



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: April 11, 2018

Time: Noon

Place: East Building, Copper Room

BOARD MEMBERS

xClay Carlos (Chair)
xRyan Cooper (Co-Chair)
xLt. Kati Booth
Stephen Aina

xDominic Sanone
xTony Choate
xCurt Oda
Vacant (Non-Voting)

DEPARTMENT STAFF

xTodd Kiser, *Ins. Commissioner*
xSuzette Green-Wright, *MC Director*
Tracy Klausmeier, *P&C Director*

Tanji Nothrup, *Deputy Comm.*
xCathy Burton, *Examiner*
xSteve Gooch, *PIO Recorder*

xReed Stringham, *Deputy Comm.*
Perri Babalis, *AG Counsel*

PUBLIC

Dyon Flannery
Wayne Carlos

Ali Jensen
Jacey Skinner

Craig Crawford

MINUTES — Approved

- **General Session (Open to the Public)**
 - Welcome / Clay Carlos, Chair (12:08 pm)
 - Adoption of Minutes for April 11, 2018 meeting
 - **Motion by Dominic to adopt minutes. Seconded by Ryan. No vote.**
 - Pretrial Risk Assessment status update / Jacey Skinner
 - Jacey is the deputy state court administrator, focusing on policy for the courts and working with the legislature and executive branch.
 - They are finalizing the automated probable cause system. Hopefully it will be done before the pretrial risk assessment tool. It will allow law enforcements to submit their probable cause statements to the jail and the judge in an automated system.
 - Ultimately the judge will have three documents in front of them — the probable cause statement, the pretrial risk assessment and the bail schedule — during the initial 24-hour period.
 - Dominic asks if the bail schedule is statewide or specific to the jurisdiction. Jacey says it's statewide and is published in Utah Code. Every year the Fine and Bail Committee meets to review legislation and determine the recommended bail schedule. Dominic clarifies that the judges can decide whether to follow that schedule or not. Jacey says that's correct.
 - Dyon Flannery asks if the information the judge gets will include both misdemeanors and felonies. Jacey says yes. Dyon asks if the start date is May 1 to implement the program

statewide. Jacey says yes. Some jails are still working on issues with their systems, but May 1 is the goal.

- Wayne Carlos asks if the 80% requirement has been removed from the contract. Jacey says yes. She says there was some misunderstanding about the 80%. The language said the courts would aspire to follow the recommendation in the lowest risk area 80% of the time — it wasn't a requirement. Jacey notes that sentencing guidelines are similar, in that the Sentencing Commission creates a recommendation for a standard case, then the judge weighs aggravating and mitigating factors to make a decision on sentencing. The discretion is always up to the judge. They are just trying to get them as much information as possible.
- Dyon asks if a person is released and fails to appear, how many times will that be allowed before they don't qualify for the PFA anymore. Jacey says the PFA is something that happens for every offender. The risk assessment makes a recommendation. If someone fails to appear, their risk will go up. Anytime their status or history changes, their risk will change. The judge ultimately makes the decision as to bail amount and everything else.
- Dyon asks how an automated system will know if the judge has already denied pretrial release. Jacey says it's an automated system, not an automated decision. It just generates information and the judge will ultimately make the call. She says bail commissioners can set bail on misdemeanors, and that won't change. If she was a defense counsel and her client had no history, she might advise her client to wait because the recommendation would probably be that the client be released on their own recognizance.
- Jacey notes that judges are required under rule, constitution and statute to set a bail amount within 24 hours. There is always a judge in every jurisdiction who is the signing judge all week long.
- Clay confirms that under no circumstances will the jail initiate what the pretrial suggests, meaning the jail won't release them. Jacey says that's correct. Kati says probable cause statements are sent right to the jail, which includes the uniform bail amount, but the judge either approves or denies. That's it.
- The process won't change at all. The process everyone knows will stay the same, other than the judges can do it more quickly and with more information about the person's history. Right now, judges don't know anything about a person's history.
- Tony asks if there are any charges that will not allow someone to be pretried. Jacey says it's not charge-based, it's risk-based. There's a table of offenses that are violence flag offenses, which will come up in the history.
- Dyon says from her perspective, they don't deal with many people who are first offenders. She thinks this will be a nightmare for repeat offenders. Jacey says that will be reflected in their risk score. Dyon says in other states it hasn't worked well and she hopes it will be better here. Jacey notes that in other states, they have implemented constitutional amendments and statutory changes to do away with bail. Utah is not doing that. Utah has not made any constitutional changes. This is the same tool other states have used, but Utah is using it in a different way.
- Tony says New Mexico uses the same tool that Utah is using, and their failure to appear rates have doubled. He asks if that gives Jacey any pause. Jacey says they implemented it differently. Dominic notes that New Mexico changed their constitution and now they're

