

# New York State Bar Association

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## THE NEW YORK STATE BAR ASSOCIATION URGES REFORM OF STATE LAW REGARDING DISCOVERY IN CRIMINAL JUSTICE MATTERS

NYSBA #29

March 23, 2018

S. 6848

By: Avella

A. 7292

By: Lentol

Senate Committee: Codes

Assembly Committee: Codes

S. 7505-B

By: BUDGET

A. 9505-C

By: BUDGET

Senate Committee: Finance

Assembly Committee: Ways and Means

The New York State Bar Association has reviewed the current budget proposals to amend state law regarding discovery in criminal justice matters. The Governor's proposed Executive Budget and the Senate and Assembly "one-house" budget proposals reflect differing points of view on this highly important issue. We believe that the Association's proposal, **A.7292/S.6848**, provides a reasonable compromise among these proposals.

The Association urges that as negotiations go forward, State Leaders make every effort to reform New York's discovery law.

Litigants in civil lawsuits in New York State have the opportunity via "discovery and inspection" or "disclosure" to learn about facts and evidence that is the basis for the other side's case. Under New York's criminal discovery statute, defendants are often denied similar access to comparable information. Consequently, criminal defendants routinely receive limited information which often is turned over so late that it is virtually impossible to properly investigate, to secure and use any potentially exculpatory evidence, to fairly weigh a guilty plea offer, or to develop a trial strategy. As a result, lack of discovery under current New York law prevents innocent defendants from mounting a proper defense, and delays the acceptance of a plea by defendants who are guilty.

Reform of New York's criminal discovery rules should seek to accomplish two key things:

- help defendants fairly prepare for trial; and
- encourage informed plea bargaining without needless and costly delays.

The Association is mindful of and shares concern over the safety of witnesses. But it is not reasonable for opponents of much-needed reform to argue that safety concerns should prevent the disclosure of any witness information. In that regard, we underscore the fact that safety concerns cannot impede defendants' constitutional right to cross-examine these witnesses in open court, during trial.

We believe that the Association's proposal, **A.7292/S.6848**, strikes the right balance, allowing effective provisions to protect witnesses while affording defendants the information to which they are rightly entitled.

New York is an outlier among other states, including all of the other states in which the 10 largest cities in the US are located. In all of these other states, witness information is subject to discovery, unless a court orders otherwise, and there are no reported aberrations regarding witness security. We think it is time that New York reform its criminal discovery laws.

The Association's policy was developed by a task force composed of members who are judges, prosecutors and defense attorneys from all over the state.

As you continue your work to enact the budget, we recommend that the Association's bill be seriously considered as a proposal that would effectively and fairly address New York's need for reform of discovery in criminal justice matters.

We strongly **SUPPORT** reform on this important issue. **A.7292/S.6848** is among the Association's legislative priorities in 2018. We urge State Leaders to include this proposal in the final budget.