



New York State Association of Chiefs of Police, Inc.

3177 Latta Rd., #230
Rochester, NY 14612
518 355-3371
www.nychiefs.org



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The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

The Honorable Andrea Stewart-Cousins
188 State Street
Legislative Office Building, Room 907
Albany, NY 12247

The Honorable Carl Heastie
188 State Street
Legislative Office Building, Room 932
Albany, New York, 11248

December 9, 2021

Dear Governor Hochul, Speaker Heastie, Leader Stewart-Cousins, Assembly Members and Senators:

We write to you as an association which counts as its members over 870 police executives, representing over 400 police agencies that protect all corners of New York State. These police agencies range in size from small departments with a handful of officers, to medium sized departments with hundreds of officers, to large departments with thousands and tens of thousands of police officers. Despite the varying size of our member agencies, we share a guiding purpose, to protect and to serve New Yorkers.

Much has been reported in the media, as well as during public discourse, concerning the criminal justice reforms that were enacted by the state legislature and governor two years ago. We recognize, as you do, that we cannot have true public safety without fairness and equity in the criminal justice system. Inequitable treatment erodes trust and inhibits our ability to protect the public. For example, the bail system that was in place prior to January 1, 2020 was patently unfair. Some defendants were locked up simply because they were too poor to pay for their release while defendants who posed a continuing danger to our communities were allowed to mount their defense while free because they had enough money to post bail. Likewise, discovery laws permitted the denial of vital information to a defendant about their case when making vital decisions in connection with their case. And furthermore, allowing New York State to become only one of two states



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in the nation that punished sixteen and seventeen year-olds as adults in the criminal justice system, rather than affording them a corrective path without a criminal record.

Reforms, however, cannot tip the balance so far in favor of the accused that public safety is jeopardized and victims are left choosing between the pursuit of justice and the fear of reprisal if they move forward with their case.

While we agree with the general intention of all of these laws, we cannot endorse their unintended outcomes. We do not believe their potential to negatively impact public safety was carefully and cautiously considered, nor were they implemented with a contemplated sense of fairness to victims and their families. These reforms, although designed to create a more equitable criminal justice system, have had the unintended consequence of making our communities less safe. Injustice persists if communities are not, and do not, feel safe.

The reforms enacted by the state have been hotly debated, and with good reason. After two decades of consistent drops in crime, many of our organizations, and particularly our large cities, have seen sharp spikes of criminal activity since the enactment of these laws. Statewide, there has been an 82.2 percent increase in shooting victims and an 80.9 percent increase in individuals killed by gun violence from 2019 to 2020. More people were murdered in New York in 2020 alone than had been in over a decade.

It should be noted that every one of our member agencies worked diligently prior to the enactment of these criminal justice reforms to help reduce arrests and incarceration. The amount of individuals in state prison declined from over 63,000 in 2007 to about 47,000 in 2019. We are not afraid of reform.

While the impact these reforms have had on crime is a consistent source of debate, we believe that it is more productive to work together to address issues we see as paramount to the future of public safety. It is possible to achieve a balance between maintaining the spirit of these necessary reforms and enhancing the safety of our communities.

As such, we are uniquely positioned to offer our insight as well as to propose the following legislative amendments. To be clear, we are not advocating for a repeal of the work you have done. We are offering precise and measured amendments within the legislative framework you have created. These amendments strike the appropriate balance between public safety and fairness to the accused. It is in our common interest to foster a system of justice that both protects the public and preserves our constitutional rights. These proposals focus on the critical issues of bail, discovery, Raise the Age, and desk appearance tickets.

Summary of Proposed Amendments:



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1) **Bail**

- a. Eliminate cash bail altogether by eliminating the inequities that allow wealth to determine freedom.
- b. Allow judges to consider a defendant's public safety risk, so that the people who pose the biggest threat to our communities can be taken off the street.

2) **Discovery**

- a. Stagger the discovery schedule to ease administrative burdens while at the same time providing enough information to defendants to make informed decisions.
- b. Limit discovery to relevant and material information and not to all information that is tangentially related to the case and provides no probative value.
- c. Allow the prosecution to answer ready for trial if they have substantially complied with discovery, preventing cases from being dismissed because duplicative and non-material information is provided later in the discovery process.

