Haine Responds To Governor, Offers To Help Correct Problems With SAFE-T Act

by Brian Brueggemann
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EDWARDSVILLE — Madison County State's Attorney Thomas A. Haine on Wednesday sent a letter to Gov. J.B. Pritzker, saying he is willing to work with the governor to correct problems with the SAFE-T before it takes effect Jan. 1.

Haine's letter said the SAFE-T Act, which abolishes the cash bail system in Illinois, will limit the ability of his office – as well as local judges – to detain dangerous defendants

prior to trial. Haine said the new law will prohibit the detention of some defendants prior to trial despite their level of threat to the community or their likelihood of being no-shows for court.

“As lawyers we have a responsibility to read the Act and apply the basic tenets of statutory construction,” Haine wrote. “Once such an approach is applied, the plain language of the Act shows major problems. The discretion of judges to detain is unquestionably limited in many important cases, even where the defendant poses a demonstrable risk to the public.”

He added: “Based on this and other issues, a wholesale reconsideration of this law is fully appropriate. At the very least, significant amendments to this law are necessary to prevent the worst outcomes in just a few months. The governor last week sent a letter to Haine’s office, accusing the prosecutor of misinterpreting the SAFET Act, spreading misinformation about the law and “fearmongering.” Haine’s four-page response letter Wednesday included a point-by-point analysis of the SAFE-T Act’s provisions.

“With courageous leadership, I truly believe that a reform of our cash bail system can be accomplished that does not put our communities at risk,” Haine wrote. “I welcome the opportunity to discuss this important public safety issue further with you as we approach the SAFE-T Act’s Jan. 1, 2023 effective date. In the meantime, I am committed to accurately informing the public and working toward meaningful changes to the Act prior to implementation."

Thomas Haine Full Response To Gov. Pritzker:

Dear Governor Pritzker, I am in receipt of your letter from last Friday regarding our contending views on the SAFE-T Act. It is clear from your letter that you and I have different philosophies on how best to fight crime.

You support the SAFE-T Act. I am joined in my opposition to the SAFE-T Act by 100 out of 102 State’s Attorneys in Illinois. You support eliminating cash bail. I am joined in my support for cash bail by a broad consensus of voters across the political spectrum. For example, the elimination of cash bail was rejected by the citizens of California just two years ago when they passed a referendum supporting cash bail by over 10 points.

Likewise, the citizens of New York learned the hard way and rolled back the elimination of cash bail after crime skyrocketed. But whatever our philosophical disagreements, we can agree on a couple of points: those charged with crimes are innocent until proven guilty, the current cash bail system is not perfect, and any reform should prioritize the safety of our law-abiding citizens. Your letter also takes issue with some of my legal analyses of the SAFE-T Act.

It is imperative that the public receive accurate information about the SAFE-T Act prior to implementation. I encourage you to take a closer look at our claims purely from a statutory construction perspective. You accuse me, and others who agree with my position, of construing the statute too narrowly. But we are merely interpreting its "plain language." See JPMorgan Chase Bank, N.A. v. Earth Foods, Inc., 238 Ill.2d 455, 461 (2010).

As you know, where the plain language of a statute is unambiguous, no court would have the authority to apply a broader interpretation. In your letter, you state that prosecutors may argue "that a defendant is likely to evade prosecution because of the seriousness of the charge." (Emphasis added.) You reiterate this point by stating: "prosecutors may … argue that the facts or potential sentence for certain criminal offenses make defendants a flight risk." (Emphasis added.) But the SAFE-T Act's plain language appears to undermine any argument that "willful flight" can be shown by merely "seriousness of the charge."

The Act explicitly defines "willful flight" as "planning or attempting to intentionally evade prosecution by concealing oneself." 725 ILCS 5/110-1(e). The "seriousness of the charge" may be a motive to flee, but it may not be a plan or attempt. We could attempt such an argument, but the plain language of the SAFE-T Act appears Page | 2 Pursuing truth and seeking justice through application of law. 157 North Main Street, Suite 402, Edwardsville, Illinois 62025 (618) 692-6280 www.madco-sa.org to stand in our way. The SAFE-T Act also makes clear that prior failures to appear by the same defendant are no evidence of "willful flight."

I therefore see little likelihood that we can typically expect to have evidence of "planning or attempting" to flee on hand to present to a judge, particularly when prior failures to appear are excluded from evidence, and especially within 24-48 hours of the initial appearance (the new timeframe imposed by the SAFE-T Act on all pretrial detention hearings). See 725 ILCSs 5/110-6.1(c)(2). Further, your letter states that under the SAFE-T Act "risk" will "determine whether these defendants will be detained prior to their trial" (Emphasis added.) You then encourage me "to file motions to detain defendants you consider to be dangerous to the citizens of Madison County." (Emphasis added.)

Sadly, the plain language of the SAFE-T Act forecloses that option in many cases. Section 110-4 of the Act reads as follows: "All persons charged with an offense shall be eligible for pretrial release before conviction. Pre-trial release may only be denied when a person is charged with an offense listed in Section 110-6.1 or when the defendant has a high likelihood of willful flight…" (Emphasis added.) Then section 110-6.1 (Denial of pretrial release), subsection (a), states: "Upon verified petition by the State, the court shall hold a hearing and may deny a defendant pre-trial release only if (1) the defendant

is charged with a forcible felony offense for which a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, is required by law upon conviction, and it is alleged that the defendant's pre-trial release poses a specific, real and present threat to any person or the community."

