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DA hopeful Kavanagh: Bail reform creates threats to communities

by [Michael Kavanagh/July 23, 2019](#)

On Jan. 1, 2020, sweeping criminal justice reform legislation will take effect throughout New York State. This legislation will have a profound effect on the way the criminal justice system operates here in Ulster County. As a lawyer who has been both a prosecutor and criminal defense attorney for over 20 years, I support many of these reforms and believe that our legislators should be commended for tackling some very difficult issues. One of the reforms that will be implemented will,

in essence, abolish the use of cash bail in most criminal cases. While I am firmly in favor of responsible bail reform, any experienced prosecutor would see that some of the provisions included in the new law will serve to compromise the rights of victims and seriously jeopardize the safety of our community.

For example, beginning on Jan. 1, 2020, our judges will no longer be permitted to set any bail on defendants who are charged with committing a residential burglary. If apprehended and arrested, the accused will be immediately released back to the community, regardless of how overwhelming the proof of guilt or how profound the impact of this release will be on the homeowner. The same applies to those charged with the possession of large quantities of heroin. A person found in possession of a pound of fentanyl-laced heroin in their vehicle cannot be required to post so much as a dollar of bail to ensure their return to court, even when there is every indication that this person will flee the jurisdiction with no

intention of ever returning. Even defendants accused of committing certain bank robberies are exempt from any cash bail.

A less obvious adverse impact this bail reform statute will impose — one that every experienced prosecutor has recognized — pertains to the insidious opioid crisis we are currently facing. We in the Ulster County DA's Office have seen far too many times young men and women brought to court having been charged with misdemeanor possession of heroin. They have track marks on their arms and exhibit all the hallmarks of heroin addiction. Family members come to court and beg the judge to put their loved one in jail for fear that if released they will die of an overdose. Currently, the judge is empowered with the authority to set bail, which for the time being, can save lives. This is not a punitive measure. Rather, it provides an opportunity for our addiction recovery experts to intervene and plan a course of recovery. However, on Jan. 1, 2020, that option will no longer exist and those afflicted by

addiction will be released back into the same environment in which their addiction has thrived, and where the prospect of them seeking help on their own is non-existent.

Another troubling aspect of the new bail reform legislation is that New York will remain one of the few states that forbid a judge from considering a defendant's threat to the community as a factor in determining whether cash bail should be set. The District Attorneys' Association of New York lobbied the legislature to permit courts to consider risk to the community in the new legislation, but it was inexplicably rejected. Courts must therefore continue to ignore known threats to specific people or the community at large when considering whether bail is appropriate. For example, a person who has two prior DWI convictions and is charged with vehicular manslaughter will be released to the community, regardless of how strong the proof is or the fact that they are accused of causing an accident while intoxicated that resulted in the death of

another human being. The courts cannot consider the long history of putting other drivers at risk, or the mortal danger this driver presents to the community.

That being said, the issue of reducing pretrial detention is a continuing effort that we in the Ulster County District Attorney's Office have been working on for several years and it's starting to bear fruit. According to the New York State Division of Criminal Justice, over the last year we have reduced Ulster County's jail population by 18 percent. That is 7 percent more than the statewide average. More significantly, over the same period of time, we have reduced the number of people incarcerated on pretrial bail by 36.5 percent. That is 24 percent more than the statewide average. While this shows progress, we are committed to continuing our efforts into the future.

Experience has shown me that the decision as to when, or when not, to seek bail is a complex matter. There are factors that simply cannot be

ignored, factors that impact the safety of the very citizens we are duty-bound to protect. Yes, there are defendants who remain in jail on pretrial bail, some of whom are charged only with misdemeanors. However, a careful review of their circumstances reveals that those in jail on pretrial bail have protracted criminal histories. They have been convicted of multiple prior felonies, or have demonstrated a pattern of refusing to return to court when given every opportunity to do so voluntarily. Many are charged with acts of domestic violence that create a very real and present danger to their partners and their children, and many of them have violated orders of protection. What I can assure you is that in every instance, before this office recommends bail there is a careful balancing of the rights of the accused with the impact his or her release would have on our community.

The concerns I have expressed are shared by a bi-partisan group of prosecutors throughout this state, all of whom, because of their extensive

prosecutorial experience, realize how important these changes are if this legislation is indeed going to serve the public interest. I know our local legislators are good people who care deeply about victim's rights and public safety. However, I urge them to reconsider parts of this legislation. I am more than willing to work with them to ensure that we successfully and responsively address the issues raised by this legislation, and to find common sense, responsible solutions.

Michael Kavanagh, chief assistant district attorney of Ulster County, is the Republican candidate for district attorney in this fall's election.