Commentary

Haine: Half of Madison County's jail inmates to walk out door on Jan. 1 due to SAFE-T Act

Dear Citizens:

The greatest jailbreak in Madison County history will occur on January 1, 2023. On that date, approximately half of our present jail population must be released under the terms of the new SAFE-T Act, and cash bail will be eliminated throughout Illinois. That translates to well over 100 criminal defendants walking free in Madison County alone without paying a dime as they await trial for alleged crimes including aggravated DUI, aggravated battery, failure to register as a sex offender, burglary, and aggravated fleeing and eluding from a police officer. Many who will be released are repeat offenders with multiple pending felonies. Many have previously failed to appear in court or violated some other condition of release. Now they will be automatically released again.


Haine

This is all thanks to the Illinois SAFE-T Act, which was passed back in 2020 with only Democratic support (not a single Republican voted for it) during the last hour of a "lame-duck" session. I opposed it then, along with an overwhelming (and bipartisan) majority of the Madison County Board, and 100% of the police chiefs and Sheriff of Madison County. The appeals of law enforcement and citizens from across the state have fallen on deaf ears, as Governor Pritzker still signed the law. Now the deadline for implementation is fast approaching, and Madison County residents need to understand what is about to happen and why.

A critical part of our current criminal justice system is our ability to detain some criminal defendants prior to trial when appropriate. This protects witnesses and victims, stops repeat offenders, and allows a swifter resolution to cases. Currently, judges make this decision after considering 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.

On January 1, 2023, however, the SAFE-T Act will severely restrict the ability of our judges to use their discretion by classifying entire categories of crimes as those "for which pre-trial release may not be denied," (making such criminal defendants non-detainable). For example, under the SAFE-T Act, those charged with probationable forcible felonies cannot be detained prior to trial. For first-time offenders, such probationable (and therefore non-detainable) crimes include second-degree murder, robbery, burglary, arson, aggravated battery causing great bodily harm, and kidnapping. Other non-detainable crimes even for repeat offenders include hate crimes, aggravated DUIs (including those which leave innocent victims dead or permanently disfigured), aggravated fleeing, vehicular homicide, drug-induced homicides, or threatening a public official. In fact, under the SAFE-T Act, no drug offenses will be detainable, not even delivery of fentanyl or trafficking cases. Major drug traffickers will be given a mandatory get-out-of-jail-free card by the SAFE-T Act.

The only way persons charged with such crimes can be detained is when we can show a "high likelihood of willful flight" which is defined in the law as "planning or attempting to intentionally evade prosecution by concealing oneself." A defendant's prior history of failing to appear in court does not count. Neither does the risk such defendants may pose to others or the public. In other words: an individual charged with a non-detainable crime may be demonstrably dangerous, but the SAFE-T Act mandates that as long he continues to remain dangerous here and doesn't try to flee, we cannot keep him in jail while he awaits trial.

But even the possibility of detention when there is obvious evidence of flight risk is removed for almost all Class 4 felonies and lower-level offenses. These never-detainable crimes include aggravated animal cruelty, fleeing and eluding of a police officer, and criminal trespass to residence. No pre-trial detention is allowed for such crimes even when the defendant is a demonstrable risk to the community, waving a plane ticket in our faces, and describing his plans to flee justice in open court. What could possibly be the public policy justification for such a rule?

For lower-level crimes the SAFE-T Act eliminates virtually all accountability for defendants. First, it eliminates cash bail, which is used to provide a financial incentive for released defendants to show up at their court hearings. Then, when the defendant is released without bail and fails to show up at his next court date, the SAFE-T Act also prevents judges from issuing a warrant for his arrest. Instead, an absent defendant must be served – within 48 hours of the hearing - with a court order asking them to appear a second time. If they can't be found within 48 hours of the hearing, the court can't issue any warrant. Such a convoluted exercise is a toothless waste of time and taxpayer resources which would be better aimed at reducing crime instead of catering to the scheduling needs of no-show criminal defendants.

Based on this analysis, only half of the present inmates in the Madison County jail can continue to be held after January 1 because only these defendants are charged with detainable offenses pursuant to the SAFE-T Act. Such detainable offenses are restricted to non-probationable forcible felonies, domestic violence offenses, enumerated sex offenses, gun felonies, and human trafficking. But even here, judges may only detain a defendant under the new law if the prosecution proves by clear and convincing evidence the defendant also "poses a real and present threat to the safety of a specific, identifiable person or persons or the community" or a "high likelihood of willful flight." These rules make it more difficult to keep even those charged with the most serious violent crimes detained prior to trial.

These restrictions have a real impact on victims and witnesses. Potential witnesses to a crime will be less inclined to cooperate with law enforcement during an investigation if they know many defendants will be immediately released back onto the streets. An "order of protection" or other conditions of release may not provide sufficient protection. Without witnesses it becomes increasingly difficult for prosecutors to convict criminals and protect the public.

In sum, the SAFE-T Act is a massive "unfunded mandate" requiring the county to spend even more money on the criminal justice system while fundamentally weakening it. This is not a prescription for good government or for public safety.

So what can we do?

Call your legislators, call Governor Pritzker, and demand that they postpone implementation of this law until a further review of its true impact. Demand that they at least amend it to allow pre-trial detention on any crime to be left to the discretion of the trial Judge, who is in the best position to determine risk to the community.

There is still some time to make these changes prior to January 1. Otherwise, under the current terms of the SAFE-T Act, over half of the Madison Count jail population will walk out the door on that day. And there will be nothing we can do about it.

One final note: The Governor's office has repeatedly stated that "there is nothing in the law that requires those suspected of crimes be let out of prison when it goes into effect" and that "when the law goes into effect, the State's Attorney would have the ability to go to court and present evidence as to why a person suspected of a crime should be held, and a judge could rule to hold them." These statements are false. In the SAFE-T Act, as described above in detail, only a limited group of crimes are listed as those "for which pre-trial release may be denied." The rest are those for which pre-trial release may not be denied. The SAFE-T Act therefore makes those crimes non-detainable no matter the risk to others and in some cases (almost all Class 4 felonies) even if there is clear evidence the defendant is about to flee justice. This is clear from reading the statute itself (https://www.ilga.gov/legislation/publicacts/101/PDF/101-0652.pdf) or by reviewing the flow charts prepared by the Illinois Supreme Court Pretrial Implementation Task Force, which outline the available paths to pre-trial detention for various crimes pursuant to the SAFE-T Act. (https://www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/). I can see no way my office can "present evidence" as to why those defendants charged with non-detainable crimes should be held and no way a Madison County judge could rule to hold them based simply on "risk." And yes, that means that in Madison County the SAFE-T Act "requires that those suspected of crimes be let out of prison when it goes into effect" because approximately half of those currently detained in Madison County Jail are charged with crimes which will become non-detainable on January 1 and so must be released.

If the Governor's office disagrees, it must point out how such a conclusion is incorrect and the methods available in the law for Madison County to continue to hold such non-detainable defendants prior to trial.

Sincerely,
THOMAS A. HAINE,
State's Attorney, Madison County

A comprehensive look at the Jan. 1 of SAFE-T Act 'no cash bail' available at ibjonline.com

Due to space constraints within our print edition, we have made the Capital News Illinois comprehensive look at the Jan. 1, 2023 implementation of the Illinois SAFE-T Act available in its entirety on the Illinois Business Journal website.

Be sure to check out the important information gathered by CNI's Jerry Nowicki in the story, "A comprehensive look: What happens when cash bail ends?" by visiting the Illinois Business Journal online at www.ibjonline.com/2022/09/20/what-happens-when-cash-bail-ends/.

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