

STATE OF HAWAI‘I  
**OFFICE OF THE PUBLIC DEFENDER**

**Testimony of the Office of the Public Defender,  
State of Hawai‘i to the House Committee on  
Judiciary & Hawaiian Affairs**

February 1, 2022

H.B. No. 1459: RELATING TO JUVENILE RESTITUTION

Chair Nakashima, Vice-Chair Matayoshi and Members of the Committee:

The Office of the Public Defender strongly opposes H.B. No. 1459.

When the Legislature enacted HRS § 571-1, they had the foresight to create and design the Family Court to “promote the reconciliation of distressed juveniles with their families, foster the rehabilitation of juveniles in difficulty, render appropriate punishment to offenders, and reduce juvenile delinquency.” In addition, to these principles, HRS § 571-1 states that “all children found responsible for offenses shall receive dispositions that provide incentive for reform or deterrence from further misconduct, or both.” The Intermediate Court of Appeals acknowledged the purpose and the goals of the Family Court in its decision in In Re CM, 141 Hawai‘i 348, 409 P.3d 752 (2017), when it stated the following:

Unlike the penal code statute, the family court restitution statute is permissive or discretionary and does not mandate an order for restitution in every case in which restitution is requested. ... HRS § 571-48(11) provides even greater flexibility, however, authorizing a family court to order a minor law violator to make restitution by way of services to the victim, or to render community service instead, and does not specifically require reimbursement of the “full amount” of the victim’s loss. These options stand in sharp contrast to the HRS § 706-646(3) mandate that “[r]estitution shall be a dollar amount that is sufficient to reimburse any victim fully for losses[.]” HRS § 571-48(11) does not prohibit, for example, a family court’s consideration of a young teen’s ability to pay full restitution or the impact of a restitution order on a distressed family.

H.B. No. 1459 is clearly aimed at making restitution mandatory and would in effect remove the family court's ability to consider a young teen's ability to pay, the impact of restitution on a distressed family, and would eliminate the current ability of the family court to order services or community service in lieu of restitution.

The Office of the Public Defender is deeply concerned that the Legislature is moving away from the core principles and goals espoused in HRS § 571-1 and the purpose of the family court. Juveniles in distress may include juveniles who are victims of physical and sexual abuse, juveniles who have experienced traumas and who may be suffering from mental health challenges as a result of these traumas, and juveniles in our foster care system who do not have loving a responsible parent to care for them. Many of our juveniles involved in the court system are struggling with homelessness, extreme poverty, and serious mental health issues. Everything from access to food and basic amenities, access to transportation, and access to a computer or a working phone are daily challenges.

We ask that the Legislature allow the Family Court to retain the flexibility to work with distressed juvenile and their families and to consider alternatives, like community service, as a means for an adjudicated juvenile to learn, make amends, provide service, and learn from past negative behaviors. Obviously, the family courts would still retain the option of ordering monetary restitution. We ask that they continue to have the option of community service in lieu of restitution, when appropriate, and the option of a full review of the totality of the circumstances when determining a disposition for a minor in the juvenile justice system. Juveniles living in shelters, living in residential treatment programs for substance abuse issues, mental health issues, or sexual abuse issues, should be given some flexibility as they navigate the muddy waters of childhood while also navigating the juvenile justice system.

We do acknowledge the important principles and purpose of restitution and compensating victims for losses. We submit that restitution may also be claimed through the Crime Victim Compensation fund established in HRS § 351 which has the authority to award compensation to victims of crimes. Victims may also seek remedies through insurance and through the civil courts against parents or guardians for full restitution. In cases where the victim's financial losses are made whole through other options, we believe flexibility with distressed juveniles is appropriate and in line with the basic Family Court principle of determining what is in the best interest of a child and what may help a distressed child succeed.

Finally, we are concerned that juvenile restitution does not include the checks and balances that adult restitution has built in to avoid the situation where the Courts becomes a de facto debt collection agency that can last for years after a juvenile turns 18 years old. In essence, the Family Court will become an unlimited debt collection agency that can last a lifetime with the added threat of a bench warrant for non-compliance with court orders. In adult court, restitution may be ordered as a “free-standing order” and enforceable in civil court. But this sentencing alternative does not exist for juvenile restitution. It is our position that without the flexibility that the Family Court currently has, juvenile restitution is more punitive than adult restitution.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**CRIME VICTIM COMPENSATION  
COMMISSION**

1164 Bishop Street, Suite 1530  
Honolulu, Hawai'i 96813  
Telephone: 808 587-1143  
Fax: 808 587-1146

**MARTHA ROSS**  
Chair

**CLIFTON Y.S. CHOY**  
Commissioner

**MARI McCAIG BELLINGER**  
Commissioner

**PAMELA FERGUSON-BREY**  
Executive Director

TESTIMONY ON HB 1459  
RELATING TO JUVENILE RESTITUTION  
by  
Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

