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## Courts, sheriff tighten up bond procedures (http://daltondailycitizen.com/local/x603541303/Courts-sheriff-tighten-up-bond-procedures)

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DALTON — Whitfield County court and law enforcement officials say they have taken a closer look at the system of ensuring bail bond forfeitures are paid by local bonding companies after questions about the process were raised by The Daily Citizen.

Approval of who can start a bonding business and who can be employed as a bondsman is left up to the county sheriff under state law. In Whitfield County, six companies have been approved to write bonds for defendants so that the defendants can be released from jail, although two of the companies are currently in a “dissolved” status with the Georgia Secretary of State’s Office.

Three of the bonding companies owe a total of almost \$70,000 in bond forfeitures to Dalton Municipal Court. The Daily Citizen looked to see if any of the bonding companies owe outstanding amounts to Superior, Magistrate and Probate courts in Whitfield County. Information has been difficult to obtain since most of the bonding companies did not return phone calls and some courts do not keep up with how much is owed, and one court official found that forfeitures have not been sought for decades. County Attorney Robert Smalley said local bonding companies are “extraordinarily diligent” about getting defendants into court that they have written property bonds on, but the system to ensure the companies stand for the bond amounts is “structurally complicated.”

“It’s a system that doesn’t lend itself to running as smoothly and efficiently as we would like,” he said. “My understanding is that it’s done more informally than formally, but we want to figure out a better way to do this. The sheriff (Scott Chitwood) and clerk (of Superior Court, Melica Kendrick) are very interested in getting it started, and we believe the process we’ve come up with is very workable.”

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## The sheriff's perspective

Chitwood said a bonding company's "job" is to produce the individual for court who the company has bailed out of jail.

"They're responsible," he said. "If a bench warrant is issued by the court for failure to appear, the bond company gets on the hunt."

Chitwood said the closer look at how county courts and his office handle the bonding process and potential forfeitures — which his office is tasked to collect — has helped "streamline" procedures related to bonds.

"Through all this, we looked at it — how we could streamline and make it more effective," he said recently. "So on a monthly basis the (county) clerk's office is going to check her files and see which ones may or may not have been settled, give me a list of them and we'll look and see if they have issued (start of legal proceedings)."

"We make every effort to find efficient and effective ways to streamline any course of action," he said. "We have a process where the clerk of (Superior) Court will forward to the sheriff's office all current bonding company forfeiture 'fi fas' (for fieri facias, a writ of execution) at the end of each month. We will then forward to the bonding companies, with a requirement that they remit payment or clarify any 'fi fas' that should be canceled."

Smalley said state law favors the bonding companies.

"The law requires 120 to 150 days to go by before a hearing may be held on whether to enter judgment on a forfeited bond," he said. "If it gets to the point where a judgment is entered by the court, a 'fi fa' is issued by the clerk and the sheriff is then authorized to levy upon certain assets of the judgment debtor found in Whitfield County."

## Out at Municipal Court

Dalton attorney Jerry Moncus, who was fired as city judge of Dalton Municipal Court on the same day that court administrator David Hamil resigned — over "going after" bond companies for court forfeitures, they say, while City Council members cited unexplained "philosophical differences" — called bond forfeiture "about a four-stage process."

"That process is geared in such a way in favor of the bond companies," he said. "They can be relieved of all liability almost right up until the very last day by simply producing the defendant. So if they produce the defendant before the final day, there's a possibility they're going to be completely released of any and all obligations ... (and) we've wasted our time."

Moncus said that after going through the forfeiture process with the bonding companies — including certified mail being sent to bonding companies and legal notices — they still "seemed to refuse" to pay.

"Two companies cooperated and paid — that was A-1 and Huckabee Bonding," he said. "The rest of them simply refused to pay, totally. It was just, 'We're not going to pay, we don't give a darn.' They told us in plain English their attitude was 'We're not going to pay.'"

City Administrator Ty Ross said Cohutta Bonding has also satisfied its uncollected bond amount to the

court, but that AGV Bonding (\$22,682), A-Bail Bonding (\$19,556) and Dalton Bail Bonds (\$27,660) still owe a total of \$69,898 in bond forfeitures.

Moncus said city court was the only court that was “really, really trying to make them pay.”

“I mean, we were demanding payment,” he said. “Now I don’t know about Probate Court, I know nothing about them. Superior Court goes through the bond forfeiture process, but once the bond is forfeited who in fact is actually forcing them to pay off that bond? To my knowledge, no one, if the sheriff doesn’t shut them off.”

