



SEASON 4 EPISODE 9

When "Bail Reform" Isn't

Texas conservative lawmakers and bail reform advocates have long debated what bail reform can look like for those who cannot afford to bail themselves out of jail. Journalist Andrea Henderson looks closely at a new bail law some activists consider a setback.

Mitzi Miller: I'm Mitzi Miller, and this is 70 Million.

NEWS CLIP: Let's talk about the late night drama in Austin, as Democrats took one last chance to shut down a bill that, boy, a lot of folks across the nation are watching.

Miller: Earlier this summer, the Texas legislature was in the national spotlight. Democrats walked out of the state capitol at the end of the regular session, as we hear in this clip from WFAA news.

NEWS CLIP: A quorum is apparently not present, Mr. Garin moves the House adjourned and 10 a.m. tomorrow as Objection sure hears none order. So Democrats in the House, they walked out, meaning there weren't enough people to vote on a controversial election reform bill.

Miller: The legislators were specifically trying to block the passage of a controversial voting rights bill. But in that [same session](#) was a whole slate of measures backed by conservatives, including an [ultra-restrictive abortion law](#) that also got national attention. And, flying somewhat under the radar -- a so-called "bail reform" law.

In contrast to the growing national movement to end cash bail, this law makes it harder for people accused of certain crimes to get out of jail as they await trial.

Andrea Henderson explains.

Andrea Henderson: Geronimo Gonzalez says he hadn't seen the inside of a Victoria County jail cell in nearly 17 years.

Geronimo Gonzalez: I don't have what you call a revolving door here.

Henderson: In December 2004, he was arrested for stealing and pleaded guilty.

Gonzalez: I don't come in and out, you know, I went into something and something happened.

Henderson: In May, Geronimo was charged with two counts of aggravated assault with a deadly weapon. And he landed here at the Victoria County Jail. Allegedly, he stabbed two men during an early morning fight at a local business.

Henderson: Geronimo is one of [roughly 47,000](#) people in Texas who are being held in pretrial detention, many of whom cannot afford to pay their cash bail. Geronimo's bail is set at \$150,000. Right now, he doesn't have the \$30,000 he says he needs to bail out.

In order to be released from jail some bonds give defendants the option to pay a percentage to a bondsman in cash or occasionally collateral. Other bonds, sometimes known as personal recognizance, do not require defendants to pay anything to be released. They just simply have to return back to court for their hearing and if they do not show up then they will have to pay whatever the bail is set for.

Gonzalez: *Excuse me, I didn't hear you.*

Henderson: As I video chat with him, Geronimo is in the common area, which is a little noisy. He's wearing square, black eyeglasses. His light gray hair is pulled back in a ponytail. And he is wearing a white t-shirt and jail trousers.

He says he feels worthless inside of jail.

Gonzalez: If I could just get out there, I could make enough money to pay my lawyer, pay me a good lawyer, you know, pay everything because the oil fields I've always made good money. I've always made good money. But in here I can't make nothing.

Henderson: In general, the Victoria County Jail has been accused of unhealthy and inhumane conditions.

Ma'am, this place is I don't know, I mean, it's I don't know.

Henderson: And Geronimo had his own issues inside the jail.

Gonzalez: When I first got here I told them, I cannot be on the top bunk because I have seizures. They put me in a single cell and they had a top bunk. I wanted to sleep on the floor, but it had cracks in the wall and they smell like urine. So I slept on the top bunk. I was OK for about six days.

At about six seven days, I had a seizure. I fell off the top bunk and I hit myself on the head on the commode. I don't know how long I was out, but when I woke up, I had a big old lump on my head and my eyes were shut close and they were black. And I kept telling

them and they wouldn't do nothing for two days and at night, well, I would sleep. Puss would come out of my eyes. Finally, somebody listened to me and they took me to the hospital.

Henderson: I contacted Victoria County Jail's infirmary department and the sheriff's office to ask about this incident, but did not receive a response.

Geronimo says his arrest caused him to lose his job operating a rig at an oil company near Victoria and he and his wife are not on the best of terms. He says he is working with his court appointed lawyer to lower his bond.

[*Music Transition*]

Geronimo is [one of the last few](#) defendants in the state with violent charges who can be released from jail on bail without a judge viewing his criminal or bond history. A new law, known as SB 6, will change bail requirements going forward.

NEWS ANCHOR:

New bail reforms are soon going to go into effect all across the state, Governor Greg Abbott signing Senate Bill six this morning in Houston. The bill is known as the Damon Allen Act and made it through the end of the second special session.

Greg Abbott: *Now we also passed laws to directly address a serious crime issue in Houston, Texas, more so than any other part of the state of Texas, and that is to address a broken bail system.*

Henderson: Texas Gov. Greg Abbott signed Senate Bill 6, or SB 6, in September at "Texas Pastor Council's" "[Safer Houston Summit](#)."

