of Appeals of Alaska.

James G. DEMERS, Appellant,

v.

STATE of Alaska, Appellee.

No. A-7916.

Feb. 8, 2002.

Defendant pled no contest and was convicted in the Superior Court, First Judicial District, Juneau, Patricia A. Collins, J., of second-degree theft and falsifying business records. Defendant appealed. The Court of Appeals, Stewart, J., held that: (1) victim was entitled to restitution for costs incurred for paying accountants to review its books after defendant's theft was discovered, and (2) 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 organization's records, and thus was not entitled to restitution for that volunteer work.

Affirmed in part and vacated in part.

Mannheimer, J., filed a concurring opinion.

Coats, C.J., filed a dissenting opinion.

West Headnotes

[1] Sentencing and Punishment ⇨ 2154

350H ----

350HXI Restitution

350HXI(D) Compensable Losses

350Hk2154 Other Particular Matters.

Non-profit organization was entitled to restitution for costs incurred for accounting services due to defendant's theft and falsification of records while organization's treasurer; organization paid accountants for reviewing its books after defendant's theft was discovered. AS 12.55.045(a)(2), 12.55.100(a)(2).

[2] Sentencing and Punishment ⇨ 2148

350H ----

350HXI Restitution

350HXI(D) Compensable Losses

350Hk2148 Monetary, Pecuniary, or Economic Loss.

Non-profit organization did not incur any actual damages or loss caused by crimes of second-degree theft and falsifying business records committed by defendant, the former treasurer of organization, when

its board members volunteered 200 hours of work auditing and reconstructing organization's records, and thus was not entitled to restitution for that volunteer work, although organization was injured, since organization neither expended any money nor received an invoice for the volunteer effort. AS 12.55.045(a)(2), 12.55.100(a)(2).

James E. Curtain, Juneau, for Appellant.

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

Before COATS, Chief Judge, and MANNHEIMER and STEWART, Judges.

OPINION

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. (FN1)

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 condition of probation that orders \$5,000 restitution for the volunteer time expended by the Board members.

Discussion

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. (FN2) 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.

[1] 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.

[2] 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 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 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 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.

*3 MANNHEIMER, J., concurring.

COATS, Chief Judge, dissenting.

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. (FN1) 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). (FN2) 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 with the crime.

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 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, 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 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 person[s] 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) 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 "person[s] 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 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.

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 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. (FN1) 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 victims." (FN2) 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." (FN3) This expressed legislative intent seems to me to support the conclusion that the legislature favors restitution awards as part of criminal sentences.

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 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.

(FN1.) AS 11.46.130(a)(1) & AS 11.46.630, respectively.

(FN2.) 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[.]

(FN1.) See *R.I. v. State*, 894 P.2d 683, 685 (Alaska App.1995).

(FN2.) 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.

(FN1.) See *Lonis v. State*, 998 P.2d 441, 447 (Alaska App.2000).

(FN2.) AS 12.55.045(a)(1).

(FN3.) Ch. 71, § 1, SLA 1992 (emphasis added).

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



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February 27, 2003

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

Dear Representative Weyrauch:

I am writing this letter in support of HB 23, which would allow the court to order restitution equal to the value of volunteer labor incurred to alleviate or mitigate the effects of the defendant's crime, including embezzlement.

In 1994, AWARE was a victim of embezzlement, and the effects on our staff and agency were great. We were fortunate to have a strong staff and Board of Directors who worked to correct the situation and our reputation in the community. It seems appropriate that an offender is required to pay restitution for the full effect of the damage they have caused, not only those with a direct financial cost.

Thank you for your work in protecting victims of crime as we work together to end violence in the lives of those impacted by domestic violence and sexual assault.

Sincerely,

Saralyn Tabachnick
Executive Director



Jacque Debbaut
PO Box 73022
Fairbanks, AK 99707
907-451-4637

February 12, 2003

Representative Bruce Weyhrauch
Alaska State Capital
Juneau, AK 99801-1182

RE: HB 23

Dear Representative Weyhrauch;

I am a member of the Board of Directors for the Ester Volunteer Fire Department (EVFD) in Ester, Alaska and have been for approximately 10 years. I am writing this letter as my own personal views and these views may not be the views of the other Board members at EVFD.

