

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

March 16, 2010

S.B. No. 2534 SD2: RELATING TO BAIL

Chair Karamatsu and Members of the Committee:

We support section 2 of S.B. No. 2534 SD2. Currently, if a person is taken into custody by the Department of Public Safety during non-regular business hours -- specifically, nights, weekends and holiday -- that person is not able to post bail during those hours. This is the case even if the person is in current possession of the bail amount. The current situation means that, once a person is in the custody of Public Safety, that person can only post bail at the courthouse during normal business hours. Given the decreased hours resulting from Judiciary employee furloughs, the opportunity to post bail has been contracted even further than normal.

The right to bail is guaranteed by both the United States and Hawaii Constitutions. H.R.S. § 804-3 also statutorily assures the right to bail for persons charged with criminal offenses except in certain, very limited, instances. By not accepting bail, the entity which has custody of a detainee is, effectively, denying that person of his/her constitutional and statutory right to bail. This situation is particularly egregious when a detainee has the required amount of bail in his/her possession but cannot convey that amount to the appropriate authority to gain his/her immediate release. The right to bail should not be dependent upon the day of the week that a person is received into custody.

Thank for the opportunity to comment on this measure.

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No. _____

TESTIMONY ON SENATE BILL 2534, SD2
RELATING TO BAIL

by

Clayton A. Frank, Director
Department of Public Safety

House Committee Judiciary
Representative Jon Rick Karamatsu, Chair
Representative Ken Ito, Vice Chair, Vice Chair

Tuesday, March 16, 2010; 2:15PM
State Capitol, Conference Room 325

Representative Karamatsu, Representative Ito, and Members of the Committee:

The Department of Public Safety (PSD) **opposes** SB 2534, SD2. As written, this measure would require correctional facilities to accept cash bail and bail bonds, which they are not currently able to do.

In order to comply with this measure, PSD would require several additional staff members at every correctional facility statewide. This measure would also require the development and implementation of new security procedures and protocols, and possibly new security equipment or renovation of existing facilities, especially since members of the public would be entering correctional facilities after hours when the facilities operate with a minimum of staff.

In addition, the implementation of this measure would be violative of HRS § 353-11.5, "Restricted access to correctional facilities", which restricts entry upon grounds of a Hawaii correctional facility without the permission from the administrator. This measure would also require additional daily travel to and from the courts, which

creates additional costs and would take correctional officers away from their primary functions of security, custody, and control of those incarcerated.

Further, SB 2534, SD2 would require additional Sheriffs positions beyond the current allotted position count. There are currently no Sheriffs offices that are open to members of the public on evenings or weekends due to the current economic situation, the limited number of Deputy Sheriffs, and the current duties and responsibilities of the existing Sheriffs. The implementation of this measure would also require an additional office or renovation of existing sheriff facilities, equipment, and require the development and implementation of new security procedures and protocols.

It would be more feasible, cost effective and efficient to have the Judiciary ensure an after hours bail clerk is available in each of the four Counties to receive, process, and verify bail. The information and bail documents could then be electronically transmitted from the after hours bail clerk to either OCCC, HCCC, MCCC, or KCCC via secure computer communication between the Judiciary and PSD, which would in turn affect the release of the person(s).

PSD is not opposed to working with the Judiciary, Professional Bail Agents, or the various Police Departments to develop and implement a cost effective, efficient, and expedient bail release process. However, at present, PSD simply does not have the resources required to comply with this measure as it is currently written.

As written, PSD opposes SB 2534, SD2 due to its impracticality, unbudgeted fiscal impact, and negative affects it would have on the priorities set forth in the Executive Supplemental Budget for Fiscal Year 2010-2011.

Thank you for the opportunity to provide testimony on this measure.

karamatsu1-Kenji

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 14, 2010 12:50 PM
To: JUDtestimony
Cc: james.lindblad@gmail.com
Subject: Testimony for SB2534 on 3/16/2010 2:15:00 PM

Testimony for JUD 3/16/2010 2:15:00 PM SB2534

Conference room: 325
Testifier position: support
Testifier will be present: Yes
Submitted by: James Waldron Lindblad
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Submitted on: 3/14/2010

Comments:

We are working with Mr. Tommy Johnson and hope to have proposed amendments ready by the hearing date. Attorney Brook Hart is assisting.

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THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

Testimony to the House or Representatives Committee on Judiciary
Rep. Jon Riki Karamatsu, Chair.
Rep. Ken Ito, Vice Chair.

Tuesday, March 16th, 2010
2:15 pm
Conference Room 325
State Capitol

Testimony in Favor of Senate Bill 2534 SD2, Relating to 24 Hour Bail Release and From
Whom Bail May Be Accepted.

My name is James Waldron Lindblad, here on behalf of The Professional Bail Agents of Hawaii, to offer support of this bill.

