Hon. Andrea Stewart-Cousins
President and Majority Leader of the New York State Senate
State Capitol Building
Albany, NY 12247

Hon. Carl E. Heastie
Speaker of the New York State Assembly
State Capitol Building
Albany, NY 12248

Dear Majority Leader Stewart-Cousins and Speaker Heastie:

We are law professors from across New York State and we write to urge the Legislature to unequivocally reject Governor Hochul's proposed rollbacks to New York's landmark criminal discovery laws. Despite claims that the Governor's proposal would merely amend the 2020 law; by eliminating incentives for police and prosecutors to disclose evidence to the accused and stripping judges of authority to enforce compliance with the law, the proposal would effectively repeal the 2020 reforms and return New York to its shameful Blindfold Era.

As scholars who teach, study, and practice the law, we train students to be ethical lawyers for the public interest, and we document how systems can deny people human dignity, entrench racial inequality, and drive convictions in cases where people are factually innocent. Those concerns motivate our opposition to Governor Hochul's proposal, which would gut New York's 2020 discovery statute in its relative infancy, reverse the progress New York has made towards transparency, and return to an era where guilty pleas were secured by coercion, not evidence.

We know you support the rule of law and will see that any legitimate system demands that people accused of crimes who stand to lose their freedom must be given access to the evidence against them well in advance of trial and any plea. The proposed amendments to the 2020 discovery laws are contrary to this fundamental tenet of legal legitimacy and must be rejected in their entirety.

New York Must Never Return to Its Blindfold Era

New York State's pre-2020 discovery and speedy trial statutes suffered from grave deficiencies. Neither a prosecutor's obligation to disclose evidence, nor their obligation to be ready for trial was subject to effective enforcement. The statutes came to be called the "Blindfold Law" because prosecutors could secure convictions without disclosing critical evidence to the accused, forcing New Yorkers to defend themselves in the dark.[1] Because disclosure obligations were not tied to speedy trial rules, prosecutors could withhold evidence until the eve of a person's trial, if they shared basic evidence at all. New Yorkers could not make informed decisions about their cases,

[1] Beth Schwartzapfel, *Defendants Kept in the Dark About Evidence, Until It's Too Late*, NEW YORK TIMES (Aug. 7, 2021) https://www.nytimes.com/2017/08/07/nyregion/defendants-kept-in-the-dark-about-evidence-until-its-too-late.html

investigate adequately, weigh plea offers, secure exculpatory evidence, or meaningfully prepare for trial before the last minute.[2]

New York's Blindfold Law spawned devastating results. Many innocent New Yorkers—overwhelmingly Black, brown, and unable to afford counsel—were convicted of serious crimes and condemned to prison in cases where prosecutors neglected to disclose evidence or intentionally withheld it.[3, 4, 5, 6] The law bred a culture of gamesmanship that encouraged prosecutors to claim to be ready to proceed to trial even as they failed to provide evidence, including evidence that demonstrated the innocence of the accused, with essentially no legal accountability. This denial of basic fairness affected every New Yorker accused of a crime, whether jailed pre-trial or free but forced to sacrifice days at work, school, or caring for children, without prompt access to evidence.

The Governor's Proposals Would Resurrect New York's Blindfold Law

Governor Hochul's proposal threatens to revive the abuses of New York's Blindfold Era. It should be rejected in whole. We highlight the three most harmful aspects of her proposal here:

1. **Hochul Would Eliminate the 2020 Law's Enforcement Mechanism by Granting Prosecutors Unilateral Control Over the Speedy Trial Clock**

The 2020 discovery law ties a prosecutor's disclosure obligations to their speedy trial clock and empowers courts to assess whether a prosecutor's efforts to provide discovery were *reasonable*.[7,8] Where a court finds that a prosecutor has acted reasonably, the speedy trial clock remains unaffected, even if the prosecutor has not provided all evidence to the accused. That standard has created a common-sense judicial check on prosecutorial power and incentivized prosecutors to make timely disclosures and assess their evidence before the eleventh hour.

