

LATE TESTIMONY

Regular Session of 2008

House Judiciary Committee,

Tuesday, March 11, 2008, 2:00 P.M. Conference Room 325

*Senate Bill 1961 SD1

Testimony in Support of SB1961 SD1

Measure Title: Relating to Bail

Report Title: Bail Bond Agents; Sureties; Licensing; Commerce and Consumer Affairs, Attorney General

Description: Creates a licensing requirement for bail agents. Requires the director of commerce and consumer affairs to adopt rules, prohibits certain acts relating bail agent and sureties.

Introducer: HANABUSA (BR)

Current Referral: JUD

Presented by: James Waldron Lindblad.

A-1 Bail Bonds

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My name is James Waldron Lindblad. I was born in Honolulu and have been a bail agent for thirty two years. Prior to becoming a bail agent I worked for Clark County, Community Corrections in Washington state, for two years as a pretrial release officer. I am writing in my personal capacity in support of SB 1961 SD1, and in support of the consistency, predictability and the needed clarity I think this bill portends for the people of Hawaii, the public agencies dealing with bail and members of the bail bond industry.

Purpose: SB1961 SD1:

To clarify and improve the effectiveness and uniformity of bail procedures applicable to compensated sureties and attempt to clarify discharge of surety or bail surrender and the required procedures.

Vote Yes, Favor:

I think SB1961 SD1, even “as is,” will help the courts, the police, the public and the bail agents to know what their duties, rights and responsibilities are regarding bail. The bill is a step in the right direction. The bill will also assist in bringing about uniformity and fairness to all concerned by insuring licensing and bail forfeiture payments, thus making for a more even playing field and, hopefully, accountability for persons involved in the bail process.

Needed Corrections or amendments:

Please see attached AIA Holdings letter from Chief Legal Counsel, Jerry Watson, regarding technical changes to the bill. Further, I believe that if bail fees are not paid pursuant to contract that bail surrender should be allowable, thus failure to pay bail fees should be added as a reason for allowable bail surrender. Bail agents require a minimum of 45 days not 10 days to process return of collateral. Judgments exonerating bail bonds are not final for sometimes at least 30 days and paperwork required to submit to sureties is needed for release of mortgages. If we are going to require separate bail licenses or endorsements we need to grant bail licenses only to insurance producers.

Suggested Amendment and Additions:

In my view, there are several primary additional issues the bill should address. I suggest the future of bail in Hawaii requires clarity, uniformity, and predictability. To achieve these goals, like the courts, in cooperation with the DCCA, must be the arbiter and

enforce the rules, set policy, and require the stakeholders to adhere to their duties and responsibilities in order to insure integrity in the system.

In my view, bail is divided into three distinct areas, once a dollar amount for bail is set by the court.

1.) How to get booked and bail out and who is allowed to do this. For instance, is a license required to deliver a bail bond? How a person may pay for cash bail must be fully described with written rules available for all interested parties.

2.) Who can effect or process the bail out? HPD, the court and the sheriff? What is the function of the district court judges in this process? In other words who shall accept bail? Who authorizes the release of a person on bail? During what times is bail accepted and who will see to or implement release and verify the information needed or required for release and who provides the next court appearance date? On the mainland and in Hawaii prior to 1996, the facility holding the defendant provided a means to obtain release. There was also a short time period on Oahu from about 2002 until May of 2006, when either the sheriff or the police would accept bail for a person in custody at the DPS, a prison or a corrections division. Hawaii, unlike mainland jurisdictions, does not have a jail to hold pretrial inmates and instead uses the prison system to house pretrial detainees. Further, the question of who can accept bail has been a long standing issue in Hawaii. While police normally accept cash bail, the police on Oahu will presently accept bail bonds only for those persons in their custody, although Hilo and Kona police will accept bail for HCCC inmates during hours when the court is closed. The DPS or OCCC will accept copies of bail receipts but the bail, whether cash or bail bond still must be filed at the court first. This is a cumbersome process for all concerned; in my view the DPS should accept bail. In fact, any facility housing pretrial detainees should provide a means to release persons ready willing and able to pay bail, certainly during day time hours and at least 7 days per week, including holidays. Requiring DPS to accept bail for those in their custody or, in the alternative, requiring the judiciary to provide a means for bail release during non-business hours, weekends and holidays when the court is

closed should be a priority. A best case scenario would be to have a bond clerk with authority to direct the DPS staff statewide to release detainees by using secure technology like fax, phone, email, or even placing a court authorized worker at the facility to hand stamp or seal bail receipts acceptable to DPS staff.

