Office of the Kane County State's Attorney

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VIA EMAIL
Illinois State Senators
Illinois State Representatives

RE: HB 3653

To Whom It May Concern,

My name is Jamie Mosser and I am the newly elected Kane County State's Attorney. I am writing to discuss my position regarding HB 3653. I have been a prosecutor for 12 years prior to entering into private practice. For the last 18 months, I campaigned heavily to get back to my passion which is being a prosecutor. I love being the State's Attorney. In my opinion, it is the job that truly offers the best chance to do justice.

During the campaign, I promised to bring true criminal justice reform to Kane County. As the elected State's Attorney, I continue to promise that this will be my focus. I understand that reform ideas have fallen on deaf ears before. HB 163 was 611 pages and introduced during a lame duck session with the hopes that it could be forced through with little to no debate. It was introduced with no opportunity for those of us, who have made the pursuit of justice our profession, to be a part of this discussion. From that, HB 3653 was crafted. While some of the grievous errors were changed, this 764 page bill still has serious consequences. I objected to both of these bills because of the reasons below. This is a non-political assessment of a political move.

What follows is a list of examples of the dangers of what has been created as a part of this House Bill. Criminal Justice Reform should not come at the expense of the safety our community. Further, it is my opinion that forcing this reform through, with the altruistic purpose of getting the reform that we need, will set our movement back. I urge you to make these changes and take the time to meet with those who share your goal. I will dedicate my energy to that goal. You only need to ask.

1. Page 49 – Removing the requirement that those who file a complaint against an officer not do so with a sworn affidavit or legal documentation.

a. I find no purpose in this legislation except to encourage people to file scurrilous complaints against an officer. If officers lie when they file charges against an individual, they will be charged with perjury. There should be a penalty for individuals who lie to get an officer in trouble. I would also like to point out that the departments will expend hundreds of hours investigating these frivolous complaints instead of being able to focus on investigating valid complaints and the other actual crimes that occur in our community.

2. Page 66 – Keeping all records related to complaints, investigations, and adjudications of police misconduct permanently.

    a. Again, I find no purpose in this legislation. Law enforcement departments have rules regarding the retention of officer records. Referencing the legislation in paragraph one above, you are now allowing these unfounded complaints to remain in an officer's file even if they are investigated and deemed to be unfounded. The laws of Illinois prevent a person's criminal history from being used against them if it is older than 10 years. Allegations against a person's credibility are only allowed in a trial when those allegations are evaluated by a Judge and deemed to be relevant. This language treats officers differently than the law would treat anyone else.

3. Page 283 – Peace Officer's Use of Force in Making an Arrest – adds in language that "the officer reasonably believes that the person to be arrested cannot be apprehended at a later date, and the officer reasonable believes that the person to be arrested is likely to cause great bodily harm to another.

    a. At what point would an officer be able to effectuate an arrest if this language is allowed to stand? After a crime is committed and the suspect is resisting the lawful act of the officer, this law is forcing the officer to let the suspect go. Let's use the example of a retail theft. A store has video of an individual stealing and leaving the last point of sale. Officer confronts the individuals and indicates that the suspect is under arrest. The suspect forcibly resists arrest. In this case, the officer could arrest the person later and there appears to be no indication that the person would cause harm to another. The officer then waits a day and attempts to arrest the suspect again. The suspect forcibly resists again. This language has no common sense application and should be removed in its entirety. As a secondary argument regarding this, HB 3653 creates mandated training including use of force training. That legislation serves the purpose of teaching officers different ways to safely subdue an individual. The language above does not.

4. Page 284 – Peace Officer's Use of Force in Making an Arrest - Adds the word 'just' to the statute.

    a. What is the definition of 'just' in terms of committing a crime? Let's now assume that the officer has a warrant for the arrest of the defendant for a murder that happened two years before. The defendant has evaded arrest until now. According to this, the officer would not be allowed to use force in the arrest of the defendant <u>if</u> the defendant resists that arrest.

5. Page 306 – Makes it a Class 3 felony for officers who misrepresent or omits facts from a report.

    a. I am in agreement with this. However, when you add in language to the body camera statute as contained on pages 82-83 that prohibits an officer from reviewing the body camera footage prior to writing the report, you are setting officers up for failure. The science behind the brain and what we see/remember during traumatic events is voluminous. I have argued before hundreds of juries that a victim's recollection of events, when it differs from the 911 call to the initial statement to the officers to the statement to the detectives to the testimony in trial, is because of what our brains do to protect us. Officers are not immune from this. If an officer wants to use the recording of the incident to ensure that he/she is documenting the incident truthfully, they should not be prohibited from doing so. Frankly, this addition to the legislation was done solely to penalize officers. It has no legitimate basis. I urge you to remove the language added on pages 82-83 that prevents officers from reviewing the body camera footage.