Bail Agent's Position: Bail agents support Senate Bill 2534 SD2, because the bill provides for bail release at all Department of Public Safety holding facilities like OCCC., MCCC., and KCCC., during hours when the court is closed. SB 2534 SD2, also adds much needed clarity, uniformity, and predictability to the bail release process for both cash bail and for bail bonds by helping to ensure a means for prompt release for all persons whose bail has already been set by the court.

We believe the right to bail, just as all rights, should not be contingent upon the time of day or the place of detention.

Senate Bill 2534 SD2, accomplishes the following:

* Allows persons in custody of OCCC (defendants) to bail themselves out on cash bail. Presently, this task cannot be accomplished without third party assistance in filing the bail at the court first and then taking the bail receipt back to OCCC. The same is true at MCCC-Maui and KCCC-Kauai.

* Allows licensed bail bond persons to bail defendants out at OCCC, after hours when the court is closed. For instance, evenings, weekends and holidays. The same would be provided for at MCCC-Maui and KCCC-Kauai. Big Island allows for release

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at HCCC., via cooperation with the Big Island Police Department, although persons cannot pay their own bail and require third party assistance.

* Allows licensed bail bond persons to bail out persons at police or sheriff custody in the day time hours without the need to go to the court first to file the bail bond. This is similar to how licensed bail agents bail out defendants at night at HPD, or Sheriff's Airport Division and also similar to the mainland. This provides much needed uniformity statewide.

* Maintains the provision where bail bondspersons can pre-file the bail bond at court for defendant self surrender at Halawa Jail Booking for re-booking, which frequently occurs on grand jury indictments and also on information charging for persons who already bailed out from HPD and must be re-booked and re-bailed again. In other words provides a simple means for bail on double booking for the case.

* Provides that only licensed bail agents may present or deliver original bail bonds.

Suggested Amendments:

1.) We believe that if the bail filing fee is adopted that all bail filings, not just bail bonds, must be incorporated and charged a filing fee equally. For instance, cash bail, supervised release bail and own recognizance bail should all have the same filing fee per defendant.

2.) Perhaps too, a cap of the filing fee per defendant should be incorporated. We believe the courts and anyone else collecting bail need better guidelines as to how many times these new bail filing fees can be collected, either by per defendant or by a formula per charge or per count? We think one filing fee is sufficient per defendant and we do not want those agencies collecting bail to think there must be a separate bail filing fee per charge or per count when bail is paid.

3.) One problem we see to contrast the Circuit Court on Oahu and how the felony cases are always aggregated, per bond and incorporated on to one CR Number which, we think, is fine, but at District Court on Oahu many times felony cases are not aggregated and the agency taking the bail wants a separate bail bond for each case. This is evidenced too with the multiple bail release forms or BRF forms needed per defendant by what seems an arbitrary decision made by court staff at District Courts on Oahu. However, this same is also true of TRO and abuse cases as separate bail bonds are required for each police report number on each abuse case. This means that if a defendant has five (5) TRO cases there are five bail bonds required or one bond per count, this too five BRF form and five affidavits by the bail agent. The same is also true of traffic warrant with one bail bond being

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required for each ticket or bench warrant on Oahu while on outer island the traffic cases are aggregated on to one document via a schedule.

4.) The filing fee portion of the SB2534 SD2 needs added clarity. In fact, the filing fee could be dropped in its entirety and SB2534 SD2 would still a big improvement by saving the State time and money in housing and transportation costs of those persons released on bail verus held in custody.

5.) The biggest problem over the years for law enforcement agencies like OCCC in collecting bail was in the subsequent "delivery of the bail," to the court. To fix this, we suggest the court should go and get the bail from OCCC and other relevant agencies like HPD who are collecting the bail for the court. If the courts do not want to provide a bond clerk at night and on weekends to collect bail and electronically notify corrections staff then perhaps a good balance would be to split the bail task and send a court runner to collect the bail rather than forcing police, sheriff and corrections staff to deliver the bail to the court.

Please support SB 2534 SD2, with technical amendments for clarity on how the filing fee is paid.

James Waldron Lindblad, Professional Bail Agents.

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Background & Additional Commentary:

Purpose: Senate Bill 2534 SD2, requires all law enforcement agencies including corrections staff at Oahu Prison/O.C.C.C., who hold or house defendants whose bail has already been set by the court to accept cash bail, certified copies of pre-filed bail bonds, and original bail bonds from licensed bail agents at all times including when the court is closed, nights, weekends and holidays. Specifies from whom bail may be accepted. Requires prompt release after acceptance of bail. Requires a filing fee. (SD1)

We believe that bail should be accepted from certified bail agents in good standing with the State of Hawaii Insurance Division and the courts and defendants should always be able to post their own bail if they have the cash with them, especially small traffic cases. This means bail should be accepted universally by all law enforcement agencies holding pre-trial defendants, and not just two out of three.