A former Fire Chief of EVFD was convicted of theft in the first degree (embezzlement). The investigation started in April, 2000 with an indictment in June, 2000 and a trial that was postponed several times and finally took place in September, 2001. He was found guilty and was sentenced in February, 2002. He was ordered to pay restitution for the amount the Court decided he stole. If it wasn't for the large amount of volunteer hours put into this case, the Troopers and the District Attorney would have had a difficult time obtaining the appropriate documentation and information necessary to convict him.

I understand that HB 23 would provide the Court the means to order restitution to a non-profit corporation as a part of a sentence or probation for documented volunteer hours spent to alleviate or mitigate the effects of the crime.

Our particular case included literally about a two foot deep stack of paperwork. The District Attorney commented that he has never processed a case with as much paperwork as this one. Well, that paperwork had to come from somewhere. I personally spent countless hours researching information the investigators were looking for or specific documents the District Attorney requested. The defendant's attorney subpoenaed five years worth of Board minutes, financial reports, fire chief's reports, annual reports, correspondence, formal audits and tax returns. Due to the fact that we are a volunteer Board and serve an elected two year term, Board members come and go. Most of the

2

reports were in a central location but there were parts and pieces missing. I spent many, many hours sorting these documents, calling other Board members to see if they had the missing pieces. They in turn spent time looking for the documents. I didn't dare turn over the original documents for fear of not getting them back in the condition they were given so I made copies of everything for both the District Attorney's office and the defendant's attorney.

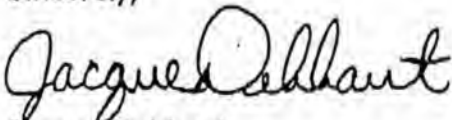
Once the paperwork was turned in and the investigators and attorneys had time to sift through it all, they had many questions for us. They would call any time they had questions and since it was a very complex case, they called often. We would then have to do more research if we didn't know the answer off the top of our heads. This went on for a year and a half. We also had to take time out of our work day to answer these questions, to be interviewed by the Troopers and District Attorney and to sit at the courthouse awaiting our turn to testify.

The amount of hours put into this case by myself alone is literally countless. I could not even begin to guess how many hours I put into this case. Other Board members and fire fighters spent many hours on the case as well. I personally felt I had a duty to put the time and effort into the case because I was driven to get the information to the appropriate authorities in a timely manner. Sometimes I wondered if it was all worth it but I was determined to see it through and hoped it would all be worth it when the verdict came in, and it was.

I understand that HB 23 would not be retroactive in our case, however the prospect of restitution for volunteer hours may give other volunteers the incentive to put forth the extra effort to see it through to the end to benefit their non-profit organization.

I support HB 23 and hope that by passing it, it will help other volunteers get through a difficult time. Please feel free to contact me at #907-451-4637 if you have any questions regarding my experience.

Sincerely,



Jacques Debbaut
Volunteer

Ester Volunteer Fire Department
3750 Old Nenana Hwy
PO Box 229
Ester, AK 99725-0229



Phone 907-479-6858
Fax 907-479-9883
www.esterfire.org

2/6/03

Representative Bruce Weyhrauch
Alaska State Capital
Juneau, AK 99801-1182

Re: HB 23

Dear Representative Weyhrauch,

I am writing on behalf of the Ester Volunteer Fire Department EVFD to support HB 23. I have witness the devastation that embezzlement can play on a non-profit corporation. Just recently our former Fire Chief was convicted of embezzlement. We were very fortunate to have a strong core of volunteers who worked vigorously to correct the situation. These volunteers put in countless hours to ensure that the former Chief would not pull down the Fire Department with him. We are still licking our wounds from the incident and hope that our fate never falls upon another department or service organization.

Although House Bill 23 would not be able to cure the situation, it would put a light at the end of the tunnel for volunteers who assist with these types of situations. I feel that the burden of the volunteers would be lifted knowing their efforts would result in a positive outcome for their non-profit organization. Please feel free to contact me if I can be of any more assistance to you. I can be contacted at the above number.

Sincerely,

John Debbaut
Fire Chief
Ester Fire Department

THE
FOLLOWING
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Employee theft often hits vulnerable small businesses

■ **FRAUD:** Owners can't be too vigilant against embezzlement by workers.

By **GLORIA IRWIN**
Knight Ridder Newspapers

About one in four owners of a small business is getting his pockets picked by his most valuable asset — his own employees. A recent survey conducted for Intuit found that 24 percent of the 500 small-business owners surveyed have caught their employees stealing from them.

