



Insurance Department

State of Utah

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

Bail Bond Oversight Board Meeting

(http://www.insurance.utah.gov/producers/bailbond_board.html)

Date: April 13, 2016

Time: Noon

Place: East Building, Copper Room

Board Members

xBrad Jenkins (Chair)	Ryan Cooper
xGordon Wright (Co-Chair)	xPeter Stevens
xLt. Kati Booth	xClay Carlos
Stephen Aina	xBrett Barratt (Non-Voting)

Staff

Todd Kiser, <i>Ins. Commissioner</i>	xSuzette Green-Wright, <i>MC Director</i>	xCathy Burton, <i>Examiner</i>
Reed Stringham, <i>AG Counsel</i>	xRandy Overstreet, <i>Licensing Director</i>	xKathy Archuleta, <i>Analyst</i>
xSteve Gooch, <i>PIO Recorder</i>		

Public

Rob Johnson	Jacob H.B. Franklin	Pamela Lofgreen
Jim Clark	Gary Walton	Wayne Carlos

MINUTES — Approved

- **General Session (Open to the Public)**
 - **Welcome** (12:05pm)
 - Adoption of Minutes for January 13, 2016 / Chair
 - Adoptions of Teleconference Minutes for March 23, 2016 / Chair
 - **Motion by Gordon to adopt both sets of minutes. Seconded by Pete. Motion passes 5-0.**
- **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 January through March** / Cathy
 - Since the last meeting, Sircon has started sending an automatically generated email to agencies that lists the names of licensees whose licenses have lapsed. Agencies need to make sure their agency emails are correct on Sircon and the email address inactivation.uid@utah.gov is whitelisted in their spam filters.
 - Email reminders are sent to a licensee 75 days prior to their license lapse date. Then on the lapse date, the Department sends an inactivation letter to the producer. Now an email will be sent to the agency as well, which should help a lot.
 - As for the licensing report, the industry is doing much better at keeping track of their licensees. The number of people who are not designated with an agency has gone down.
 - **Summary of Enforcement Reports** / Cathy
 - Proposed Penalties for Board's Review: None
 - Agency Audit Update / Cathy

- Since the last meeting, Cathy has completed a number of audits with some going to stipulation and others to hearing.
- Open Investigations shows that quite a few were opened and closed. A lot were designation issues, while others were failure to pay judgments that were recalled by the courts afterward. About half are recalled by the courts. Brett asks why they would be recalled. Cathy says they can be recalled if there's a payment arrangement with the agency, or if proper service wasn't done to the agency, and others if the judgment is paid and the case is closed.
- Brad asks if, in all those cases, Cathy is contacting the agency and relaying information to the courts. She says sometimes she's able to stop it between the courts and agency. Brad asks if it has helped the state look at things closer before they send them to Cathy. She thinks it's been an education with them as far as the courts. It has clarified and stopped some of them because they use Cathy's form as a checklist before they send it.
- Brad asks if it looks like the industry is getting better. Cathy says on trust account issues, yes. On forms, that's more of a problem at present, but we're working through it.
- **Motion by Kati to accept the reports. Seconded by Pete. Motion passes 5-0.**
- **New Business**
 - **New App: Busy Bee Bail Bonds**
 - Busy Bee's articles of organization were dated Dec 7, 2015 and were supplied by Gary Walton. Gary Walton is the manager and Nancy Walton is a member. Busy Bee was listed by Dept. of Commerce as of Dec 7, 2015.
 - Busy Bee's current assets are a little over \$100,000 in liquid assets and property that has been valued at \$303,000 with no liens.
 - Gary has been licensed with the Department since July 31, 1998, and has been employed with Beehive Bail Bonds since February 1, 1989. Beehive Bail Bonds has verified Gary's employment. An explanation of administrative actions has been provided, as has tax information for 2013 and 2014. The operational account is setup at Zions Bank. There is no trust account because Zions isn't accepting trust monies.
 - Pete asks about question #13, which is the certification about owning property — he asks if we know what the properties are. Cathy says we know that there are some, but only one has been specifically put under Busy Bee. Pete clarifies that Busy Bee has a piece of property in its name and there is no lien. He asks if there's anything stopping the owner from selling it or encumbering it, or if the state has no claim on it. Brett says the state has no claim. Pete says there should be \$100,000 liquid, but if that's encumberable or sellable and then there's a failure, the state is left holding the bag. There have been two occasions where that has happened recently. He suggests that the Board take a look at that. There needs to be some mechanism whereby the state needs to be notified if the property is sold or encumbered.
 - Brett asks if assets are pledged during audit exams. Cathy says yes, and that if renewals are collateral backed, that is looked at every year. Pete says even that doesn't secure the deposit. How do we know there are no liens? Cathy says the property profile is pulled to check for liens, in addition to the information provided.
 - Pete asks how we know the \$100,000 pledged is there today and will be there in the future. Brett says he doesn't think we do. Brad notes that the \$100,000 liquid is