House Committee on Judiciary & Hawaiian Affairs  
Representative Mark M. Nakashima, Chair  
Representative Scot Z. Matayoshi, Vice Chair

Tuesday, February 1, 2022; 2:00 PM  
Via Videoconference

Good afternoon Chair Nakashima, Vice Chair Matayoshi, and Members of the House Committee on Judiciary & Hawaiian Affairs. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify before you today. The Commission strongly supports the passage of House Bill 1459, with the Department of the Prosecuting Attorney, City and County of Honolulu's proposed amendment.

The Hawai'i State Legislature established the Crime Victim Compensation Commission in 1967 as a safety net for violent crime victims. The Commission assists victims of violent crimes with medical costs, counseling costs, lost wages, and funeral and burial expenses not covered by other sources. Many victims would not be able to receive rehabilitation services, counseling services, or bury a loved one without compensation awarded by the Commission.

The Commission also administers a Restitution Recovery Project to collect court-ordered restitution from inmates and parolees and to disburse those funds to their crime victims. In January 2021, the Commission and the Council of State Governments released an article titled "*Victim Restitution Matters: Four Lessons from Hawai'i to Ensure Financial Justice for Crime Victims.*" The Commission is developing a restitution data dashboard that will provide a valuable tool for criminal justice practitioners, leadership, and policy makers to evaluate the impact of efforts to improve restitution collection.

## **Mandatory Restitution**

*“...in the criminal justice system, the victim of crime is almost always neglected. By requiring the convicted person to make restitution and reparation to the victim, justice is served. In so doing, the criminal repays not only “society” but the persons injured in the criminal’s act. There is a dual benefit to this concept: the victim is repaid for his loss and the criminal may develop a degree of self-respect and pride in knowing that he or she righted the wrong committed.”*

*Sen. Stand. Comm. Rep. No 789, in 1975 Senate Journal @1132,  
commentary on the Senate’s intent in passing HRS section 706-  
605(1)(e) which authorizes Courts to order restitution.*

The right of a victim to receive restitution for financial losses suffered as the result of a crime is a core value of our criminal justice system and should be mandated.

The goal of restitution is to not only repay the victim for their financial losses but to also rehabilitate offenders by requiring them to take responsibility for the consequences of their criminal acts. Restitution has been established as a factor in reducing recidivism amongst juveniles. See e.g. Butts, Jeffrey A. & Snyder, Howard “Restitution and Juvenile Recidivism” Juvenile Justice Bulletin (September 1992); Zehr, Howard “Restitution Reduces Recidivism”, Crime and Justice Network Newsletter (Oct. 1990-March 1991); Ruback, R. Barry ‘Restitution in Pennsylvania: A Multimethod Investigation’ Final Grant Report Submitted to Pennsylvania Commission on Crime and Delinquency (August 2002).

While restitution is mandated to be ordered by the courts in adult cases, it is not required to be ordered in juvenile cases, and juvenile crime victims are then left to “fend for themselves” and to absorb the financial losses from the crime.

## **Support for the Department of the Prosecuting Attorney, City and County of Honolulu’s proposed amendment to Clarify the Definition of Victim**

The Commission supports the amendment to HB 1459 proposed by Department of the Prosecuting Attorney, City and County of Honolulu, to address the issues created by a recent opinion that was filed by the Intermediate Court of Appeals (“ICA”) on February 28, 2022, by clarifying the definition of a victim in juvenile cases.

In *In the Interest of DM*, a juvenile victim was stabbed by a juvenile law violator and received substantial assistance from the Commission for medical bills since the juvenile victim did not have medical insurance. Because of this decision, the juvenile law violator was not ordered to repay the Commission and was not held responsible for the physical and financial harm created by his actions.

The ICA ruled that the definition of “victim,” as used in HRS §571-48(11) and (13), does not include the Commission, even though the Commission is included in the definition of “victim” for purposes of victim restitution in adult cases under HRS §706-646(1)(c),

Juveniles should be held accountable for their actions and should be required to take responsibility for the consequences of their criminal acts.

Thank you for providing the Commission with the opportunity to testify in support of mandatory juvenile restitution in House Bill 1459 with the Department of the Prosecuting Attorney, City and County of Honolulu's proposed amendment.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM  
PROSECUTING ATTORNEY

THOMAS J. BRADY  
FIRST DEPUTY  
PROSECUTING ATTORNEY



**THE HONORABLE MARK M. NAKASHIMA, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**  
**Thirty-First State Legislature**  
**Regular Session of 2022**  
**State of Hawai`i**

February 1, 2022

**RE: H.B. 1459; RELATING TO RESITUTION.**

Chair Nakashima, Vice-Chair Matayoshi and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of H.B. 1459, with an additional amendment suggested in response to recent caselaw. This bill is part of the Department's 2022 legislative package, and we thank you for hearing it.