The Governor's proposal would abolish this essential accountability measure. It would allow prosecutors to stop the speedy trial clock whenever they file a certificate of discovery compliance,

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[2] *See* NEW YORK STATE BAR ASSOCIATION, NYSBA REPORT OF THE TASK FORCE ON CRIMINAL DISCOVERY (New York State Bar Association's Task Force on Criminal Discovery 2015) https://nysba.org/app/uploads/2020/02/Criminal-Discovery-Final-Report.pdf

[3] The University of Michigan's Exoneration Initiative lists more than 200 New Yorkers who were wrongfully convicted in part because a prosecutor withheld evidence. *See The National Registry of Exonerations*, UNIVERSITY OF MICHIGAN (Last Visited Feb. 14, 2025) https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx.

[4] Troy Closson, *They Spent 24 Years Behind Bars. Then the Case Fell Apart*, NEW YORK TIMES (Mar. 5, 2021)

[5] Stephanie Clifford, *Exonerated Man Reaches $10 Million Deal With New York City,* NEW YORK TIMES (Aug. 19, 2014) https://www.nytimes.com/2014/08/20/nyregion/jabbar-collins-wrongfully-convicted-man-reaches-10-million-settlement-with-new-york-city.html.

[6] *See The National Registry of Exonerations – Robert Majors*, UNIVERSITY OF MICHIGAN (Last Visited Feb. 14, 2025) https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5845

[7] *People v. Bay*, 41 NY3d 200, 208 (2023) ("To incentivize the People's compliance with these procedures, the enactments tie their discovery obligations to trial readiness under CPL 30.30[.]")

[8] *People v. Bay*, 41 NY 3d 200, 211 (2023) ("Reasonableness, then, is the touchstone—a concept confirmed by the statutory directive to make "reasonable inquiries").

no matter how deficient their disclosures may be.[9] Under the Governor's proposal, even if a court concluded that a prosecutor's certificate was filed in bad faith, that sham filing would stop the clock.

This is precisely the abuse that occurred in Kalief Browder's notorious prosecution.[10] Under the Blindfold Law, prosecutors were able to prolong Browder's case for years by repeatedly mouthing empty assertions of their readiness for trial as he languished in a cell on Rikers Island.[11]

The Governor's proposed "modification" to the 2020 law would turn the clock back to the same toothless, ineffectual enforcement mechanism that existed—and allowed trial-by-ambush, coerced pleas, and delayed justice—for decades under the Blindfold Law. Courts must retain their authority to assess whether prosecutors have met their discovery obligations and are truly "ready for trial."

2. Hochul Would Erect Barriers to Evidence

Because most evidence originates with the police, the 2020 discovery law ensured that there was to be a "free flow" of information between police and prosecutors, who work hand-in-glove in every criminal case. The Governor's proposal seeks to undo New York's progress toward fairness, erecting a dangerous barrier between prosecutors and law enforcement. By only holding prosecutors responsible for turning over evidence that they "actually possess," the proposal also eliminates speedy trial consequences for prosecutors who fail to disclose evidence held by police, even when it's electronically accessible. This incentivizes police to withhold—and prosecutors to willfully avoid coming into possession of—basic evidence, shielding prosecutors from accountability and preventing defendants from accessing crucial, otherwise unavailable, materials like body camera footage, 911 calls, witness statements, DNA results, and records of police misconduct.

The Governor's proposal would codify the same obstructive tactics that recently drew sharp criticism from a Bronx court:

> [A]utomatically discoverable material (*see* CPL 245.20 [1]) in the possession of the NYPD is deemed by statute to be in the People's coequal possession. Thus, when the People request material such as [Internal Affairs Bureau] logs from the NYPD, the only statutorily appropriate response by the NYPD, pursuant to the discovery statute, is to "ensure" the free "flow" of this material to the People...
>
> The People cannot be made to jump through a series of NYPD-crafted hoops to receive discoverable material that the New York State Legislature deems to be in the People's possession—unless the People allow themselves to be made to so jump.