different from the \$300,000 of property. When money is taken out of the account voluntarily or involuntarily, that takes the state out of play. Pete says the Office of State Debt Collections (OSDC) looks at this like it's a black hole and it can't be collected on. How can we have a debt or obligation to the state that the state can't collect on?

- Gordon says this isn't covered by current statute. Until we change the statute, the application has to be approved because it has complied with statute. This is something that we need to look at and get legislation on. If Gary were to sell his property, he's required to notify the department that it's being sold. If he doesn't, he's in violation.
- Suzette reads some of R590-186 (Unprofessional Conduct) and its application to this discussion.
- Clay says it seems like a gaping hole when a company folds, but there are bonds and forfeitures in place that OSDC doesn't know about so they can't go after them. The key is giving the state the ability to go after somebody even after they've closed.
- Brad says he would consider this far worse than unprofessional conduct. It needs to fall under a different category — it should fall under fraud or criminal.
- Wayne Carlos says we measure aggregate bail, but not how many FTAs are out there. We need to fix that. As you get more FTAs, maybe we need to report that.
- Brett says the issue of writing bonds based on collateral that may not be there is a function of an issue with collateral backed agencies. Surety backed has recourse against the insurance company. The tension is with the legacy business of collateral backed and maybe there's a better way to secure the collateral without inhibiting its uses. During the legislative session, he tightened it a bit, but if it's something the board and OSDC would like to work on, the Department can commit those resources. Gordon would like to talk about it as an association before the state does.
- Gary says until the statute changes, and he thinks it should, there's not much of an argument against collateral backed agencies. Brett agrees.
- **Motion by Gordon to approve. Seconded by Pete. Passes 5-0.**
- Brad notes that nothing that was discussed has anything to do specifically with Gary.
- Brett asks why Gary is forming a second company. Gary says it's just another name and another phone number for marketing purposes.
- Intro to Office of State Debt Collection / Jacob H.B. Franklin, Esq.
 - Jacob Franklin says bail companies have 6 months to produce a defendant or forfeit the bail. OSDC gets involved when neither happens. When it's referred, the court issues a civil judgment against the bail company and refers the case to OSDC. OSDC adds fees and fines above the bail amount, which essentially makes collection free to the state. There's 2.65% interest added, 21.95% collection costs, a 6% late penalty, plus service and costs.
 - The AG's office uses post-judgment proceedings like garnishment of wages and bank accounts and levee of tax refunds. Judgment in favor of the state results in an automatic lien on the debtor's property. They also contract with collection vendors who work to recoup the money.
 - OSDC only does collections — no other administrative actions.
 - When payment is received, 20% goes to fines and penalties from OSDC, then 80% goes to restitution, then interest, court fees and fines, and anything else owed.

