



# 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:** July 11, 2018

**Time:** Noon

**Place:** East Building, Copper Room

### BOARD MEMBERS

xClay Carlos (Chair)	xDominic Sanone
xRyan Cooper (Co-Chair)	xTony Choate
xLt. Ken Jones	xCurt Oda
Stephen Aina	xReed Stringham (Non-Voting)

### DEPARTMENT STAFF

xTodd Kiser, <i>Ins. Commissioner</i>	xTracy Klausmeier, <i>P&amp;C Director</i>	xCathy Burton, <i>Examiner</i>
xSteve Gooch, <i>PIO Recorder</i>		

### PUBLIC

Richard C. Rose	Kathleen Morgan	Richard Beard
Adam Rogers	Dyon Flannery	Todd Harris
Vivian White	Mike Baucum	Joshua Massey
Wayne M. Carlos	Craig Crawford	Steve Brown
Clyde Stevens	Rena Cauley	Mike Brown
Gary Walton	Edward Wells	

## MINUTES — Approved

- **General Session (Open to the Public)**
  - Welcome / Clay Carlos, Chair (12:05 pm)
  - Swear in Lt. Ken Jones / Cathy
  - Recognize Lt. Kati Booth / Commissioner Kiser
    - Commissioner Kiser expresses the UID's appreciation to Kati for her contributions and service to the board.
    - Ken accepts Kati's plaque on her behalf.
  - Adoption of Minutes for April 11, 2018 meeting
    - Curt asks that the 3<sup>rd</sup> bullet point on the front page be clarified because "It will law enforcements" makes no sense.
    - **Motion by Curt to adopt minutes as amended. Seconded by Dominic. 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 April through June** / Cathy
    - There was little agency activity. The major activity starts in July because renewals were due on July 15. Information about the agency's backing is due on that date. Surety-backed agencies must provide a qualifying power of attorney. Collateral-backed agencies must

- provide a CPA-prepared form that is based on information the agency supplies to the CPA. Cathy has been asking for liquidity information to verify the \$100,000 that is required. If they're backed totally by liquidity without any equity, she asks that they provide the portion of liquidity that backs them.
- Clay clarifies that she's looking for more proof than just a CPA's word, such as documentation to back it up. Cathy says yes. She is asking for that information to make sure UID's records are correct. Clay asks if she contacts the surety to ask for documentation if they don't provide it during the renewal. Cathy says yes. Cathy says if everything is provided by July 15, she will ask for clarification and it's not an issue.
  - The last three months have been good regarding agent licensing. One person got back into the business after a year, and another didn't write anything while their license was lapsed.
- **Summary of Enforcement Reports / Cathy**
    - Agency Audit Update / Cathy
      - Cathy has completed one audit. She notes that audits are a work in progress, and if agencies don't hear from her during an audit, it doesn't necessarily mean that something is wrong. People can always call her for an update.
    - Enforcement / Cathy
      - There were 25 cases opened in the last 90 days, and most were designation issues. Agents get an email 75 days before their license lapses, and agencies are notified once the license lapses.
      - There were also a few failures to pay judgment.
      - There are 2 cases with the AG's Office, and 1 that has been resolved.
    - Proposed Penalties for Board's Review: None
  - **New Business**
    - **New App: 007 Bonds / Cathy**
      - 007 Bonds is a DBA under Todd Harris, so Articles of Organization aren't needed.
      - Cathy has the EIN, which is an SSN as is allowed under state law.
      - The Department of Commerce issued a certificate of existence on May 18, 2015.
      - Cathy has a bank statement showing more than \$100,000 available. A CPA reviewed the statement for liquidity and equity.
      - She has 2016 and 2017 federal tax returns.
      - She has received preliminary title reports on two properties. Between the liquidity at the bank and equity in the properties, the \$300,000 requirement has been met.
      - There is an operational account, but at this time they are electing not to take cash collateral so there is no trust account.
      - They reported an administrative action in 2016, and provided the information regarding it.
      - Todd Harris is the designated agent for 007 Bonds and has been licensed as an agent since July 31, 1998. He owned Break Out Bail Bonds from May 12, 2010 to August 14, 2016 and has been associated to various agencies since 1998. He provided a letter regarding the 2,000 hour requirement.
      - Dominic asks what names the properties are under. Todd Harris says one is his private residence and the other is a vacant property and they're both titled as "007 Bonds/Todd Harris".

- Gary Walton suggests that the Board and Commissioner review 31A-23a-107, 31A-23a-110, and 31A-23a-402. He sees several issues with these sections. He says Todd Harris' legal name is Dennis Todd Harris, but he holds a license with the UID under D. Todd Harris. 007 Bonds is a DBA of D. Todd Harris, while the conveyances on the property are to Todd Harris. It is an incorrect conveyed title that needs to be corrected if we're considering those properties. Gary says in 2016, Todd Harris and Break Out Bail Bonds surrendered Break Out Bail Bonds' license in lieu of administrative action. It was found that he was violating the rules of a trust account. He was using Break Out Bail Recovery as a holder of the collateral, not the bail bond entity. Gary says when the license was surrendered, the UID viewed Todd Harris as the entity that was surrendering the license, but used the agency license not the individual license. There was a \$10,500 fine assessed, which Gary assumes is the reason the license was surrendered in lieu of paying the fine. Gary says Todd Harris is a defendant in an ongoing lawsuit, and he couldn't find any satisfaction of judgment from a judgment ordered against him in 2010 for \$11,245. If that's been satisfied, that satisfaction needs to be presented to the board before the application can be considered.
- Edward Wells, attorney for Todd Harris, says there is no judgment and the case is pending. There's a motion to set aside the prior rulings because the original premise of the case — that Todd had illegally foreclosed — was based on an erroneous ruling by a court reinstating a bond that has since been vacated. The whole basis for the lawsuit went out the window and they're working to have it dismissed. There is no legitimate legal basis for the lawsuit.
- Gary says he highly disagrees with Edward's statement and sees nothing in the docket that the judgment has been overturned. He says there's still a current judgment of Banker's Insurance against Todd Harris and Break Out Bail Bonds. Todd says Banker's Insurance is a defendant in the case where they are suing over what Edward is talking about. Gary says they have filed through their attorneys a countersuit against Todd. Edward says a counterclaim is just a claim. There's no judgment or anything else. It's a matter completely apart from the bail bond business, and has to do with a legal malpractice claim.
- Todd submits for review a letter from the Davis County Attorney's Office, which is in the process of filing criminal charges against the parties in the civil suit for a felony attempt to extort from Todd. He says this is the case Gary is referring to, where he has supposedly been fined. Todd says the facts are that he bail out the defendant, but the defendant failed to appear in court. He let him out of handcuffs and into court a month after the failure to appear notice, and the judge reinstated the bond. The judge had no authority to reinstate the bond. The defendant refused to pay his bond fees, so Todd tried to collect. The defendant then turned it into a class-action lawsuit. Todd has had the bond exoneration overturned, and says he was legally right in taking action against the defendant for the payment of the bond fees. They chose to escalate it out of control because of judicial errors. He says the whole case has been completely overturned and the letter is documentation that the county attorney is involved for possible criminal charges against the parties that are persecuting and prosecuting him in this matter.
- Clay calls for a vote. Vote is 3-2-1.

- Yea: Curt, Tony, Clay
- Nay: Ryan, Dominic
- Abstain: Ken
- Dominic asks for clarification. He says the letter is dated October 2015 and doesn't see its relevance. Edward says he is in the process of preparing documents to dismiss the case. There has been no movement forward in three years. He says it's the plaintiff's obligation to move the case and they aren't. There is nothing in the letter that would serve as a basis for denying the license.
- Gary says the property deeds need to be corrected to show the actual name of the operating entity, which is D. Todd Harris not Todd Harris. He says clarification is in order on what name Todd is using. Gary says one of his agents was fined substantially for not changing her name to current married name. He thinks if no alias is filed with the UID for all three of his names, they need to be filed and clarified and the deeds need to be resolved. Cathy asks which character requirement he's referring to. Gary says the fact that he surrendered in lieu and the name changing back and forth. Cathy recommends that these concerns be looked at. She suggests that she will gather more information from Todd and then approach the board in a teleconference.
- Clay agrees and says it would be unfair to make Todd wait 3 months if he can provide clarification sooner.
- Todd says the biggest thing he needs is the *nunc pro tunc* order from the judge that exonerates the bond. Clay says there are two people on the board he needs to satisfy, and he should confer with them on what they need to get an approval.
- Update on Colorado & national pretrial release / Jeff Clayton
  - Jeff Clayton is the executive director of the American Bail Coalition (ABC). ABC is the authority on what the bail industry is facing nationally with pretrial.
  - Since 2015, there have been challenges to the legality and constitutionality of bail, which started with challenges to bail schedules.
  - The ABC is fighting for the meaning of the 8<sup>th</sup> Amendment.
  - In *O'Donnell v. Harris County, TX* the county bail system was found unconstitutional because the defendant can't speak. The 5<sup>th</sup> Circuit Court overturned the judge's order, finding that Harris County's due process was unconstitutional but bond schedules themselves are OK.
  - In *Walker v. Calhoun, GA* it was found that a bond schedule is unconstitutional because it discriminates based on wealth. Jeff thinks the 11<sup>th</sup> Circuit will overturn the judge's order.
  - There are a couple of cases before the 9<sup>th</sup> District. One said wealth isn't a constitutional class and another (*Buffin v. City of San Francisco*) said that's not true. Jeff is confident that they'll prevail in San Francisco and that California's bail system isn't unconstitutional. California has high bails, but it allows 0% bail fees.
  - *Holland v. Rosen* argued that New Jersey's system is unconstitutional because it denies the right to bail. The 3<sup>rd</sup> District said there's no right to monetary or cash bail, but there's a constitutional right to a personal surety. Jeff says there's no difference between bail and personal surety. He's hoping the Supreme Court will find that bail must be considered.

- *Rogers v. Christie* is the family of Christian Rogers suing Chris Christie and the Arnold Foundation because the Arnold tool let an offender off, who then found a gun and shot Rogers 22 times.
- *State v. Loomis* says there's a due process right when you want to challenge the results of an algorithm. There have to be warnings, but the warnings aren't a part of the deployment of any pretrial tools, which makes them vulnerable on due process grounds. Wisconsin's Supreme Court had a list of warnings that had to be given to judges when the tool came out, but they aren't part of Utah's tool or in other parts of the system.
- Jeff says the industry will prevail on these cases because the right to bail is fundamental.
- The people trying to eliminate financial security release and bondsmen call themselves the 3<sup>rd</sup> Generation of Bail Reform in America. Basically, they just want to implement the Federal Bail Reform Act of 1984. The trend is against this, and the momentum has shifted.
- Alaska had a rollback of bail reform that had passed the previous year.
- Hawaii rejected bail reform which would have eliminated bail.
- California is a huge fight, but it's getting quieter. SB10 would eliminate bail in the state; a companion bill (Assembly Bill 22) was run last year but was killed by 5 votes. SB898 compares the bail industry to auto insurance; it died a week ago. The senator running the bill was arguing that bail is illegitimate because it doesn't pay losses.
- Curt notes that losses are expected in normal property & casualty insurance, but in bonding there aren't supposed to be losses.
- Idaho drafted a constitutional amendment to eliminate bail. It was killed pretty hard, but it sent a message that bail elimination could happen in any state.
- Utah has the Arnold Foundation tool in operation and so is the bond schedule. Most judges ignore the tool.
- A similar thing has been happening in Lucasville, OH which has been held up as a success story for the Arnold Foundation. Now judges are mostly ignoring the Arnold tool.
- Jeff says Utah has also seen an explosion in cash-only bail, according to Wayne Carlos. He says Colorado has had the same thing happen there too. Judges like cash bail because they get to keep the money. Places are doing more cash-only bail to get revenue flow. That's challengeable under federal law.
- Colorado ran a bill to get rid of bail on misdemeanors, but it was killed. Colorado has split houses and is election dependent, so bills often die on the other side. The crime commission met again and are recommending a constitutional amendment but it won't go anywhere. They're revalidating the assessment tool, which hasn't been done since 2012. There will be a push next year to make the tool mandatory statewide. The tool is one of the worst because it uses demographic factors which leads to race and gender discrimination.
- New Mexico is a mess, and crime is rampant in Albuquerque. In Bernalillo County, Jeff sat through an arraignment 6 months ago where of all the people arrested on a felony, only 1 had to post bail to get out. That person had convictions from 7 states, 1 federal conviction, and 32 failures to appear. The bond was \$2,500. Judges follow the tool because they're disciplined if they don't.

- ABC tried to undo what was done in New Mexico. Jeff negotiated a constitutional amendment that passed, but Justice Charles Daniels screwed them over and implemented it by court rule.
- Texas has the Arnold tool in Harris County. Last year ABC got into a fight over mandatory statewide risk assessment. The chief justice did an end run around ABC where they're developing their own in-house tool that is similar to the Arnold tool. The new tool is called the PraiseTX system. Texas code doesn't allow for consideration of risk assessment, so Jeff expects a lawsuit at some point. He expects more legislation next year.
- Iowa had a legislator slip an amendment into the budget that shuts down the Arnold tool at the end of the year. The legislature changed the amendment to shut the tool immediately, and it was passed. However, the governor line-item vetoed it and issued an executive order to shut it down at the end of the year.
- Minnesota has an effort to regulate bounty hunters. Many states have no regulations for bail recovery because nobody wants to do it or admit that there's a problem. The bill was killed last year but will likely come back next year.
- Missouri and Louisiana have similar legislation.
- Ohio was a major fight against a statewide risk assessment. They have had risk assessment since 2009 with 10 tools, but only 5 have ever been validated, and the other 5 haven't been revalidated since 2009. The data in the validation dataset only included 4 people in 2009.
- Michigan has had a lot of talk about doing a constitutional amendment, but so far nothing has happened.
- West Virginia tried to take bail out with 3 different bills, but they were stopped.
- Maryland's court of appeals made their own rule to implement the New Jersey system. Judges don't have bail so they lock people up and "e-carcerate" them, which is house arrest. The pretrial population in Baltimore increased 22%.
- Delaware had a constitutional amendment run, but it was killed and can't be re-run until 2020.
- New York had 100 community groups arguing against algorithms in criminal justice. The only discussion is about getting rid of bail. But the New York senate is controlled by independent Democrats, and it hangs on 2-3 people getting elected. If they don't, bail reform will come back next year. Charitable bail funds are hot in New York, but they're not sustainable.
- New Jersey isn't releasing any data. There hasn't been an FTA number since it was implemented. A clerk told an NPR reporter that they had data, but it's not good so they need to put the info in context before they release it. New Jersey's system will be out of budget next year.
- New Hampshire's recently passed bill was watered down by ABC so it's no big deal.
- Vermont and Georgia have similar bills that ABC was able to minimize.
- Florida had a major fight, with a bill about risk assessments and another bill to create presumptions against bail.
- At the state level, there were 2 constitutional runs that were defeated. Risk assessments were a part of all fights except in New York. So far in 2018, no legislature has done anything significant about bail reform.

- Jeff says risk assessments aren't great. Labeling people as risky is why we've had a cycle of criminality since 1970. All these sorts of tools do is shuffle deck chairs on Titanic — they have no impact on mass incarceration.
- ProPublica did a study that found the Compass sentencing algorithm (a tool that is also made by the Arnold Foundation) is racist. It made the right call 62% of the time, which is virtually identical between races. But in the 38% of the times the tool was wrong, African American defendants were labeled more risky 60-70% of the time, while whites were labeled less risky. Jeff suspects the Arnold Foundation tool has the same problem, but they won't give up the data.
- There have been legislative calls to eliminate black-box algorithm tools like the Arnold tool.
- The ABC has submitted a model policy to the American Legislative Exchange Council (ALEC) to force transparency and put basic safeguards in place to prove these sorts of algorithms are race and gender neutral. Curt suggests they also submit it to the NCSL.
- Jeff says the shift toward risk-based assessment is blowing up. There have been increases in pretrial incarceration in places where these sorts of tools have been implemented. There's also a lack of transparency from the Arnold tool, Compass, and in-house tools made by governments.
- The Arnold tool has two algorithms: the scoring component and the decision-making framework. People went into a room and decided what the levels and risk tolerances would be. A lot of it wasn't done publicly, which is a problem.
- There are a lot of regulatory issues with bail recovery agents, but the bills are often killed.
- Colorado passed a bill that limits fines for market conduct investigations when there was no harm or there were minor recordkeeping errors.
- There's a trend where insurance departments are being politicized and used against the bail industry. In these cases, there will be town halls where people beat up on the bail industry, then the commissioners recommend the elimination of bail, like happened in California.
- To sum up: The 3<sup>rd</sup> Generation of Bail Reform in America is a retreat of what happened in the 1980s. There will always be questions about how much to charge. The drive to change state constitutions will go away. Federal bail isn't an option. New Jersey has been detaining people in 44% of all cases. When you don't have bail, it's easier to lock people up or go to e-carceration. The algorithm is going to fail throughout the system, and the idea we can use a computer to do bail is going to go away. The way politics is done has changed because of the internet and computers. The ABC turning to cyberwarfare has been powerful — they get the public outraged and talking to their legislators.
- The ABC's website is [americanbailcoalition.org](http://americanbailcoalition.org).
- Curt asks how Utah compares to other states. Jeff says the UID has been good to the ABC. There have been nasty fights with insurance departments in other states, but Utah's regulatory environment is good, the agents are good, and bail recovery licensure is good. Due process and bail setting is good. Cash only bail needs to be clarified because it's unclear if judges have that authority or not. Overall, Utah is a pretty good system.

- **Old Business**
  - Update on PSA / Ken
    - At first, they very rarely got change of bail recommendations from the judge, which the staff likes. Over the last while, there have been some changes but not a lot of OR releases that the PSA recommended. Ken thinks the judge is working into it and doing business as usual, but more often the judge has chosen to raise bail.
    - Clay asks if there's a bail commissioner that sets bail based on the uniform schedule upon booking, or if they're assessed by a judge. Ken says they use the standard bail, and the only time the judge deviates is if the arresting officer makes her aware of aggravating circumstances. He says since the PSA has come in, it's more common for the judge to raise the bail than release people on OR.
    - Clay asks if people can bond out of Ken's facility before the judge sees the PSA. Ken says yes.
    - Ken says overall the change from manual to automated has been great. His people are indifferent about the judge weighing in and making changes to bail. It's been treated as a non-issue. Clay says the industry thinks judges should get more information, but the concern is that they make the wrong decision from their standpoint.
    - Gary asks if Park City has a full-time pretrial service. Ken says they have a couple of deputies who do supervision as a pilot project.
- **Other Business**
  - Elect new chair & vice chair
    - **Dominic nominates Clay as chair. Curt seconds. Motion passes 6-0.**
    - **Ryan nominates Dominic as vice chair. Motion passes 6-0.**
  - Curt says the board needs to stay on Jacey Skinner to get data from the courts.
  - Curt requests that all agencies be sent a copy of the minutes along with the agenda.
- **Adjourned** (1:42 pm)
  - **Motion by Dominic to adjourn. Seconded by Ryan. Motion passes 6-0.**
- **Next Meeting:** **October 10, 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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