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2025 Joint Budget Hearing Testimony

Public Protection

District Attorneys Association of the State of New York

February 13, 2025

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*** PAST PRESIDENT OF DAASNY**

Thank you for the opportunity to speak to you today on behalf of the District Attorneys Association of the State of New York.

As our State continues to face challenges, you are in a position to make thoughtful investments and decisions that will help ensure that our residents, businesses, and visitors have a sense of confidence in public safety and the criminal justice system. On behalf of New York's 62 District Attorneys I thank you for your partnership and commitment to justice and public safety.

I urge you to prioritize programs and initiatives that help stop violence and maintain public safety, in addition to investing in programs that prevent crime and help those that are in need of assistance, such as drug and alcohol treatment and mental health services. As you go forward, New York State's District Attorneys want to continue to be part of upcoming conversations about how we can continue to ensure a safe, fair, and efficient criminal justice system in New York.

Although there are many topics and issues related to public safety in our State, and though we hope to have further conversations about issues such as gun violence, domestic violence, retail theft, and others, I would like to spend this time today talking to you about proposed changes to our discovery law and drugged driving laws, as well as the need for continued investments of money related to discovery exchange in our State.

As you know, New York's discovery law was overhauled in 2019, after years of discussion on how to make the system fairer to those accused of crime. Additional changes were later made to the law, providing some additional time to retrieve, prepare, and exchange discovery. District Attorney's offices spent a great deal of time establishing new mechanisms for discovery storage and exchange. Discoverable information is often voluminous or duplicative and the reality of obtaining

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

materials from numerous agencies and entities, both public and private, that are in actual possession of information can result in a delay in disclosure.

Tight deadlines and difficulties in obtaining information have resulted in widespread dismissals of cases all over the State, because of the law's burdensome requirements. The law has resulted in less-swift and less-efficient discovery practices and less-just dispositions. New York State has seen a drastic increase in dismissals on technical grounds, an increase that negatively impacts public safety and crime victims as well as the overall well-being and sense of safety of everyone in our State.

DAASNY supports changes to our discovery law that would help fulfill the original intent of discovery reform, to allow for early, broad disclosure to criminal defendants, so that they have all the information that they need to defend themselves, while at the same time helping to eliminate the gamesmanship and the technical dismissals that have been burdening the criminal justice system. The current discovery law has caused an increase in case processing times. New York State Chief Administrative Judge Joseph Zayas has noted that the structure of the current discovery law incentivizes defense attorneys to delay cases to "run out the speedy trial clock" to obtain dismissals based on speedy trial grounds. That was certainly not the intent of the drafters of the original law.

Therefore, DAASNY supports amendments to our discovery law that would reduce case processing times and help end the exploitation of the speedy trial statute that results in dismissals on technicalities and not on the merits of a case. We support adding a harm-proportionate remedy to the discovery process that would make it clear dismissals should only be considered in circumstances where a defendant's case is actually harmed by a failure to provide discovery. DAASNY recommends amendments that would prohibit the invalidation of a certificate of compliance when a prosecutor has made a good faith effort to obtain discovery material. Overall, I urge you to consider meaningful substantive changes to our discovery statutes.

Furthermore, prosecutors' ability to reduce the number of technical dismissals that can lead to injustice for our victims will continue to depend on the attention, planning, and resources that we devote to discovery exchange. As a result, in addition to necessary substantive amendments

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

to the discovery statutes, I also urge you to continue adequate funding for discovery, funding that has become necessary due to the increase in the volume of discoverable items. The number of documents and the amount of electronic discovery could be 20-30 times greater than it was in 2019, because discovery must be produced in every felony and every misdemeanor case, as if the case is going to trial, and within 20 or 35 days of arraignment. Every District Attorney's office requires significantly more staff, both legal and support staff, to deal with that increased volume of discovery. Those costs relate to hiring and training additional staff that is needed to review and prepare discovery. For example, medical records and X-rays must be reviewed and redacted to remove patients' social security numbers. Camera footage must be reviewed to blur out license plate information or faces of uninvolved bystanders. Video files are voluminous, and processing those files translates into a need for at least a 25% increase in staff, including investigators, ADAs, IT staff, and others. Additionally, storage needs far exceed what was estimated when changes to New York State's discovery laws were first discussed. We thank you for your past financial support and urge you to consider continuing it.

I would be remiss if I didn't mention one other important provision in Governor Hochul's Executive Budget: an amendment to the Vehicle and Traffic law that would close a significant loophole in drugged driving cases. Under current law, an impaired driver cannot be charged with drugged driving unless the prosecution is able to prove that the driver was under the influence of a drug named on a list of controlled substances contained in the Public Health Law. That list is very often behind the state of the chemistry of impairing substances, and many drugged drivers cannot be charged, no matter how impaired they are, because of the absence from that list of the substance that impaired them. The result has been a detrimental impact on public safety resulting from many drugged drivers who cannot be prosecuted for their crimes. The Governor's Executive Budget would amend the Vehicle and Traffic Law to provide that drugged drivers may be charged if they are impaired by any substance, regardless of whether it appears on that list or not. I urge the Legislature to adopt that portion of the Governor's Executive Budget, so that we can help increase the safety of those using our roads.

I have also included DAASNY's full budget request letter that was submitted in November. I also submit memoranda in support of the

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

aforementioned Discovery amendments in the budget bill and the drugged driving legislation. On behalf of DAASNY, I thank you for considering these requests and as you craft the budget, I look forward to working with you in our shared desire to keep New Yorkers safe and ensure justice for all under the law.