- OSDC has been setting up supplemental proceedings at courts all over the state. Sureties and bail bond companies haven't been attending, and a lot of them are now out of business. A lot of those weren't LLCs, but were DBAs of an individual. They've been able to abstract judgments against that individual, and have been subject to liens against his property.
- Brad asks about the \$192,000 outstanding from Jacob's handout. Jacob says that's through FY2016. A little under \$50,000 has been collected, including a few thousand extra over the past few months. Pete asks about calendar year 2015. Jacob says this is accumulated collections stretching from the inception of OSDC in 1996 to now. Brad asks how long it takes before a debt is written off the books. Jacob says it's when the judgment expires or the company expires and there are clearly no assets to collect against. Brad asks how many judgments have been written off. Rob Johnson doesn't have the final number but will get it.
- Brett asks about the bail bond industry's concern with the Utah Supreme Court's Committee on Pretrial Release Alternatives. He's surprised to see only \$192,000 outstanding. He's wondering why isn't it more than that amount: Are prosecutors not getting the judgment, or getting it but not forwarding it on? Jacob says he doesn't know why they wouldn't refer more if there isn't more to refer.
- Clay asks if \$192,000 is high or low. Brett says it's low. Clay notes that the \$49,000 collected out of the \$192,000 is a 25% collection rate, which is pretty good. Brad thinks it's a low figure, considering the companies that have gone under in the past few years.
- Pete sums up that since 1996, 201 bail bond cases have been forwarded to OSDC, with \$192,000 in outstanding collections, of which \$49,000 has been collected. He says this is a low number for the Supreme Court to be concerned about.
- Form filing deadlines / Kathy Archuleta
 - With the passing of SB 105, Kathy reminds everyone that form filings including an email address must be submitted to the Department no later than May 10. If a company chooses to use a stamp or sticker in the meantime, that's OK but she still needs to see the forms. Also, all carbon copies would need to have the email address stamped or stickered on each copy given. Clay asks if it would be OK to have a spot to write in the email address that would transfer to all copies. Kathy says that would be fine.
 - Gary asks if there's an expiration date for using stamps and stickers. He has lots of forms that need to be used, and doesn't want to destroy them. Kathy says he can use the stamp on the supply he has now. When he reorders forms with the actual email on them, Kathy will need to see them.
 - Cathy asks if stamped forms have to be submitted by May 10. Kathy says yes.
 - Brett asks what the usage time-frame is. Kathy says forms can be used 30 days after they are submitted to the Department.
 - Gary asks if the Department will send notice to the agencies, or if it's the agency's responsibility. Cathy says she will send an email, with the board's approval, to remind agencies about SB 105 and also to remind them that July 15 is coming.
 - Gordon says Kathy is really good about helping to get the form filings done.
 - Brad asks if there will be a sample of what needs to be done to the forms when Cathy sends her email out. Cathy says yes, she will work with Kathy on it.

- Wayne says his company has a lot of forms that don't have the email, and wants to make sure there isn't a deadline for when actual printed forms must be used. Kathy says there is no date — stickers can be used now and into the future. Brett says the reason for the change is to provide more ways for the courts, customers and Department to connect with agencies.
- Brad says there's been a lot of concern over this, but Cathy and Kathy have made it easy.
- Gary asks if an agency changes their email address from what's on a printed form, will that require a form change. Kathy says yes.
- Brett asks when the email blast will go out. Cathy says next week.
- New jail policies / Pamela Lofgreen
 - Pamela says the jails have been at full occupancy even when the metro jail opened 16 years ago. In 2006, they created a management plan to help manage the jails. There's a step-by-step plan to triage prisoners as they come in the door. It's a quick screen based on current charges, not any sort of history.
 - Over-crowding release (OCR) is this triage process. In the past 5 years, there has been a 500% increase in OCRs on a booking increase of 10%. The same prisoners are coming back on the same charge, and are being processed through, which is an issue from a volume standpoint.
 - A new plan was implemented on March 1, 2016. It's similar to what they've been doing, but it has reintroduced booking restrictions. This means that instead of just being processed into the facility and then sent home, now certain low-level crimes don't even come in the door. This includes crimes like spitting on a sidewalk or jaywalking, which are often just reasons to remove people from the community. They're trying to target the people that would be OCRs anyway.
 - The average length of stay in the Salt Lake County Jail is 23 days.
 - Gordon asks about the 900% increase. Pamela says it went from 948 releases in 2012 to 7,953 releases in 2015. Many of these are people who are booked a couple of times a week. The new program is a way to keep that population out and save bedspace for higher-level crimes.
 - Bookings increased from 32,570 in 2010 to 36,004 in 2015. They come in with a laundry list of charges and dispositions. Dispositions are what come along with the booking, like bail or trial or pretrial release. There was a 57% increase in dispositions from 2010 (117,275 dispositions) to 2015 (183,621 dispositions). This makes it harder to properly audit files to prevent accidental releases. They're trying to reduce the number of actual transactions they have to do in an attempt to keep errors down.
 - Clay asks why bail bonds aren't the first step to a resolution. Pamela says offenders used to go through pretrial but that has been changed. Now they get a copy of their booking sheet at booking along with their bond amount, so they can bond out if they want. OCRs come as a last resort after pretrial too. Part of the problem is the amount of time people can be kept in the holding areas. There are more phones in the holding area so they have increased access to bonds people. The majority are repeat offenders who know the process. If they know there's an opportunity to get out without bonding, they'll wait for it. The problem is that they have to keep people moving through, or they'll have to shut the front door.

