

Good afternoon Chairman Manning, Vice Chairman Rezabek, Ranking Member Celebrezze, and members of the House Criminal Justice Committee, and thank you for the opportunity to offer proponent testimony on behalf of House Bill 391. Thank you also to Representative Derek Merrin and his staff, especially Blake Springhetti, for introducing this legislation. I am Michael Goulding, and I serve the citizens of Lucas County as a judge in the common pleas court's general trial division.

House Bill 391 is a rather simple legislative fix which addresses the consequences of appellate decisions holding that accounting costs cannot be ordered as restitution in criminal cases. Here is the oft-repeated scenario: an employee over the course of time steals money from her employer. The employer finds out about it, and goes to the county prosecutor to discuss the filing of charges. Of course the prosecutor wants to know, with the appropriate degree of certainty, the provable amount of the theft. The victim/employer either has to work overtime to gather the bank statements, tax returns, and other records to trace the extent of the theft, or, more likely, hires an accountant to conduct a forensic examination of the company books to determine the amount of theft. Presuming a finding of guilt eventuates, the trial judge must then decide whether to order the payment of restitution. But as the law now stands, the judge may not order, as restitution, the accounting costs incurred by the swindled victim to establish the amount of loss.

Ohio law currently authorizes, but does not mandate, a judge to order the offender to pay restitution - to pay back the victim for the harm he or she caused. Common sense dictates that a victim of crime should be made whole by the law, even in cases where payment may never be made, or be made partially over time. These accounting costs, which benefit the state in proving the crime, and which are wholly occasioned by the criminal activity of the offender, should be included in the definition of "economic loss."

I have had a number of cases in my own court where this issue has arisen. In one, a Mom-and-Pop small business was victimized by a trusted bookkeeper. The thief stole over \$85,000 over several years, and since she was the bookkeeper, she had the prowess to conceal her wrongdoing. It cost the company \$7,000 to hire an accountant to determine the extent of provable loss. In that case, as with others like it, the full amount of loss was never completely discerned: the accountant concluded some amount of loss was real, but simply not provable. As the trial judge, I could order payment of restitution in the amount of \$85,00, but not the accounting cost which was crucial to proving the loss.

I am a state trial judge, not a bankruptcy expert, but it is my understanding that restitution cannot be discharged in bankruptcy in a criminal case. I do know that current Ohio case law prohibits the expungement or sealing of records in a case where restitution has not been paid in full. House Bill 391 would ensure that these accounting costs would enjoy the same status. It would also conserve judicial resources in that the only way, practically now, to attempt to recover the sometimes-dubbed 'consequential' costs of accounting is to file a separate civil lawsuit against the tortfeasor/offender and hope to obtain collectible judgment.

A second example, taken from my own docket, involves a trusted employee's theft from Dana Corporation. Here, as in the prior example, an employee was given access to funds for the maintenance and upkeep of a corporate facility. The employee abused this trust by cloaking as

corporate purchases personal items she used for her own benefit. Dana's in-house accountants determined the extent of loss - again, some provable, some likely but not provable - and documented its time adequately for this investigation. I could not impose the cost of Dana's forensic efforts as restitution. While I don't know for sure, I believe that Dana did not, in fact pursue a civil suit against the offender, who walked out of incarceration and directly into bankruptcy court.

Finally, I have a case on my docket now which I am not at liberty to discuss, but which involves, generally, theft from a governmental entity. Someone will have to establish the amount of the theft - perhaps another state agency or a private firm - but the restitution will be limited to the amount of the money stolen, while the government is stuck with the accounting bill.

House Bill 391 is a simple fix which recognizes that criminals should not leave their victims holding the bag for costs which the criminals themselves necessitated. Thank you for your consideration of it, and I encourage its passage.