

**Testimony of the Office of the Public Defender
State of Hawaii
to the Senate Committee on Judiciary and Labor**

January 30, 2013

**S.B. NO. 872 RELATING TO THE COLLECTION OF RESTITUTION FOR
CRIME VICTIMS.**

Senator Hee and Members of the Committee:

S. B. 872 seeks to amend HRS Section 706-646 – Victim Restitution. The proposed amendment would add “any duly incorporated humane society or society for the prevention of cruelty to animals, contacted with the State or county to enforce animal-related statutes or ordinances, that impounds, holds, or receives custody of a pet animal pursuant to sections 711-1109.1, 711-1109.2 and 711-1110.5”.

We believe this is not an appropriate addition to the category of “victims” of a crime, currently listed in 706-646 which provides for an award of restitution to:

- direct victims of a crime, including business, trust or government,
- a surviving relative of a deceased victim, or
- a governmental entity that has reimbursed the victim for losses arising as the result of the crime or paid for medical care provided to the victim as a result of the crime.

In other words, restitution can be ordered for the actual dollar loss of a victim, their medical bills, their funeral expenses, etc. However, if a private entity, such as an insurance company, pays for repairs to a home from a burglary break-in, the insurance company is not able to seek restitution because the insurance company is not a victim. Only the victim can seek to be made whole for the reasonable and verifiable losses suffered by the victim.

The goal in the area of restitution is to repay the victim for actual loss but not to have the criminal court act as a collection agency for what would otherwise be the subject of civil proceedings, such as “pain and suffering” of the victim or the expenses of all other entities that might have a role to play in covering various costs. Those entities continue to be able to seek monetary damages in civil court.

This bill proposes to go outside the stated title of the statute to include an entity that is not a victim in a legal sense. Certainly, we applaud the agencies that care for distressed animals that have been taken from owners who either couldn’t care for them, or worse, chose not to. But caring for the animal(s) does not make that entity a victim of the crime.

The contractual relationship that such an entity might have with the State or county doesn’t change them into a victim. Other entities might have similar contractual relationships, such as foster service agencies that take in children whose abuse has resulted in criminal charges against a parent. If the Legislature opens this particular door, to include a private agency that helps to deal with the aftermath of a defendant’s conduct,

no matter how significant that help may be, as a “victim” of the crime, it will only be a short time before every other entity that can claim the same tangential relationship to someone’s criminal conduct will be seeking the same accommodation.

The criminal courts are not the proper venue to seek reimbursement for such expenses. These courts do not have the resources within the probation office, the individual trial courts, the counsel paid by taxpayers, etc, to handle what are essentially civil matters. If the Legislature wants to assist deserving private entities with the recovery of this money, it should create a streamlined process on the civil side to do so.

We oppose S.B. No. 872 for these reasons. Thank you for the opportunity to comment on this bill.

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**THE HONORABLE CLAYTON HEE, CHAIR
SENATE JUDICIARY AND LABOR COMMITTEE
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai'i**

January 30, 2013

RE: S.B. 872; RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

Chair Hee, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in strong support of Senate Bill 872.

The purpose of S.B. 872 is to clarify the definition of "victim" in section 706-646, Hawai'i Revised Statutes ("HRS"), to include any duly incorporated humane society or society for the prevention of cruelty to animals, contracted with the State or county to enforce animal-related statutes or ordinances, that impounds, holds, or receives custody of a pet animal pursuant to HRS §711-1109.1, §711-1109.2, and §711-1110.5.

In a recent decision by the Circuit Court of the First Circuit (State of Hawaii v. David Lee Becker, Cr. No. 12-1-1202), the court denied restitution to the Hawaiian Humane Society ("HHS")--for expenses incurred in caring for 153 dogs previously subjected to animal cruelty in the second degree--on the basis that HHS was neither a governmental agency, nor the "direct victim" of the crime committed. Although HHS lawfully assumed the care of these animals, and became the legal owner of all 153 dogs upon forfeiture proceedings, the court held that HHS was not the "actual owner" of the dogs, and thus not entitled to restitution under HRS §706-646.

The court, in reaching its decision, opined that "the plain language of the restitution statute [HRS §706-646] is clear it does not give me the authority to order restitution to the [Hawaiian] Humane Society in this circumstance." Thus, S.B. 872 provides clear language to allow HHS, and other duly incorporated humane societies contracted with the counties, to receive restitution for expenses incurred when caring for an animal as a result of animal forfeiture or impoundment.

For the foregoing reasons, the Department of the Prosecuting Attorney, City and County of Honolulu, strongly supports S.B. 872. Thank you for the opportunity to testify on this matter.

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 5:09 PM
To: JDLTestimony
Cc: igibson@hsus.org
Subject: Submitted testimony for SB872 on Jan 30, 2013 09:30AM

LATE TESTIMONY

SB872

Submitted on: 1/29/2013

Testimony for JDL on Jan 30, 2013 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Inga Gibson	Humane Society of the United States-Hawaii	Support	No

Comments: Dear Chair Hee and Committee Members, We support SB872 to clarify that "victims" include local animal care and control agencies who receive animals via forfeiture in animal cruelty cases. These organizations can spend thousands and in some cases hundreds of thousands of dollars in caring for and rehabilitating animals from cruelty cases. These agencies should be provided restitution for the care and expenses they expend in rescuing these animals in need. Please support this measure Inga Gibson, Hawaii State Director The Humane Society of the United States

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