

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**

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New York is an outlier among other states with respect to discovery in criminal justice matters, including all of the other states in which the 10 largest cities in the U.S. 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 New York State Bar Association's policy on criminal discovery was developed by a task force composed of members who are judges, prosecutors and defense attorneys from all over the state. We believe that NYSBA's proposal strikes an appropriate and reasonable balance in advancing fair policy on this issue.

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.

NYSBA 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 strongly **SUPPORT** reform on this important issue to protect witnesses while affording defendants the information to which they are rightly entitled. Indeed, this issue is among NYSBA's legislative priorities in 2019. We urge state leaders to take action to ensure fairness in our criminal justice system.