

SB 2534

Measure Title:
Relating To Bail.

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

CLAYTON A. FRANK
DIRECTOR

DAVID F. FESTERLING
Deputy Director
Administration

TOMMY JOHNSON
Deputy Director
Corrections

JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 2534
RELATING TO BAIL

by
Clayton A. Frank, Director
Department of Public Safety

Senate Committee on Public Safety and Military Affairs
Senator Will Espero, Chair
Senator Robert Bunda, Vice Chair

Tuesday, February 2, 2010; 1:25PM
State Capitol, Conference Room 229

Senator Espero, Senator Bunda, and Members of the Committee:

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

Therefore, PSD strongly opposes SB 2534 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.

**Testimony of the Office of the Public Defender
State of Hawaii
to the Senate Committee on Public Safety
and Military Affairs**

February 2, 2010

S.B. No. 2534: RELATING TO BAIL

Chair Espero and Members of the Committee:

We support S.B. No. 2534. 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.

Testimony to the Senate Committee on Public Safety and Military Affairs

Senator Will Espero, Chair

Senator Robert Bunda, Vice Chair

Tuesday, February 02, 2010

1:25 p.m.

Conference Room 229

State Capitol

By, James Waldron Lindblad, Personal Testimony

Testimony in favor of Senate Bill 2534

Oral Presentation.

Bill No. and Title: Senate Bill 2534, Relating to Bail.

Purpose: Senate Bill 2534 requires or allows for all relevant law enforcement agencies to accept bail when ever the courts are closed, including Department of Public Safety, Corrections Division. (OCCC) This means defendants at OCCC will be able to bail out when the court is closed. The bill provides that persons held at OCCC can pay their own cash bail or bail bond at the OCCC facility including nights, weekends and holidays by use of cash, pre-filed bail bonds or original bail bonds delivered by licensed bail agents. The bill requires prompt release for those persons paying bail. This bill takes into account act 134, 2008, bail agent definition & licensing and several updates from Judicial Admin Order 2.1, regarding court directives on accepting bail and emphasizes specifically from whom original bail bonds may be accepted, thus, prohibiting unlicensed activity.

Bail Agent's Position: Bail agents support Senate Bill 2534 because the bill adds clarity, uniformity and predictability to the bail release process for cash bail and for bail bonds and will help ensure prompt release for those persons whose bail has already been set by the court whenever bail is offered and accepted.

The right to bail, just as all rights, should not be contingent upon the time of day or the place of detention. Bail should be accepted universally at all law enforcement agencies

holding pre-trial defendants 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.

Senate Bill 2534 accomplishes the following.

* Allows persons in custody of OCCC (defendants) to bail themselves out on cash bail. Presently, this task cannot be accomplished without a third party assistance in filing the bail at the court first and then taking the receipt back to OCCC.

* 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, 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.

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

Please support SB 2534.

Oral testimony provided by: James Waldron Lindblad, 808 522 1960: www.808bail.com

Testimony to the Senate Committee on Public Safety and Military Affairs

Senator Will Espero, Chair

Senator Robert Bunda, Vice Chair

Tuesday, February 02, 2010

1:25 p.m.

Conference Room 229

State Capitol

Presented by, James Waldron Lindblad, Professional Bail Agent

Testimony in Favor of Senate Bill 2534, Relating to 24 hour Bail Release and From Whom Bail May be Accepted.

Bill No. and Title: Senate Bill 2534, Relating to Bail

Purpose: Presently those persons held in pretrial custody at Oahu Community Corrections Center can bail out only when the court is open and only if someone else, a third party or bail agent files the bail at the court. No Community Corrections Facility accepts bail from any person directly. This causes long delays in the bail release process over weekends and holidays because the courts are closed. Senate Bill 2534 fixes the problem of delayed bail release during the night & weekend hours for pretrial inmates held by the Department of Public Safety Correction Division, O.C.C.C., and M.C.C.C., & K.C.C.C., that want to pay bail by allowing bail to be collected directly at the facility.