- Gary asks if there's ever a time where repeat offenders aren't given any more OCRs. Pamela says not really, but they've been working with SLCPD to identify in the system who the frequent offenders are. As a courtesy, the jail would make sure they have enough beds for those people. There's a catch-22 in keeping as many people as they can, but they'll have to release somebody to open up that space.
- Wayne asks if the change in OCRs is comparable to other jails. Pamela says Davis and Tooele have lots of open beds. Salt Lake County is in an interesting position in that they don't have bed space.
- Bond charges had a 5.5% decrease in March compared to an 87% decrease in OCRS and 25% reduction in bookings. OCRs can only happen during booking, not once an offender is in the population. That's why OCRs happen early in the process. If there's a compelling reason to keep someone rather than giving them an OCR, they will consider that.
- Brad asks if it would be possible for bail bonds people to create some kind of form that would show that the surety brought a defendant to the facility, but the facility wasn't able to take them. He thinks this might let them get an exoneration. Pamela says she will take it back to her legal team. Kati notes that this is important because bonds people have money riding on an offender being accepted, whereas a police officer doesn't.
- Brad asks how long the OCR process takes. Pamela says it can take a few hours depending on their compliance and sobriety. Brad notes that there have been cases where he's worked on a bond and gotten it submitted quickly, but the person is already out. He asks if the bond is faxed in before the OCR is completed, wouldn't it make more sense to take the bond over the OCR. Pamela says absolutely. The problem is the volume of work and the time it takes to get the information during the process. Pamela will talk with the jail's OCR group to make sure that doesn't happen anymore.
- Wayne says the association is working on a standard form that will be helpful to the jails.
- County ordinance requires the council to approve the number of beds. They have 1,700 beds available, which is 80% of the general population of 2,114 beds. Brett asks Kati what Summit County runs. Kati says she's a 100-bed facility but she also runs at 80%.
- Pamela discusses the phases of the Cap Management Plan, which kick in as the population increases. Brett asks if bail bonds people can call to find out what phase they're in, so they'll know if the jail will accept one of their clients. Pamela says yes they can.
- Court response to new jail policies / Brent Johnson
 - Brent Johnson is excused due to illness.
 - **Moved to July 13 meeting.**
- **Old Business**
 - Discussion of R590-196-6 / Brad
 - This is about filing forms and the provisions in those forms that allowed bonds people to arrest people if they didn't fulfil their check-in requirements electronically (with an ankle monitor) or otherwise. Wayne says it's 2016 and we're requiring some releases to have ankle monitors and travel restrictions. These are things that haven't been

addressed and should be. Brad would like to propose something at the next board meeting.

