

## DOES AUTHORITY EXIST FOR CRIMINAL PROSECUTION OF BAIL LICENSING LAWS WITHOUT CERTIFICATION OF CRIMES BY THE DEPARTMENT OF INSURANCE?

There have been very few criminal cases prosecuted with regards to the bail licensing laws. I searched through newspaper archives after finding no case law existed on Westlaw. I was not able to find any criminal cases. Next, I looked through all available "Annual Reports of the Insurance Commissioner" that were available at the Orange County Public Law Library. Although I found similar violations to those that have been criminally prosecuted in recent times, they all had been enforced by the Department of Insurance as disciplinary matters in accordance with the APA.

The first criminal prosecutions seem to be the ones filed against Lisa and Teresa Golt in 1999 in Los Angeles and Orange Counties. These cases were initiated by means of utilizing a Grand Jury to indict them. Then there were prosecutions in Riverside and San Bernardino. I believe a grand jury was used in one or more of these prosecutions. Next was the Orange County District Attorney's office who also utilized a grand jury.

It has been said that Insurance Code § 1814 authorizes a D.A to criminally prosecute a person for a suspected violation of a bail agent licensing regulation. I assume this is interpretation of Insurance Code 1814 is based on the general premise that the Superior Court has jurisdiction over all felonies in the state. There are exceptions provided for in the Penal Code.

I am not challenging the validity of the statutes or regulations but what I am questioning is the authority for someone other than the Department of Insurance to enforce the bail licensing laws independent of any action by the Department of Insurance.

For example, attorney Joseph Cavallo was convicted of a felony violation of Title 10, CCR section 2071 and Insurance Code Section 1814. Cavallo admitted guilt to capping. As an attorney he was in violation of B&P Section 6152(a), a misdemeanor.

**681.** No person can be punished for a public offense, except upon a **legal conviction in a Court having jurisdiction thereof.**

**690.** The provisions of Part 2 (commencing with Section 681) shall apply to all criminal actions and proceedings in all courts, **except where jurisdictional limitations or the nature of specific provisions prevent, or special provision is made for particular courts or proceedings.**

**691.** The following words have in Part 2 (commencing with Section 681) the signification attached to them in this section, unless it is otherwise apparent from the context:

(a) The words **"competent court"** when used with reference to the jurisdiction over any public offense, **mean any court the subject matter jurisdiction of which includes the offense so mentioned.**

Specialized provisions and procedures have been made by the Legislature for state agencies to make their own rules/regulations as well as procedures by which those administrative regulations are to be enforced by state agencies. Courts do not have the knowledge of the subject matter the Department of Insurance is charged with enforcing, the legislature decided for matters of convenience or more efficient administration to withhold initial determination of the matters from the courts.

The Administrative Procedure Act was created in 1945 specifically to try to **unify the procedures** used to enforce the rules and regulations of the different state agencies.

**When statutes require a particular class of controversies to be submitted first to an administrative agency as a prerequisite to judicial consideration, and the parties reasonably dispute whether their case falls into that category, it lies within the agency's power to determine in the first instance, and before judicial relief may be obtained, whether the controversy falls within the agency's statutory grant of jurisdiction.**

There is no doubt that the California Code of Regulations, Title 10, Sections 2050-2104, which were promulgated by the Insurance Commissioner, fall under the jurisdiction of the Department of Insurance. The Department of Insurance is required to comply with the Administrative Procedure Act when making and enforcing the administrative regulations. **If the DOI chooses not to act, absent a blatant abuse of discretion, the courts are without power to make the DOI act. There is no authorization for any other entity to then decide they have jurisdiction to investigate and prosecute a matter for which the DOI has declined to take even administrative action on.**

The courts are not familiar with bail licensing laws. As a result, criminal convictions have been obtained for **matters the Department of Insurance itself did not feel were important enough to take action on**. In what seems a complete contradiction of logic, due process and equal protection of the law, the Department of Insurance then revokes the bail agents license based on a conviction for a violation the DOI had previously decided not to take action on.

Primary jurisdiction, like exhaustion, allows complex questions to be answered in a uniform manner by one decisionmaker, the agency, rather than many different courts.[1] The goals of the two doctrine are similar and, indeed, they are often confused with each other. Nonetheless they are separate doctrines and the correct choice can make a significant practical difference.

**Insurance Code Section 1814 does not define a crime; it is merely a penalty provision.**

Below is an excerpt from the **2011 ANNUAL REPORT OF THE INSURANCE COMMISSIONER**.

According to the information below, the **Investigation Division** of the Department of Insurance is charged with **enforcing** applicable provisions of the Insurance Code and is also to **certify crimes** of which the Commissioner has knowledge to a prosecuting authority.

**SECTION TWO: INVESTIGATION DIVISION (page 37)**

The Investigation Division is charged with **enforcing** applicable provisions of the California Insurance Code under authority granted by **Section 12921** and to **certify crimes** of which the Commissioner has knowledge to a prosecuting authority pursuant to **Insurance Code Sections 12928 and 12930**. **The Investigation Division pursues prosecutions of offenders through both regulatory and criminal justice systems.**

**The mission of the Investigation Division is to protect California consumers** by investigating suspected violations of laws and regulations pertaining to the business of insurance and seeking appropriate enforcement actions against violators. **Effective enforcement** of the insurance laws helps to safeguard consumers and **insurers** from **economic loss** and eliminate unethical conduct and criminal abuse in the insurance industry.

**The Insurance Commissioner established case priorities for the Investigation Division** to include premium theft, senior citizen abuse, unauthorized insurers, deceptive sales and marketing practices, title insurance rebates, public adjuster violations, abusive acts committed by auto insurance agents and companies and **illegal bail practices**.

**In the Cavallo case, attorney John Barnett’s Motion for Discovery refers to “Department of Insurance Investigators working with the District Attorney’s office on this case...” If the Department of Insurance was working on this case, they would have been required to “certify crimes of which the Commissioner has knowledge to a prosecuting authority pursuant to Insurance Code Sections 12928 and 12930.**

VII. SPECIAL ISSUES FOR ATTORNEYS IN CRIMINAL CASES

A. ISSUES FOR THE PROSECUTOR: CHARGING, PLEA BARGAINS, REPORTING TO STATE AGENCIES

The fact that a defendant holds a professional license should have little effect on a prosecutor’s charging or prosecution of a case. In charging a case, a prosecutor has a duty to institute criminal charges that he or she believes are supported by probable cause. Cal Rules of Prof Cond 5-110. A prosecutor should not use the charging process to obtain leverage to induce a guilty plea to a lesser charge before trial (see Uniform Crime Charging Standards II-1-II-2). **Thus, it would be improper for a prosecutor to charge a case as a felony merely in an attempt to affect a defendant’s professional license.** The best practice for a prosecutor handling a case in which the defendant holds a professional license is to charge and prosecute the case on the merits of the case without taking into account the defendant’s professional license status.