Joint Budget Hearing

Public Protection
General Government

Tuesday, January 30, 2018

~Testimony~

New York State Association of PBAs, Inc.
&
Police Conference of New York, Inc.

The New York State Association of PBAs and the Police Conference of New York, "umbrella" organizations collectively representing the vast majority of professional police and law enforcement unions in New York State, offer the following testimony:

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In his 2018-2019 New York State budget proposal, the Governor has proffered a very substantial modification to the state's system of bail in connection with criminal charges in Part C of the Public Protection and General Government Article VII Legislation. The proposed legislation almost entirely replaces commercial bail with release on pretrial orders with non-monetary conditions, calls for mandatory release on misdemeanors and non-violent felonies and calls for mandatory hearings in violent felony cases where pretrial detention is recommended with a very high standard of proof required of the prosecution before detention can be ordered.

While we agree that there may be areas in the criminal justice system regarding bail that could be reformed *after careful study*, we oppose the proposed legislation as submitted because we firmly believe its scope is far overreaching.

On behalf of our membership, our organizations oppose this proposed legislation for reasons that follow:

- Police Officers have an abiding interest in ensuring that the subjects they arrest on criminal charges be required to return to court following arraignment to face the charges brought against them. It is a very serious matter to us that there be in place some system to compel those arrested to return to court for an appropriate disposition of their cases. Bail helps assure their return. New York State currently has a commercial bail system that serves its intended purpose and ensures that individuals charged with crimes appear when they are required to do so by the courts, and that subjects who are simply too dangerous to be released be detained pending trial. The current system applies to all regardless of their race, creed, color or financial circumstances. In the absence of a demonstration that there is some major problem with the current system, we believe that there are far more important problems in the State of New York deserving the attention of the legislature.

- Mandatory release on misdemeanors and non-violent felonies is just wrong. The proposed legislation provides that under no circumstances could a person charged with a misdemeanor or a non-violent felony be required to post bail or be detained pending trial. Some of the misdemeanors that would be included under this mandatory release provision would include stalking, sexual abuse, sexual misconduct, resisting arrest, arson in the fifth degree, criminal
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possession of a police uniform, escape in the third degree, bail jumping, criminal contempt and criminal obstruction of breathing, and obstructing governmental administration. The non-violent felonies that would be covered by the proposed mandatory release provisions would include vehicular manslaughter, burglary in the third degree, illegal abortion, robbery in the third degree, arson in the third degree, identity theft in the first degree, escape in the first degree, promotion of an obscene sexual performance by a child and rape in the third degree. Neither list is exhaustive. No one charged with such crimes should have the right to leave the courthouse after arraignment with immunity from bail or detention pending trial as a matter of law! Some of the aforementioned crimes demonstrate total lack of respect for the criminal justice system and the members we represent. Even worse, the proposed provisions provide that the number of arrests that the defendant has, the number of open cases against him or her and even the number of failures to appear on prior criminal charges may not play any part in the decision to release him or her. That simply isn't fair to the victims of the criminal conduct, to the witnesses to the criminal conduct, and to the public at large. There may well be reasons why the perpetrator of any misdemeanor or non-violent felony should not be released without cash bail or, in some cases, detained pending trial, but under this proposal that would be impossible.

- Replacing commercial bail with a system based on orders bearing non-monetary conditions is a bad idea and would be very costly to implement. If cash bail is eliminated from all but the most serious of cases as this proposal would do, the commercial bail bondsmen of our state would be out of business. It is our commercial bail bondsmen who make our current system work. If their clients don't show up for their court appearances, the bail bondsmen forfeit their bonds, which gives them a very strong incentive to play a vital role in assisting the criminal justice system to ensure future court appearances. If we substitute for that a system of non-monetary release orders bearing conditions, then someone is going to have to see to it that those conditions are fulfilled, and it will not be the commercial bail bondsmen. Every municipality in the state that operates a criminal court will have to hire additional personnel to monitor compliance with the non-monetary conditional release orders. In even a minimally busy criminal court, that would mean additional employees on the public payroll. Such a change would effectively create a pretrial parole system along with the attendant need for space, computers, equipment, training, pensions, health insurance, etc. The federal bail system works largely on such a system, and the federal courts employ very substantial pretrial staff to serve these functions. If New York is facing a $4 billion dollar deficit this

year, this seems like a very bad time to consider any program that would involve so much additional cost.

- The standard of proof on detention hearings is too high. This bill provides for mandatory hearings in any case where the crime involved is a violent felony and detention is recommended by the prosecution, and it provides that the standard of proof on any such detention hearing would be "clear and convincing evidence" as to both flight risk and public safety. We contend that it is imperative to maintain the current bail system in these violent felony cases. Moreover, the proposed legislation, by establishing mandatory hearings with such a very high standard of legal proof – second only to the criminal conviction standard of "beyond a reasonable doubt" and significantly beyond the civil standard of "preponderance of the evidence" – it effectively requires the prosecution to try the case twice; once at the pretrial detention hearing and again at the trial on the substantive charge. We feel that this inappropriately elevates the rights of a perpetrator charged with a violent felony over the rights of his or her victim(s), any witnesses to the crime, prosecutorial staffs and the general public. A standard of preponderance of the evidence would be sufficient.

- This matter needs further study. A number of other states have adopted bail reforms similar to what the Governor is proposing, including Kentucky, Illinois, Oregon, Wisconsin, New Jersey, and cities including Washington D.C., and Philadelphia; some of them did so many years ago. The Federal Courts have long employed a system much like what the Governor is proposing. There is a great deal of information available through those jurisdictions. Before the State of New York disrupts a viable bail system and undertakes reforms that will cost many millions of dollars, a study should be made to determine whether and to what extent the jurisdictions that have adopted such systems have eliminated the evils and injustices that the Governor professes to be addressing with this legislation. Cash bail has been an integral part of American jurisprudence since the Eighth Amendment to the U.S. Constitution precluding "excessive bail" was adopted in 1791. We should not abandon a system based on it without careful study and thorough reflection, and we clearly should not be considering a plan to change such a fundamental part of our system of justice in haste in the context of our State's budget.

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