3.) Once bail is paid and the person is released and expected to show up in court, how do we bail agents surrender the bail if needed? When surrender is not required how do we bail agents cure and fix mistakes when a person misses court by accident or is unintentionally late? The law needs to explain what processes are needed to effect bail surrender, and the courts needs to provide a means to correct appearance mistakes. Surrender of bail is too often needed as the only means to stop the forfeiture clock from ticking to a point where payment from the surety is required. This situation occurs frequently because judges issue bench warrants and will not recall the warrant when persons are late for court, or when they unintentionally miss court, by accident unless an attorney will file a motion to recall the warrant, at which point some courts also require the bail agent to hire an attorney to reinstate the bail bond and or pay court costs. Most every missed court date in my experience are due to innocent error or miscommunication. However, from the judiciary and prosecutor's view there is no margin for error; in real life, mistakes are inadvertently made. This area needs legislative attention to guide our judiciary in the use of proper protocols to fix common appearance errors and distinguish between innocent error and intentional bail jumping and provide a clearly documented means to surrender bail when required and to fix mistakes when they occur.

In connection with these issues the overriding question is: who is responsible to provide the information as to why the detainee is in custody along with the needed police report numbers required to be listed on the bond? Presently, HPD, and DPS assist with this bail information, but, I believe this should be a court duty and responsibility. In other words, why is the person in jail? Someone in authority must be responsible to provide attorneys, family members seeking bail, the bail agents, and the news media the needed information to post bail. Presently this is lacking. Most mainland jails work in

conjunction with the courts making use of the same database that provides an online means for members of the public and bail agents to secure the needed information for bail. In Hawaii, the court has a computer, but the holding facilities all require hard copies of certified documents to be hand delivered.

The following six urgent points need to be discussed among all concerned parties, with primary emphasis on the duties and responsibilities of the court. After all, it is the court that sets bail and accepts bail but the court does not insure release from custody and many times the court fails to assign or provide court date information when bail is posted. Insuring release, once bail is posted, and assigning court dates, are the most important aspects of bail. The law should clearly state who is responsible for insuring release once bail is paid and who is responsible for providing court date information to all defendants.

A.) After hour release for those persons held by DPS. Presently detainees can bail out from DPS/OCCC, only when the court is open. Why should persons who pay bail have their release delayed? Scarce state resources require release on bail to become a primary concern and not a secondary concern. Further, persons held at OCCC and MCCC cannot self bail, even if they have the cash, because there is no means to transport the bail money to the court and return the paperwork to secure the release. For example, if your bail is \$50.00 and you are detained at OCCC or MCCC and if it is Friday afternoon, you cannot bail out until Monday and then only if a third party goes to OCCC or MCCC to obtain your \$50.00, transports that \$50.00 to the court, obtains a bail release form, AKA BRF form, then transports that BRF form back to OCCC or MCCC in order for your release to occur. This series of tasks can consume the entire day. The same goes for bail agents who must file bail bonds when the court is open. In this regard, Honolulu district court will not accept bail bonds for all district courts and will certify bail bonds only for Honolulu, district court. This means that if a bail agent is involved, the bail agent may need to travel to Kaneohe, Wahiawa or Ewa to file the bail bond in order to obtain the needed certification required for release. Of course, this makes filing small bail bonds an all day activity and certainly not worth the 10% or 15% fee allowed by law. Licensed bail agents are not interested in spending all day for \$40 or \$50 dollar

commissions; thus, the unlicensed “runners” operate to do the work for surcharged amounts over and above the allowable 10-15% fees. This practice unduly encourages unlicensed activity in the bail bond business in Hawaii.

