

Good morning Chairman Lang, Vice Chairman Plummer, Ranking Member Leland, and members of the Criminal Justice Committee, and thank you for the opportunity to present proponent testimony in support of HB 66. Thanks also to Rep. Derek Merrin and his staff for their work on this legislation. I am Michael Goulding, and I serve the residents of Lucas County, Ohio as a judge in the general trial division of the court of common pleas. I am also honored to serve in this office as a judge of our court's commercial docket.

As you know, HB 66 is an improved iteration of HB 391, which was introduced in the 132d general assembly. The legislation addresses the consequences of appellate decisions holding that accounting and/or auditing costs cannot be ordered as restitution in criminal cases. HB 66, the Theft Victims' Restitution Act, further provides that such an award be reasonable, discretionary, and not exceed the amount of the underlying financial damages.

Here is an oft-repeated scenario: an employee over the course of time steals money from his or her employer. The employer finds out about it, and goes to the prosecuting attorney 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 stolen. Presuming a finding of guilt eventuates for the theft, the trial judge must then decide whether to order the defendant to pay restitution. However, the accounting and audit costs, under current Ohio law, cannot be awarded as restitution. The criminal is not ordered, therefore, to make the victim whole.

Technically, the Theft Victims' Restitution Act provides that the amount of accounting and/or auditing costs to be included as restitution be reasonable and not exceed the value of property stolen. But practically, the Act seeks to make the victim whole – by allowing a court to determine the real cost to the victim and to order the criminal to pay more fully for the harm he or she caused.

A couple of cases from my own docket may help to illustrate the operation of the law. In one case, a small Mom-and-Pop contracting firm was victimized by its trusted bookkeeper. The thief stole over \$85,000 over three years, and since she was the bookkeeper she was able 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 many others, the exact amount of the total loss was never completely discerned – some of the loss simply could not be proved beyond a reasonable doubt. As the trial judge, I could and did order restitution in the amount of \$85,000. But the victim was stuck with the \$7,000 accounting – the fruits of which enabled the prosecutor to prove the state's case.

The second case involves a theft from Dana Corporation. In that case, a trusted employee with access to the corporate credit cards purchased personal items for her own benefit. Dana's in-house accountants worked overtime to scrutinize the credit card statements to determine the extent of loss. Here too, the full amount was difficult to discern. But the auditors were able to prove a certain sum of theft beyond a reasonable doubt. My restitution order in that case did not, because it could not, include the cost to Dana for the forensic examination.

Finally, there are the cases involving charges of Theft from a Person in a Protected Class. Often these cases involve stealing from the elderly or the infirm, and sadly often involve not only the theft of money but also the fencing of stolen heirlooms. In those cases, it is also necessary to spend time and money conducting an audit of the victim's finances to determine the extent of loss.

The original version of HB 391 raised valid questions and concerns which HB 66 has corrected. First, the amount of such accounting costs must be reasonable. Second, the accounting/audit costs must not exceed the amount of property stolen. And third, as with all restitution cases, judges retain the discretion whether to award any restitution at all, and can thereby determine such matters on a case-by-case basis.

But most importantly, the bill recognizes that criminals should not leave their victims holding the bag for costs which the criminals themselves necessitated. Thank you for your time and consideration of HB 66, the Theft Victims' Restitution Act, and I would be happy to answer any questions.