

Statement of Support

S.1716 (Bailey)/A.1431 (Lentol) – The 2019 Discovery for Justice Reform Act February 11, 2019

The Osborne Association urges the Legislature to pass and the Governor to sign comprehensive criminal discovery reform this session. We strongly support the Discovery for Justice Reform Act S.1716 (Bailey) /A.1431 (Lentol), which will repeal the current “Blindfold Law” and bring early, open, and automatic discovery to our criminal legal system.

While New York is an example for other states to follow in bringing both incarceration and crime down, it falls behind most states when it comes to its discovery laws. Unlike most of the rest of the country, prosecutors and police in New York are not required to provide copies of police reports and other crucial documents, information, or evidence related to their cases to people facing criminal allegations or to their attorneys until trial begins – months or years after an arrest. Because the vast majority of cases end in either dismissals or plea deals, rather than trials, nearly everyone who is accused of a crime in New York may never see all of the evidence; this includes police reports, witness statements, exculpatory information, and more. This is why New York’s discovery law is also referred to as the “Blindfold Law.”

This unfair law fuels mass incarceration, case delays, and wrongful convictions. It prevents people facing criminal accusations from making informed decisions about plea offers, forcing many to choose between pleading guilty or suffering the well-documented brutality of jail while fighting the charges against them without access to crucial evidence.

Nearly every other state in the country has employed systems of broad access to both parties’ evidence at an early stage of criminal cases for many years. Prosecutors and defense attorneys alike in these states consistently say broad discovery produces effective outcomes, and no state that has reformed its discovery statute has since gone back to reverse its progress.

New York’s antiquated criminal discovery laws stand in stark contrast to its law in civil cases, where only money is at stake, not individual liberty. In New York civil cases, both parties are required to turn over all of the information, including live testimony, called depositions, questions and answers, called interrogatories and production of documents. Yet, people facing jail or prison, a criminal record, separation from children and family, and a lifetime of related consequences, like loss of employment, housing, educational opportunity, and deportation are not currently afforded even the most basic information prior to making a decision about whether to plead guilty or proceed to trial.

The legislature and the Governor have an opportunity to remedy this by passing the Discovery for Justice Reform Act S.1716 /A.1431. We urge them to do so.