1.) SB2534 SD2., provides a means for 24/7 bail release for those person held by Department of Public Safety, OCCC., MCCC., KCCC., such is already the case in most mainland jurisdictions and such is presently the case on Big Island. Presently, persons held by corrections division at OCCC, must wait until the court is open to bail out.

The bill adds clarity to the bail bond process that will ensure prompt release for those persons whose bail has been set by the court whenever bail is offered and accepted.

2.) We believe persons should be able to pay bail to the agency holding them in custody and should be able to do so even on weekends and holidays and Senate Bill 2534 SD1., tells all persons and relevant agencies how to accomplish this task. SB2534 SD2., further streamlines and makes uniform the task of bail acceptance statewide for those persons held in police custody by establishing uniform bail acceptance and filing procedures that are the same method 24/7. In other words, day time bail release procedure will be the same as night and weekend bail release procedure.

3.) Presently, any defendant held at O.C.C.C cannot bail out on their own because someone needs to take the bail to the court and then back to OCCC. This is the same in Maui and Kauai. Defendants cannot pay bail themselves even if they have the money because they cannot travel from OCCC., to the courts to pay the bail and presently there is no means to pay bail at OCCC., which is where most persons needing bail are housed.

We all know the courts are closed weekends, holidays and furlough days and when the court is open they close at 4:15 p.m. This delays release on bail.

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4.) Senate Bill 2534 SD2, provides the defendant can pay bail themselves or the person paying the bail could do so directly at the facility where the defendant is located and where all the information on the bail is. Senate Bill 2534 SD2., clarifies the duties and responsibilities of all concerned and benefits everyone by speeding the release process of those persons already determined eligible and prevents delays in the release process. This will provide statewide uniformity & predictability so that all persons may know their duties, and responsibilities.

There are minor technical matters that need to be addressed pertaining to collection of the bail filing fee; a.) how the filing fee can be paid, via cash or credit card, b.) making the fee apply uniformly to all bail collected, not just for bail bonds, c.) clarifying that all agencies accepting bail can keep the bail fee and d.) perhaps capping the fee per person or per bond or per criminal tracking number. We do not endorse bail fees be paid if computed by criminal charges or police report number alone as the fee, in our view must be based on transaction or per defendant. Further, HPD may not want to collect the bail fee unless they can keep the money and even if they are able to keep the money HPD would need a means to track the money. In other words, the filing fee might be too much trouble, we are not sure.

5.) Senate Bill 2534 SD2 is needed because the court has already granted authority to accept bail to the police, sheriff and corrections division to take bail on behalf of the court. The court granted this authority via Admin Order 2.1, and as jailers holding pretrial defendants the police and the sheriff do accept bail but corrections division will not accept bail directly. The corrections division requires the bail be filed or deposited elsewhere. At one time the sheriff collected bail for OCCC inmates and at one time even HPD collected bail for OCCC inmates. Presently, Big Island police collect bail for HCCC inmates 24/7., but most of the persons needing bail in Hawaii are at OCCC., and thus the need to force the corrections division as jailers for the court to accept bail for those persons in their custody at OCCC.

We believe there are potential federal civil rights violations for holding persons longer than necessary who would otherwise pay bail and because we believe in equal protection under the law. Why should persons in police and sheriff custody be given special preference over those persons held at OCCC? The constitutional arguments and also habeas corpus and whether or not the court must be disturbed after hours will likely cost the State of Hawaii a large sum of money if delays in release for certain persons at OCCC., continue.

Presently the system can be manipulated to hold certain persons up to three days longer than needed due only to the inability of persons at OCCC to pay bail when the court is closed.

The matter of bail is important. Even our 8th amendment to the United States Constitution speaks of bail. Specifically too, our Hawaii statutes under HRS 804 speak of bail and

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prompt release, yet OCCC., as the jailer for the court is not in compliance. We bail bondspersons never contemplated that OCCC would continue to fail in its duty, as the court's jailer, to provide an efficient means for persons to pay bail when the court is closed, but this has been the case on and off, since 1996.

While it could be argued the matter of bail is a court responsibility, OCCC., as the jailer for the court also has a duty and a responsibility and the court has already granted written authority to the corrections division via Admin Order 2.1, to accept bail for the court. Yet, OCCC., will not accept bail for the court.

6.) Money and housing concerns over long weekends, in of of itself, should motivate the corrections division to release as many persons on bail as possible and we think they should do so eagerly & promptly, rather than feed and house persons at public expense who could otherwise be released on bail, yet this has not been the case.

Common sense should prevail, and this glaring issue of holding persons longer than needed at OCCC., now requires legislative action. We believe SB2534 SD2., is a valid attempt to remedy the OCCC., bail release issue.

Bail agents support Senate Bill 2534 SD2.

Thank you,

James Waldron Lindblad