



NEW YORK STATE SENATOR

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Editorial: Commit the Crime? You Won't Have To Do the Time or Pay the Fine

PAMELA HELMING November 13, 2019

Have you visited a store or shopping mall recently? If so, you have probably noticed seasonal displays and holiday music filling the air. Every now and then the cheerful music is interrupted by a friendly voice reminding us there are less than 45 shopping days left. Before we know it, the holidays will be over and we will be ringing in the New Year!

If you follow state government, you know the New Year means the start of a new legislative session. This year, it also means the time to implement our state's new criminal justice laws is upon us.

These 'reforms' were passed by elected officials focused entirely on downstate politics. They include dramatic changes to our current criminal justice system. Cash bail and pretrial detention will now be eliminated for nearly all misdemeanor and non-violent felony offenses. If a person is charged with manslaughter, aggravated vehicular homicide, criminally negligent homicide, criminal sexual acts in the third degree, unlawful imprisonment, rape in the third degree, arson in the third and fourth degrees, criminal possession or sale of a controlled substance in or near school grounds, promoting or possessing an obscene sexual performance by a child, failing to register as a sex offender, making a terrorist threat, burglary in the second degree, robbery in the second degree, or

aggravated cruelty to animals, he or she will be released back into the public pending trial. Under current law, a judge has discretion to require an individual to post bail or hold such individual in custody, pending trial.

These changes don't end with these crimes. Cash bail and pretrial detention have also been eliminated for all Class A drug felonies, with the sole exception of operating as a major trafficker. A person can sell three pounds of fentanyl and be back out on the street to make another sale by the end of the day.

After speaking to many local law enforcement officials, we can all agree that some common sense changes to bail reform are needed. A person charged with a first-time, misdemeanor offense such as disorderly conduct, should not necessarily be detained in jail just because he or she does not have the money in his or her pocket for bail.

However, this legislation goes much too far. A dealer who gets caught selling drugs on school grounds will be back for his next round of sales by the time the end of the day school bell rings. A repeat DWI offender who kills someone while driving drunk and is charged with aggravated vehicular homicide, will be free to drive himself home after his arrest. A pedophile who promotes or possesses an obscene sexual performance by a child will be free to go. And the list goes on.

Under these new laws, a vast majority of offenders will no longer qualify for bail. The State Legislature has literally given criminals a get out of jail free card.

As our state continues to cater to criminals and refuses to require any accountability for breaking the law, safety concerns for our law abiding citizens continue to grow. Already, there are numerous examples across the state of suspects who would be detained under current law, but by January 1, 2020, will be free to go.

The Center for Court Innovation has estimated that of the almost 205,000 criminal cases arraigned in New York City in 2018, 90% will be released under this new statute.

Closer to home, by the end of 2019 in Ontario County, over 25% of the offenders who are currently in the local jail will be released; in Monroe County, 200 inmates; and in Cayuga County, 35.

Come January, it will be the responsibility of our local courts to notify a defendant of upcoming court appearances by using whichever type of notification the defendant desires - text, phone, email or first-class mail. It will be up to our law enforcement to invest significant manpower and resources on tracking down defendants who decide not to appear.

It doesn't stop there though. As part of these criminal justice reforms, the Democrat controlled Legislature also passed discovery "reforms". Grand jury proceedings will no longer be behind closed doors and prosecutors will be forced to turn over evidence within 15 days after arraignment, creating a significantly smaller window than the current law allows. This means our prosecutors will have less time to investigate, interview witnesses, and that violent offenders will be free to walk our streets.

Even worse, these new statutes expand the type of information that must be provided to the defense. The prosecution will be forced to turn over the names, addresses and adequate contact information for any person who has relevant information regarding the case. This even includes victims' contact information.

The defense will also receive the names of all law enforcement personnel who have relevant information regarding the case and all statements by any person with relevant information, regardless of whether the person will be called as a witness at trial. As if all of that is

unbelievable in itself, suspects will be allowed to return to the crime scene, including a victim's own home. These requirements will do nothing, but hinder the willingness of victims and witnesses to come forward.

To add further insult to injury, in a rush to "pave the way" for "sweeping reforms," the State Legislature did not provide appropriate funding. Our state's top legal officer, the Attorney General, recently said there is not enough money to support this package of unfunded mandates. So while our law enforcement officers and criminal justice professionals are already grappling with how to implement these disastrous reforms, they do not even have the funds or resources to effectively do so.

It is for these reasons that it is now more important than ever that we speak out and work together to halt the implementation of these new laws. We must push for reforms that protect crime victims and hold criminals responsible for their actions. That is why I am proud to stand with my Republican colleagues and push for legislation that would expand our Victims Justice Agenda. Legislation has been introduced that would allow judges to consider a perpetrator's dangerousness when determining if a defendant should be held pre-trial. A second bill would ensure that each crime under the aggravated family offense statute, which includes domestic violence and sex crimes, would qualify for bail and pre-trial detention.

Before the ball drops on 2019 and on our criminal justice system, we must do what we can to stop the madness.