People v. Chimborazo, 81 Misc.3d 442 (Crim Ct, Bronx County 2023).

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[9] NEW YORK STATE SENATE, FY 2026 NEW YORK STATE EXECUTIVE BUDGET, PUBLIC PROTECTION AND GENERAL GOVERNMENT ARTICLE VII LEGISLATION 25 (lines 23-25); 29, (lines 1-4), 30 (lines 14-16); 31 (lines 2-7) (2025) https://www.budget.ny.gov/pubs/archive/fy26/ex/artvii/ppgg-bill.pdf.

[10] Jennifer Gonnerman, *Before the Law*, The New Yorker (Sept. 29, 2014).

[11] *Id.*

By delinking police and prosecutors, Hochul's proposal would allow the police to unilaterally make illegal decisions to withhold evidence from the defense without consequence. The Bronx court's condemnation of these tactics should serve as an urgent call to the Legislature to reject the Governor's proposal and uphold the 2020 discovery law as enacted.

3. Hochul Would Grant Prosecutors Unilateral Redaction Power

The Governor's proposal would allow prosecutors to unilaterally redact information they deem unrelated to a defendant's "instant case" without judicial review, preventing defendants from making fully informed plea decisions and guaranteeing wrongful convictions.[12] Experience with the Supreme Court's *Brady* rule has taught that prosecutors are woefully ill-equipped to make judgment calls about the value of evidence. And New York's Court of Appeals has long held that defense counsel is best positioned to make judgments about evidentiary value:

> [O]missions, contrasts and even contradictions, vital perhaps, for discrediting a witness, are certainly not as apparent to the impartial presiding judge as to single-minded counsel for the accused; the latter is in a far better position to appraise the value of a witness' pretrial statements for impeachment purposes. Until his attorney has an opportunity to see the statement, it is asked, how can he effectively answer the trial judge's assertion that it contains nothing at variance with the testimony given or, at least, useful to him in his attempt to discredit such witness?

People v. Rosario, 9 N.Y.2d 286, 290 (1961).

In 2021, now-Chief Administrative Judge Joseph Zayas vacated murder convictions of George Bell, Rohan Bolt, and Gary Johnson after finding that prosecutors withheld exculpatory witness statements that implicated alternate suspects.[13] At the time of the murder trials, the defense made repeated demands for the exculpatory statements.[14] But prosecutors argued that the statements were generated in a separate robbery investigation, and immaterial to the instant murder case. Because of the Blindfold Law, the defense never saw the statements. Bell, Bolt, and Johnson were convicted, sentenced to life terms, and each served over 24 years. Decades later, post-conviction attorneys discovered that the statements—redacted by the robbery prosecutor, now-Associate Justice Madeline Singas—identified alternate suspects, leading to the convictions being vacated.

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[12] *Id.*

[13] Closson, *supra* note 4.

[14] *People v. Bell*, 71 Misc.3d 646, 653 (Sup Ct, Queens County 2021).

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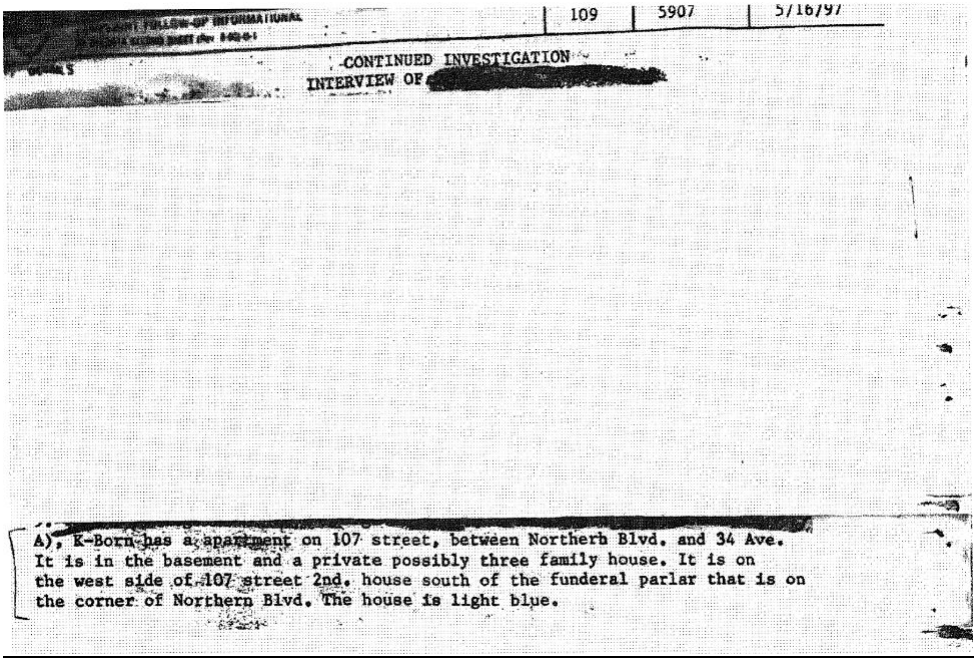