B.) The courts no longer have a place to book and release a person needing to clear warrants, unless that person travels to Halawa Correctional Facility to be booked by the sheriff during day time hours up until only 2:00 pm., on weekdays. Of course, booking must occur before a bail bondsman can obtain accurate information to file a bail bond, but this happens only if the booking or holding facility will agree to provide the information. Again, this should be a court function, but interestingly, many times the court clerks don't know the information and must call the holding facility to obtain the information. This is backwards, as it is the court that should know why the person is in jail. The holding facilities personnel are willing to provide bail information to court staff, but are inconsistent and many times refuse to provide information to bail agents or members of the public. Although frequently in Honolulu, the court computer, Hoohiki contains the correct information for First Circuit cases, contrarily on Maui, the court will not enter the correct information into the public access computer until the person is booked and the paperwork is then filed at the court. In fact, Maui keeps warrant information a secret unless the prosecutor is willing to provide it. Both the Maui and Oahu bail release practices make it unnecessarily difficult for those persons wanting to clear warrants to do so. An example of this deficiency occurred on September, 19, 2007 when my client, Saysuk Maharaj, traveled from Kona with his wife and two children to clear a warrant. There is no longer a means for this to occur at the court house and no person or sheriff at the court house was willing to make the arrest on the bench warrant outstanding on Mr. Maharaj unless directed to do so by a Circuit Court Judge. I phoned two judges, one of whom stated that if it was his court's warrant he would direct the sheriff to make the arrest but the other judge, whose warrant it was, stated that “this is a police duty,” in effect, making it impossible to surrender the person at court or to a sheriff and requiring me to transport the person to HPD for booking. Of course, once booked at HPD there is no court until the next day. At least the person was bailable at HPD after court hours, which was good. I believe this entire area of booking, arrest,

and release needs improvement. Presently, the system is far too complex, time consuming and unpredictable. Further, if the case is a district court matter or has been an “information charged,” usually only the holding facility has the correct information. District court clerks can tell us only what happened on the calendar that day and criminal assignment clerks who know the information charging information will no longer take phone calls or provide information needed to arrange for posting of bail.

C.) The new Bail Release Form, (BRF) created and used by some courts spotlights the problem of each court acting on its own, without any uniformity statewide, and the cumbersome, time consuming multiple documents some of the courts require which delay release and cause problems for those believing they need to complete or sign off on the BRF. For instance, a TRO case presently requires a separate long and complex BRF for every police report number. Some courts require transport of the BRF for signature by the defendant when filing bail at court, while other courts write N/A on the signature line when filing bail at court. Neither circuit nor family courts of the First Circuit require the BRF form, however if police arrest a defendant and accept bail after hours, the police make use of the BFR form regardless as to the court’s requirements. If district court of the first circuit completes a BRF, the police still require another 2nd duplicate BRF form upon release of the defendant, thus causing delay and more unnecessary paperwork. Perhaps, First Circuit Court does not utilize the BRF, because the form duplicates the precise information already contained on the bond and the booking sheet!

D.) At present double bookings are required on some “information” charged defendants who bail out at HPD, and many times double bookings are required for grand-jury indictees and or after the fact “information” charged defendants who are released pending investigation. The entire district court transfer of bail to circuit court needs a thorough overhaul. Mainland courts use simple forms for this purpose and Hawaii courts could use the same. This double processing needs to be streamlined, or, at a minimum a location convenient to defendants needs to be established for processing. In this regard, there is need for a booking a location if not, HPD, certainly not Halawa for clearing warrants,

fixing innocent error and getting defendants cases back on the calendar, short of the need for an attorney to file a motion. Mainland courts station warrant officers at court for booking and release, and for persons wanting to clear warrants. Seattle, Washington, Vancouver, Washington, and Las Vegas, Nevada among many other cities utilize warrant officers stationed at the court house to quickly process warrants.

E.) The district court's new JIMS system must insure uniformity statewide and DTA numbers utilized by the JIMS system in order to identify cases must match invo and HPD numbers utilized by HPD and the attorney general or at least tie or correspond in some easily identifiable manner. Presently this uniformity is completely lacking. This is because there is no correlation or tie in between the DTA number on the newly revised JIMS system and the traditional HPD booking numbers we have all become accustomed to.