Abbott: *You have revolving door releases of dangerous criminals back onto streets who then go commit even more crimes....*

Henderson: The [law bans](#) most personal recognizance bonds for people charged with violent crimes. These are the bonds where defendants don't have to pay money bail to get out of jail. Defendants can still bond out if they use a bail bondsman, or by paying the full bail amount. And the law also creates a statewide data system for judges to review defendants' previous charges before deciding on bail.

Texas Republican lawmakers and many families of crime victims [believe that](#) people who are accused of violent crimes should stay in custody until their court date. [They believe](#) that letting those defendants out of jail [contributes](#) to a higher crime rate.

SB 6, also known as The Damon Allen Act, was [named for a Texas State Trooper](#) who was shot and killed on Thanksgiving Day 2017. The person who killed him [had previous violent crime arrests](#) and was out on bail at the time. Governor Abbott said the magistrate who set the bail for Damon's killer did not have access to prior criminal history.

Damon Allen's widow Kasey also spoke at the summit, and expressed how important it was to pass a law that's close to her heart.

Kasey Allen: This bill will help keep violent offenders like the one who killed him off the streets and make them safer for other officers and for our communities.

Henderson: Many Texas cities have seen a [rise in murders](#) and [aggravated assaults](#). But opponents of SB 6 [say there's no evidence](#) that making it harder for pretrial defendants to get out of jail will lead to increased public safety: [Research](#) on the national increase in homicides-- though not conclusive -- [suggests](#) lockdown orders, changes in policing, and an increase in gun sales could be to blame. Opponents also argue that outlawing only cashless bonds will make [poverty-based detention worse](#), since defendants can still get out of jail if they can afford it.

This is not a new argument. So, let's walk it back a little bit.

In Harris County, where Houston is, the fight over bail reform has been going on for years. One side wants to eliminate cash bail, arguing it [criminalizes poor people](#), [pours money into the bail bond industry](#) and [limits the court's power](#). The other side argues that [cash bail is essential for maintaining public safety](#) because it will keep violent criminals in jail until their case is complete.

In 2016, Harris County [elected a progressive district attorney](#), Kim Ogg, [who promised to limit marijuana arrests, hold police officers accountable for misconduct, and to enact comprehensive bail reform](#).

The year Ogg took office, [a federal judge in Houston ruled](#) that the county's misdemeanor cash bail system was unconstitutional and it discriminated against poor people. With a settlement, reforms to the bail system for misdemeanor defendants went forward. But there was pushback. DA Ogg herself, disappointing many of her progressive supporters, [filed an objection to the settlement](#). And now, the debate over SB6 has put a spotlight on the part of this argument that's specifically about public safety.

In September of 2021, DA Ogg's office released a [60-page report](#), that links bail reform to the rising crime rates in Harris County. The report suggests there was an increase in defendants out on bail committing new crimes and not showing up for court.

While the report indicates that crime is increasing in the Houston area, some advocates disagree that bail reform is to blame. They point to a [2021 report](#) from the Harris County Justice Administration Department that says the rise in violent crime in the county [cannot be linked to the existing misdemeanor bail reform](#).

Insha Rahman: People, myself included, we're reptilian when it comes to public safety.

Henderson: Insha Rahman is an attorney, bail expert, and vice president of advocacy and partnerships

at the Vera Institute of Justice.

Rahman: There is something about seeing the front page of the news and that one terrible outlier case and suddenly it clouds your sense of public safety and crime in your neighborhood, even though that might be happening over there. It's not happened to you. And when everyday people suddenly no longer believe they're safe because of bail reform, you get backlash and that's what politicians are responding to.

Henderson: Insha opposed SB6, and objects to its supporters calling it reform.

Rahman: I think it's a misnomer to call it bail reform. If what you mean by bail reform is any change to a bail law, then maybe you can call it that.

Henderson: Insha says, to her, an actual bail reform law would do four things.

Rahman: The first is that it eliminates or greatly reduces the use of money or profit in the pretrial system. The second is that it decreases rates. Fewer people are behind bars because we have a crisis in terms of how many people end up in jail because they can't afford the bail that's set in their case. The third thing is that it actually addresses the gross racial disparities that we see in every jail system in this country. And the fourth is that it upholds public safety, which we have yet to see a jurisdiction that's actually done bail reform and truly met those first three criteria.

Henderson: Insha says what's happening in the Texas legislature is an effort to make the bail system even more punitive and that it will lead to an [increase in jail population](#), an issue the state's jails [already struggled](#) with.

Rahman: The law that just got passed essentially makes money bail even more of a requirement for people to get out. It will increase jail populations. We did an analysis of by how much, and we think it will be at least 17,000 new admissions to jail across the state of Texas each year.