An embezzling worker loots on average \$127,500 from a small business, according to the Association of Certified Fraud Examiners, which contends that companies with fewer than 100 employees are more vulnerable than larger businesses. The as-

sociation pegs the overall cost of workplace fraud at \$400 billion annually. With the billion-dollar accounting scandals at Enron and WorldCom and a tight economy, more and more business owners are paying closer attention to what's going on inside their companies.

Employee theft can undermine a small business, but owners can take steps to safeguard their companies, CPAs advise.

Whether the person dipping into the till is a new hire or a trusted veteran, the business owner may be left questioning his or her judgment.

That was true in the case of Celeste A. Klopfenstein, who appeared Oct. 15 in Summit County (Ohio) Common Pleas Court for sentencing in the theft of \$330,000 from the Tallmadge Collision Center.

"Celeste, you broke my heart,"

company founder Kenneth C. Dixon Jr. said.

Accountants documented 260 incidents in which Klopfenstein stole money — a little at a time — since 1997.

Klopfenstein was almost like family, company vice president Robert L. Black said. He played basketball with her sons and worked out with her husband.

Because she was such a trusted employee, Black said, as a convenience he let her use a stamp bearing his signature when he wasn't around.

"I didn't want to give anybody else the authority to sign, so I just got a stamp and gave it to her," Black recalls with regret.

That in itself is a red flag to Mark

See Page F-4, THEFT



DENNIS BALOGH / Akron (Ohio)

HIGHLIGHTS OF THE BUSINESS WEEK AHEAD

TODAY

■ Rick Nerland of the Nerland Agency presents "Brand Building and Television" to the Anchorage Chamber of Commerce at the 4th Avenue Theatre at noon. R.S.V.P. to 272-2401 or www.anchoragechamber.org.

TUESDAY

■ The Mat-Su Borough Small Business Development Center, with Rene Russ of Waddell & Reed, offers "Financial Management" from 9 a.m. to noon at the SBDC's Wasilla office. Pre-registration is required. Call 1-907-373-7232 for more information.

TUESDAY

■ Former Gov. Wally Hickel discusses his proposal for a Community Dividend fund at a Greater Wasilla Chamber of Commerce meeting at the Mat-Su Resort at noon. Call 1-907-376-1299 for more information.

THURSDAY

■ Port director Bill Sheffield speaks on "Thinking Globally, Acting Locally" to the Resource Development Council at 7 a.m. at the Petroleum Club of Anchorage. R.S.V.P. to www.akrde.org.

THURSDAY

■ "Entrepreneur University," a one-day business conference co-sponsored by Alaska InvestNet and the Alaska Manufacturer's Association, begins at 8 a.m. at Downtown Marriott Hotel, Anchorage. For details: www.eualaska.com, or call the manufacturers association in at 565-5646.

Coming at

Every year thousands of Alaska residents migrate away from Alaska in the migrations.

1996-97

1997-98

1998-99

1999-2000

2000-01

2001-02

Source: Alaska Depart-

THEFT: Beware dishonest employees

Continued from F-1

Bober, a partner at Bober, Markey, Fedorovich & Co., who conducts what are known as forensic fraud investigations. Bober doesn't recommend a signature stamp to begin with, but for owners who insist on a stamp's use, "keep it locked and secured," he advises, or allow only the person whose signature the stamp contains to control it.

That's one of the lessons that Black said he's learned since Klopfenstein's thefts were uncovered. She used the stamp to obtain cash from the company's checking account. Owners who turn over responsibilities to trusted managers still need to keep an eye on what's going on.

"The owners have to play an active role in monitoring the internal controls of their business," said Dave McCarthy of the Rea & Associates certified public accounting firm in Medina, Ohio.

Strong internal controls are the first defense.

That starts with segregation of duties. Don't allow the same person to send out bills and also collect the mail and prepare bank deposits, McCarthy advises. Have the receptionist open the mail, someone else prepare the bills and yet another person reconcile bank statements. If the business is small, the owner can fill one of those roles.

A simple step like requiring every employee to take an annual vacation can help prevent embezzlement, McCarthy said. A substitute filling in for a trusted employee may spot questionable procedures. "It's amazing how many times somebody goes on vacation, and they haven't taken one for five or six years, how many things get caught at that time," McCarthy said.