F.) Remarkably, there is no uniformity on how warrants are entered into the Hoohiki state public records system accessible to members of the public. Many times defendants want to turn themselves into authorities and want to be prepared for the booking process. On Oahu this is usually possible, because public information on at least the felony warrants is entered but this is not possible on outer islands. Court personnel on Maui, for instance, by long tradition, pursuant to a request of the Maui prosecutors, will not enter warrants into the public Hoohiki database until after the warrant is served. We think this is because police want the warrant secret, but we do not really understand this reasoning. The newspapers obtain the information from the grand juries and the prosecutors have the information which is normally available to private defense attorneys, but others are not afforded this information and are told to "wing it," and present themselves to the police to see what, if any, warrant is out. These persons must then be booked and processed before learning their bail amounts. This is a slow process and needs to be improved and should be consistent with Oahu courts who enter the information promptly. Over 70% of my Oahu business is turn in or self surrender. Turn ins are much easier for all concerned. Why should police or warrant officers need to drag a defendant off his or her job without notice or arrest them in front of family members,

if this is not needed. Scarce state resources should be spent tracking down those persons who are trying to avoid capture, those persons on Crimestoppers.com, and not on those persons wanting to turn themselves into custody.

Conclusion:

SB1961SD1 makes a valid attempt at providing clarity and insuring fairness to all concerned parties. The bill addresses unlicensed activity and helps to insure accountability for bail forfeiture payments while providing a level playing field, which benefits bail agents and consumers. I think we all want to insure prompt release from custody for those persons already determined eligible for release by the courts, but to accomplish this task we need to pin down who is responsible for bail release, determine with specificity who is responsible for providing release information needed for bail, who within the system may repair mistakes, how can surrendering of bail take place, and who shall process a bail surrender.

I support SB1961 SD1.

Very truly yours,

James Waldron Lindblad

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ALLEGHENY CASUALTY
INTERNATIONAL FIDELITY
ASSOCIATED BOND

October 17, 2007

Mr. James "Jim" Waldron Lindblad
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Dear Jim:

Regarding Hawaii SB 1961, Brian has passed on to me your request for an analysis of the bill. Having reviewed it I do have a few comments, and they are as follows:

1. In Section 1 next to the last line on the first page of the bill the word "only" is used regarding when a surety may be discharged. I would strike that word and then add at the end of that sentence "*..... and for such other reasons as the court in its discretion may deem appropriate*".
2. Under Section 804-A definitions, at the end of the first full paragraph are the words "*..... whether for compensation or otherwise*". To me, this opens the door for at least one interpretation that unlicensed persons could be compensated for the pledging of bail related security. I think this would be a mistake. I would strike that language and add in its place: "*however no person other than a licensed bail agent or a properly admitted insurance company may exact payment of any kind in exchange for facilitating the making of bail*".
3. At section 804-B bail agent license; qualifications. I would add a sub-paragraph (d) stating "*No person not a permanent resident of Hawaii shall be*

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licensed as a bail agent. Nor shall any such person, other than a properly admitted insurance company, receive premium, commission or anything of value in exchange for a bail bond being posted in Hawaii". If you like, please give me a call and I will discuss with you my reasoning here.

4. At Section 804-G fiduciary responsibilities. Under paragraph (b) it provides that premiums due insurers must be paid according to the terms of the contract between the carrier and the agent, but in the absence of any contractual time requirement on that payment then the payment must be made "*..... within 45 days after receipt.*" Auditing for compliance under these terms would be extremely difficult. I would change the word "*receipt*" to: "*..... date of bond being posted*".

5. Under the same section at (d) I would likewise change the word "*receipt*" to: "*bond posting date*".

6. Section 804- (the bill shows no initial here) exoneration from bond liability. Under section (a) (4) the bill provides that the surety must be exonerated upon surrender of the defendant "*..... before a judgment has been entered*" after payment of attendant costs. I would think that you would much prefer to have a time certain after forfeiture has been ordered but before the court can enter

judgment during which time, if the defendant is returned to custody by whatever means, the surety would be exonerated upon proof of such incarceration. Of course, there maybe appropriate costs for the surety to pay in some cases. Should you choose to go that route I would add, at the end of the first sentence in this section, something like the following: *"..... which judgment may not be entered prior to the passage of 180 days from mailing of notice of forfeiture to the bail agent by the clerk of the court in which the bond was ordered forfeited"*. A number of very good arguments exist in support of such a practice, and I will be happy to discuss those with you if you like. Your colleagues, or even court personnel, may argue that the same can be accomplished by mandatory remittitur upon surrender of the defendant within a particular time period. In other words, as soon as the court chooses to enter judgment after declaration of forfeiture, the surety would have to pay and then have a period of time during which the legislature would by statue assure full remission less costs upon surrender of the defendant back into custody. You should please be aware, however, that this alternative embodies constitutional frailties. For example, an appealing argument would be that this takes the entire remittitur discretion away from the court and ensconces it in the legislature thereby violating the separation of powers doctrine. That argument cannot be made, or at least certainly not as easily, regarding legislatively established set period of time which must elapse prior to entry of judgment.