6. Page 335 – Definition of willful flight – "Planning or attempting to intentionally evade prosecution by concealing oneself. Simple past non-appearance in court alone is not evidence of future intent to evade prosecution".

    a. I have had defendants get arrested for multiple cases and not come back to court until arrested again. The only way the case was resolved is when they remained in custody. These individuals had no intention to come to court. When there is a victim involved, this "simple non-appearance in court" prevented justice from being done. A judge should be able to look at the defendant's intentional prior history of not appearing in court in deciding whether to retain an individual. I urge you to remove this language as it is not practical and does not allow a Judge to ensure that a case moves towards resolution.

7. Page 340, Page 370 – Pre-trial release

    a. Let me begin by saying that I am in favor of eliminating cash bail. If we are going to hold someone in custody, we should be doing so because they are a danger to the community or a flight risk. We should never hold someone in custody because they cannot pay the money. A wealthy murderer should remain in jail just as much as a poor murderer. However, the language that was drafted for this section prevents Judges from holding an offender with multiple DUI's, drug dealers, and people who illegally possess or shoot guns when we can't identify a threat to a person or persons. Again, this was written and not vetted by those of us who have advocated for our community and victims at bail hearings. I urge you to return the language as previously written that allows Judges to make the decision to deny pre-trial release based on the offense charged, prior criminal history, danger to the community, etc.

    b. I also want to discuss the procedure that was added that the prosecutors shall file verified petitions requesting pre-trial release. The bail hearing in our

County occur in the morning and in the afternoon. We typically get the paperwork an hour (at most) before. There are also multiple defendants on the call for the bail hearing. This has increased the work exponentially for our prosecutors who are already overworked and underpaid. This was done with little to no thought of the burden being placed on the prosecutors.

8. Page 377 – Adds language that the defendant can call the complaining witness in its favor when asking for pre-trial release.

    a. The following scenario could occur as a result of this language. Suspect rapes victim. Victim immediately goes to the hospital and a report is made. Defendant is arrested the same day and goes to court the following morning and makes a demand for the victim to appear in court and states that he would be "materially prejudiced". The Court grants the request requiring the victim to appear in court that day or the day after. While this may seem dramatic, this is a possibility according to added language. The statute as it was written before allowed the defendant to bring forth witnesses. This addition allows the Court to <u>compel</u> the victim to appear when the sole issue the Judge has to deny is whether the defendant should be held pre-trial. There is no rationale for this language and I urge you to have it removed.

9. Page 410 – Right to Communicate with Attorney and Family

    a. While I agree with allowing a suspect to be able to have the opportunity to communicate with family and/or an attorney, the drafting of this language will impede investigations and have other unintended consequences. The 3-hour time limit and the granting of 3 phone calls seems arbitrary at best. What is the purpose of setting that time and that amount of phone calls? Would a suspect be allowed to randomly request the phone call at the beginning of every hour? Could the suspect use this to terminate the questioning by law enforcement? The language also states that the suspect should have access to their cellular phone. What does access mean? What happens if the phone is evidence of the crime? Does the officer have to give the phone to the suspect to use? Can the officer ask the suspect for the passcode for the phone to obtain the number that is needed? What if the defendant uses his three phone calls to contact the victim of the crime? What happens if the suspect deletes evidence in the phone? Having prosecuted hundreds of domestic violence crimes, I can tell you that the majority of the defendants use their phone call to call the victim in an attempt to dissuade them from testifying. The fact that there are this many questions involving this portion of the bill and the fact that cases could be complicated by adding of this language shows that it needs to be removed in its entirety.

10. Page 538 – Escape

    a. The language added is that a person that escapes from electronic home monitoring cannot be charged with escape until <u>48 hours</u> after the initial escape. I see no point to this language being added. If a defendant cuts off the EHM bracelet and leaves the home, that is escape. The amount of damage that can be done in that 48-hour time period is significant. Again, let's put

this in the context of a defendant charged with Aggravated Domestic Battery for strangling his wife. This defendant cuts off his bracelet and sits outside of his wife's home. The defendant comes back to his home 47 hours later. Nothing can be done to this defendant and the trauma to the victim is immeasurable. Since there appears to be no purpose to this law and the consequences to the safety of victims and our community great, I urge you to remove this language.

There are more issues within the bill that conflict with other laws. There are provisions that are inconsistent within the bill itself. I remain more than willing to have an in depth discussion about how to bring about reform in the right way. This letter highlights the portions of the bill that are the highest priority to change. Please do not hesitate to call me if you have more questions or need more information.

Respectfully,

Jamie L. Mosser

Jamie L. Mosser
Kane County State's Attorney