### ‘Confusing’

Chitwood showed where four bonding companies — A-1, AGV, Cohutta and Huckabee — have between \$30,000 and \$35,000 lines of credit to back their bonds, according to letters produced by the companies between Sept. 2 and Oct. 4. Those letters are renewed on a yearly basis, he said.

He called working with the bonding companies “a relatively simple process” that can be confusing.

“There can be an appearance that a lot of bond forfeiture money is not being collected,” Chitwood said. “It can be confusing, because a bonding company can sign \$100,000 of bonds, and that \$100,000 looks pretty strong, and that’s ‘outstanding.’ But now let’s start checking and see which ones are settled, and that \$100,000 may become \$15,000 in bonds. It can be misleading if you don’t understand about the number of bonds signed versus what is truly, truly outstanding.”

He said bonds could be “settled” a number of ways, such as finding the individual, learning he is jailed somewhere else, or that the defendant is hospitalized or, in some cases, deported out of the country.

“It’s a very risky business, but 99 percent of the time it works out perfect,” he said.

### Refusing to help?

But a former public defender who worked in Dalton Municipal Court said the sheriff’s office was not helpful in collecting on forfeitures.

“When I was working with (the court) in collecting their bonds, the sheriff absolutely refused to assist us with collection efforts,” said Josh Smith, a local attorney who assisted Moncus and Hamil. “When I informed them they were the only ones with statutory authority to help us, they did not care. Citizens must realize that when someone does not pay a bond or when a defendant fails to appear for court and the bonding company does not produce that person, the criminal is walking the streets and the bonding company is not held to account for bringing that person in because the bond will not be collected from the bonding company. Therefore, we have rapists and other violent criminals walking our streets because the bonding companies will not bring them into court.”

Smith said the sheriff’s office did help on “one small case” that involved the collection company he was a partner in, LMST Recovery Group.

Chitwood said he has received some bond forfeiture papers from city court.

“I consulted the county attorney, (Superior Court) Judge (Jack) Partain ruled on it, and they said, ‘Sheriff, don’t do anything unless Judge Partain changes his ruling,’” he said. “I’ve always got along with Josh Smith, with Jerry Moncus and David Hamil.”

## Uncertainty at Superior Court

Kendrick said the court has taken in \$8,000 in bond forfeitures this year, but only \$1,000 came in through a local company, A-1 Bonding. Two separate forfeiture payments — one for \$5,000 from a local law firm on behalf of its client and another for \$2,000 from an individual — accounted for \$7,000.

“We don’t keep a dollar amount, a total,” she said. “Our system is not set up to do a total of that. When it’s actually ordered from court that a judgment be issued, we put a ‘fi fa’ of record in our general execution (records). Title searchers pick up the ‘fi fa’ that’s filed with the clerk of court office by the court. There is an amount on the ‘fi fa,’ but it’s not something that we actually put into our system and keep a running total of.”

“It’s been unclear to me as far as the law concerning bond forfeitures,” said Kendrick, who took office in 2009. “I just want to help wherever I can. I’m a new clerk and I need to learn, but we’re record keepers and not debt collectors. We don’t create — it all comes to us.”

She said bond forfeitures are paid to the criminal division of the court and then paid into the county treasury.

## Change coming to Probate Court

Judge Sherri Blevins said her search of Probate Court records revealed that property or “surety” bond forfeitures have not been pursued as far back as 1961, but she plans to implement a system after the first of the year.

Chief Magistrate Haynes Townsend said bond forfeitures are not a problem in his court, since all bonds are preset and are normally not very high. Magistrate Court deals with all county ordinances and misdemeanors such as theft by shoplifting, criminal trespass, possession of less than an ounce of marijuana, criminal trespass, bad checks and alcohol to minors charges (furnishing or possessing), according to Court Clerk Gayle Gazaway.

“People need to keep in mind that bonds are not set to punish people, but to ensure they show up for court,” Townsend pointed out.

## Indirect effect

Moncus claims bond forfeitures are hurting the local economy.

“The city’s broke, the county’s broke, people are being laid off from work, benefits are being curtailed and you’ve got hundreds of thousands of dollars ... and no one’s trying to collect,” he said. “My whole objective in this (collection) process is to force these individuals to pay. I would like to have someone ... ask the solicitors in each court why they’re not asking for the bond forfeitures, ask the judge why they’re not issuing a bond forfeiture, and ask the sheriff why he’s not forcing the companies to pay.”

Asked if thousands of dollars are “out there” in uncollected bond forfeitures, Chitwood shook his head and said, “That’s not happening.”

“This has been a good opportunity for us to review and double-check how we’re doing,” Chitwood said. “It’s been a little learning process for everybody.”