This, as you can see, has much less to do with removing any discretion from the court. Just a thought.

7. Under Section 804- (also no letter in the bill) enforcement procedures for compensated sureties. At sub-section (18) having to do with sanctions against a bail agent for not clearing an "on the board" item within 45 days. The last sentence of that section has some, in my opinion, very weak language regarding treatment of that agent's insurance company under those circumstances. I would replace the language of that sentence with something like the following: *"Immediately upon a bail bond agent being placed on the board the clerk of the court in which the bond was ordered forfeited shall immediately notice, by certified mail return receipt requested, the insurance company that appeared as surety on the subject bond, and it shall be the responsibility of such insurance company to ensure that the matter is appropriately cleared within the said 45 day period. Three instances of non-compliance, regardless of the identity of the agent, within any two year period shall require the insurance company to respond to the insurance commissioner as to why that company's certificate of authority to be a bail surety underwriter in Hawaii should not be suspended or revoked"*. It should, in my opinion, be realized that, after all, the surety on the bond is not the agent but the insurance

company and as such, the ultimate responsibility for payment as far as the state is concerned is the insurance company itself.

You and your colleagues may agree or disagree with some, or all, of these ideas. That is OK, as I am only sharing a lot of years of experience in observing in some cases the effectiveness and in others the total ineffectiveness of bail regulation statutes. As I've already said a couple of times in this memorandum, I'm available for discussion should you desire.

Good luck to all of you in this legislative endeavor. You are to be commended for this attempt to show a very high level of responsibility on the part of serious and well intentioned participants in our industry. It should not be lost upon the authorities, both legislative and otherwise, with whom you are working that it is highly unusual for a segment of the American Insurance Industry to argue for tighter and stricter governmental regulations over its business practices. And yet, that is exactly what you and your colleagues are doing here, and you should all be recognized for the integrity that brings to the process.

Sincerely,



Jerry W. Watson
Chief Legal Officer
AIA Holdings, Inc.

Cc: Brian Nairin – CEO, AIA Holdings, Inc.
Brendan Pegg, Esq. - Legal Counsel, AIA Holdings, Inc.

July 25, 2006

From: James Waldron Lindblad
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Cell phone: 808 780 8887

To: The Honorable Judge Ronald T. Y. Moon, Chief Justice
Supreme Court of Hawaii
Via E-Mail: Ronald.t.Moon@courts.state.hi.us

Dear Chief Justice,

I am writing as the principal owner and manager of A-1 Bail Bonds because I have a problem for which I respectfully request your help.

I have communicated my concerns regarding the new bail release form, also known as the BRF or bail receipt to Judge Colette Y. Garibaldi, Judge Corinne Watanabe, Judge Derrick Chan, Court Administrators Keller and Ching, and Diane Tiara, but I have received no response. Mr. Keller did have Ms. Inafuku write me to say the matter is being referred to Diane Tiara, but I have had no communication from Ms. Tiara.

I have communicated to Judge Garibaldi what I perceive as conflicts between the BRF and Admin Order 2.1. The new BRF forms do not look like receipts at all, but look like two new bail bonds. The BRF forms require additional signatures that are either not needed or too difficult to obtain. Many persons accepting bail find them unnecessarily difficult and time consuming to complete. Additional interpretations of the new BRF forms at district court in Honolulu and at circuit court in Hilo now require that the defendant's social security number and date of birth be included as a condition to file a bail bond, which is a requirement I cannot find anywhere in the HRS or in Admin Order 2.1; this requirement delays release of qualified persons and encourages identity theft.

Beyond my concerns, others are voiced by HPD Major Timothy Slovak and DPS, Interim Director Jim Propotnick, regarding the time required to complete the form and how the

form fails to comply with and seems to directly conflict with Admin Order 2.1; we all seek clarity regarding the BRF, due to the delay in release issue. HPD Major Timothy Slovak decided that in the interest of uniformity and consistency that for an HPD release he will now require a licensed bail agent to present any bail bond, whether filed at the court first or not, and that the bail agent must sign off on the bail release form or BRF in order to effect release. This is contrary to Admin Order 2.1, but at least it does provide consistency. Jim Propotnick has decided that the Department of Public Safety will not to accept bail at all after regular hours, because his sheriffs and DPS staff cannot provide the signature of the defendant on the BRF.

