

Concerned individuals who are public defenders, et. al.
Sarah.koziol@pubdef.state.mn.us
612-596-7887

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RE: Reject HF 16 and its Proposals

Dear Rep. Rymer and Committees:

We all are individuals with experience working as Public Defenders in the Fourth Judicial District of Minnesota. We speak on our own behalf—we are not speaking on behalf of our employer—but draw on a combined total of over one hundred and ninety four years of experience working in a high-volume court system representing indigent defendants. We have represented clients of all case types from petty misdemeanors to first degree murder, and though we often stand next to the most unpopular person in the courtroom, we are also the only constitutionally mandated attorneys there. We are committed and passionate for our work to protect the constitutional rights of everyone, even the most marginalized and at times, and often the most disliked because, as Justice Frankfurter once wrote, “the safeguards of liberty have frequently been forged into controversies” involving the marginalized, the unpopular, the disliked, the disenfranchised, and yes, often those accused of crimes.

We also vote.

We write to caution these committees against adopting a bill which would, in whole or in part, achieve the ends described in HF 16.

One of the liberties this body mandates us to protect is the presumption of innocence for everyone until convicted or pled guilty. Another is fairness and due process. Yet another is freedom from cruel and unusual punishment. Though this list is not exhaustive, a large part of our job is helping marginalized people find a way to change their lives so that in the future, they can live law abiding lives and not have future contact with the criminal system. Simply put, our job done well protects the constitution and upholds its rights for everyone by protecting the most vulnerable among us. And our job also helps people not reoffend.

Many of the proposals you make would equal punishment without process, devastatingly disproportionate punishments to the crimes at issue, all for people who remain legally, if not actually, innocent.

Your proposal has several fatal flaws. First, it ignores the reality that immigration enforcement, particularly at courthouses or through probation, frustrates the goal of advancing public safety through our criminal system. Immigration enforcement at courthouses deters people from coming to court for fear of being separated from their families, deported to countries where they faced persecution, poverty or both, and detained without counsel for indefinite periods. This fear of coming to court is not something only defendants feel – victims of crimes seeking account also feel this chilling effect. This proposal appears to undercut your own confidence in the judicial and criminal system we have, and its ability to further public safety. By creating law that disrupts Minnesota court processes, you risk safety, fairness, and waste taxpayer money by disrupting the system it funds.

Second, your proposal appears to attempt to mandate the executive branch – county attorneys – to notify immigration officials when an undocumented person is arrested for a crime of violence. This is unconstitutional and unethical for several reasons. First, county attorneys ethically do not have contact with defendants represented by counsel. This proposal invites racial profiling and guessing with the cost of family separation, detention, and deportation in the balance. Second, even where county attorneys charge a ‘crime of violence,’ that person is still legally innocent until the conclusion of due process. Your proposal thus flies in the face of the constitutional right to be presumed innocent until proven guilty. Third, your legislative body, and the substantial powers it has, does not bind the executive branch to which county attorneys belong. Your proposal fails separation of powers doctrine must and is vulnerable to costly litigation on the taxpayer’s dime.

In short, what you propose is the morally and legally wrong thing to do because it would separate children from their parents, encourage racial profiling, undermine our system to protect public safety, and cost the taxpayer money they don’t want to spend—all for people who may not have committed a crime at all.

Please reject efforts to pass HF 16 or the practices it proposes.

Sincerely,

/s/ Sarah Anne Koziol

MN Bar No. 0402562

sarah.koziol@pubdef.state.mn.us

/s/ Brooke Adams
MN Bar No. 0402046
brooke.adams@pubdef.state.mn.us

/s/ Laura Baldwin
MN Bar No. 0391105
Laura.baldwin@pubdef.state.mn.us

/s/ Sarah-Rose Ballard
MN Bar No. 0504339
Sarahrose.ballard@pubdef.state.mn.us

/s/ Maggie Bott
MN Bar No. 0403388
Maggie.bott@pubdef.state.mn.us

/s/ Ellen Brady-Hurt
MN Bar No. 0504354
Ellen.brady-hurt@pubdef.state.mn.us

/s/ Shira Burton
MN Bar No. 0396300
Shira.burton@pubdef.state.mn.us

/s/ Eve Byron
MN Bar No. 0401178
eve.byron@pubdef.state.mn.us

/s/ Raissa Carpenter
MN Bar No. 0396413
Raissa.carpenter@pubdef.state.mn.us

/s/ Allison Chadwick
MN Bar No. 0401185
Allison.chadwick@pubdef.state.mn.us

/s/ Jessica Colbert
MN Bar No. 0395235
Jessica.colbert@pubdef.state.mn.us

/s/ Jesse Dong
MN Bar No. 0398730
Jesse.dong@pubdef.state.mn.us

/s/ Elizabeth Eckholm
MN Bar No. 0504337
Elizabeth.eckholm@pubdef.state.mn.us

/s/ Meghan Holden
MN Bar No. 0403609
Meghan.holden@pubdef.state.mn.us

/s/ Christine Irfanullah
MN Bar No. 0504092
Christine.irfanullah@pubdef.state.mn.us

/s/ Ava Kelley
MN Bar No. 0505258
Ava.kelley@pubdef.state.mn.us

/s/ Dana Lurie
MN Bar No. 0505257
Dana.lurie@pubdef.state.mn.us

/s/ Gabriela McCormack
MN Bar No. 0505487
Gabriela.mccormack@pubdef.state.mn.us

/s/ Kimberly Meyer
MN Bar No. 0504340
Kimberly.meyer@pubdef.state.mn.us

/s/ Yastril Nanez
MN Bar No. 0403907
Yastril.nanez@pubdef.state.mn.us

/s/ Molly Novak
MN Bar No. 0504342
Molly.novak@pubdef.state.mn.us

/s/ Brenna O'Connor
MN Bar No. 0397165
Brenna.o'connor@pubdef.state.mn.us

/s/ Leslie O'Connor
MN Bar No. 0401438
leslie.o'connor@pubdef.state.mn.us

/s/ Anthony Patton
MN Bar No. 0505255
Anthony.patton@pubdef.state.mn.us

/s/ Briana Perry
MN Bar No. 0393333
Briana.perry@pubdef.state.mn.us

/s/ Rebekah Phelps
MN Bar No. 0403860
Rebekah.phelps@pubdef.state.mn.us

/s/ Matthew Plotnick
MN Bar No. 0505263
Mathew.plotnick@pubdef.state.mn.us

/s/ Laura Prahl
MN Bar No. 0394846
Laura.prahl@pubdef.state.mn.us

/s/ Liam Riley
MN Bar No. 0505838
Liam.riley@pubdef.state.mn.us

/s/ Eduardo Salgado Diaz
MN Bar No. 0402561
Eduardo.salgadodiaz@pubdef.state.mn.us

/s/ James Sieben
MN Bar No. 0403914
James.Sieben@pubdef.state.mn.us

/s/ Alyson Sorensen
MN Bar No. 0403398
Alyson.sorensen@pubdef.state.mn.us

/s/ Amanda Stoks
MN Bar No. 0402394
amanda.stoks@pubdef.state.mn.us

/s/ Lindsey Van Beek
MN Bar No. 0397721
Lindsey.vanbeek@pubdef.state.mn.us

/s/ Zeel Vora
MN Bar No. 0403399
zeel.vora@pubdef.state.mn.us