The purpose of this bill is to support, encourage and ensure restitution to victims of crime in juvenile cases, by requiring courts to order restitution when applicable. While restitution (if any) is always ordered by courts in adult cases, it is not required to be ordered in juvenile cases, and victims are then left to "fend for themselves" via private civil action against a juvenile defendant. In this sense, the current system greatly decreases the chances that defendants will be held accountable to their victims, which further demoralizes or "re-victimizes" these victims of crime, discounting the very benefits that restitution is intended to provide.

Victim restitution is perhaps the only core victims' right that addresses such a wide range of the—often devastating—effects of crime, including physical, emotional, psychological, financial and social impacts. As stated by the House Judiciary Committee, upon passing the language that later became Section 706-605, Hawaii Revised Statutes ("HRS"):

*Reparation and/or restitution by wrongdoers to their victims is basic to justice and fair play...[B]y imposing the requirement that a criminal repay not only "society" but the person injured by the criminal acts, society benefits not once, but twice. The victim of the crime not only receives reparation and restitution, but the criminal should develop or regain a degree of self respect and pride in knowing that he or she righted, to as great a degree as possible, the wrong that he or she has committed.*

House Stand. Comm. Rep. No. 425, in 1975 House Journal.

Currently, some judges are interpreting HRS §571-48 to mean that the court is only authorized to order restitution as an alternative to community service, rather than having the authority to order either or both. The amendments proposed in H.B. 1459 would clarify this by moving the option for community service (in law violator cases, brought under HRS §517-11(1)) from subsection HRS §571-48(11) to -48(12). Thus, victims of juvenile law violators would be placed on the same level as those who are victimized by an adult offender. Courts do assess every offenders' "ability to pay" before specifying a monthly payment that is appropriate for that individual. Also, HRS §571-48(13) specifically and separately allows courts to order that the parents of a juvenile law violator pay the restitution, if and when the court finds it appropriate.

Lastly, the Department respectfully requests an **additional amendment** to H.B. 1459, to address an opinion that was just filed by the Intermediate Court of Appeals ("ICA") last week Friday, January 28, 2022. In *In the Interest of DM*,<sup>1</sup> a victim was stabbed by a juvenile law violator, and received assistance from the Crime Victim Compensation Commission ("CVCC"), for medical bills not covered by the juvenile's (lack of) insurance. The ICA ruled that the plain language definition of "victim," as used in HRS §571-48(11) and (13), does not include CVCC, even though CVCC is included in the definition under HRS §706-646(1)(c), regarding victim restitution in adult cases.

Although the Court is required to interpret all statutory amendments as if the Legislature has full and complete knowledge of all other laws in effect, the Department believes that a certain amount of "human error" still exists in the legislative process, and further believes that the lack of amendments in HRS §571-48(11) and (13) was simply an oversight. The Department does not believe that the Legislature would intend for victims of adult offenders to be defined any differently than victims of juvenile offenders. To address this issue, the Department requests that the Committee add the following language to page 9, lines 11 and 19:

Pg. 9, Lines 9-13:

(11) The court [~~may~~] shall order any person adjudicated pursuant to section 571-11(1) to make restitution of money or services to any victim **as defined in section 706-646(1)**, who suffers loss as a result of the child's action [~~, or to render community service~~];

Pg. 9, Lines 17-20:

(13) The court may order the parents of an adjudicated child to make restitution of money or services to any victim **as defined in section 706-646(1)**, person, or party who has incurred a loss of damages as a result of the child's action."

The Department understands that juvenile and adult offender may have vastly different financial situations. Nevertheless, we believe that juveniles should also be held accountable for their actions when they directly affect victims. For these reasons, the Department of the Prosecuting Attorney strongly supports the passage of H.B. 1459, with the suggested amendments. Thank you for this opportunity to testify.

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<sup>1</sup> Available online at <https://www.courts.state.hi.us/wp-content/uploads/2022/01/CAAP-20-0000485mop.pdf>; last accessed January 31, 2022.



**HB-1459**

Submitted on: 1/31/2022 1:44:21 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Diana Gausepohl-White	County of Kauai Victim/Witness Program	Support	No

Comments:

I strongly support HB1459 as well the additional amendment.

I respectfully ask that your Committee PASS the Bill. Thank you for your time in this matter.