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March 16, 2010

Representative Jon Riki Karamatsu, Chair  
Representative Ken Ito, Vice Chair  
Committee on the Judiciary  
Hawaii State House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: Testimony Of Brook Hart  
In Favor Of S.B. No. 2534, S.D. 2

Dear Representative Karamatsu and Representative Ito:

I am a criminal defense attorney in Hawaii who frequently deals with bail matters. The following is my written testimony in favor of S.B. No. 2534, S.D. 2, for the hearing on March 16th, 2010, in Conference Room 325 of the State Capitol.

Rule 56 of the Hawaii Rules of Penal Procedure states that all courts "shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders." The constitutional right to bail should not be contingent upon the particular day, time of day, or place of detention. In most mainland jurisdictions

and on the Big Island, bail is available at all times. Furthermore, the constitutional guarantee of equal protection under the law should prohibit persons in police and sheriff's custody from being given special bail preference over persons held at OCCC, MCCC and KCCC.

Bail agents support SB 2534 SD2, because it 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.

SB 2534 SD2 produces the following benefits: (a) it allows people in custody at OCCC, MCCC and KCCC to bail themselves out on cash bail (which currently cannot be accomplished without third party assistance in filing the bail at the court and then taking the bail receipt to the correctional facility); (b) it enables licensed bail agents to bail defendants out of OCCC, MCCC and KCCC when court is closed on evenings, weekends, holidays and furlough days; (c) it allows licensed bail agents to bail out people in police or

sheriff's custody even when court is open, without the need to first go to the court to file the bail bond; (d) it maintains the provision allowing bail agents to pre-file the bail bond at court for defendants self-surrendering at Halawa Jail Booking for re-booking; (e) it provides that only licensed bail agents may present or deliver original bail bonds; and (f) it saves the State time and money by eliminating housing, food and transportation costs of those persons released on bail rather than remaining in custody.