It has always been my impression that only the court can accept bail and that once the court accepts bail it is up to the court to provide for release. This could be done by faxing to the appropriate facility to release the defendant. However, as a practical matter and courtesy the bail agents have taken certified copies of bail bonds to wherever the defendants are to speed release. Further, HPD and the sheriff try to assist and cooperate by accepting bail for the court when the court is closed, in part due to public policy of releasing qualified persons, but also to help the court so that release of those persons eligible for release is prompt and not delayed.

As a consequence of the BRF, the after court hours release at OCCC has been stopped and defendants who are otherwise eligible for release are being detained longer than needed. This delayed release can be as long as three days over a long weekend; it means that the state must spend additionally and perhaps unnecessarily, substantial resources to house persons presumed innocent and who are qualified for release on bail.

I have not been able to establish a dialog with anyone in authority regarding the BRF, and have not been included in any of the discussions regarding this form. As a stakeholder who makes his living by providing bail to those persons already determined eligible for release by the court, I feel I can assist and cooperate after thirty years as a licensed bail bondman in Hawaii. I think I can help provide solutions to the delayed release situation.

Attorneys Howard Glickstein and Guy Matsunaga have made themselves available to provide legal advice.

Perhaps cancellation of Admin Order 2.1 and the current bail bond form is necessary before utilizing only the BRF itself, as the BRF is really just another bail bond. This will eliminate confusion, provide clarity and provide uniformity statewide. Judge Garibaldi can then direct HPD and DPS to accept bail at any hour and on any day it is available to be posted, as they did in the past and the court can discontinue collecting bail and just allow those agencies that have custody of the defendant to collect the bail. Court clerks do not like collecting bail and the police and sheriff do it well. In the alternative, perhaps Admin Order 2.1 should be retained along with the practice of issuing receipts. That practice had worked relatively well for many years prior to adoption of the BRF in May, 2006.

I seek your advice and or help in this matter.

Kindest regards,

James Waldron Lindblad.

Criminal Administrative Order No. 2.1

RE: QUALIFICATIONS FOR INDIVIDUALS AND/OR ENTITIES ISSUING BAIL BONDS; PROCEDURES REGARDING THE FILING OF BAIL BONDS

All individuals and/or entities issuing bail bonds to secure the release of any person from confinement shall comply with the following requirements:

A. Qualifications

1. Must be registered to do business, and in good standing, with the state department of commerce and consumer affairs.
2. Must comply with HRS sections 804-10.5, 804-11 and/or 804-11.5.
3. Must be licensed by the state insurance commissioner and in good standing.
4. Must satisfy the requirements of HRS chapter 431.

B. Procedures for Filing Bail Bonds

1. Each and every bail bond shall conform to the "Sample Standard Form for Bail Bonds" attached to this order.
2. Individuals and/or entities issuing bail bonds shall be responsible for ensuring that all information appearing on a bond is correct.
3. Each and every bail bond shall clearly reflect the applicable agency⁷ report number(s) and, except as provided in paragraph B6, shall be filed with the Court before it is presented to any agency to obtain the release of any person from confinement.
4. Each and every bail bond shall have attached to it a power of attorney indicating the insurance company that is insuring the bond.
5. Except as provided in paragraph B6, an agency having custody of a person may not accept a bail bond unless it has been file-stamped by the Court.

⁷"Agency" includes the department of the attorney general, the department of public safety, including all of its correctional facilities and the law enforcement division, and all county police departments.

6. Whenever bail has been set pursuant to HRS section 804-5 and the Court is closed for business, a bail bond that has not been filed with the Court may be accepted by the agency having custody of a person to secure the person's release from confinement; provided that the individual offering the bond:
- (a) is licensed to sell, solicit, and negotiate surety insurance in this state;
 - (b) presents to the agency the individual's insurance producer license, the notice of appointment appointing the individual as an agent of a surety insurer, and personal identification satisfactory to the agency; and
 - (c) certifies in writing under penalty of perjury that all information furnished to the agency is true and correct, and that the individual is, or is authorized to represent an individual or entity that is:
 - (1) registered to do business and in good standing with the state department of commerce and consumer affairs;
 - (2) authorized to act as a surety insurer pursuant to HRS chapter 431; and
 - (3) in compliance with all applicable provisions of HRS chapters 431 and 804.

