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MEMORANDUM IN SUPPORT

S. 1716 (Bailey) & A. 1431 (Lentol) Discovery for Justice Reform Act

The New York State Association of Criminal Defense Lawyers (NYSACDL) strongly supports the Discovery for Justice Reform Act, which would repeal New York's outdated "Blindfold Law" and require timely and open discovery in criminal cases. NYSACDL is a statewide bar association responsive to the needs of both private practitioners and public defenders and dedicated to assuring the protection of individual rights and liberties for all. Many of our members are among the most experienced criminal defense lawyers in their communities, the State and nationwide. Their commitment to criminal defense and constitutional fairness has led many to become leaders of various Bar Associations, such as the New York State Bar, National Association of Criminal Defense Lawyers, the Bar of the City of New York, New York City Criminal Bar Association, Nassau County Criminal Bar Association, Ulster County Bar Association, Monroe County Bar Association, and the list goes on.

Under New York State's current criminal discovery statute, Criminal Procedure Law Article 240, enacted in 1979, people accused of crimes are denied vitally important information that is essential to make informed decisions about their pending cases. New York is one of the handful of states that fails to provide meaningful and prompt discovery. Inadequate and late discovery routinely prevents defense lawyers from fulfilling two of their most important constitutional obligations – investigating the charges and giving meaningful advice on plea offers.

Discovery rules involving broad access to both parties' evidence at an early stage of criminal cases have been used for decades in other states. Such rules are practicable and fair, and they result in greater efficiencies in the court system and afford victims earlier closure. New York State has failed to join this nationwide trend, and these changes are long overdue.

We understand such sweeping reform is not enacted without objections, most notably from those in law enforcement and victims' groups, concerned that the early release of victims' and witness' names and addresses will expose them to intimidation or harm. However, years of experience in other states demonstrates this not to be the case. Sensible witness safety provisions are included in the Act, as was done in many other and far more conservative states like Texas. After five years of discovery reform experience in Texas, there has been no need for increased security concern for witnesses and victims. Prosecutors and former prosecutors, regardless of party affiliation, in Texas and many other states, such as Virginia and North Carolina, have universally embraced discovery reform.

Meaningful and prompt discovery will allow all parties to engage in more productive discussions in an attempt to resolve cases earlier; defendants will be able to see the strength of the People's case; prosecutors will have the benefit of defense lawyers' informed input; this will allow for speedier disposition of cases, less pre-trial

detention, fewer trials and, again earlier closure for victims. This also allows resources of prosecutors, law enforcement, public and private defense lawyers and the courts to focus on those cases that need to be tried. Trial by ambush will be a thing of the past. Wrongful conviction reversals due to prosecutors withholding, intentionally or inadvertently, exculpatory (*Brady*) material will be minimized.

A criminal conviction, whether it leads to prison or not, is a life altering event. Why is a person's life worth less than financial disputes in civil cases? In civil matters, both sides are required to disclose all their evidence, (and then some), are entitled to question under oath all parties and all witnesses in advance of trial.

We appreciate that some may perceive this as a difficult vote, but we believe true Justice does not come easy and that you are up to the task. After more than ten years of advocacy and comprehensive discussion devoted to meaningful discovery reform, New York shouldn't accept a watered-down piece of legislation. Passing the Bailey/Lentol bills will go a long way to restoring the public's faith in our criminal justice system.

**The New York State Association of Criminal Defense Lawyers
strongly supports passage of this bill.**