

Date: March 29, 2017

To: **House Committee on Judiciary**
Representative Jeff Barker, Chair
Representative Andy Olson, Vice-Chair
House Democratic Leader Jennifer Williamson, Vice-Chair
Representative Chris Gorsek
Representative Mitch Greenlick
Representative Ann Liniger
Representative Bill Post
Representative Tawna Sanchez
Representative Sherrie Sprenger
Representative Duane Stark
Representative A. Richard Vial

From: Nicole Jergovic
Attorney, Oregon State Bar Association

Re: House Bill 3283

I am here today to ask for your support of HB 3283.

HB 3283 will close a couple of potential loopholes, provide clarity in the law, and treat offenders fairly and consistently according to the appropriate level of crime committed.

Section 1 specifically permits fundraising efforts to offset the burdensome costs associated with rescue in an abuse or neglect situation and would close a potential loophole that could create a financial windfall for a convicted animal abuser. When we have cases of animal abuse and neglect, often the animals require treatment and care. The costs for the veterinary treatment and care can be astronomical when the injuries are severe or there are a significant number of animals involved. It can be necessary for agencies and organizations to seek financial assistance from the community in response to investigations involving animals. The changes specified in Section 1 clearly permit the agency or organization to seek funding, as is often necessary in the field of animal welfare in order to bear the financial burden of these types of investigations and rescue operations. The generosity of the community provides financial assistance much more quickly than a restitution payment ever would. Restitution is ordered only at the close of a case, months or even years after the damages and costs have been incurred and the bills have been paid. And in most cases, the defendant is then given a minimal amount to pay as restitution on a monthly basis. In many cases, restitution is simply not paid. But even when restitution is paid, it is not paid timely, with small amounts trickling in on a monthly basis, at best. The current restitution landscape leaves someone else to bear the burden of the damages and costs at the critical time. The changes proposed in Section 1 would provide statutory authority allowing these

agencies and organizations to mitigate the burden of the costs through alternative funding and donations.

A restitution order may be paid by an offender personally, by an insurer, or simply by another person who wants to support and help the defendant. My concern with the current statute is that a savvy defendant could argue against restitution for damages that the defendant caused because the community had generously aided the agency or organization in obtaining the necessary care and treatment. Generally, the situation severe enough to cause an outpouring of donations would be a situation with egregious facts and horrible suffering caused to the animals. The situation would be the exact opposite of a situation where the general population would want the offender to reap a financial benefit, such as not being ordered to pay restitution for the damages caused. The changes in Section 1 of HB 3283 clearly state that the restitution order is separate from and in addition to any amount that generous people within the community may bestow upon the agency or organization working on the investigation. This would then prevent a defendant from benefiting financially, personally obtaining a windfall through criminal conduct.

Section 2 corrects what appears to be an oversight or error in the fair and consistent treatment of offenders. ORS 167.332 generally prohibits a person convicted of a felony from possessing animals for 15 years, while it prohibits a person convicted of a misdemeanor from possessing animals for 5 years. When the legislature modified ORS 167.325, and ORS 167.330 Animal Neglect II & I, to recognize that certain circumstances were more egregious than others and warranted felony level treatment, the length of time that a felony offender under the Animal Neglect statutes was prohibited from possessing animals was not also changed to reflect the 15-year prohibition that is in place for other felony level offenses against animals. When the Animal Neglect statutes were amended to include a felony level section for certain egregious fact scenarios, the statute that addressed the prohibition against future possession of animals still only listed these animal neglect statutes under the shorter ban that had historically been for misdemeanor offenses only. This section would keep the misdemeanor animal neglect offenses appropriately under the 5-year prohibition against possession of animals while placing the felony animal neglect offenses appropriately under the 15-year prohibition against the possession of animals that is already in place for other felony level offenses against animals. This correction seems to be the only way to treat people convicted under these statutes fairly and consistently with respect to the level of offense for which they were convicted.

Section 3 provides clarity and closes a potential loophole that is somewhat addressed by the proposed change in Section 1, discussed above. But Section 3 provides additional necessary clarity, stating quite succinctly that an accounting of costs incurred for the purposes of restitution shall not first deduct financial contributions made by other parties. This seems consistent in the overall purpose of restitution in making a victim whole again and requiring an offender to bear some burden for the damages caused. Without this change, if a community were so outraged by a scenario of abuse or neglect that there was an outpouring of donations to the agency or organization tasked with the treatment and care of the animal, that defendant could argue that restitution must first deduct any donations that could have been in response to the donor having heard about the specific investigation. And worse, a defendant could even try to claim that the additional donations were simply overpayments made on his behalf, which were due to be returned to the offender himself. I think it is safe to say that the generous donors who seek to

alleviate the burden of costs associated with egregious injury to animals and or large scale abuse and neglect are making donations because they care about the animals' being able to receive the costly care that is required. The donors are not seeking to create a windfall for the offender. Section 3 of HB 3283 clarifies that donations received are separate from and do not offset amounts due in a restitution order.

Sincerely,

Nicole Jergovic
Attorney, Oregon State Bar Association
njergov@yahoo.com
(503) 348-4657