Senate Bill 2534 provides for normal 24/7 bail release statewide for pretrial defendants in a manner that is similar to most police departments in Hawaii and

other pretrial holding facilities nationwide. Senate Bill 2534 also speeds release for those persons already in Police or Sheriff custody during daytime hours by providing uniform guidelines for police and sheriffs to accept original bail bonds from licensed bail agents without the need to first file the bail bond at court. Senate Bill 2534 accomplishes unification of day time and night time bail bond release by mirroring daytime release procedures with the same tested after hour bail bond release procedure as is presently utilized by most police and sheriffs statewide for defendants in their custody who are released on bail bonds during the weekend & evening hours. In other words, Senate Bill 2534 in addition to providing a bail release mechanism for those persons in the custody of the Department of Public Safety holding facilities daytime release will now be consistent with the same procedures used for after hour bail release at the police departments thus making one uniform predictable bail release process statewide for all persons and all relevant law enforcement agencies including Department of Public Safety Corrections Division in order to effect bail bond release at locations like O.C.C.C., M.C.C.C., & K.C.C.C. This uniform process for bail release should also assist state sheriffs and others who book defendants during the day time hours at Halawa Jail, which now requires bail agents to make an extra trip to the court house when it is open to file the bail bond.

Senate Bill 2534 takes corrective action by setting workable and tested guidelines that require all law enforcement agencies including corrections staff at Oahu Community Correction Center (O.C.C.C.,) that hold or house pretrial defendants whose bail has already been set by the court to accept cash bail, certified copies of pre-filed bail bonds from anyone, and original bail bonds from only licensed bail agents at all times including when the court is closed, nights, weekends, furloughs and holidays. The bill specifies from whom bail may be accepted. The bill requires prompt release after acceptance of bail.

Senate Bill 2534 corrects the deficiency of defendants not being able to pay their own bail over long weekends, nights and holidays if held in custody at a Community Corrections holding facility like O.C.C.C., or M.C.C.C., and importantly allows defendants a means to pay their own bail. The bill also provides a uniform procedure for filing cash bail or bail bonds directly with the holding facility, the results being to improve the booking and bail release procedures by providing one efficient and uniform procedure statewide to file bail.

Senate Bill 2534 will speed release for those persons wanting to post bail and will prevent needless delays by incorporating one clear concise and improved means to pay bail statewide for all courts, police and corrections staff to be guided by. These defendants will post bail anyway so why make so many wait overnight, over the weekend and over long three day holiday and furlough days for the courts to open?

This bill takes into account the new act 134, 2008 bail agent licensing definition and several updates of Judicial Admin Order 2.1, regarding the court directives on accepting bail and the failures within the Department of Public Safety and the Judiciary to implement a means for defendants to pay bail after hours when the court is closed once held in custody at O.C.C.C., or M.C.C.C.

Senate bill 2534 also addresses the Honolulu District Court's failure to provide any sort of reciprocity or *one-stop-drop*, regarding accepting bail for any other district court division like Ewa Court or Kaneohe Court and the very difficult Honolulu District Court policy of requiring persons paying bail to call the Oahu Community Correction Center as a condition of paying bail while at the court house cash bail window and then needing to complete the task of determining police report numbers, charges and bail amounts for the clerks at the court who take bail so they can complete a form called the BRF form that even requires the difficult to obtain defendant's social security number. This task must be accomplished by laypersons and relatives on a

cell phone while standing in the courthouse hallway. (see information for posting bail sheet provided by Honolulu District Court attached)

Senate bill 2534 will bring about uniformity and predictability by standardizing the way bail is paid statewide and how bail is paid during hours the court is both closed and open. Presently, bail bonds must be filed at the court during daytime hours but cash bail is accepted by police and sheriff staff directly. Police will accept original bail bonds from licensed bail bond agents only after 4:00 p.m., when the court is closed. Going back and forth from the court to the facility during daytime hours requires at least twice as much time and delays release needlessly.

