

High bails cause some concern Attorney blames 'Duncan effect'

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Defense attorney Tim Gresback calls it the "Duncan effect": judges, especially in Kootenai County, setting bail amounts so high, defendants might as well be held in jail without bond.

Bail amounts traditionally have been higher in Kootenai County than elsewhere in the state, Gresback said. He believes the crimes of Joseph Edward Duncan have pushed the dollar figure higher.

As a result, Gresback said, the accused are stuck in jail, lose their jobs and see relationships with loved ones suffer. Some might even admit to crimes they didn't commit, he fears, just to resolve a case sooner.

After Duncan's arrest on triple-murder and kidnapping charges in Coeur d'Alene, reporters went to the doorstep of the Minnesota judge who had set Duncan's bail at \$15,000 in a molestation case just weeks earlier.

The judge has been subjected to nationwide criticism for not setting bail higher given Duncan's violent history. Relatives of Duncan's Kootenai County victims also sued the judge.

Gresback believes that judges post-Duncan are setting bails higher to avoid a similar public relations--and political--nightmare.

"If one guilty local citizen released on low bail freaks out and commits another crime, the judge will suddenly be labeled 'soft on crime,'" Gresback said. "Next to a judge getting caught drunk driving, the 'soft on crime' label is one of the few things that can cause lasting countrywide public displeasure."

Judges reached for comment said politics and Duncan are not factors when they set bail. Idaho judges have broad discretion over bail, which is intended to secure a defendant's appearance in court.

Idaho court rules set out a number of factors that judges are to consider in setting bail, including defendant's work histories, relationships, characters, prior criminal records, ties to the community, and nature of the charges against them.

Because no case is the same, it's difficult to compare bail from one county to the next.

But Gresback and attorney Jim Siebe, who both defend clients throughout the state, say bail is higher in Kootenai County.

First District Magistrate Eugene Marano said bail amounts have increased in the 21 years he has been a judge, but he attributes the change to inflation, not the Duncan case. Marano and fellow Magistrate Barry Watson said they also have noticed, over time, that prosecutors are asking for increasingly higher bail amounts.

Kootenai County Prosecutor Bill Douglass said that if prosecutors are asking for higher bail, it only reflects the serious nature of the crimes being committed in today's society. As for the so-called "Duncan effect," Douglas said he doesn't believe it's so.

"If it's a grave crime carrying serious punishment, we're going to ask for higher bail," Douglas said. "Especially where the facts would indicate a strong likelihood of conviction."

Gresback characterizes Kootenai prosecutors as "pushing so hard it doesn't give the judge any cover."

If a judge sets bail lower than the prosecutor requests and a defendant commits another crime after posting bond and being released, Gresback said, then prosecutors can say in their own defense that they asked for higher bail.

Then the judge, like in the Minnesota case, bears the brunt of public criticism--not the prosecutor.

Watson said he believes the Minnesota judge wasn't provided all the details on Duncan's criminal background and probably made the best decision he could with the information available.

"The way I viewed it, it wasn't really the judge's issue. The prosecutor didn't really inform the judge Duncan was a Level 3 sex offender," 1st District Magistrate Benjamin Simpson said. "I don't view that as a failing of the judge. Unfortunately, he's the one who takes the heat for it."

Watson said the magistrates who set bail aren't always provided "sufficient or good information.

Kootenai County is hoping to address that issue through a new pre-trial services program. The county received a \$162,000 grant through Idaho State Police to fund the program.

As it works now, the prosecutor's office tells a judge about a defendant's criminal background and the charges against the defendant during an initial court appearance within 48 hours of arrest. Judges typically ask questions of the accused to determine whether he is a candidate for bail or can be released on his own recognizance while awaiting trial.

The new program aims to do a more thorough check on a defendant's background, according to Mike Wall, manager of Kootenai County's Adult Misdemeanor Program. The pre-trial services program will operate under the umbrella of his department.

Each day, Wall's office will get a list of everyone who has been arrested and booked into jail. Pre-trial services will meet with the arrestees and interview them.

The program is expected to start in January.

Wall said employees of the new program will call relatives and bosses to verify information and conduct criminal background checks. By the time the accused appears in court for the first time, pre-trial services will have forwarded a one-page synopsis of that person's background to the judge, prosecutor and defense attorney.

"Our job isn't to form an opinion," Wall said. "It's just to gather accurate information."

Pre-trial services will also provide supervision of those who are released on bail and will remind the defendants of approaching court dates in hopes of reducing the number who fail to appear in court.

Wall said he hopes the program will free up space in the county's crowded jail. On any given day, 70 percent of Kootenai County inmates are in jail awaiting trial, not yet convicted of any crime.