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## Newschannel 6 Exclusive: Broken Bond System

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It's your constitutional right: protection against excessive bail. It's a protection from getting lost in the system and sitting in jail while legal wheels turn. But, the system is an imperfect one.

Right here in Texoma, a man sits in jail on a \$2.5 million bond for a crime he planned, but one that never happened. That's higher than for any murder suspect in the last two years. In this Newschannel 6 exclusive, I dig into the laws, the inconsistencies and the confusion surrounding the bond system asking: is the bond system broken?

Sadness...frustration...anger...

These are the reactions of David Gonzales' family. Gonzales was shot and killed March 20, allegedly by his girlfriend's husband. The suspect, Jason Robert Acheson, was out on a \$25,000 bond only 16 hours after the shooting.

Part of the family's frustration stems from another love-triangle case from just days earlier.

On March 15, police arrested and charged David Everett Stevens with criminal solicitation to commit murder. Allegedly, for paying a man to kill his wife's boyfriend.

The killing never took place. The would-be hit man turned Stevens in to police. Stevens still sits in the Wichita County Jail on a \$2.5 million bond.

That's \$2.5 million for a killing that never happened and \$25,000 for a murder charge.

"What is the public supposed to do with that information?" asked Stevens' defense attorney Ronnie Robert Molina. "How do they process it? How can someone not think the system is failing us?"

So, is the system failing us? To find out, I talked to Wichita County Justice of the Peace for Precinct 3 Judge Marc Newman.

"It is supposed to be based on the individual case," Newman said. "What the security is going to be to assure their appearance at trial, to protect the victim's safety, to protect the community's safety. Then it just becomes a judgment call for the judge. Whatever feels right in their head and their heart, becomes the bond amount."

The assurance that a defendant will return is central to the system.

"And that's all it's for," said Newman. "We are not punishing people with bonds because these are people who are accused, not convicted."

There are no requirements for bond amounts. And that leads to some pretty unusual decisions. "I have seen bonds that make me scratch my head," said Newman.

But, there are guidelines to consider. The 8th amendment to the US Constitution forbids excessive bail. And, article 17.15 of the Texas Code of Criminal Procedure prohibits the use of bond as an instrument of punishment. But, it also calls for consideration of the offense and public safety.

"You balance it the best you can, given the limited amount of time that the magistrate spends with that case," explained Newman.

And that's part of the problem. Wichita County sees thousands of cases and, unless a judge has a

compelling reason to ask for it, they aren't given a defendant's criminal record. So magistrates are largely left with their gut feeling.

"And then you hope you guessed right," said Newman. "Both in the interest of the accused and the interest of the public."

But is a \$2.5 million bond excessive, even punitive?

"Was it punitive? I don't think intentionally," said Molina. "Has it turned punitive? Yes."

But, Judge Newman said the system does have built-in safeguards. Both defense and prosecution attorneys can motion to have bonds changed.

However, those getting bond reductions are largely people who can afford their own attorney.

In Wichita County, over the past three years, felony defendants who had bonds reduced by retained lawyers outnumber those with appointed lawyers by more than two to one.

"The common person," explained Molina, "do they one, have a defense counsel that is willing to appeal and knows how to appeal? And two, can they finance it? And the answer is no. So, with the current set standard, there is a worked-in defeat to the public."

Both Molina and Judge Newman agree, however, that is not the fault of public defenders. Judge Newman explained: "The PD's office will generally not...they don't have the time to conduct hearings for bond reductions where, no matter what you reduce the bond to, the defendant is going to be incapable of posting the bond."

Judge Newman pointed out if someone can't afford an attorney, they likely can't afford to post their bond.

There is, however, an option for those who can't pay their bonds in cash: the bail bondsman.

Max Green, a professional bondsman in Wichita Falls, explained the system.

A suspect contacts the bondsman to post their bond. That money never actually changes hands. The bondsman agrees to back the amount of the bond with personal assets or through a surety company.

The suspect pays a fee of around 15 percent to the bondsman. If the suspect shows up for court, the bondsman keeps the fee and has the bond amount refunded to his or her assets.

Bail bonding is big business across the country and right here in Texoma. And, it's getting bigger.

A 2007 report released by the US Department of Justice shows more felony suspects are now released on financial backing than their own personal assurance. That change came in 1997 and, ever since, the number of people sitting in jail who can't bond out has climbed steadily.

As the bond industry grows, so does the jail population. Though, we aren't seeing that problem here in Wichita County.

"I think that the jail overcrowding, and we do have jail overcrowding," said Newman, "I think that is coming more as a result of the, frankly, the number of drug-related and drug-ancillary cases that we're seeing."

Still, Molina's client, David Stevens, could be sitting in jail for quite some time if bond reductions don't go through. "And a trial in that court, do you realize how long that would be?" asked Molina. "Probably six months."

So, what can or should be changed within the system?

In an earlier conversation with Newschannel 6, 78th District Court Judge Barney Fudge said he would support set bond amounts for particular crimes. That could eliminate discrepancies like the

Acheson bond.

But, Judge Newman said the Attorney General's office has been clear on that idea for years.

"That's not allowed," said Newman. "That takes the human examination out of the picture and that's not what we want to have."

Green argued, and he's backed up by the Justice Department, defendants out on a monetary bond show up for court in higher numbers than those released on their own recognizance. And he said, it takes the taxpayers off the hook if defendants skip bond. Bondsmen, said Green, become financially responsible for their re-arrest and return.

Molina believes broad guidelines, that aren't legally binding, could add some stability to the system. "That might help our public handle this whole process better," he said. "Because right now the general public does not understand this very subject we're talking about."

It's the confusion, said Molina, that really drives public frustration and anger when they see huge swings in bond amounts. "And," he added "if it continues to follow a pattern that confuses the public, it's going to grow until we have a problem that will have to be answered."

But, Judge Newman said, with all of it's flaws, bond is still a pretty good system.

"Changes that I would like to see...I really can't think of any right now," he said. "I have not seen any significant abuse of (the system) during the 12 years I've been doing this."

-"The system works?"

-"It does."

Stevens' next opportunity for a bond reduction will be at a habeas corpus hearing scheduled for January 6 in the 89th District Court.

Acheson has yet to be indicted on his murder charge.

*Tim Barnosky, Newschannel 6.*



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