An agency accepting a bail bond pursuant to this paragraph B6 shall file the bail bond with the Court no later than 4:00 p.m. on the first business day thereafter.

(Sample Standard Form for Bail Bonds)

BAIL BOND

(Name of Surety)

(Name of Surety)
(Address)
(Telephone Number)

CIRCUIT OR DISTRICT COURT OF THE STATE OF HAWAII

Police Rep. Nos. _____

Criminal No. _____

VOID

DEFENDANT _____, having been admitted to bail and ordered to appear in court in the State of Hawaii.

KNOW ALL MEN BY THESE PRESENTS:

THAT THE UNDERSIGNED SURETY, OR SURETIES, AS SURETY, HEREBY UNDERTAKE THAT THE SAID DEFENDANT WILL APPEAR AND ANSWER ALL CHARGES MENTIONED IN WHATEVER COURT IT MAY BE PROSECUTED WITHIN THE STATE OF HAWAII, AND WILL AT ALL TIMES BE AMENABLE TO THE ORDERS AND PROCESS OF THE COURT, AND, IF CONVICTED, WILL APPEAR FOR JUDGMENT, AND RENDER SELF IN EXECUTION THEREOF, OR FAILING TO PERFORM EITHER OF THESE CONDITIONS WILL PAY TO THE STATE OF HAWAII, AS PROVIDED IN SECTION 804-51 HAWAII REVISED STATUTES

THE SUM OF _____ dollars (\$ _____).

BOND VALID ONLY FOR THOSE CHARGES LISTED UNDER THE ABOVE REPORT AND OR CRIMINAL NUMBERS AS OF THE DATE STATED HEREIN. BOND IS CANCELLED AND SURETY EXONERATED UPON SENTENCING, DAG PLEA, OR DISMISSAL.

DATED THIS _____ DAY OF _____ 19 ____.

BY: _____

Regular Session of 2008

House Judiciary Committee,

Tuesday, March 11, 2008, 2:00 P.M. Conference Room 325

*Senate Bill 1961 SD1

Oral Testimony in Support of SB1961 SD1

Presented by: James Waldron Lindblad.

A-1 Bail Bonds

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I am here today in support of SB 1961 SD1 because I believe reform is needed in the court's bail bond process. Presently in many instances, there is a long delay in the release process for those persons already determined eligible for release by the court of up to three days over long weekends because the courts are closed and there is no person in authority available to accept bail for persons who are incarcerated at OCCC and MCCC. Further, there is no means for any individual who is on their own and has the money or credit card with them to bail themselves out of OCCC or MCCC even if they have the cash. We have courts throughout the islands but they are closed on the weekends and when they are open during the week, the district courts will not accept bail for each other and the circuit court and district courts on Oahu have no reciprocity or one-stop-drop agreements. It is easier to file a bail bond on Oahu for use on an outer island matter making use of, **Rule 2.1. EX OFFICIO FILING**, than to make bail bond filings on the same island from district to circuit or from district to district of Kapolei to Wahiwa, Kaneohe, Ewa or Honolulu district courts. We need a one-stop-drop on each island to speed up the bail release process and SB 1961 SD1 attempts to achieve this in some ways.

Further, there are no collection efforts that I know of regarding bail forfeiture, no means to fix innocent error, mistakes or late appearances and no uniform surrender policy including a lack of a uniform and predictable NCIC entry policy by the prosecutors for those persons who do jump

bail. We, the bail agents pay all costs associated with failure to appear pursuant to HRS 804-62, so, why would a state court prosecutor delay or forget to enter NCIC on all failure to appear cases. Our attorney general enters NCIC in every single instance of failure to appear. If the courts want bail agents to bring in bail jumpers we need warrants that are valid inter-island and interstate. This should go without saying. The bail agents require NCIC or warrant entry to accomplish the task of retrieving bail jumpers. This is especially true since 9-11-01 and restricted travel.