Henderson: Insha believes the new law will also worsen racial disparities in who stays in jail.

Rahman: We see this each and every time when money bail gets set, black and brown people and families are harmed because of generational and, you know, racial disparities in wealth. White families and white people are more able to pay bail when it's set than black and brown families.

Henderson: Advocates like Insha believe that a working pretrial bail system doesn't cost defendants money, it prioritizes their humanity as well as public safety. She says, [of the nearly 1 million yearly arrests in Texas](#), only a small number of people pose a threat to public safety. For those people...

Rahman: We make sure that we actually get them their day in court quickly, which is possible to do, so that people aren't languishing for a year or two years, three years, which we see on the regular in Texas and all across the country.

Henderson: And for the vast majority of those other low-level, non-violent arrests...

Rahman: If you took most of those arrests and you just released people automatically and all you did was send a text reminder or a call to remind people to come to court and you assist them with transportation and you make sure that you know they're flexible hours so people don't have to choose between going at their job and losing it or showing up to court or child care and showing up to court. You would have people come back to court.

Henderson: She suggests more mental health and social support, which could lower the amount of bodies waiting in jail for court dates. And there are plenty of people still doing that kind of work, even in the face of the new law and its proponents.

[*Music Transition.*]

Monique Joseph: My name is Monique Joseph. I'm a client advocate with Restoring Justice.

Henderson: The organization Monique Joseph works for provides legal assistance and social services to people in jail and those out on bail.

As a lawn mower buzzes outside, she shows me around the house she lives in with her three children and brother, on the southeast side of Houston. And she tells me about the family member who's not here.

Joseph: So it's been six years now. He's been gone and he was sentenced to forty-five years. And so in Texas, he has to do 50 percent, I want to say, of that time. So he's been gone for a while. And if you come in here, I'll show you some art that he actually sent....

Henderson: We go into her bedroom where she keeps colorful portraits of her children on the walls. Her husband sent them to her from prison.

Joseph: They really, really are inspiring. And just a reminder of how much brilliance and absolute amazing stuff is done by folks who the rest of the world considers dangerous, criminal, unsafe, you know, savage.

Henderson: Monique works for those so-called dangerous people. While still working from home because of the pandemic, she acts as a liaison between her organization's attorneys and their clients. Monique also supports defendants with locating housing, signing up for food benefits or applying for jobs, all of which are things people can lose while they're stuck in jail.

She does criminal justice advocacy work from a place of love and pain. She wants to support families while their loved ones are locked up, because initially, no one supported her through the process while her husband awaited trial.

Joseph: I just really knew that he wasn't the only person that had been in that situation. He had to

do over two years pre-trial in jail.

Henderson: Really?

Joseph: Yes, ma'am.

Henderson: Her husband spent time in Harris County Jail in downtown Houston from 2016 through 2018. Another jail in Texas that doesn't have the best reputation. He sat there because Monique needed \$40,000 cash to bail him out.

Joseph: I sold everything trying to pay for attorney's, trying to pay for bail. I had an extra car. And so we sold it, somebody picked it up and towed it. Couches, TVs, purses. My husband, you know, we thought we were doing well, so he bought me a necklace and a ring. I pawned that. My wedding ring, gone. Computer. I mean, anything that I had that had value.

Henderson: Monique's husband was originally arrested for aggravated robbery with a deadly weapon. While he was in jail the courts also charged him with three sexual assault cases. Monique says his [face was picked out of a photo lineup](#) by women who accused him of rape. She believes he was wrongfully convicted for those sexual assault charges.

Joseph: Statistics do show that, you know, Black and brown people do get those higher bail amounts and aren't able to reach them and then subsequently found guilty and sentenced way longer.

Henderson: A recent pretrial detention study from the [American Economic Review](#), did find that if a defendant is unable to pay bail, it's [more likely that they'll be convicted](#).

It's another reason why Civil rights advocates and opponents of SB6 have been fighting to eliminate cash bail. And Monique says the backers of the new law are rolling back the progress with misdemeanor bail reform that advocates fought so hard for in Houston.

Joseph: There is no excuse for their lack of acknowledgement of simple data and reports that actually show that bail reform in the way it's been enacted in misdemeanors has actually produced a safer society. It's actually produced people who commit less crimes because we diverted and provide support for those folks.

Henderson: SB 6 also has a provision aimed right at charitable organizations like the one Monique works for. The first version of the bill [would have outright prohibited](#) them from bailing out anyone who had been convicted of a violent offense in the last 10 years -- even if the current charge was non-violent. The version of the bill that eventually passed removed that provision, but [now requires those organizations to file reports](#) to their county sheriffs on things like who they bond out of jail and whether they show up for court. And if they're found in violation of these mandates, [their ability to post bail can be suspended](#).