FOLLOW-UP INFORMATIONAL

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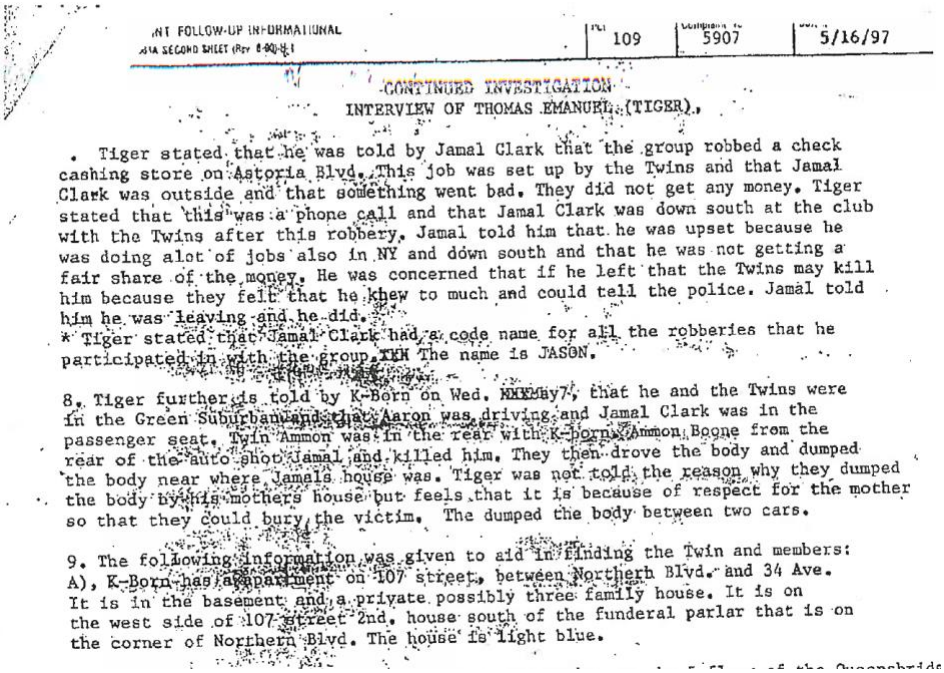
CONTINUED INVESTIGATION

INTERVIEW OF [redacted]

A), K-Born has a apartment on 107 street, between Northern Blvd. and 34 Ave. It is in the basement and a private possibly three family house. It is on the west side of 107 street 2nd. house south of the funderal parlar that is on the corner of Northern Blvd. The house is light blue.

Unredacted



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CONTINUED INVESTIGATION

INTERVIEW OF THOMAS EMANUEL (TIGER).

. Tiger stated that he was told by Jamal Clark that the group robbed a check cashing store on Astoria Blvd. This job was set up by the Twins and that Jamal Clark was outside and that something went bad. They did not get any money. Tiger stated that this was a phone call and that Jamal Clark was down south at the club with the Twins after this robbery. Jamal told him that he was upset because he was doing alot of jobs also in NY and down south and that he was not getting a fair share of the money. He was concerned that if he left that the Twins may kill him because they felt that he knew to much and could tell the police. Jamal told him he was leaving and he did.