working to change it back. Jacey says Utah isn't taking the giant step that other states have.

- Jacey is a former prosecutor and was director of the sentencing commission for a while. These are not new topics to her. She's is very sympathetic to the plight of the judge who is being asked to make a decision without enough information. Judges don't take these decisions lightly, especially when they don't have information. Clay says the PSA is guaranteed to release people who shouldn't be released. Jacey asks about his basis for making that statement. Clay says all the other states who have implemented pretrial release have faced that. Jacey says Utah is implementing it very differently. This is intended to give more information on who is low risk and who is high risk, not to just release people. It's static information based on the offender's history.
- Dominic says we can trust that if a judge sees first-time offender who has a heinous crime, but their risk assessment is low, the judge isn't going to kick that person. We have to have faith in the judicial system to hold the people who need to be held. Judges will make educated decisions.
- Curt notes that there's an issue of consistency between the judicial districts.
- Jacey says they want the judges to have as much information as possible. They've met with legislators throughout the last few months to talk about what the program is. Without exception, they were shocked that this was information that judges don't have already. Dominic says they have it, but it's not assimilated into one number and it requires research. They don't have time to do that. Jacey says it gives judges access to information that the public assumes they already have.
- Dyon asks if bail agents will have access to the risk assessment data. Jacey says she doesn't know, but it will become part of the case file for the defense counsel and prosecutor.
- Clay asks if judges have the latitude to disregard the PSA recommendations altogether. Jacey says absolutely. They are under no obligation to rubber stamp the recommendation. They're getting the information and the algorithm makes a recommendation based on the information. The judge can do whatever they want with them.
- Clay asks what the AOC's standpoint is on a judge that chooses to disregard the PSA. Jacey says they would never tell judges what decision to make. If a judge decided to not look at the information, that's up to them. They're there to exercise their discretion. Clay says it remains to be seen whether judges will be willing to disregard the PSA recommendation. In other states they've almost exclusively adhered to the PSA. Jacey says that's up to the judges and whether they find the information valuable. She's spoken to a number of judges and they're looking forward to having additional information.
- Dyon asks if there's a committee who oversees the process. What kinds of checks and balances are there? Jacey says there's a Pretrial Release Oversight Committee and a bail committee who hold public meetings. Dyon asks if they're prepared to look at numbers in six months. Jacey says of course. The goal is to improve judges' decision making. If it's not doing that, they'll objectively look at that.
- Dyon says she has concerns about pretrial in general and how it will work in Salt Lake City specifically. Jacey says Salt Lake City has had a pretrial release system for a long time, and it won't change that.
- Jacey says the purpose of this isn't to kick people out of jail. It's to identify those who are low risk and those who are high risk. Clay says his concern is that bail bonds have