Bail Agent's Position:

Bail agents support Senate Bill 2534 because the bill adds clarity to the bail release process for cash bail and for bail bonds and will help ensure prompt release for those persons whose bail has already been set by the court whenever bail is offered and accepted. This will be especially true for those persons held in custody at the Community Correction facilities statewide over weekends and holidays.

It seems logical that persons should be able to pay bail to the law enforcement agency or correction facility holding them in custody and Senate Bill 2534 tells all persons how to accomplish this task. There are of course, other workarounds to speeding up the release process but normally the law enforcement agency holding the defendant in custody should always be able to accept the bail. We have found no other jurisdiction nationwide where the holding facility cannot accept bail. A 24 hour bond clerk, employed by the courts to accept bail statewide and then teletype or fax release authorization to holding facilities is another option but we like Senate Bill 2534 and the easy straight forward approach to speeding up release because it saves money right now without incurring added costs. We know this because O.C.C.C., accepted bail directly prior to 1987 with good results.

Background:

Presently, any defendant held at O.C.C.C., or M.C.C.C., cannot bail out on their own because someone needs to take the bail money or bail bond to the court and file it first and then go back to O.C.C.C. This is the same long process on Maui and Kauai. Unbelievably, defendants cannot pay bail themselves even if they have the money because they cannot travel from O.C.C.C., back to the courts to pay the bail themselves and presently there is no means to pay bail directly at O.C.C.C., which is where most persons needing bail are housed.

This means that if a defendant has bail set at \$150.00 and does not pay the bail at court or the police station and is later transferred to any corrections holding facility like O.C.C.C. or M.C.C.C., that person is stuck period. The defendant cannot even pay his own bail at his next court date because corrections staff take his money and property when processed into the facility and even if the defendant still had the money the court itself provides no means to pay the bail once a person has been processed at a correction facility. The only means is asking a friend, relative or bail agent to pay the bail for them at the court and then take the receipt to the facility and this is an all day task at best.

Solution:

Senate Bill 2534 provides clarity in the taking of bail for all concerned and clarifies the bail release process of a defendant by telling law enforcement agencies and O.C.C.C., they have authority to accept bail. Presently, agencies that set bail may accept bail and that means only the court and the police have authority to release persons by accepting bail. There is no current statutory provision for the corrections division at any Department of Public Safety Community Corrections holding facility to accept bail.

Presently O.C.C.C., cannot accept bail directly. SB 2534 corrects this.

All persons held at O.C.C.C., must pay their bail at the court and the courts are closed after hours, holidays and weekends.

Further History and Background:

The problem of bail release from O.C.C.C., has been brewing since at least March 7, 1986, but only recently resurfaced we think, due to a new interpretation of the definition of bail under our statutes and also use of a new and irregular receipt form called the BRF form by certain courts, like Honolulu District Court. Around 1987 the legislature changed the definition of the word bail, we think, by accident as there are no committee notes on the subject and the problem of delayed release for those in O.C.C.C. custody has only recently been spotlighted again due to the use of the new court receipt form call the BRF or bail release form which was suppose to only replace the police bail receipt and the resulting consequences of sheriff and police not wanting to accept bail for those persons held by DPS Corrections Division.

Each circuit interprets use of the new BRF form differently and First Circuit Criminal and Family Court Divisions have not adopted use of the BRF form, due in part to the difficulty in making use of the form and determining how to complete the form.

Until recently, the sheriff was accepting bail after hours for O.C.C.C., and Maui Police accepted bail for Maui Correction facility pretrial defendants but the sheriff division will no longer accept bail for any persons not in their direct custody and Maui Police will no longer accept bail for persons not in their direct custody.

Further, the District Courts in Honolulu interpret the bail release process differently than the circuit courts by requiring use of the very specific bail release form called the BRF form and also require all bail to be filed at the specific court division, thus making release on bail for those persons held at O.C.C.C., and M.C.C.C., almost impossible because the person paying the bail needs to go to each individual court to pay the warrant to ensure a person's release once at O.C.C.C. In other words, there is no central location to pay bail. Everything is determined by the location of the court that set the bail. Release is always delayed, because courts are closed nights, weekends, holidays and furlough days, but even during daytime hours the posting of bail at Honolulu District Court, Ewa Court and Kaneohe Court can take all day. Delays are caused in part by the complexity in determining exactly what court to pay bail at and if bail needs to be paid at Honolulu District Court the complexity of the BRF form and the required information like the defendant's SSI Number, & charges & various bail amounts needing to be provided by the person paying the bail. It seems obvious the person or agency accepting the bail should complete the bail release form but presently this is not the case.