* Tiger stated that Jamal Clark had a code name for all the robberies that he participated in with the group. The name is JASON.

8. Tiger further is told by K-Born on Wed. May 7, that he and the Twins were in the Green Suburban and that Aaron was driving and Jamal Clark was in the passenger seat. Twin Ammon was in the rear with K-Born. Ammon Boone from the rear of the auto shot Jamal and killed him. They then drove the body and dumped the body near where Jamals house was. Tiger was not told the reason why they dumped the body by his mothers house but feels that it is because of respect for the mother so that they could bury the victim. The dumped the body between two cars.

9. The following information was given to aid in finding the Twin and members: A), K-Born has an apartment on 107 street, between Northern Blvd. and 34 Ave. It is in the basement and a private possibly three family house. It is on the west side of 107 street 2nd. house south of the funderal parlar that is on the corner of Northern Blvd. The house is light blue.

The current discovery law provides clear consequences for such a failure to disclose exculpatory information *and* provides crucial judicial review for most redactions. The Governor's proposal eliminates this vital check, inviting prosecutors to withhold evidence more easily and secure more wrongful convictions like Bell, Bolt, and Johnson's, without accountability.

New York Courts Have Repudiated the Claims the Governor Now Relies On

The Governor and the District Attorneys Association of New York have repeatedly, but unreasonably, argued that the discovery statute imposes an impossible burden.[15] When the Court of Appeals had the chance to rule on this issue, they unanimously rejected identical arguments made by Cortland County prosecutors. The Court explained that the statute's "due diligence" standard—requiring prosecutors to make "reasonable efforts" to comply—neither presumes a "perfect prosecutor" nor subjects prosecutors to "strict liability" for failure to disclose discoverable material.[16]

The Court also repudiated claims that the Governor has chosen to amplify[17]—that the statute forces dismissals because of legal loopholes:

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[15] Vaughn Golden, Matt Troutman, *Hochul backs NYC DAs' push to reform discovery laws by closing loopholes that let criminals walk free on technicalities*, NEW YORK POST (Jan. 31, 2025), https://nypost.com/2025/01/31/us-news/hochul-backs-nyc-das-push-to-reform-discovery-laws-by-closing-loopholes-that-let-criminals-walk-free-on-technicalities.

[16] *People v. Bay*, 41 N.Y.3d 200 (2023)

[17] *Video, Audio, Photos & Rush Transcript: District Attorneys Endorse Governor Hochul's Plan to Streamline Discovery Laws to Protect Victims, Hold Perpetrators Accountable and Safeguard the Right to a Fair and Speedy Trial*, NEW YORK STATE GOVERNOR (Jan. 31, 2025) https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-district-attorneys-endorse-governor-hochuls-plan-streamline.

> We note that speedy trial dismissals based on disclosure violations are not inevitable. In addition to exercising due diligence to ensure COCs are not later deemed improper, the People can request additional time for discovery upon a showing of good cause (see CPL 245.70 [2]), seek 'an individualized finding of special circumstances" to be deemed ready despite the failure to file a "proper certificate" (CPL 245.50 [3]), or try to exclude from the speedy trial calculus "periods of delay occasioned by exceptional circumstances" (CPL 30.30 [4] [g]).

People v. Bay, 41 N.Y.3d 200, 215 (2023).

The oft-cited argument that defense attorneys win unfair dismissals by "lying in wait" is similarly specious. Recent trial and appellate court decisions show that defense motions are denied if the defense has not timely notified the prosecution about missing discovery. The Appellate Term, Second Department recently held:

> CPL 245.50 (4) (b) provides that, "[t]o the extent that the party is aware of a potential defect or deficiency related to a [COC] or supplemental [COC], the party entitled to disclosure *shall* notify or alert the opposing party *as soon as practicable"* (emphasis added). In addition, CPL 245.50 (4) (c) provides that "[c]hallenges related to the sufficiency of a [COC] or supplemental [COCs] *shall* be addressed by motion *as soon as practicable*" (emphasis added). Here, as defendant's first notification of any deficiency in, or challenge to the sufficiency of, the COC was 72 days after the prosecution filed its COC, when defendant filed his motion, defendant's motion, under the circumstances presented herein, was properly denied as untimely.