- operated as a risk pool. They've had to bail the low-risk people out of jail to pay for the high-risk people who have 16 warrants and might run. This program will erode the risk pool and leave agents only with high-risk people. How are they going to function under the new system? Some companies are going to go out of business. Clay says he has 40 agents and he will not have 40 agents next year at this time.
- Jacey says she understands the fear and uncertainty. These public policy decisions aren't directed at the industry, and they want to monitor how it works.
 - Clay notes that bail agents are experts in how to get people to court, and to have an entity say their algorithm is just as good rubs him the wrong way.
 - Tony asks if Jacey personally as a prosecutor has any concerns about how this is being implemented. Jacey says no. She likes the fact that you can identify high-risk people.
 - Wayne says agents make risk decisions on who they'll bail out all the time. They have remedies to stop something bad happening if people fail to appear. He sees the PSA tool as being absolutely something that can be used to keep people from being released. But he has trouble believing it will be predictive enough that it will tell courts that it's OK to release someone. Bail agents are the insurance for the system. Without them, the system won't have insurance.
 - Commissioner Kiser says his sense is that the system doesn't want to chase agents away. He also understands Clay's comments about adverse selection. If you look at the surface, there's a segment of the population that can move away from bonding. Why would they stay if they can't make money? That's where regulators would step in to figure out how to help licensees stay in the system. There is a need for what bail bond agents are doing to get high-risk people to court. That has to be part of the discussion. He agrees that this program may change the whole mix of the risk pool. That needs to be considered as we move forward.
 - Jacey says the focus isn't on those who can post immediately. It's on those who can't afford bail and are low risk, and who lose their job because they're sitting in jail. Tony asks if the night judge can't just OR them. Jacey says yes, but all they only have the probable cause statement and don't have the person's history to decide if they're comfortable with that or not.
 - Jacey will find out about public availability of the data and will update the board on it and the final go-live date. Dyon asks if jails know that May 1 is the go-live date. Kati says they have training next week. She says they've been using probable cause statements in the system and it's great. Officers have a space to add their thoughts about whether a person is high-risk or not. Judges like it too. The system specifically asks if there are any aggravating circumstances the judge should know about when deciding bail.
 - Clay says he appreciates Jacey coming today. He's been to a lot of similar meetings and none of them have been as insightful as today's. Jacey says agents are free to call her with questions if they have them.
 - Jacey Skinner: 801-578-3807 & jskinner@utcourts.gov
 - Curt says if they start having problems with judges, they can be referred to a state entity called the Judicial Performance Evaluation Commission. Judges whose performance isn't up to snuff often resign or retire before the report comes out. Dyon says it might not be a bad idea to get the cash-only bail law in front of them because it's still happening.
- Department changes / Reed
 - Reed Stringham and Tanji Northrup are the Department's new deputy commissioners.

- Suzette is retiring, so there are some changes to the Department. Market Conduct will be split between the Property & Casualty and Health & Life divisions. Cathy will be under Property & Casualty, whose director is Tracy Klausmeier. Cathy will still be the bail industry's contact.
- **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 January through March / Cathy**
 - An agency license was suspended in January. There were some reinstated licenses as well. Two of the licenses were down for a long time: one for 194 days and one for 196 days. When licenses go down, she sends out letters asking why they were down so long before renewal. She asks if they wrote any bonds and if they were appointed to an agency. It's to make sure nothing was happening. The Department keeps a list of active agents that the jails and courts can pull, but sometimes they just go with who they know and don't pull anything up.
 - Cathy reminds everyone that July is coming up, which is when everyone needs to report their information. She will start sending reminders in June. Dyon asks how soon they can send the information in. Cathy says there are requirements if you're collaterally backed. Surety insured need to send current or new qualifying powers of attorney. It's closer to June. Paying the money can be sent 75 days prior to August 14, which is the actual expiration date of the license.
 - Quite a few agents went down and were reinstated in February. It's becoming more common that agents will be appointed to more than one agency. Each agency is responsible for their portion of any investigation that would result from a lapsed license.
 - In March, the agency report is clear. There was one reinstated individual license.
 - Cathy asks agencies to remind their agents that licenses need to be renewed every two years in their birth month. Agencies need to make sure their principals' licenses stay up, because they are the agency's designated representative. If they go down, there could be larger problems regardless if they wrote a bond. They're the person Cathy should be contacting for agency business, and if they don't have a license it causes issues.
 - Wayne notes that the rule for renewals only goes through 2017 and needs clarification. Cathy says R590-186-5 is specifically for collaterally backed agencies and it talks about certain time frames information needs to be provided to the Department for renewals. The Department's AG rep will open the rule to get that fixed. Once it's fixed, it will bring the rule into compliance with the code and will explain it in more detail. It goes hand-in-hand with the code. Clay asks if there are any plans to change the requirements. Cathy says they're anticipating just changing the dates and not making other adjustments. Curt notes that while the rule is open, it would be a good time to fix any other issues.
 - **Summary of Enforcement Reports / Cathy**
 - Enforcement / Cathy
 - A lot of times, open investigations in the last 90 days show a correlation between investigations and what comes forward as an E-case. She is constantly working with her division director and attorneys to make sure we're doing what needs to be done.
 - Agency Audit Update / Cathy