In sum, the plain language of the Act makes pretrial detention offense-specific. A defendant may be dangerous, but even demonstrable risk to others is only relevant to pretrial detention when that defendant is charged with the offenses listed in Section 110-6.1. Or as several pro-SAFE-T Act commentators have even noted: "For an individual to be detained, the state must show the court that the person is charged with an offense within the 'detention net' or detention-eligible offense…" 1 You nonetheless say it is "false" to claim that the SAFE-T Act creates "non-detainable offenses."

This term may be controversial, but it remains useful and a candid reflection of the real-life implications of the SAFE-T Act's plain language and meaning. Please see 725 ILCS 5/110-6(a)(1), regarding revocation of pretrial release "if the defendant is charged with a detainable felony as defined in Section 110-6.1" (Emphasis added.) Plainly speaking, if some offenses are identified in the Act itself as "detainable," crimes not listed as "detainable" can only be described as nondetainable. Further, as discussed above, the plain language of the Act clearly eliminates judicial discretion to detain dangerous individuals charged with an offense not listed in 110-6.1 unless there is evidence of "willful flight." But that standard is highly restrictive as presently drafted.

Such crimes can therefore be described as non-detainable from a practical perspective as well. You cite a Snopes online resource in your letter. Many may view this Snopes article as an authoritative analysis of the SAFE-T Act. In fact, it is filled with statements directly at odds with the plain language of the Act. For example, Snopes states that under the SAFE-T Act "pretrial 1 Let's Get Real About the SAFE-T Act, Chloé G. Pedersen, Jessica Schneider, & Michelle Lewis, Illinois Bar Journal, June 2022. Page | 3 Pursuing truth and seeking justice through application of law. 157 North Main Street, Suite 402, Edwardsville, Illinois 62025 (618) 692-6280 www.madco-sa.org release can still be denied when any defendant poses a specific, real and present threat to any person or the community." (Emphasis added). This assertion is flatly false. As discussed above, it is only once a defendant is charged with an offense within the "detention-eligible offenses" outlined in Section 110-6.1 that risk to the public becomes relevant. In fact, later in its own article Snopes quotes that very section of the SAFE-T Act, commenting without apparent irony: "The act also states: "Pretrial release may only be denied when a person is charged with an offense listed in Section 110-6.1 or when the defendant has a high likelihood of willful flight."

Indeed it does. Then, after getting the law right for just a moment, Snopes concludes its article with a highly deceptive statement: "Under the new law, judges will consider each

case on an individual basis to determine release and base their decisions on whether the suspect is a threat to the community or a flight risk." But again, the Act contains no generalized assessment of "threat to a community" that would allow detention of any defendant. An assessment of a defendant's "threat" is only relevant when that defendant is charged with a crime listed in Section 110-6.1. And even then, some crimes listed in Section 110-6.1 will not allow detention for merely a "threat to the community" but require a much more specific assessment. For example, to detain a person charged with the offense of Armed Habitual Criminal would require a judge to find "a real and present threat to the physical safety of any specifically identifiable person or persons," not just "the community." See Section 110-6.1(a)(6).

It is hard to know why Snopes makes so many elementary mistakes in analyzing the plain language of the SAFE-T Act. But it is undeniable that its article is riddled with errors and is not a good resource on this topic. A more helpful legal resource is a recent publication from S.J. Quinney College of Law at the University of Utah titled Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois. There, Professors Cassell and Fowels teamed up to examine Cook County's Bail Reform Study which had concluded that an increase in pretrial release was accompanied by considerable stability in crime rates. Cassell and Fowles state, ". . . we find that, contrary to the Study's suggestion of stability, the number of crimes committed by pretrial releasees appears to have significantly increased. Correctly estimated, the number of released defendants charged with committing new crimes increased by about 45% after implementation.

And, more concerning, the number of pretrial releasees charged with new violent crimes increased by about 33%. . . .the percentage of aggravated domestic violence prosecutions that prosecutors dropped increased from 56% before to 70% after. A reasonable inference is that the increase in dropped cases resulted from batterers more frequently obtaining pretrial release and intimidating their victims into not pursuing charges at trial." 2 (Emphasis added.) In sum: as lawyers we have a responsibility to read the Act and apply the basic tenets of statutory construction.

Once such an approach is applied, the plain language of the Act shows major problems. The discretion of judges to detain is unquestionably limited in many important cases, 2 Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois, Paul Cassell and Richard Fowles, S.J. Quinney College of Law research paper No. 349, University of Utah. Page | 4 Pursuing truth and seeking justice through application of law. 157 North Main Street, Suite 402, Edwardsville, Illinois 62025 (618) 692-6280 www.madco-sa.org even where the defendant poses a demonstrable risk to the public.

Based on this and other issues, a wholesale reconsideration of this law is fully appropriate. At the very least, significant amendments to this law that are necessary that prevent the worst outcomes. Thankfully, even at this time of tension and disagreement, there is an opportunity to take positive steps forward. With courageous leadership, I truly believe that a reform of our cash bail system can be accomplished that does not put our communities at risk. I welcome the opportunity to discuss this important public safety issue further with you as we approach the SAFE-T Act's January 1, 2023 effective date. In the meantime, I remain committed to accurately informing the public and working toward meaningful changes to the Act prior to implementation.

Sincerely: THOMAS A. HAINE

STATE'S ATTORNEY MADISON COUNTY, ILLINOIS