Office of the Bronx County
District Attorney

Office of the Queens County
District Attorney

June 25, 2014

Honorable Andrew M. Cuomo
Executive Chamber
Albany, New York 12224

Re: S4928b/A7333b

Dear Governor Cuomo:

We write to express, in the strongest possible terms, our opposition to the above-referenced legislation which would take the unprecedented step of removing an entire category of criminal prosecutions occurring in the county of one independently elected District Attorney and mandating that said prosecutions be held in another county. For all of the reasons herein set forth, we urge that you disapprove this ill-advised legislation.

The bill would amend subdivision 4 of section 20.40 of the Criminal Procedure Law by adding a new subdivision (n) which would read "An offense committed at Rikers Island facilities shall be prosecuted by Queens County." Remarkably, in one short sentence this bill manages to be ambiguous as to its meaning, potentially unconstitutional and at odds with the surrounding provisions of the Criminal Procedure Law. It also has significant problematical implications.

As the City of New York noted in its letter of opposition to this legislation, the legislation is "unique in the Criminal Procedure Law by prohibiting a county from exercising jurisdiction over crimes committed within its own geographical borders." Bronx County geographically encompasses Rikers Island on which New York City's primary prison complex is located. Thus, for many years all crimes committed on Rikers Island have been prosecuted by the Bronx County District Attorney who was elected by the people of Bronx County to prosecute all crimes committed in said county. The Bronx County District Attorney's Office has experience and expertise in handling these cases and has dedicated and specially trained assistants who conduct said prosecutions. Indeed, after many years of requesting resources for such cases, only this year, Bronx County received a $600,000 grant from the City of New York to help defray the significant costs associated with prosecuting close to 1000 felony and misdemeanor cases arising out of criminal activity on Rikers Island annually. These

cases include assaults on correctional staff and inmates, possession of dangerous contraband, inciting to riot and criminal mischief, among others. In addition, there are numerous investigations each year into allegations of misconduct at and around the facilities which are handled by the Bronx District Attorney's Office. Some of these cases involve threats or attempts to intimidate victims and witnesses in Bronx prosecutions or violations of orders of protection against Bronx residents.

No compelling justification has been offered for removing these cases from the jurisdiction of the county in which they occurred and from the jurisdiction of the elected District Attorney who has handled them for decades. The memorandum in support of the legislation simply asserts – with no data to back up its claim – that the change " will provide cost savings and management efficiencies for New York City as all crimes will be handled in the nearby Queens courts" and that said "change will eliminate the need to drive inmates to the Bronx for prosecution which is considerably farther from Rikers." The cost saving assertion made in the memorandum in support of the bill is belied by the City of New York in its opposition letter which states that " the City does not anticipate that it would realize any savings from the proposed law." Indeed, because they are transporting Rikers inmates every day to courts in the five boroughs, the additional costs of having some inmates on the bus going to Queens instead of the bus going to the Bronx is negligible. To the contrary, there would be substantial additional costs created for the prosecutor's office and the court system in Queens County to absorb all of these new cases with no additional space, funding or personnel. No funding is provided to the court system or the District Attorney's office to handle the substantial influx of cases that would result were this legislation to be enacted.

The bill also prohibits every other county in the State from exercising jurisdiction over crimes which they presently may prosecute pursuant to any of the other provisions of CPL 20.40. Every other subparagraph of subdivision 4 of Section 20.40, which clarifies jurisdiction in certain specific cases where multiple counties may have an interest in prosecution, reads "<u>may</u> be prosecuted" while this bill reads "<u>shall</u> be prosecuted". (emphasis added.) Thus, this bill in effect repeals jurisdiction which presently exists pursuant to every other section of CPL 20.40 and 20.60. Suppose, for example, an inmate at Rikers Island violates an order of protection in a New York County domestic violence assault case through a threatening phone call from Rikers Island, or a defendant in a pending Kings County homicide hatches a plot to murder a witness, obtaining the hitman by using a Rikers Island phone or writing a letter at the facility or contacting another inmate. Requiring Queens County to prosecute such cases would be inefficient and could lead to duplicative or inconsistent actions. It would also pose substantial burdens for victims and witnesses who would have to appear in multiple proceedings in different counties handled by different prosecutors.

Moreover, even the language of the bill is confusing and ambiguous. It provides that criminal activity at Rikers Island be prosecuted in Queens County but does not indicate by whom. Beyond that, prosecution of "an offense committed at Rikers Island facilities" in Queens County leaves open the question of the prosecution of offenses committed on Rikers Island outside of the

facilities. Much costly and unnecessary litigation may well ensue as a result.

Finally, there are serious questions about the constitutionality of this legislation. The permanent reduction in the geographical jurisdiction of a county's district attorney may well violate Article XIII, Section 13 of the State Constitution which provides that each county will elect one District Attorney to prosecute crimes in that county. The proposed legislation takes away from the Bronx District Attorney his ability to prosecute crimes occurring in Bronx County that he was elected by the residents of that county to prosecute. It also would have a chilling effect on a District Attorney's legitimate exercise of discretion to pursue difficult or controversial types of cases if the Legislature can, at any time, deprive that District Attorney of jurisdiction over those types of cases and place jurisdiction in another county regardless of where they occur. Could legislation, for example, be enacted that would require all political corruption cases occurring in Albany County be prosecuted in Hamilton County which only has a part-time DA and very limited resources?

In short, this flawed bill is an unfunded mandate which serves no useful purpose. It is also of questionable constitutionality, would cause significant disruption and needless litigation in the courts of both Bronx and Queens counties, would impact negatively on cases in all of New York City's five boroughs, and would send a chilling and disturbing message to independently elected prosecutors across the State about their ability to exercise their discretion freely.

For all of these reasons, we urge that you disapprove this legislation.

Respectfully submitted,

Robert T. Johnson
District Attorney, Bronx County

Richard A. Brown
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