Office of the Winnebago State's Attorney
J. Hanley, State's Attorney
"Op-Ed" Submission to RRStar
September 7, 2022

On January 1, 2023, it is estimated that more than half of the inmates in the Winnebago County Jail will walk out the door. Approximately 400 criminal defendants will be released back into our community because our Illinois legislators passed the "SAFE-T Act" back in 2020. They passed it in the pre-dawn hours of a "lame-duck" legislative session in an attempt to circumvent the democratic process. They were successful. And so, on January 1, cash bail will be eliminated throughout the State of Illinois.

The public has a right to know what this law entails, its practical shortcomings, and the serious negative impact it will have on public safety for the citizens of Winnebago County.

While there are numerous issues with the new law, perhaps most problematic is that it only allows for even the possibility of pretrial detention for a small subset of crimes and under very limited circumstances – regardless of a defendant's risk to re-offend or their known danger to the community. In so doing, the law eliminates prosecutorial and judicial discretion when determining which defendants should be released back into the community while their cases are pending.

In a bond or detention hearing, judges are presented with the facts underlying the charges against a defendant, that person's criminal history, as well as an evidence-based risk assessment particular to each defendant. With that vital information, the judges of *our community*, using their discretion and experience, are truly best positioned to balance the important interests at stake and decide if a person should be detained pending trial. The Illinois Supreme Court has held that when determining bail, a judge's decision must "balance the right of an accused to be free on bail against the right of the general public to receive reasonable, protective consideration by the courts." The SAFE-T Act, however, does away with all that. It strips judges of their important role and responsibility to both defendants and the public by actively preventing them from considering each case on its own merits and applying the law accordingly.

Under the new law, entire categories of crime, such as aggravated batteries, robberies, burglaries, hate crimes, aggravated DUIs, vehicular homicide, drug induced homicides, all drug offenses, including delivery of fentanyl and trafficking cases, are not eligible for detention no matter the severity of the crime or the defendant's risk to a specific person or the community, unless the People prove by clear and convincing evidence the person has a "high likelihood of willful flight to avoid prosecution."

Additionally, in cases involving non-probationable forcible felonies, such as murder and armed robbery, judges may only detain a defendant under the new law if the prosecution proves by clear and convincing evidence the defendant "poses a real and present threat to the safety of a specific, identifiable person or persons." Imagine the defendant who murdered his wife, to whom he no longer poses a threat, being released because of this ridiculously limited legal standard.

Even more absurd, judges may no longer issue a warrant when a defendant fails to come to court. Instead, an absent defendant must next be served with a court order asking them again to appear and then fail to appear a second time before a warrant may be issued. This convoluted series of steps will not only delay justice for victims and strike fear into the hearts of witnesses, it will place an unnecessary burden on law enforcement to find defendants who they've already arrested and serve them with a piece of paper asking them nicely to come to court. In eliminating virtually all accountability for defendants, the new law severely impedes the orderly administration of justice. One can hear the wheels of justice beginning to grind to a halt.

In addition to upending longstanding principles of justice, the law places unrealistic timelines and obligations on the State's Attorney's Office - and other criminal justice partners - creating unnecessary strain on already overwhelmed employees.

The bottom line: The law will allow dangerous individuals to roam our streets. It will deter victims and witnesses from reporting crimes. And it will make it more difficult to prosecute those alleged crimes.

Oh, and as is customary in Illinois, the new law is an "unfunded mandate" requiring the County to spend even more money on the criminal justice system without any financial support from the State. Come January 1, our criminal justice system will become much more expensive and much less effective.

So, what can we do about it?

First, the effective date of the law should be delayed at least six months so it can see the light of scrutiny and debate outside the shadow of a bygone legislative lame duck session. In hastily passing the law, our legislators failed to heed the warning of the Illinois Supreme Court Commission on Pretrial Practices, which stated in its final report: "[S]imply eliminating cash bail at the outset, without first implanting meaningful reforms and dedicating adequate resources to allow evidence-based risk assessment <u>and supervision</u> would be premature" (emphasis added).

Once delayed, our legislature should start over. Our State would do well to model its pretrial fairness law after New Jersey's 2017 move to a cashless bail system. Unlike our new law, New Jersey allows judges to detain persons for any crime where the prosecution proves the defendant i) will not appear in court, ii) poses a danger to any other person or the community, or iii) will obstruct or attempt to obstruct justice, or threaten, injure, intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror. While New Jersey's law has its detractors, many have found it appropriately balances a defendant's presumption of innocence against the court's interest in the fair and orderly administration of justice and the community's safety. It is certainly a much better law that the one currently set to take effect here in Illinois.

I, along with other Illinois State's Attorneys, have requested the Illinois General Assembly adopt a statute similar to New Jersey's and continue to allow judges to use their discretion on behalf of the communities they represent in detention hearings. While a few of our local legislators are listening, thus far our requests have not been acted upon. Let's hope that action can be taken during the post-election "veto session" in early December. Please call your legislators and advocate for

such action – but don't call me – or the Sheriff – we aren't responsible for letting over half the jail population walk out the door on January 1.