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[Copy of letter to the Governor and the Legislative Leaders]

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.

I am writing to urge that as negotiations go forward, you and your colleagues 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. As you know, 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.

Let me be clear, 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 should underscore 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 (Lentol)/S.6848 (Avella), 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. Before becoming policy, our proposal was vetted among our members with extensive expertise regarding the criminal justice system, as well as other aspects of the legal system. As you and the leaders 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.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sharon Stern Gerstman', written in a cursive style.

Sharon Stern Gerstman
President