

Sun Journal

Dexter killings put focus on domestic violence bail decisions

By John Christie, ©Maine Center for Public Interest Reporting

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Amy Bagley Lake with children Monica, 12, and Cody, 13, in an undated photo.

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Sometimes it takes a death.

Sometimes it takes four deaths: a mother, her two children and the man who killed them and then killed himself.

The deaths of Amy, Monica and Coty Lake at the hands of their husband and father, Steven Lake, may be the tragedy that brings major reform to how the criminal justice system handles dangerous domestic violence cases.

The June 13 triple murder-suicide is becoming a rallying point for changes in the system from an unofficial coalition of domestic violence groups, leading Republicans and Democrats and the state's top judge and top cop.

"Change will occur," Brian Gagan said. "I can guarantee you that."

Gagan was part of a four-man team of former police officers — now academics and consultants — who recently released a "domestic violence psychological autopsy" of the Dexter incident.

The team interviewed 69 people to discover the systemic causes behind the murders. It cites multiple failures by police, prosecutors, the courts, bail commissioners and the Legislature.

Among the failures: Bail commissioners set "ridiculously low" bail of \$2,000 twice after Lake was picked up for threatening and stalking his wife. In both cases, he was bailed out by his father in a matter of hours.

Although this was the most damning report yet on the pretrial criminal justice system, it is not the first time problems have been raised by experts — and then mostly ignored.

But this time, the response might be different.

This time, the names coalescing behind a change include: Republican Gov. Paul LePage; his public safety commissioner, John Morris; state Rep. Emily Cain, the leading House Democrat; Maine Supreme Court Chief Justice Leigh Saufley; Attorney General William Schneider; a district attorney; and advocates with social service and law enforcement backgrounds.

"It takes a long time and sometimes a horrible tragedy for people to put this together," said Julia Colpitts, executive director of the Maine Coalition to End Domestic Violence and vice chairwoman of the Maine Commission on Domestic and Sexual Abuse.

One of the focal points of their legislative changes will be the way the state sets bail for defendants accused of domestic violence.

Currently, except in murder cases, bail is not set by a judge. It is set by one of the state's 115 bail commissioners. There are no job requirements to be hired, they get one day's training a year and they are independent contractors paid by the people they set bail for, not the courts.

This beleaguered system has been changed very little since it was established by the Legislature in 1883.

'Orphan' system

The bail commissioners come under the direction of the state's judiciary and Chief Justice Saufley, who has been working behind the scenes to improve it with the limited funds and laws available to her.

This year, she was able to reinstate a position that will help train and select bail commissioners. The Baldacci administration eliminated the job during a budget crunch; Gov. Paul LePage and the Legislature restored it.

But, generally, Saufley said, the bail commissioner system has been “an orphan within state government.

“The Legislature will have to look at whether it wants to unwind this ancient system of bail commissioner,” she said. She doesn’t see that happening soon because of the costs involved, she said.

In the meantime, though, a number of changes from politically strange bedfellows are making their way toward public debate.

They include:

* Gagan’s group proposes more than 50 reforms, some legislative, some procedural. Among them are nine changes to the bail system, including that in cases such as Lake’s, a district court judge, not a bail commissioner, should set the bail.

They also recommend that in most cases in which terrorizing, assault or other violence has occurred while the defendant has been ordered to stay away from a spouse, the defendant should be jailed until a trial.

“The training and the budget for bail commissioners has so drastically been restricted,” Gagan said. “It’s no surprise that cases have slipped through the cracks.”

* Public Safety Commissioner Morris said he has been meeting with the governor, Attorney General Schneider and the Maine Commission on Domestic and Sexual Abuse to come up with legislation for the 2012 session.

The governor’s bill is still being worked on, but Morris said it would address the bail issue.

Like Gagan’s group, among the ideas from the LePage administration is to take bail decisions in serious domestic violence cases out of the hands of bail commissioners and have them handled by a judge.

“Judges have more training and they are more experienced and are able to assess the danger associated with (a defendant),” Morris said.

* Evert Fowle, district attorney in Kennebec and Somerset counties, has been a critic of the bail commissioner system. The Morning Sentinel has reported that he, too, is submitting a bill to put judges, not bail commissioners, in the decision-making role in the most serious domestic violence cases.

* Rep. Ken Fredette, R-Newport, a lawyer, also has submitted a bill that would put bail decisions in violent domestic cases in the hands of a judge, who could require defendants to wear an electronic monitoring device that tracks their whereabouts for authorities.

* Perhaps the most far-reaching idea would provide a “risk assessment” tool that would be used by police and bail commissioners.

Using science

One such process used now in other states and Canada, the Ontario Domestic Assault Risk Assessment, calculates how likely spouses are to re-assault their partners.

The 13 yes-no questions in the assessment cover the defendant's history of violence, antisocial behavior, substance abuse and other factors.

Rep. Cain's bill, which will be brought up next year, would mandate the use of a "standardized risk assessment in the management of domestic violence crimes."

It would require law enforcement and the Maine Department of Corrections to set up processes to implement risk assessment statewide over the next two years.

"We need to learn from the horrible things that happened in the Dexter case," Cain said. "We need consistency, reliability and accuracy in the bail process."

The governor's pending legislation offers a similar idea.

Meanwhile, Sagadahoc Sheriff Mark Westrum, a critic of the bail commissioner system, is about to start a model program using an assessment tool in his county.

Westrum challenges the comments from some bail commissioners who say they can make a reasonable risk assessment with the information they have now, because they personally know most of the people in their community.

Brian Rideout, a bail commissioner in Piscataquis County, said, "Ninety percent of these guys, I know," but he added that sometimes he has to "pry out" of police the criminal histories of defendants.

"The bail commissioner may think he knows, but you never really know what a person is capable of," Westrum said. A system based on verifiable data would go a long way to making better decisions, he said.

Rideout said that Judge Robert Mullen, who oversees bail commissioners, has focused more on domestic violence in the recent annual training session.

The Maine Commission on Domestic and Sexual Abuse has been working with legislators and the governor's office on the pending bills.

One key to dealing with domestic violence is the bail system, said Julia Colpitts, vice chairwoman of the commission.

A central problem "is that bail commissioners don't have enough information to make a reasoned decision in the case of someone arrested for domestic violence," she said.

Even in the rare cases when a bail commissioner has access to a full criminal record, she said, that is not enough to assess the risk, which is why she is among those pushing for a scientific-based assessment

Chief Justice Saufley said, "We're moving, I hope, more rapidly to a more objective risk-assessment tool. Anyone can be misled by another human being. The more we step away from that and rely on the science, I think the better we will be."

In the report by Gagan's group, he and his co-authors address the political side of changing laws and attitudes about domestic violence.

They say their recommendations should be adopted "in short order ... despite the roadblocks that will be attempted by a dramatic minority of decision-makers, leaders and professionals who do not accurately understand the importance of preventing (domestic violence homicides) ..."

Colpitts' comments, based on her years of experience on the front lines of the issue, echoed the report's view:

Reports, she said, "don't get things done" on their own.

"There's been a history of inaction," she said, "that needs to stop."

This story is part of a continuing series called, "Maine's Bail System: A 19th-century Holdover."

Contributing writers Emily Guerin and Mary Helen Miller provided research for this story. The Maine Center for Public Interest Reporting is a nonprofit and nonpartisan journalism organization that provides in-depth reporting as a public service to its Maine media partners. The e-mail address is mainecenter@gmail.com. The Web site is pinetreewatchdog.org.