



# Insurance Department

State of Utah

GARY R. HERBERT  
Governor  
SPENCER J. COX  
Lieutenant Governor  
TODD E. KISER  
Commissioner

## Bail Bond Surety Oversight Board Meeting

(<https://insurance.utah.gov/licensee/other/bail-bond/board>)

**Date:** **October 11, 2017**

**Time:** **Noon**

**Place:** East Building, Copper Room

### BOARD MEMBERS

xClay Carlos (Chair)	xDominic Sanone
xRyan Cooper (Co-Chair)	xTony Choate
xLt. Kati Booth	xCurt Oda
Stephen Aina	xBrett Barratt (Non-Voting)

### DEPARTMENT STAFF

Todd Kiser, <i>Ins. Commissioner</i>	Suzette Green-Wright, <i>MC Director</i>	xCathy Burton, <i>Examiner</i>
xPerri Babalis, <i>AG Counsel</i>	xSteve Gooch, <i>PIO Recorder</i>	

### PUBLIC

JL Webber	Krystina Banks	Mike Baucum
Tiffanie Baucum	Jim Clark	Dyon Flannery
Wayne Carlos	Bert Christenson	Brad Jenkins

## MINUTES — Approved

- **General Session (Open to the Public)**
  - Welcome / Clay Carlos, Chair (12:02 pm)
  - Swear in new board member / Cathy
    - Curt Oda
      - Brett notes that Curt was a Utah State Representative for 12 years, and he worked on several bail issues during his tenure. He thanks Curt on behalf of Commissioner Kiser for agreeing to serve on the Bail Bond Surety Oversight Board.
  - Adoption of Minutes for July 12, 2017 meeting
    - **Motion by Dominic to adopt minutes. Seconded by Ryan. Motion passes 6-0.**
- **Executive Session - If Needed (Closed to the Public)**
- **General Session (Open to the Public)**
  - **Approve Recommended Actions from Executive Session** – Not needed
  - **Licensing Report for July through September** / Cathy
    - August and September had no reinstated licenses, but there are a lot of lapses. Agencies are sent notice by email when an agent's license lapses. Agencies need to make sure their agents are licensed, and the agents need to make sure too.
  - **Summary of Enforcement Reports** / Cathy
    - Agency Audit Update / Cathy
      - Two audits were finished and 7 are still being worked but should be finished soon. Clay asks if her intent is to restart as soon as she finishes. Cathy says yes. New

agencies that haven't been audited are first on the list. It takes approximately a year to get through a cycle.

- Dominic asks if Cathy notifies agencies when audits are completed. Cathy says yes. If they're in compliance, they will get an audit findings report that lists everything she checked. When an agency audit is requested, the request includes a list of items that need to be reviewed. Cathy then explains how the findings fit in the rules or code and whether everything is in order or if there are problems.
- Enforcement / Cathy
  - There were several designation issues that were opened and resolved. There were several failure to pay judgements. Usually those are taken care of quickly after Cathy notifies the agency. Sometimes they can take a few extra days, but that's usually because it happens over a weekend or there's a negotiation with the court.
  - There's still 2 cases in progress; 3 were closed on July 5.
- Proposed Penalties for Board's Review: None
- **New Business**
  - Surety insure overview & bail reform / JL Webber
    - JL is a bail account manager for Bail USA. He oversees the Rocky Mountain region, plus Louisiana and Missouri. He manages all bail agents that work for the company in those states. Bail USA does not recruit new agents, but people come to them for appointments. He does background checks and vetting when agents are appointed.
    - Bail USA is active in the battle for bail reform that is raging across the country. As of January 2017, New Jersey no longer has surety bail and they're now lamenting how expensive it is to not have bail.
    - Colorado is a highly regulated state with lots of restrictions. He initially fought the restrictions, but now the bail industry is healthy as a result of the restrictions. His problems in Colorado have been reduced by 80% in the last few years after they went into effect because everyone knows how they're expected to operate.
    - JL makes contact with the insurance departments in the states he operates and asks them to let him know when there's an issue with an agent. Then he can work to address it.
    - Dyon Flannery asks what Utah agencies are licensed under Bail USA. JL says currently it's only Ape Bail Bonds. He had appointed and vetted another agency a few months ago, but then fired them about a month later.
    - Wayne Carlos asks how JL's experience with Utah is so far. JL says it's a tight ship, but he only works with one agency.
    - Wayne asks what happened when New Jersey eliminated surety bail — did all the agents go out of business? JL says he doesn't know because New Jersey isn't one of his territories, but he has no doubt that the bail industry will come back there. It's too expensive to operate otherwise.
    - In Colorado, pretrial release has been rolling out county by county, rather than with a law abolishing bail like New Jersey did. In Colorado, pretrial is either regulated by the jail or an independent company that charges administrative fees to the county. Mesa County, CO was one of the first pretrial counties and they got government grants to pay for it. But over the past few years those grants ended and they discovered that it's very expensive to operate. JL has heard that they have now closed their useful public service (UPS) unit. The Bail USA agents that weathered the storm

