

## Memorandum in Support

NYSBA #2

February 10, 2023

S.939

By: Senator Bailey

A.152

By: M. of A. Cruz

Senate Committee: Codes

Assembly: Third Reading

Effective Date: 60<sup>th</sup> day after it shall have become a law

**AN ACT** to amend the criminal procedure law, in relation to facilitating appellate review of rulings that implicate issues of public concern.

**LAW AND SECTIONS REFERRED TO:** § 710.70 of Criminal Procedure Law

The New York State Bar Association strongly supports S.939(Bailey)/A.152(Cruz). This legislation will promote the quality of representation provided to, and the fair access to justice by, indigent criminal defendants in the State courts.

NYSBA strongly supports S.939(Bailey)/A.152(Cruz), because it would amend C.P.L. § 710.70 to enable appellate review of suppression rulings regardless of appeal waivers. It would restore the legislative intent behind C.P.L. § 710.70, allowing for substantive review of police and official misconduct during searches and seizures.

The Legislature has specifically granted appellate courts the ability to review suppression rulings, “notwithstanding the fact that such judgement is entered upon a plea of guilty.”<sup>1</sup> Although it is clear that criminal defendants maintain their right to appeal suppression rulings regardless of pleas, the intent behind this law is regularly thwarted by prosecutors who demand that defendants waive their right to appeal in exchange for a plea deal. As a result, those who plead guilty are unable to access appellate review of their suppression rulings.

Appeal waivers also serve to shield police and official misconduct. When looking at dispositions of drugs and weapons possession cases, where suppression rulings can make or break a case, the appellate courts reverse the outcome of those cases at rate of 16% to 19%.<sup>2</sup> Furthermore, when looking at exonerations from 1989 to 2020, official misconduct contributed to 54% of false convictions of persons who were later exonerated.<sup>3</sup> By

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<sup>1</sup> C.P.L. § 710.70(2).

<sup>2</sup> Waters, Gallegos, Green, and Rozsi, *Criminal Appeals in State Courts*, Bureau of Justice Statistics (Sept 2015).

<sup>3</sup> Gross, Possley, Roll, and Stephens, *Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement*, National Registry of Exonerations, (September 1, 2020).

enabling appellate review of suppression rulings, we can allow appellate courts to serve as check for law enforcement misconduct.

Racial disparities in policing makes review of suppression rulings even more important. At the peak of the NYPD stop and frisk program, 55% of the individuals illegally searched were Black, and 34% were Latinx. As of 2019, 59% of those stopped were Black and 29% were Latinx.<sup>4</sup> It is undeniable that racial biases continue to play a role in policing, and illegal searches and seizures continue to target racial minorities.

S.939/A.152 is an urgent and necessary bill to simply restore its original legislative intent to allow the Appellate Divisions to substantive review of police and official misconduct during searches and seizures.

For the above reasons, the New York State Bar Association **SUPPORTS** this legislation.

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<sup>4</sup> Dunn, Shames, & Lee, *Stop-and-Frisk in the de Blasio Era*, American Civil Liberties Union of New York (March 2019)