- Testing for bail license / Randy Overstreet
 - Brett notes that at the last bail meeting, there was discussion on ways to license people instead of just by 2,000 hours of experience.
 - Randy says 31A-23a-106(2)(c) lists the limited line license types, which includes bail. 31A-23a-108 says the commissioner can require applicants to pass an exam for licensing, but it excludes limited line licenses. So, we cannot do tests for bail licenses. Additionally, R590-186-6(2) says bail bond licenses do not require exams.
 - Any changes would need to be done legislatively and by rule. There's also a national standard that specifically says limited line licenses don't need exams. Some states do require bail exams, but most don't.
 - Brad asks where the department stands on moving toward implementing an exam. Brett says we're open to it, but the problem is developing the test, administering it, and finding a vendor to produce the study materials.
 - Kati asks if we're looking at it wrong by moving toward a test versus showing hours. Brad says many times you don't know a lot of what you need to know about the business other than by going to meetings or learning them as you go. Kati says it's quite a risk to do the business without knowing how to do the business. Cathy would like people to know what they're supposed to be doing. They don't just need to know bail, they also need to know 23a (ethics, etc.)
 - Randy says exams are developed by the vendor, and include an annual exam workshop to make sure the test still makes sense. Clay notes that they would have to create a test for 50 people, which is difficult.
 - Randy says in the event new legislation is passed, he thinks a test could be done and implemented the following January. There won't be a cost to the department, but there might be for the licensee. Tests could be taken at any of the testing centers, and there are no study guide materials. Some vendors provide study materials, however those vendors might not produce study guides for such a small population. He says Michael Covington, the department's CE specialist, will know which education providers might have exams that are more helpful than others.
- **Other Business**
 - Legislation Update: Discussion of SB 105
 - Cathy hands out a cheat sheet that she'll also send out to everyone. The biggest change is to R590-35-106, which will require principals of bail bond agencies to attend at least one Bail Bond Board meeting each year. It also requires that all forms include a business email address (which Kathy discussed earlier).
 - Wayne notes that the provision requiring an agency principal to attend meetings will do a lot to promote education.
 - Gary asks about naming requirements on a license. Randy says R590-154 addresses those sorts of things, and it requires licensees to be licensed under their legal name. However, they can then file a preferred name with the department. Suzette notes that whatever is on your SSN or EIN filing is your legal name.
 - Gordon asks what the change is in R590-35-404. Cathy says it clarifies what can be used as collateral.
 - Per Diem & Mileage

- Last time, Perri noted that board members can get a per diem and mileage for being on the board. Forms are passed out for board members to indicate whether they would like a per diem, mileage, or both.
- Pretrial Board Update
 - Clay asks if we found out who from the UID will be on the pretrial committee. It will be Brett, but he doesn't know when the next meeting will be. They will decide at the end of April when the next meeting will be.
 - Clay asks if they'll get the same vote out of Brett that they got last time. Clay says he was under the impression that Brett voted in favor of all the suggestions the pretrial committee had, which the bail bond industry had a hard time with in legislation. Brett said he made some corrections and had some drafts changed because they were inaccurate, but most of the report was based on data that others presented. He didn't have any reason to say that data wasn't valid. He made a presentation and so did Gary. He doesn't feel that his role is to advocate for the courts or advocate for the bail bond industry, but to provide information. He was most focused on the part that included information based on data from the UID. He didn't object to it because it appeared to be valid information. Next time, he'll do the same thing, depending on the information presented. Personally, he thinks there are opportunities to improve the system and that some people shouldn't be taken to jail when they could be issued a citation because they're not a risk to the community. He strongly believes there's a place for the commercial bondsmen in Utah, but it may be different than it is now.
- **Adjourned** (1:59pm)
 - **Motion by Gordon to adjourn. Seconded by Kati. Motion passes 4-0. (Pete left after Pamela's presentation.)**
 - **Next Meeting:** October 12, 2016 — Copper Room, East Building

2016 Meetings (Noon to 1:30pm)

Jan 13, 2016	Apr 13, 2016	July 13, 2016	Oct 12, 2016
--------------	--------------	---------------	--------------