The primary reason I am here today is to let the legislature know that much of the delay in the bail release process can be tracked to a new form called the BRF form that was created and put forth by the judiciary, purportedly as a simple replacement for a common bail receipt. However, this new BRF form that was suppose to be only a receipt or a replacement receipt has somehow morphed into two separate long and complex bail bond contracts requiring two signatures that are both confusing and difficult for everyone involved to process and cause much delay in the release process because no person in authority is willing to retrieve signatures from defendants in custody at DPS. The work around is to write in "N/A" in the signature line most of the time. Interestingly, the First Circuit felony and family courts do not make use of the form at all but every other court, and the police agencies statewide have attempted to sort out compliance for two years now and the result is delayed release. I have spent two years attempting to communicate with someone in authority to speed up the delays in the release process without success and now seek legislative relief.

The court's own rules require the legislature to guide the judiciary in matters relating to bail.
(Rule 26 PP)

A best case scenario would be a one-stop-drop for all bail transactions or at least by circuit. Use of reciprocity, one-stop-drop, no bounce and Ex-Oficio filings would go a long ways to insure prompt release as seems to already be required by statutes. (HRS 804-7)

In other words the legislature must tell the judiciary how to collect and process bail release, how to surrender bail and how to collect on bail forfeitures. SB1961 SD 1 attempts to do this.

LATE TESTIMONY

March 11 2008

House of Representatives
Attn: Representative Tommy Waters – House Judiciary Chair
State Capital, 415 S. Beretania St., Room 302
Honolulu HI 96813
Via email: repwaters@capitol.hawaii.gov

Testimony in Support of SB 1961 SD1

Dear Representative Waters,

My name is Beth Chapman. I am testifying in favor of this bill relating to bail. I own a bail agency in Honolulu. I have been a licensed bail agent for eighteen years.

I asked that this bill be drafted in an effort to standardize the bail procedures in Hawaii, and clean up abuses in the system and assist in the timely payment and collection of bond forfeiture judgments. This bill contains many items that are very restrictive for the bail bonding industry. The bill was drafted using the prohibitions and provisions already in place in many other states.

The bill will fix or improve the following problems:

- Uniformity in licensing is non-existent.
- Currently there is no due process under the law regarding show cause notices on bail forfeitures advising the bail agent that the defendant has failed to appear.
- There is no notice to the Surety Company (Insurance Company) to advise them that there has been bail forfeiture, thus no effective mechanism to track their agents.
- There is no notice to the agent or surety company demanding payment for a bond that has been forfeited.
- There are no standard procedures for writing bonds, and delivering them to the detention facilities.
- There are no standard procedures for surrendering defendants.
- There currently are attorney's who are also licensed as bail agents, who are making "professional visits" to defendants, soliciting business and gaining access to their private jail files that are not open to the public, or other properly licensed bail agents, thus promoting an unfair advantage. Also, having attorneys licensed in this profession will cause a major conflict of interest between the defendant and his lawyer. Will the bail agent (lawyer) turn his confidential privileged client files over to his bounty hunter if the defendant fails to appear? (Now giving the confidential client information that you gained as a lawyer to a third party to affect the capture of your client. This practice is absurd)
- One attorney has a \$100,000 unpaid forfeiture with the State of Hawaii, cannot find the defendant, yet he is still writing bail. This defendant has been on the run for more than a year, causing the prosecutor's case to grow stale.
- This brings up the point; we had a prosecutor do a search for unpaid forfeitures. It turns out that all the licensed bail agents have unpaid forfeitures. None as high as the previously mentioned attorney. Even I have unpaid forfeitures totaling approx \$21,250, and the courts have no way to enforce collection. I have left these unpaid until I could come before this committee to show that there is no system in place to collect forfeitures. (I will pay these forfeitures) There is no way for due-process. Since there is no consistency in the forfeiture procedures, there is no consistency in the collection procedures.

- With the new "Board" system all of these problems will stop, as agents and courts are accountable to follow a system for uniform forfeiture and collection procedures.
- The DCCA (Division of Insurance) has no rules for enforcing these fundamental issues regarding bail because there are no statutes that deal with these issues, therefore passage of this bill is critical.
- It would be hard to imagine any responsible licensed bail agent to be against this bill, because it promotes accountability in an industry that is affecting the release of accused criminals from jail.

I have spent a great deal of time and effort to get this bill before you, as it is my heartfelt desire to improve this industry. This industry deals with releasing potentially dangerous criminals back into the community, and we must take the responsibilities that it entails very seriously.

Sincerely,

Beth Chapman