Monique thinks republicans are targeting charitable organizations because of the services they provide for poor people and people of color. [None of those requirements apply](#) to the for-profit bail bonds industry.

Joseph: They do know what these charitable organizations are doing, and I do honestly think they know the benefits, but they don't care. They want power and they want their money and they want the system, the state where them and their constituents feel comfortable and are able to keep their profits. So that's really what it's about.

It is really just showing true colors of these representatives, that they are in support of marginalizing black and brown bodies and keeping that status quo up in Texas. It's nothing new. They've been doing it.

Rahman: Every time there is an effort to change the state bail law, you have to ask yourself what is motivating, what's driving this effort.

Henderson: Insha Rahman agrees with Monique about there being a profit motive behind SB6. She believes lobbying by the bail bonds industry played a big part in bringing the bill to the legislature.

Rahman: In Texas, it wasn't, we have a crisis of too many people behind bars without any return on investment in public safety.

It wasn't that we're actually disproportionately harming Black and brown and poor people by leaving in money bail. Also, wasn't the motivation. What was, was essentially profit and the bail bond industry, which is really a strong force. It's a political force, a lobbying force in Texas.

Henderson: I reached out to Senator Huffman, the sponsor of the bill, to comment on the motivation behind it, but she did not respond to my request. Industry observers have found that the bail bond industry nationwide [profits about \\$2 billion](#) a year.

Rahman: This is a win for them, and they'll be emboldened. They have a lot of money.

Henderson: Insha has worked with lawmakers and district attorneys in other states on cash bail reform.

Rahman: Every time we have done bail reform, we've reduced the number of people behind bars. We have stopped relying on money as much. We have addressed racial disparities, at least to some degree. We have upheld public safety.

Henderson: And in California, though a new bail reform measure [recently died in session](#), the state [Supreme Court in March of 2021 ruled](#) that it was unconstitutional to keep someone in jail simply because they can't afford bail. This was an echo of the 2017 ruling in Harris County, as well as a [similar one in New Orleans in 2018](#).

Still, as of now, Insha says there's nowhere in the country she would point to that's gotten it right yet.

Rahman: Because we are a country that has had a money bail system for centuries at this point and undoing a series of decisions and choices we have made to prioritize profit over people and to prioritize incarceration over true public safety, which can happen in communities. That's a lot of work to do to undo the problems with our pretrial system. I think it's wholly possible. It's just going to take a lot of work and a lot of education and a lot of trying different things that we've never done before to get there.

Henderson: Insha says not that long ago, Texas had a reputation as a place where bipartisan criminal justice reform was really happening. But now...

Rahman: I think that moment, that era is firmly over.

Henderson: She says she's watching carefully for what's coming next.

Rahman: Criminal justice reformers across the country should be paying attention, and we're paying a lot of attention to Texas right now because of the near-total ban on abortion or the voting law that got passed. This is worrisome in terms of civil rights and civil liberties and racial justice in a different way. I get that it doesn't have the same fanfare as voting or abortion. But people should be really worried, because it's a tell of where the south frankly is going and where that huge divide that we are seeing that the binary, it's getting even bigger. And that's where we really should take note and figure out what do we do in other places so we don't see copycat bail rollbacks that we just saw happen in Texas happen in a number of other places. It's wholly likely that that can happen and we've got to be paying attention. We can't be asleep at the wheel.

Henderson: Meanwhile, people like Geronimo Gonzalez can end up sitting in jail for months-- or years-- waiting for a court date, because they cannot afford to get out.

Gonzalez: My sister's got a 401k a pretty good size of 401k, and she says she will dig into her because she knows I will pay it back...but we're trying to help ourselves out because she knows I don't belong in here. I know I don't belong in here. But nobody else believes that I don't belong in here.

Henderson: Geronimo is hoping his lawyer works out a deal to lower his bail, because he doesn't want his sister to suffer financially on his behalf.

Gonzalez: *If I can get it lowered down to where all I got to pay out of my pockets or our pockets is like \$1,500 at the most, that would be good. That would be good. But right now, I gotta pay \$30,000, and that's a lot of money.*

Henderson: *Right.*

Gonzalez: *She's all I got...*

This call will be terminated in one minute.

Henderson: If Geronimo can come up with the money he sees himself fighting the case with a private lawyer and potentially starting a new chapter with his daughter in Houston. While inside, he fantasizes about taking the COVID-19 vaccine, going back to work, taking fishing trips and riding horses again. He's dreaming of a free life.

As of October 2021, there were over [69 thousand people](#) in Texas jails and of those, about [47 thousand](#) were there awaiting trial.

Miller: Thanks to Andrea Henderson for that story.

[Music transition.]

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