and interacted with pretrial release and gained a positive reputation with the courts are now reaping the benefits. Tony asks how long pretrial lasted in Mesa County. JL says about 6-7 years.

- Wayne asks about the bail population pre- and post-pretrial in Colorado. JL says there were no more than a few hundred agents before pretrial, and now there are only a couple hundred. He's lost half a dozen agents and agencies in the past year.
- JL says he doesn't know how pretrial gains a foothold, but the selling point is helping to empty jails.
- Wayne asks about the increased costs after pretrial. JL says he doesn't have the figures, but he knows that Pueblo County went to pretrial release and had a private company called Rocky Mountain Offender Management Systems (RMOMS) administer their program. It started in August 2015 and they needed \$500,000 to administer it from August to the end of the year. The sheriff monitored defendants in the Pueblo felony court system for the recidivism rate of offenders released on pretrial. They looked at 100 randomly selected people and found that 48% were remanded back into custody for violations.
- Curt asks if JL has information he can share with the board. JL says he will send it to Cathy who can get it to the board.
- Clay says there are 200,000 active warrants in Utah as of last year. JL says he has agents in some states that have that many on their own.
- JL says pretrial is sold on the belief that poor people who can't pay a bail agent shouldn't languish in jail. Most rational people would agree with that. But when you look at the nuts and bolts of the actual operation of the pretrial assessment tool, it's a fallacy.
- JL tells a story of a kid in New Orleans who was released on pretrial and then a few months later shot 25 people in the French Quarter. The pretrial assessment goes from 1-25, and this kid scored a 4. Ted Bundy was a 6. The tool is flawed and it's partly on who is administering the tool. In Pueblo County they hire college schools to administer the tests. Tony and Clay note that the assessment is totally computer based in Utah.
- Dyon says one of the problems we're having in Utah is not knowing how implementation will happen. We know it will be implemented statewide in November, but no specifics.
- JL says pretrial release has a place in common-sense bail reform especially for truly minor offenders, like for first or second offense low-class misdemeanor, etc.
- Clay says bail is a form of insurance. He needs the \$500 guy who will go to court to pay for the \$5,000 guy who won't go to court. More participation in the pool keeps it affordable and keeps it running. Pushing off the safe people and only leave bail bonds with high risk, the costs will go higher and that will spiral the problems faced by the bail industry.
- Curt notes that bail is more like a line of credit than insurance — it's a financial guarantee. You go after a bail skip because you're on the hook for it. Clay says there's no legal requirement for a bail customer to pay the bail agent back.
- JL notes that the National Bail Agents Association and the American Bail Coalition are actively doing things to fight pretrial release. One of the problems with the bail industry is that the public doesn't know the first thing about bail. They know what

bail is and that's about it. JL was in law enforcement for 40 years, and he only knew that bail agents got people out of jail. Dyon says in Utah we're all about second chances, and that's how pretrial was sold here.

