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*2022 Joint Budget Hearing Testimony
Public Protection
District Attorneys Association of the State of New York
January 25, 2022*

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

After a challenging few years, our state's financial health is strong and we are all hopeful and remain optimistic about better times ahead for our state. Along with Governor Hochul, you in the legislature are in a unique position to make thoughtful investments in our state that will enhance the well-being of our residents and businesses for many years to come.

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 and make important decisions, New York State's district attorneys want 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 I hope to have further conversations about subjects like tackling increased gun violence and crime, and important initiatives to help reduce recidivism like access to TAP, I want to spend this time talking to you about the need for long overdue investments related to discovery exchange in our state. I cannot stress the importance of funding for additional staff, staff training, updated technology, and cloud storage, as well as other costs related to the overhaul of New York State's discovery laws.

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. As part of last year's budget, minor changes were 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. Funding continues to be needed for additional staff and particularized staff training, new and updated technology, and expanded storage capabilities. A reimagining of the discovery process continues to require system-wide coordination, cooperation, and collaboration. Most of all it requires resources that far exceed what most counties can provide prosecutors' offices.

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The success of New York's discovery law will continue to depend on the attention, planning, and resources that we devote to discovery exchange.

Before the discovery reforms became effective in January 2020, prosecutors had more time to review and provide the defense with documents, and only completed discovery when requested or when cases were headed for trial. Now, 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.

As you might guess, 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. Body-worn camera footage continues to be a huge storage problem as well as a time investment by staff. It has been estimated that for every 100 body-worn cameras on the street, a district attorney's office needs one additional staff member, without even considering costs related to storage. Video files are voluminous, and processing those files translates into a need for a 25% increase in staff, including investigators, ADAs, IT staff, and others.

Ironically, the COVID-19 pandemic provided something of a respite from those discovery burdens, considering the slowdown and shutdown of the courts. In addition, a side effect of the pandemic, which resulted in many ADAs and staff working from home, has been that they have been able to devote more time to complying with discovery. Further, with in-person appearances being suspended and court operations considerably slowed down, our offices were able to shift some of their staff to complying with discovery. Moreover, the volume of cases was down during the pandemic. Despite an increase in gun violence, we saw fewer arrests, and we anticipate that the volume of cases and the volume of discovery will begin to increase. As we start to tackle the COVID backlog, we anticipate burdens in discovery compliance as ADAs return to covering in-person court appearances. Fortunately, the pandemic will not last forever, but when society returns to normal, district attorney's offices will need immediate, ongoing, permanent, and significant funding for additional staff.

As far as technology is concerned, each county and each district attorney's office is in its own unique position depending on its existing financial resources. Some counties have more resources than others, and some counties have chosen to spend more money on discovery-related costs than others. Electronic discovery is great, and we would all like to utilize the most modern methods of exchanging discovery electronically. Computer systems, however, must be able to communicate with district attorney's offices, police agencies, defense attorneys, and other agencies. Those systems are not uniform and require major upgrades and additional staff and training.

Storage costs far exceed what was estimated two or three years ago, when changes to New York State's discovery laws were first discussed. The new laws have greatly increased the number of items that have to be retrieved and reviewed, and then stored,

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including documents, and multiple types of video and audio footage. Our eyes are continuously being opened by the volume of storage costs.

In April 2020, as part of the enacted FY2021 budget, a “Criminal Justice Discovery Compensation Fund” was created. That fund required the Manhattan District Attorney’s Office to transfer \$40 million from state-sanctioned deferred prosecution agreements, to be used in counties outside New York City for expenses related to discovery reform implementation, including “digital evidence transmission technology, administrative support, computers, hardware and operating software, data connectivity,” and other costs, including pretrial services. Although that funding is welcome and we certainly appreciate the acknowledgement that additional money is needed for prosecutors to comply with the new discovery requirements, the amount of money allocated falls far short of the funding required for adequate and efficient statewide discovery mechanisms. Furthermore, that fund is not guaranteed, and puts the success of discovery reform on a shaky funding stream from deferred prosecution agreements that are not predictable from year to year. In fact, for Fiscal Year 2021, the amount dedicated to the fund fell far short of the \$40 million that was originally budgeted. The Manhattan District Attorney’s Office was unable to contribute \$40 million to the fund in 2021. This year’s Executive Budget proposes that Discovery Fund once again, despite any confirmation that there is sufficient money from deferred prosecution agreements to adequately fund the cost.

I urge you to finally and realistically allocate money for New York’s transformative discovery laws. I thank you for the opportunity to speak here today and I have also submitted a copy of our annual budget letter where we highlight and expand on our additional priorities and budget needs.