

SB2534

SD1

Professional Bail Agents of Hawaii

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

Testimony to the Senate Committee on Judiciary and Government Operations
Senator Brian T. Taniguchi, Chair.
Senator Dwight Y. Takamine, Vice Chair.

Tuesday, February 23, 2010
10:00 a.m.
Conference Room 016
State Capitol

Testimony in favor of Senate Bill 2534 SD1, 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 SD1, 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 SD1, 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 SD1, 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.

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- * Allows licensed bail bond persons to bail defendants out at OCCC, after hours when the court is closed. For instance, evenings, weekends and holidays.
- * 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.
- * 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.
- * Provides that only licensed bail agents may present or deliver original bail bonds.

Please support SB 2534 SD1
James Waldron Lindblad

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Background & Additional Commentary:

Purpose: Senate Bill 2534 SD1, 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 SD1., 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 SD1., 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

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is open they close at 4:15 p.m. This delays release on bail.

4.) Senate Bill 2534 SD1, 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 SD1., 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.

5.) Senate Bill 2534 SD1 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

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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 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 SD1., is a valid attempt to remedy the OCCC., bail release issue.

Bail agents support Senate Bill 2534 SD1.

Thank you,

James Waldron Lindblad