- JL says almost no matter where you look, it costs more to go through the no-charge release process than what it would cost to have a bail agent do it. Here are some places that have defendants who request a bail bondsman, but the jail won't let them. They make them use pretrial.
- Brad Jenkins says the public isn't informed and it will affect them in their taxes and the consequence is that these people are getting back out on the street. If they understood the danger to society and the costs, they would never back pretrial. JL notes that a lot of these people are career criminals who don't have a job other than selling drugs or stolen goods.
- Wayne asks what position law enforcement has on pretrial. JL says many of them don't like it because it increases their job load. They had taken these people off the street, but as soon as they get back out they're back to business as usual. It's a losing proposition.
- DISCUSSION SUSPENDED 20 MINUTES TO HEAR FROM SEN. ADAMS.
- Dyon says a lot of times, the data regarding bail enforcement rates looks wrong because offenders are often being picked up for other crimes. If they're caught committing a crime when they're picked up, law enforcement gets involved because they have to add charges. She estimates that 9 times out of 10 there are drugs involved. That brings their rates down because law enforcement gets credit for the arrest. Kati asks if bond agents show the revoked bond. Dyon says yes, but a lot of times it isn't counted as exonerated.
- JL says there are two active bail associations: American Bail Coalition and National Bail Agents Association. Pretrial is a nationwide dilemma. Eventually, bail will win out because accountable bail is the only thing that works, and it has worked for hundreds of years. If agents can weather the storm, they'll be OK.
- Brad says the hope is that pointing out a disaster in another state will help Utah avoid the same pitfalls.
- JL says an uneducated general public is a huge issue. The problem is how to educate people about bail and explain that pretrial is going to cost taxpayers more money.
- JL thinks the reason there hasn't been a blanket abolition of bail in Utah and other western states is because we have tiny counties that are sparsely populated and could not begin to afford the system.
- Dyon says bail agents see the mistakes that other states have made, and the agents just want to be involved in discussions about the process. They're happy to make changes.
- Changes made to SB 167 / Sen. Stuart Adams
  - Sen. Adams says SB 167 was written because of problems with cash bonds. Wayne notes that in certain districts, the judges would establish cash bail at a lower amount and bail bonds in a higher amount, then give the defendant a choice of which to do. From a constitutional point of view, bail should be offered and in his view it should be equal.
  - Sen. Adams says bail is constitutional and the forefathers believed in a balanced system with checks and balances. If a judge sets cash bail and receives it, it's OK if it's used for restitution and things like that, but if it's used for court fees and services,

that violates the balance of power. It could be a conflict of interest if the bail is used for services within the judge's operation.

- SB 167 simply requires judges to set bail in the same amount whether it's cash or otherwise. Sen. Adams has heard rumors that judges are ignoring the bill because they don't believe in the balance of power. Most judges are elected on a yes/no basis, while legislators have to face their constituents. Judges don't see the constituent perspective like legislators can.
- Clay asks if Utah County is still passing low cash bail. Dyon says yes. She's had inmates who have a \$5,000 bond, so she starts calling the family and going through the process, but then they'll call a few hours later saying the judge changed it to \$350 cash only and gotten rid of the bondable amount. Brad says a lot of times this is done in court in front of the judge. Sen. Adams says that would be a violation, because the \$350 should also be bondable.
- Sen. Adams says when cities lack money, sometimes they'll increase impact fees rather than raising taxes. If someone fails to appear on a bond, bail agents have the responsibility to deliver the person; if it's a cash bail, the taxpayer has responsibility to get them to court. He takes exception to the idea that judges think they are all knowing and can't run through a process of convincing the legislature what's right.
- Dyon says it's concerning that the industry ran the bill, but the judges say the language leaves it open to interpretation. Wayne says they claim the bill needs more definition.
- Kati says uniform bail is set at the time of booking, but arraignment and bail hearing is for setting bail. The judge has the ability to reduce or increase the bail at arraignment. Dyon says they change bail during incarceration and it's the on-call judge changing the bail. Kati says judges have the ability to change bail once probable cause is read. She notes that the probable cause window is 24 hours.
- Sen. Adams says he needs documented information about who's ignoring the legislation so the legislature can address it. If they're changing the amount, that's allowable, but if there are discrepancies between the bond and cash amounts, that's a problem.
- Curt tells Sen. Adams that there are 200,000 outstanding warrants in Utah. Brett asks why that is. Clay says it's usually because there's no mechanism to seek the warrant. Once the warrant is placed, it sits in the database until someone is found. A lot of times, people are arrested on a warrant when they're caught doing another crime. If they were bonded, they would have a cosigner who may have intervened to keep them out of trouble. Curt says the courts should be held accountable for not following up.
- **Old Business**
- **Other Business**
  - Brett thanks Cathy for a good agenda. He notes that she's been working hard for the past two years to get good speakers. He invites people to recommend speakers and agenda topics for the future.
- **Adjourned** (1:36 pm)
  - **Motion by Kati to adjourn. Seconded by Ryan. Motion passes 6-0.**
- **Next Meeting:** **January 10, 2018** — Copper Room, East Building

**2017 Meetings** (Noon to 1:30pm)

<del>Jan 11, 2017</del>	<del>Apr 12, 2017</del>	<del>July 12, 2017</del>	Oct 11, 2017
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