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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 prosecutors' offices have.

The success of New York's discovery law will continue to depend on the attention, planning, and resources that we devote to discovery exchange. The District Attorneys Association of the State of New York (DAASNY) has estimated that costs related to discovery, additional staff, technology, and storage will top \$100 million statewide, and has repeatedly communicated that to your office and to the Legislature. That estimate is based on an initial analysis from the New York State Association of Counties.

Before the discovery reforms became effective in January 2020, prosecutors were required to provide the defense with fewer documents, and were only required to complete discovery in cases that 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

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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 could translate 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, in some cases, 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 has been 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 a unique position depending on its unique financial resources. Some counties have more resources than others, and some counties have chosen to spend more money on discovery-related costs than others. Each county also has differences in population and government structure and varying attitudes of local government and residents when it comes to investing in law enforcement. There are law enforcement agencies in some counties that have state-of-the-art technology, while others are using outdated hardware and software. Those differences impact how prosecutors and police agencies are able to communicate electronically to exchange discovery. 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. The New York State Police and many local police agencies are still dropping off computer discs of information to district attorney's offices! That practice is far from modern discovery exchange.

For district attorneys in 55 of New York's 62 counties, discovery is accomplished in part by using the New York Prosecutors Training Institute's (NYPTI's) Prosecutors Case Management System (PCMS) and Digital Evidence Management System (DEMS). Those web-based systems are proven tools for the counties using them to deliver timely discovery to the defense. By connecting prosecutors with police agencies, body worn camera systems, courts, crime analysis centers, labs, and defense attorneys, DEMS is an efficient, secure solution for meeting a portion of discovery obligations. Prosecutors manage documents, review body-worn camera footage, surveillance videos, photos, and almost any digital evidence, and make the files directly accessible to defense attorneys. Continued funding for NYPTI's PCMS/DEMS cloud-based platform, software, staffing, and training will be essential to address part of the technological requirements for

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discovery compliance and to maintain an efficient and secure exchange of required discovery. DAASNY has requested \$4 million for NYPTI, which includes an allocation for costs related to cloud processing, storage, and maintenance of PCMS and DEMS.

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 documents that have to be retrieved, reviewed, and then stored, 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 this year.

Please reach out for further questions about discovery and how our offices are engaging in discovery exchange.

Thank you,



J. Anthony Jordan
Washington County District Attorney
President, District Attorneys Association of the
State of New York

CC:

Robert Mujica, Director NYS Division of Budget
Rossana Rosado, Commissioner DCJS