- Cathy is still working on 3 in-depth audits. There have been a number of enforcement areas that have required attention, which has put the audits on the back-burner. They are going forward now.
 - Proposed Penalties for Board's Review: None
- **New Business**
 - **New App: Bonds R Us**
 - Clay asks about the business entity name Bad Boys of Utah. Cathy says it is not related to Bad Boys agency. It's just the business entity name; the doing business name is Bonds R Us. Producer licensing is OK with the closeness of the names. Clay says he has AAA Bail Bonds and just by having "A" in the name constantly associates him with companies that have similar names. Cross-association is going to happen. Cathy notes that Bonds R Us will be the listed name.
 - Cathy has received the application. There are no articles of organization so they don't need to list a single owner. She has an EIN number. The company is registered with the Department of Commerce and is licensed as a business with the city of Riverdale. The qualifying power of attorney is with American Surety. Cathy has copies of the qualifying power of attorney and the contract with American Surety. She has a copy of the operational and trust accounts for Bonds R Us, both of which are with a Utah entity. Alison Jensen Chafee was licensed May 6, 2014. Cathy has a letter from 2nd Chance Bail Bonds indicating that she has fulfilled 2,000 hours with them. Cathy has her 2015 and 2016 tax information. She has done a background check and everything is clear.
 - Ryan asks if the tax returns show 2,000 hours of employment. Cathy says the code requires a letter from the agency verifying the 2,000 hours. Tax information doesn't always accurately reflect hours worked. If the bail agency is verifying the hours, that's what we rely on. Dominic verifies that the tax returns show income from 2nd Chance. Cathy says they do. Since 2014, bail work has been Alison's sole source of income.
 - Curt notes that changes were made during the last Legislative session regarding military spouses. Cathy says producer licensing is aware of the changes, but it doesn't apply in this instance.
 - Tony recuses himself because he is the owner of 2nd Chance Bail Bonds.
 - **Motion by Dominic to approve the application. Seconded by Kati. Motion passes 5-0.**
 - Kati notes that the 2,000 hours was addressed a couple of years ago. There were issues with an agent getting a letter proving the hours worked from her current agency. Relying on a former employer isn't always reliable. There needs to be a different way to verify the hours. Cathy says that's part of the code, so the change would need to be made legislatively. Curt says rules need to follow the code, but the code can be made vague enough to rely on the rule for direction.
 - Clay says part of the problem is that different bonds require different hours of work. Kati suggests maybe doing the number of bonds written.
- **Old Business**
- **Other Business**
 - Pretrial study from JL Webber / Cathy
 - Cathy says JL indicated in October that he had information regarding Colorado and other sources about pretrial. Cathy contacted JL again after the January meeting to get information, and JL sent her sources to find information herself. She asked for better

information, and he told her to work with Jeff Clayton, who is the executive director of the American Bail Coalition. Cathy understands that the Association works with Jeff on a number of things.

- Cathy will ask Jeff Clayton to come to the next bail meeting to give an update on Colorado and other issues.
- Curt suggests having Jeff send whatever information is available so we have it fresh. Then he can follow up later with more information.
- Dyon suggests getting updates from a court clerk or someone from the jails to give an update on how things are going since implementation. Cathy will try to get someone from a jail other than Salt Lake City's. Clay suggests getting someone from outside the 3rd District.
- **Adjourned** (1:37 pm)
 - **Motion by Kati to adjourn. Seconded by Ryan. No vote.**
 - **Next Meeting:** July 11, 2018 — Copper Room, East Building

2018 Meetings (Noon to 1:30pm)

Jan 10, 2018	Apr 11, 2018	July 11, 2018	Oct 10, 2018
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