People v. Seymour, 84 Misc. 3d 23, 25 (App Term 2024), lv to appeal denied, 42 NY3d 1022 (2024).

The Legislature should allow the Court of Appeals to continue to interpret the 2020 discovery law as enacted, rely on lower courts to continue to assess whether prosecutors have acted reasonably in providing discovery, and resolutely reject the Governor's proposed repeal.

The Governor's Proposals Rely on Inaccurate Data

The Governor and the District Attorneys' Association further claim that the 2020 discovery law has spiked dismissal rates and thereby driven increased recidivism.[18] These claims are baseless. They misrepresent publicly available data and rely on a politics that uses conviction rates as a metric of public safety.

Office of Court Administration data shows that indicted felony dismissal rates have held steady since the discovery law went into effect.[19] In New York City, felonies prosecuted in Superior Court were dismissed at a rate of 14% in 2019, before the law went into effect, and 14% in 2024. Outside of New York City, misdemeanors were dismissed at 42% in 2019, and 43% in 2024. The

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[18] Brian Lee, *'Playing the Clock'?: Hochul Says NY's Discovery Loophole is to Blame for Wide Dismissal of Criminal Cases*, NEW YORK LAW JOURNAL (Jan. 14 2025) https://www.law.com/newyorklawjournal/2025/01/14/playing-the-clock-hochul-says-nys-discovery-loophole-is-to-blame-for-wide-dismissal-of-criminal-cases/?slreturn=2025020563914.

[19] *Discovery Reform: Court Activity Dashboard*, NEW YORK STATE UNIFIED COURT SYSTEM DIVISION OF TECHNOLOGY & COURT RESEARCH (Last Visited Feb. 14 2025) Discovery Reform: Court Activity Dashboard.

only increased dismissal rate in the state is for misdemeanors in local criminal courts in New York City, where over-policing of Black and brown communities has historically yielded high dismissal rates.[20]

Furthermore, the Governor has no basis to claim that any of the current dismissal rates are higher than they *should* be because she has no baseline of comparison that would obtain if the judicial system were working fairly. Governor Hochul is just asserting—without defending—that rates are higher than they should be under the proper functioning of the judicial system. But that is precisely the issue: prior conviction rates were artificially inflated because prosecutors wielded unfair threats and coerced pleas out of defendants who were in the dark about the evidence against them. Many pleaded guilty even in the face of factual innocence out of fear. The data does nothing to suggest that recidivism has increased, much less that New Yorkers are less safe than before the 2020 law went into effect.

The Governor's Proposal Must be Firmly Rejected

The Governor's proposal rests on the cynical assumption that conviction rates promote safe communities. They don't. As Justice Sonia Sotomayor wrote in *Utah v. Strieff*, people who suffer an arrest or criminal conviction are forced to endure the "'civil death' of discrimination by employers, landlords, and whoever else conducts a background check,"[21] not to mention loss of liberty. Our State, our Governor, and our District Attorneys should embrace a politics that houses, educates, employs, feeds, and cares for New Yorkers, not one that maximizes civil death and erodes fundamental procedural protections.

We, the undersigned law professors, urge you to reject the Governor's chaotic and unsound proposal and remain steadfast to the principle of fundamental fairness for all as budget negotiations continue.

Sincerely,

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[20] Issa Kohler-Hausmann, *Misdemeanor Justice: Control Without Conviction*, American Journal of Sociology, Vol. 119, No. 2 (September 2013), pp. 351-393 (43 pages).
[21] *Utah v. Strieff*, 579 U.S. 232, 253 (2016).

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