Raymond Dunkle, a certified fraud examiner at Bober, Markey, Fedorovich, said he's known of cases such as Tallmadge Collision Center's in which a trusted employee has been stealing over a period of years. Employees often justify stealing as a way of making up for a lack of pay.

"They're able to rationalize that they're enti-

led" to the extra money, Dunkle said.

Padded expense accounts, unauthorized purchases with a company credit card, invoices from fictitious vendors and ghost employees on the payroll are only a few of the ways that employees can get unearned compensation.

Although owners must be able to trust employees, "you just need to be curious and watchful of what they're doing," McCarthy said. An employee who shrugs off an error may simply have made a mistake, but "just because somebody said it was a mistake, you may need to look further and be a little more curious about any situations that come across your desk."

Dave Haramis, a partner at Haramis & Roe Inc., which has offices in Barberton and Copley, Ohio, recalls a local case in which an employee scammed her company into paying her utility bills. She added her bill to the company's before writing the corporate check. Her employer didn't notice that the company's utility bills were just a bit higher than usual.

Owners should review invoices before signing checks, Haramis suggests. "They don't have to look at every single bill, just spot-check," he said. Knowing that an employer is randomly checking work is the first step in deterring theft, he said. "You have to have something there that lets the person know there's a possibility that they will be caught," he said.

McCarthy cautions owners against merely assessing an employee's integrity and deciding the person won't steal. "It's not necessarily whether someone is ethical," he said. "The goal is not to put them in a position where they can easily do something." Business owners should instead emphasize that there are procedures and policies in place to catch dishonesty, he said.

"You don't want an employee in receivable going into payable and cutting himself a check," said Jeff Haramis, who also recommends that employers make it mandatory that computer users periodically change their passwords.

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5 Feb-Pros & Cons of Bankruptcy	5 Mar-Negotiate Anything
12 Feb-Stop Impulse Shopping!	12 Mar-Net Worth; Balance Sheet
19 Feb-Prevent Identity Theft	19 Mar-Building Assets When You Don't Have Any
26 Feb-Budget or Die	26 Mar-Buying a House as a Single

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Today is March 2. There are 79 days

ALASKA LEGISLATURE NEWS

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House bill allows for full restitution

NONPROFIT: Festival board not paid for time spent proving a crime.

The Associated Press

(Published: February 18, 2003)

Juneau -- A legislator is seeking to change a law he says prevented the Alaska Folk Festival from collecting full restitution from an accountant who embezzled thousands of dollars from the organization in the 1990s.



Rep. Bruce Weyhrauch, R-Auke Bay, went before the House Judiciary Committee on Friday to discuss House Bill 23. He says it would allow nonprofit groups to collect restitution for time and resources spent to uncover criminal activity within an organization.

Weyhrauch told the committee that when the Juneau-based Alaska Folk Festival, which hosts an annual free music fest and other events, discovered that money was missing in 1999, its members were burdened with reconstructing the crime before law enforcement authorities would prosecute.

Festival accountant Jim Demers was charged with stealing at least \$13,000 from the organization. He was sentenced to two years in prison with 18 months suspended and was ordered to pay restitution up to \$24,000.

But a Court of Appeals decision in 2002 cut \$5,000 that would have gone to the group for the 200 hours festival board members spent uncovering the thefts. The court found that "the festival did not expend any money nor receive an invoice for this volunteer effort."

Former festival president Riley Woodford told the committee that the Juneau Police Department told the organization it didn't have the time or resources to investigate such a crime.

Festival officials would have to document each individual crime and how the crimes were covered up before police would get involved, Woodford said. He said restitution likely would have been paid in full had the nonprofit group hired an accounting firm to reconstruct the crimes.

Weyhrauch noted white-collar crime is increasing in Alaska and throughout the nation. As a member of several nonprofit organizations, he said he is particularly sensitive to the issue of restitution for such organizations.

"You go on a song and a prayer a lot of times. You are running on a shoestring, and you can't afford to go out and hire a bunch of professionals to re-create crimes," Weyhrauch said.

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SENATE COMMITTEE REPORT

DATE: 3/17/03

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 4/9/03

Judiciary Committee considered CS FOR HOUSE BILL NO. 23(JUD)

HB 23 RESTITUTION FOR CRIME VICTIMS

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

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
ADRM	3/4/03		✓	2

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			X	
<i>[Signature]</i>				
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CHAIR: <i>[Signature]</i>	✓			

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