By long tradition the sheriff has accepted bail but the sheriff will not accept bail for persons held by the DPS Corrections Division. Honolulu police will not accept bail for anyone not in their direct custody.

Judicial Admin Order 2.1 has made several attempts to address the bail release situation but Admin Order 2.1 has not been interpreted by all law enforcement agencies in the same way. For instance, Hilo police accept bail for H.C.C.C., pretrial inmates when the court is closed but Honolulu, Maui and Lihue police will accept bail only for those in their direct custody, thus limiting release for any person held at Oahu Prison, Maui Corrections or Lihue Corrections to hours when the court is open. At one point we even had non-licensed persons participating in the bail bond process who would sell, solicit and negotiate bail bond sales and deliver bond policies due to

lack of clarity in Admin Order 2.1, and that issue took some time to correct. Senate bill 2534 corrects this inequity by clearly stating from whom bail bonds may be accepted.

Further, on Oahu the district court does not know why persons held on bail set by any district court are held at O.C.C.C., and District Court staff rely on O.C.C.C.'s module five staff and records staff, to tell them why the defendant is in their custody. This is backwards and this fact makes paying bail for any district court case very difficult and time consuming. Where have you ever paid money and then needed to complete your own receipt to take delivery? The District Court now even hands a piece of paper with telephone numbers on it to person wishing to pay bail for friends or relatives held at Oahu Prison and then report back to the cash bail window. This means the person paying bail must stand in the hallway with a cell phone and call O.C.C.C. to tell district court staff how to accept the bail. District Court staff even requires the social security number of the defendant and requires the person paying the bail to complete the bail release form which is supposed to be only a court receipt. Have you ever tried to fill out someone else's receipt? How can you obtain another's SSI number? This issue needs clarity and delays release and we think Senate bill 2534 fixes this deficiency by allowing O.C.C.C., and M.C.C.C. to collect the bail.

Conclusion:

Under Senate Bill 2534, the defendant themselves or the person paying the bail can do so directly at the facility where the defendant is located and where all the information on the bail is located.

We, the bail agents of Hawaii think Senate Bill 2534 clarifies the duties and responsibilities of all concerned and benefits everyone by bringing about uniformity and predictability among all relevant agencies in the bail release process.

Bail agents support Senate Bill 2534.

Submitted by:

James Waldron Lindblad
Professional Bail Agent

Contact information:
James Waldron Lindblad
550 Halekauwila Street # 303
Honolulu, HI 96813
Phone: 808 780-8887 Cell
Fax: 808 522-1960
Web: www.808bail.com

Below is the form Honolulu District Court cash bail window requires all persons paying bail to complete. This requires telephoning O.C.C.C.

INFORMATION FOR POSTING BAIL

Call Oahu Community Correctional Center (OCCC): 832-1552, 832-1553 or 832-1469

Name of OCCC Detainee: Mr. J. C. 5

HND # (Case #): <u>872-41370</u> Violation Section: <u>11-1114</u> Bail Amount: \$ <u>4,500.00</u> Court Date: <u>4/24/24</u> Location & Time: <u>2c</u>	H29 # (Case #): Violation Section: Bail Amount: \$ Court Date: Location & Time:	H29 # (Case #): Violation Section: Bail Amount: \$ Court Date: Location & Time:
H29 # (Case #): Violation Section: Bail Amount: \$ Court Date: Location & Time:	H29 # (Case #): Violation Section: Bail Amount: \$ Court Date: Location & Time:	H29 # (Case #): Violation Section: Bail Amount: \$ Court Date: Location & Time: