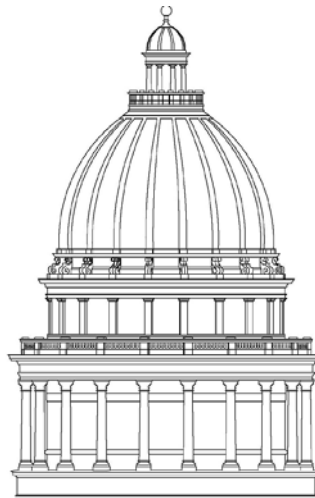


REPORT TO THE  
**UTAH LEGISLATURE**

Number ILR 2016-B



**A Limited Review of the Use of  
Cash Bail in Utah District Courts**

February 2016

Office of the  
LEGISLATIVE AUDITOR GENERAL  
State of Utah





STATE OF UTAH

# Office of the Legislative Auditor General

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**Audit Subcommittee of the Legislative Management Committee**  
President Wayne L. Niederhauser, Co-Chair • Speaker Gregory H. Hughes, Co-Chair  
Senator Gene Davis • Representative Brian S. King

JOHN M. SCHAFF, CIA  
AUDITOR GENERAL

February 1, 2016

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Limited Review of the Use of Cash Bail in Utah District Courts** (Report Number ILR 2016-B). We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink that reads "John M. Schaff" with a stylized flourish at the end.

John M. Schaff, CIA  
Auditor General

JMS/lm



# REPORT TO THE UTAH LEGISLATURE

Report No. ILR 2016-B

## **A Limited Review of the Use of Cash Bail in Utah District Courts**

February 2016

Audit Performed By:

Audit Manager	Darin Underwood
Audit Supervisor	Jesse Martinson
Audit Staff	Derek Olson

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Office of  
LEGISLATIVE AUDITOR GENERAL  
State of Utah

**Report Number ILR 2016-B  
February 2016**

## **A Limited Review of the Use of Cash Bail in Utah District Courts**

Utah's Second, Fourth, Seventh, and Eighth District courts have used cash bail in an effort to better assure appearances at court hearings. We were asked to perform a limited review of Fourth District Court's cash bail collection from defendants to determine whether cash bail was used appropriately and if bail proceeds went toward restitution for victims.

To answer this question, we examined 35 cases from the Fourth District Court for which misuse of cash bail was alleged. We found 78 percent of cash bail postings were refunded to the payee in full. None of the postings were applied toward victim restitution; however, restitution was infrequently ordered in examined cases. State statute allows the courts to decide whether bail proceeds will be applied to victim restitution. Our limited review of the Second, Fourth, Seventh, and Eighth District courts found the courts do not frequently use cash bail, but use bonding on a more frequent basis. Statute also enables judges to use cash bail in their courtrooms and set the amount of bail to be paid.

Near the end of our survey work, we were given two additional questions about cash bail. We were asked whether cash bail is an effective tool to ensure a defendant's court appearance when compared with bonding. We were also asked what costs are incurred when using cash bail versus bonding. However, these questions proved to be beyond the limited scope of this review. Answers to these questions would require a more involved, full audit. If desired by the

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**To determine the effectiveness of cash bail and its associated costs, a full audit approved by the Legislative Audit Subcommittee would be required.**

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Legislature, further in-depth analysis could be performed to determine the effectiveness of cash bail use compared to bonding.

## Second, Fourth, Seventh, and Eighth District Courts Use Cash Bail Infrequently

Allegations arose that some Utah district courts were using a cash-bail-only option in lieu of bonds. We looked at four district courts alleged to have improperly used the cash-bail-only option: the second, fourth, seventh, and eighth districts. We found the districts in question use cash bail less frequently than bonds. Figure 1 shows how often cash bail and bond were posted in these districts during January 2015. We looked only at counties within the districts that have larger populations.

**The Second, Fourth, Seventh, and Eighth District courts do not use cash bail often.**

**Figure 1 In January 2015, the Second, Fourth, Seventh,\* and Eighth District Courts Used Cash Bail Less Frequently than Bonds.** District courts encompass multiple counties; we reviewed a sample of cases in the counties with larger populations.

District Court**	Cash Bail	Bond	Percent Cash Bail
Second District (Weber County)	5	49	9%
Fourth District (Utah County)	13	89	13%
Eighth District (Uintah County)	20	36	36%

*\*Note: Seventh District Court data was not included in Figure 1 because it was insufficient. However, Seventh District judges reported that they do not frequently use cash bail.*

*\*\*Note: The totals noted for the respective districts do not represent totals for each district as a whole. The totals are from courts within the districts that serve larger populations.*

*Source: Second District, Fourth District and Eighth District courts' records*

Figure 1 shows that the second, fourth, and eighth district courts used bonds more frequently than cash bail during January 2015. In sum, we found these districts used bonds 82 percent of the time and cash bail 18 percent of the time. The Seventh District Court was not included because its cash bail and bonds are not tracked beyond six months. For example, if cash bail or bond was issued, in this case, in January, and a prosecutor did not file within 120 days, then the bond would have been destroyed because the bail was no longer valid or the cash bail would have been fully refunded. However, Seventh District judges we spoke with indicated that they infrequently use the cash bail option.



## Cash Bail Collected in Fourth District Court Appears to Be Set and Used Appropriately

We found that the Fourth District Court uses cash bail, but does not misuse the bail proceeds it collects from defendants. During our review of Fourth District cases, 35 of which were provided by interested stakeholders, we found all refunded bail was returned to the respective payees in full. We did not find any instances where bail monies went toward victim restitution. State statute allows the courts to apply bail toward restitution, fines, and fees incurred by the defendant. Statute also allows judges to use cash bail and enables them to set the amount of bail to be paid by defendants.

### Review of Fourth District Court Cases Revealed No Misuse of Cash Bail Monies

The Fourth District Court was accused of not applying bail monies toward restitution, fines, and fees assessed against defendants. Interested stakeholders provided 35 Fourth District Court cases about which they were concerned whether collected cash bail was being used appropriately. We reviewed the cases involving cash bail postings and found no evidence of misuse of cash bail monies. Figure 2 shows the number of cases for which cash bail was posted at least once.

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**We found no evidence of misuse of cash bail among the Fourth District Court cases reviewed.**

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**Figure 2 Twenty-Five of the Cases Provided to Us Had Cash Bail Posted at Least Once.**

Cases	Count
Cases Provided	35
Cases Did NOT Exist or Bail was NOT Posted	<u>-10</u>
<b>Cases in Which Cash Bail Was Posted at Least Once</b>	<b>25</b>

*Source: Auditor Analysis of Fourth District Cases*

We found that cash bail was posted at least once in 25 cases provided by the stakeholders. We were unable to find cash bail postings for the remaining 10 cases. These cases either did not involve bail postings or were not actual Fourth District Court cases. Of the 25 cases for which cash bail was posted at least once, 27 postings occurred. Bail posting counts differ from case counts because a case can have multiple instances where a defendant (or someone acting on their behalf) posts bail. For instance, we identified two cases in which bail was posted twice by someone on the respective defendant's behalf.

These 2 cases brought total bail postings to 27 for the 25 cases. Figure 3 shows how many of the 27 postings were refunded to the payee.

**Figure 3 Twenty-One of the Twenty-Seven Cash Bail Postings Were Refunded to the Payee.**

Bail Postings	Count
Cash Bail Postings*	27
Cash Bail Postings NOT Refunded	-6
<b>Number of Cash Bail Postings Refunded</b>	<b>21</b>

*\*Note: Bail was posted twice in two cases.  
Source: Auditor Analysis of Fourth District Cases*

As shown in Figure 3, 21 of the 27 bail postings were fully refunded to the payee, for a refund rate of approximately 78 percent. Conversely, 6 of the 27 bail postings were not refunded, though one posting of the six was belatedly refunded after a clerical error was discovered. Refunds were not provided for the following reasons:

- **Two Bail Forfeitures Occurred.** Two postings were declared forfeitures by the court, and the funds were transferred to the State of Utah General Fund. In both instances, the defendants failed to appear for hearings, prompting the forfeited bail.
- **Two Bail Refund Checks Returned to Court.** The court sent bail refund checks to payees for two separate bail postings. The checks were returned to the court because the payees no longer lived at the addresses provided. The postings are currently held in the Fourth District Court’s trust account and will enter unclaimed property proceedings if unclaimed.
- **One Bail Post Initially Not Refunded Because of Clerical Error.** One bail posting had not been refunded because of a clerical error by court staff. Our inquiry into the case led to the discovery of the error. We found that the court clerk had not informed court accountants that the defendant had been sentenced and bail needed to be refunded. Court staff eventually corrected the error, with bail proceeds being fully refunded to the payee; this late refund is not included in the 21 cases that were initially determined to have been paid in full to the payee.

**In the cases reviewed, roughly 78 percent of cash bail posting had been refunded to the payee.**

- **One Case Still Pending.** One bail posting has not been refunded because the case is pending. The defendant failed to appear for a court hearing, which led to a warrant being issued for the defendant's arrest. The warrant is currently active.

### **Cash Bail Proceeds Were Not Applied Toward Victim Restitution**

The Administrative Office of the Courts claims that cash bail is advantageous because bail monies can be applied to victim restitution and court fines. We found that all 21 bail postings previously discussed were refunded in full to the payee and not applied toward victim restitution. However, restitution was not ordered in the majority of cases involving the 21 postings. We identified four instances where restitution was ordered by the judge; in all four instances, proceeds from the postings were not applied toward restitution. We also reviewed the cases to determine if bail was applied to fines incurred by the defendants. We found fines were ordered by the judge in the majority of the cases, but in every instance, bail was not applied toward the payment of the fine.

The postings discussed above were from cases provided by the stakeholders. These cases were hand-selected by the stakeholders and occurred throughout 2014. As a result, we found it necessary to conduct an independent review of Fourth District Court cases from Utah County to better determine if cash bail proceeds were applied toward victim restitution and fines incurred by defendants. We found 13 cases for which cash bail was posted once per case during January 2015. Restitution was ordered in two cases, but bail proceeds were not applied toward restitution. Fines were ordered in six cases with one instance where bail was applied toward the fine.

Results of our limited independent review of cases were similar to results for the cases provided by the stakeholders. Bail proceeds were not applied to victim restitution; however, restitution was not frequently ordered by judges. A full audit would be needed to further validate the results of this limited review.

### **Courts Are Not Required to Apply Cash Bail Proceeds Toward Restitution**

The courts are under no legal obligation to apply the proceeds of cash bail toward victim restitution and fines imposed on defendants.

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**Bail proceeds were not applied to victim restitution in the cases reviewed; however, restitution was infrequently ordered.**

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**Utah Code does not require the courts to apply cash bail proceeds toward restitution, fines, or fees owed by the defendant.**

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Regarding the application of cash bail toward restitution and fines, *Utah Code 77-20-4* states:

(5) Before refunding bail that is posted by the defendant in cash, by credit card, or by debit card, the court *may* [italics added] apply the amount posted toward accounts receivable, as defined in Section 76-3-201.1, that are owed by the defendant....

Accounts receivable, as defined in *Utah Code 76-3-201.1*, consist of “...unpaid fees, overpayments, fines, forfeitures, surcharges, costs, interest, penalties, restitution to victims....” According to statute, the courts may apply refunded bail toward the defendant’s restitution, fines, and fees, but are under no legal obligation to do so. The Office of Legislative Research and General Counsel (OLRGC) confirmed in a legal opinion that judges can apply cash bail towards accounts receivable but are not required to do so (see Appendix). Therefore, we conclude that the Fourth District Court’s handling of cash bail in these cases was consistent with state statute.

### **Judges Are Allowed to Use Cash Bail Under *Utah Code***

Cash bail is an alternative that judges can use in addition to bonding. A prosecutor can request the option of cash bail, then the judge can choose to utilize this option. Bail can be used to allow accused individuals to be released on their own recognizance as indicated in *Utah Code 77-20-3*:

- (1) Any person who may be admitted to bail may likewise be released on his own recognizance in the discretion of the magistrate or court.
- (2) After releasing the defendant on his own recognizance or admitting the defendant to bail, the magistrate or court may:
  - (a) impose bail or increase or decrease the amount of the bail...

Therefore, the court can determine the amount of bail required to allow an accused individual to be released. State statute grants the ability to use cash bail under *Utah Code 77-20-4*: “(1) Bail may be posted: (a) in cash....” According to the legal opinion we received from OLRGC, cash bail is allowed under this provision (see

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**Utah Code allows judges to use cash bail and set the amount to be paid.**

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Appendix). The Administrative Office of the Courts corroborated this opinion as well. The judge is given the authority to determine the amount of bail and can accept cash as an alternative. We conclude that, despite allegations that cash bail is disallowed, judges can exercise their discretion by using cash bail.

## **Unknown Impact of Cash Bail Use on Court Appearance Rates and Court System Costs**

Because of the limited nature of our review, we were unable to answer the questions that were raised toward the end of our survey work. These questions are whether cash bail is effective at ensuring a defendant's appearance in court, and what is the cost of cash bail use on the court system and law enforcement. Our review of cases involving cash bail provided conflicting results regarding its effectiveness at ensuring court appearance. We were also unable to determine if cash bail use increased court and law enforcement costs. To answer these questions, a full audit could be performed if it is the wish of the Legislative Audit Subcommittee. The Utah Judicial Council produced a report that assessed the effectiveness of bonds at ensuring court appearance, but not the effectiveness of cash bail. It appears the Council wants to strengthen the efficacy of bonds.

### **Effectiveness of Cash Bail at Ensuring Court Appearance Could Not Be Determined**

We attempted to review the efficacy of cash bail at ensuring defendants appear in court. Concerns exist that increased use of cash bail escalates the number of failed appearances by defendants, thereby increasing costs to the court system and law enforcement to locate missing defendants. As mentioned, we received 35 cases selected by those alleging the ineffectiveness of cash bail to ensure a defendant's appearance in court. These cases were identified as having been filed and adjudicated in the Fourth District Court. Our review found that 32 of the 35 cases had indeed been filed and adjudicated in the Fourth District Court, as shown in Figure 4.

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**Interested stakeholders gave us 35 hand-picked cases, alleging that cash bail was ineffective at ensuring court appearances.**

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**Figure 4 Twenty-Five of the 35 Cases We Reviewed Had at Least One Cash Bail Posting.**

Cases	Count
Cases Provided	35
Cases NOT Verified as Fourth District Court Cases	-3
Cases Verified as Fourth District Cases	32
Cases Where Bail Was NOT Posted	-7
<b>Cases Involving at Least ONE Cash Bail Posting</b>	<b>25</b>

*Source: Auditor analysis of Fourth District Court cases*

We were unable to verify three cases because case numbers and court records were not found. Cash bail had been set in all 32 verified cases, but defendants in 7 cases did not post bail. Two defendants were released on their own recognizance, while the others may not have had funds available to post bail. Conversely, defendants (or someone acting on their behalf) posted bail in 25 cases.

We assessed the 25 cases involving cash bail postings to determine if cash bail ensured court appearances. We found that most cases had instances where the defendant did not appear for scheduled court dates after posting cash bail. However, these cases were hand-selected by the stakeholders to demonstrate this fact and were dated throughout the 2014 calendar year. We did not review all the cash bail received in 2014 to determine the rate of appearance. To determine if failures to appear consistently occur, we independently reviewed cases from the Fourth District for which cash bail was posted during January 2015. As seen in Figure 5, our review of the hand-selected cases and cases that we independently verified produced conflicting results. The cases provided by the stakeholders suggest cash bail is ineffective at ensuring court appearance, while the cases from January 2015 suggest cash bail is effective.

**Most of the hand-picked cases had instances where the defendant did not appear in court.**

**Figure 5 Defendants Who Posted Bail in Utah County during January 2015 Appeared for Their Next Court Date 100 Percent of the Time.**

Type	Postings	Defendant Appeared in Court After Posting	Appearance Rate
Cash Bail	13	13	100%
Bond	89	77	87%

*Note: The totals listed are from Utah County courts in the Utah 4<sup>th</sup> District Court  
Source: Fourth District Court records*

The appearance rate for cash bail was actually higher than bonds. We found 13 instances where cash bail was posted for defendants. In each instance, the defendant appeared for a court meeting scheduled shortly after bail was posted; those who posted bonds had a lower appearance rate than those who posted cash bail. We must note that we did not receive or review any bond appearance rates for 2014, thus making a comparison between the two unfeasible. As our review was limited, we were unable to conduct a more intensive assessment of cases involving cash bail. Therefore, a more in-depth review is needed to determine the efficacy of cash bail at ensuring defendant appearance in court.

**Costs of Cash Bail Use on Court System and Law Enforcement Could Not Be Determined**

Stakeholders expressed concerns that increased cash bail use would increase costs to the court system and law enforcement as a result of more defendants failing to appear in court. Because of the limited nature of our review, we were unable to determine the financial impact of cash bail use on the court system and law enforcement. Such a study would require robust analyses of potential costs to both entities.

**Utah Judicial Council Examined the Effectiveness of Bonds but Not Cash Bail**

The Utah Judicial Council organized a committee to examine pretrial release practices in Utah courts, including the use of monetary bonds. The committee recently completed its work, culminating in a report entitled *Report to the Utah Judicial Council on Pretrial Release and Supervision Practices*. A portion of the report dealt with monetary bond forfeitures and failure to appear rates for defendants who used

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**Those who posted cash bail appeared in court more frequently than those who posted bonds.**

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**Our limited review did not allow us to determine the financial impact of cash bail use.**

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**According to a Utah Judicial Council report, bonds do not create a strong enough incentive to ensure court appearance.**

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**A full, in-depth audit would be needed to determine the efficacy of cash bail use.**

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bonds. It cited a 23 percent failure to appear rate in Utah courts for defendants released on bond during 2013.

The report further argues that bonds do not create a strong incentive for the defendant to appear in court, and that laws and practices should be improved to create stronger incentives. Despite the discussion on bonds, we found the report did not address the use of cash bail in Utah courts. We spoke with members of the committee who authored the report and were told that they had not reviewed cash bail. However, it appears the Council is looking to strengthen the effectiveness of bond use. Despite the work the Judicial Council did, they did not address whether cash bail is more effective than surety bonds. We believe a review of this would be best performed by an independent body, such as the Office of the Legislative Auditor General.

In summary, we conducted a limited review of cash bail use among selected Utah District courts. As our review was limited, we were only able to address one of the three questions asked. Further, our findings are not representative of the Utah District Court as a whole. In addition, our findings regarding the effectiveness and cost of cash bail use are inconclusive because of the limited nature of our review. Specifically, we found the data available in the court database system insufficient for robust analysis. An in-depth assessment would require review of existing case histories and other related documents, which must be examined individually. Only an in-depth analysis of all district courts and their applicable court records could determine whether cash bail use is effective.

## **Recommendation**

1. We recommend that the Legislative Audit Subcommittee consider prioritizing an audit regarding cash bail effectiveness and cost.



# Appendix

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Michael E. Christensen  
Director

John L. Fellows  
General Counsel

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# Memorandum

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To: John Schaff, Legislative Auditor General  
From: Susan Creager Allred, Associate General Counsel  
Date: November 25, 2015  
Re: Interpretation of Statutory Provisions Regarding Use of Cash Bail

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Mr. Schaff:

Mr. Jesse Martinson asked me for a legal opinion regarding the following two questions regarding the use of cash bail in the district courts.

Question 1: May courts allow a defendant to post cash bail?

The Utah Code authorizes courts to allow defendants to post cash bail, as described below.

The following section of the Utah Code provides that the court may allow the defendant to post cash bail, and addresses the procedure for returning the cash bail to the defendant.

Section 77-20-4 states:

- (1) *Bail may be posted:*
  - (a) *in cash;*
  - (b) *by written undertaking with or without sureties at the discretion of the magistrate; or*
  - (c) *by credit or debit card, at the discretion of the judge or bail commissioner.*

In addition, the Utah Code provides that bail commissioners are also authorized to allow a defendant to post cash bail, reflecting the same statutory authority to allow cash bail as is granted to a judge.

Subsection 10-30-920(1) in the Municipal Code title provides:

- (1) *Bail may be posted:*
  - (a) *in cash;*
  - (b) *by written undertaking with or without sureties at the discretion of the magistrate; or*
  - (c) *by credit or debit card, at the discretion of the judge or bail commissioner.*

Subsections 17-32-1(2) and (3) in the Counties title of the code provides:

*(2) A bail commissioner may [impose bail as follows]:*

*(3) Any person who has been ordered by a magistrate, judge, or bail commissioner to give bail may deposit the amount with the bail commissioner:*

*(a) in money, by cash, certified or cashier's check, personal check with check guarantee card, money order, or credit card, if the bail commissioner has chosen to establish any of those options; . . .*

Question 2: Mr. Martinson also requested my opinion regarding whether the courts may apply cash bail to accounts receivable, and if so, are the courts required to apply the bail to the accounts receivable?

The Utah Code allows the courts to apply cash bail to accounts receivable as defined in Section 77-3-201.1, but does not require that the courts apply the cash bail to accounts receivable.

Subsection 77-20-4(5) states:

*(5) Before refunding bail that is posted by the defendant in cash, by credit card, or by debit card, the court may apply the amount posted toward accounts receivable, as defined in Section 76-3-201.1, that are owed by the defendant in the priority set forth in Section 77-38a-404.*

Subsection 76-3-201.1(1) defines accounts receivable:

*(1) As used in this section:*

*(a) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures, surcharges, costs, interest, penalties, restitution to victims, third party claims, claims, reimbursement of a reward, and damages.*

### Conclusion

The Utah Code authorizes district court judges, in their discretion, to allow a defendant to post cash bail.

The Utah Code authorizes district court judges, in their discretion, to apply cash bail to accounts receivable as defined in Section 77-3-201.1.

Please contact me if you have additional questions in relation to this opinion.

---

Susan Creager Allred  
Associate General Counsel  
Office of Legislative Research & General Counsel



## **Agency Response**

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## Administrative Office of the Courts

**Chief Justice Matthew B. Durrant**  
Utah Supreme Court  
Chair, Utah Judicial Council

**Daniel J. Becker**  
State Court Administrator  
**Raymond H. Wahl**  
Deputy Court Administrator

Mr. John M. Schaff  
Office of Utah State Auditor  
310 State Capitol Bldg. Ste E 310  
Salt Lake City, UT 84114

Dear Mr. Schaff:

Thank you for the opportunity to respond to the recently completed audit entitled *A Limited Review of the Use of Cash Bail in Utah District Courts*. We concur in the audit findings and found the audit a thorough review of the use of cash bail.

With respect to the one recommendation provided in the report – consideration of the effectiveness and cost of cash bail – I would note that the Judicial Council has just completed an examination of pretrial release and bail practices in the state. As noted in your report, the Council study, while not specifically addressing cash bail, does advance twelve recommendations for strengthening the pretrial and bail process. We anticipate that a number of these recommendations will be incorporated into legislation for consideration during the 2016 Legislative Session.

I would like to acknowledge the manner in which the staff of your office conducted this review. Their work was thorough, complete, and professional in all respects.

Sincerely,

A handwritten signature in black ink, appearing to be "D. J. Becker", written over a circular stamp or seal.

Daniel J. Becker  
State Court Administrator

cc: Chief Justice Mathew B. Durrant, Utah Supreme Court

**The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.**

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