Bail Reform, Discovery Reform and Civil Rights Repeal

The Process:

a. These major changes in criminal justice policy were adopted as part of the New York State Budget, despite having virtually nothing to do with the budget. By including these changes in the budget bills, the public, and even most Legislators, were deprived of the opportunity to give effective comment and guidance on these important changes. This increasingly common practice, designed to ram- through major public policy changes without opponents having a fair opportunity to object or comment, should cease.

b. Because criminal justice professionals had no fair opportunity to offer their insight and expertise in the crafting and adoption of these laws, I along with other sheriff's throughout the state are forced to be here, after the fact, calling to the attention of the public, the Legislature and the Governor the serious flaws in these new laws… flaws which will create chaos in the criminal justice system, huge expense to the local taxpayers, and, most importantly, danger to our citizens.

c. We are calling upon the Governor and the Legislature to immediately convene and suspend the effective date of these new laws for at least three months, to give the criminal justice community, and the public, an opportunity to have effective input on needed changes to these misguided "reforms".

Bail Reform:

1) <u>The law will be bad for public safety.</u>

d. Judges will no longer be able to set bail for many serious crimes. *Under the new law over 400 crimes will require mandatory release.*

Consider the following scenarios that will become reality next year:

i. A man is caught selling heroin to high school students. It is also shown that this he was responsible for selling a bad batch of drugs, to the same group of students, that caused a near-fatal

overdose a few days before. He is charged with Criminal Sale of a Controlled Substance to Child, a class B felony.

Under the new law he will be arraigned and released, *since judges will not be able to set bail on nearly all drug crimes.*

ii. A drunk driver travels at an excessive speed in an attempt to evade the police. In so doing he strikes and kills an innocent bystander. The driver will be charged with Vehicular Manslaughter.

Under the new law, the driver will be arraigned and released, *since vehicular manslaughter is technically a non-violent crime…even though a person is dead.*

iii. A person is accosted in a movie theater parking lot by a masked individual who demands money. Growing frustrated, the masked perpetrator knocks the victim to the ground steals their belongings and flees. The victim suffers a broken collarbone from the attack. The perpetrator is later caught thanks to surveillance footage from the parking lot. He is charged with Robbery in 2nd Degree.

Under the new law, the assailant will be arraigned and released because *patently violent crimes like robbery will require mandatory release.* [This is the same for Burglary in the 2nd Degree, if you prefer to use a home invasion scenario.]

iv. A husband beats his wife. He is arrested for Assault in the 3rd Degree, a misdemeanor.

Under the new law, he will be arraigned and released *because judges will not be able to set bail on a domestic violence crime unless it rises to the level of a violent felony.*

b. Many of the types of cases described above may warrant pre-trial detention. But this new law will not allow it.

2) <u>The new law will not allow judges to consider the defendant's danger to the community when making a bail determination.</u>

47 States permit judges to consider public safety when determining whether to set bail. New York is not one of them.

Magistrates should be able to consider whether a defendant is a threat to public safety when considering whether to set bail. So if a person commits a qualifying crime, the judge should be able to set bail if they are a risk of flight OR if they are a danger to the community or to a specific individual.

Many other states allow judges to consider dangerousness when setting bail. New York should do the same. This may be particularly necessary in domestic violence cases, where the risk of reprisal by the perpetrator against the victim is high.

Added to this the fact that judges can no longer consider whether a defendant has any ties to community when deliberating whether to set bail. So the new law with not keep our communities safe, and will do a worse job of ensuring the defendants are present at trial.

3) The law's reliance on pre-trial services as an adequate alternative to bail as a means of ensuring attendance at trial is speculative, and will almost certainly fail without adequate funding.

    a. This is another unfunded mandate that will end up costing county taxpayers. The scope of pre-trial services mandated by the law cannot be achieved without dedicated, perpetual state funding.

    b. We've seen how this has played out in other states. In the wake of New Jersey enacting its own version of bail reform which required extensive pre-trial services, a report prepared for the Governor and legislature warned that the system is "simply not sustainable" and faces a "substantial annual structural deficit" because its funding mechanism relies on court fees rather than the State budget.

    c. The report also found that the pretrial monitoring program lacks resources to keep tabs on people released and lacks resources to help defendants who suffer from mental health or addiction problems. Pretrial monitoring was found to be taxing on court staff and requires 24-hour staffing.

    d. Why are we choosing to make the same mistake?

Discovery Reform:

1) <u>The rigid timeline for compliance with the new discovery rules will be nearly impossible to manage.</u>

> There simply won't be enough time, manpower and money to meet the new requirements of the discovery statute. When law enforcement and prosecutors fail to meet their discovery obligations within the statutory timeframe, the result will be the dismissal of otherwise good cases. This would be a miscarriage of justice, not a balancing of the scales between the People and the defense.
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> > The amount of material and data that will have to be collected, analyzed, collated, and redacted will be enormous. And without thorough scrutiny by law enforcement and DAs before disclosure, we run the risk of inadvertently disclosing sensitive information the defense would not otherwise be entitled to.

2) <u>The confidentiality of informants, the safeguarding of witness, and the privacy of citizens unrelated to the case but somehow identified in the materials will all be at risk.</u>

> Many defendants want to find out as much about witnesses as soon as possible not to unearth exculpatory information, but to identify, target and intimidate witnesses who possess incriminating information.
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> Witness tampering and intimidation represents a fundamental threat to the rule of law. It makes it more difficult to detect crimes, because many will go unreported to the police. It also makes it extraordinarily difficult to prosecute crimes because it deprives the prosecution of credible witness testimony.
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> Witness intimidation is cited as a primary reason for witnesses recanting statements at trial. Research suggests that intimidation is most likely to be carried out against our society's most vulnerable people, children, elderly, immigrants, victims of domestic violence.
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> Prematurely exposing the identity of witnesses will result in more harassment, intimidation and violence against innocent citizens. Witnesses

will increasingly refuse to cooperate if they know that their name, address and contact information will be given to the defendant well before trial. Public confidence in the criminal justice system will be shattered.

Potential Repeal of Civil Rights Law § 50-a:

A repeal of 50-a would only further distort the fair administration of justice in this state. This provision of law, which designates police and peace officer personnel records as confidential, is a necessary bulwark against the malicious use of such records.

The statute was designed to prevent abusive exploitation of personally damaging information contained in officers' personnel records for purposes of cross-examination of a police witness in a criminal prosecution.

Years ago, the legislature rightly recognized that the introduction of non-probative, inflammatory information gleaned from a police officer's or correction officer's personnel file could result in a miscarriage of justice and be unnecessarily destructive for the officer. The potential for such abuse is no less today than it was when the statute was enacted.

The statute already provides a mechanism for disclosing such records. If the record in question is germane to an ongoing court proceeding, and a judge determines that there is probative information in the record relevant to the proceeding, then the judge can order that it be disclosed.