3) **Raise the Age**

- a. Allowing judges in Youth Part to see family court records so individuals do not appear in front of the Youth Part judge as a perpetual first time offender.
- b. Amend the statute of limitations so that individuals who commit crimes days before their 18th birthday can be prosecuted after their 18th birthday.

4) **Appearance Tickets**

- a. Expand the list of crimes for which police are not required to issue appearance tickets to include some serious offenses.
- b. Limit the ability for chronic offenders to continually receive appearance tickets.

Bail Reform

Under the current bail laws, a judge can release a defendant on his or her own recognizance, release the defendant under non-monetary conditions, or, if the defendant is charged with a qualifying offense, fix bail or remand the defendant. For non-qualifying offenses, bail and remand is not an option. However, even for qualifying offenses, which include violent felonies, the judge must release the defendant on his or her own recognizance unless the judge makes an individualized determination that the defendant poses a risk of flight to avoid prosecution. If such a determination is made, the judge is then required to select the *least restrictive* alternative and conditions that will reasonably assure a defendant's return to court. Judges must also consider a defendant's ability to pay when setting bail.

This law, and its subsequent amendment in 2020, allowed the fundamental flaw of bail to remain within a limited set of cases. Freedom was contingent on a person's ability to pay. At the same time, unlike 49 other states, Washington D.C. and the federal government, judges are prohibited



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from considering whether a person poses a threat to the community. Dangerous individuals and career criminals have been freed to reoffend at will to the detriment of all New Yorkers.

As a result, we propose eliminating cash bail altogether. This will assure that defendants will not be kept behind bars solely because they are poor. Further, the proposal calls for giving judges the discretion to impose conditions of release if the defendant either poses a flight risk or is a danger to the safety of any person or the community. If no condition can reasonably assure the defendant's return to court or assure the safety of any person or the community, then the judge has discretion to remand the defendant. In making a determination, the judge would consider such factors as the defendant's history of violence. This will have the desired effect of keeping dangerous individuals off the street and protecting potential victims.

While we agree that monetary status should not be a factor in determining whether a defendant is set free, we believe that a defendant's threat to public safety should. The proposed amendments maintain the spirit of reform and progress. Pre-trial release will not be based on a defendant's ability to pay. At the same time, the amendments give judges the ability to remand dangerous individuals with long criminal histories who pose a threat to victims, witnesses or the community as a whole.

Discovery

The state's discovery laws were overhauled in order to provide defendants with all information relating to their cases faster, so they could make more informed decisions as to whether to plea or mount a defense. Prior to these changes, prosecutors were permitted to turn over timely discovery to the defendant as they walked into court for hearings. It is clear the discovery laws needed reform. However, under the current laws, law enforcement agencies and district attorney offices are overwhelmed by having to produce the volume of materials within the strict timeframes provided. Many of these documents that must be produced are duplicative or irrelevant to a material issue of the case.

The current law requires the prosecution produce initial discovery within 20 days after arraignment when the defendant is in custody and 35 days after arraignment when the defendant is not in custody. Additionally, the prosecution must provide supplemental discovery no later than 15 calendar days prior to the first scheduled trial date. The prosecution must comply with all discovery obligations before filing a certificate of compliance prior to declaring readiness for trial. Further, the prosecution must turn over all material that is "related" to the case regardless of its relevance. This has immensely increased the volume of material that must be turned over in the very initial stages of discovery. Both prosecutors and police agencies are overburdened, and some of these agencies simply do not have the resources to comply with these new discovery mandates. Most worrisome, is that the failure to disclose a document or other discoverable material that may not be relevant and material to the charges against the defendant, and is only tangentially related to the case, has led to the dismissal of criminal cases.



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Finally, the current law does little to protect victims and witnesses. As part of initial discovery, the prosecution must turn over the names and contact information for all persons other than law enforcement personnel whom the prosecutor knows to have evidence or information relevant to any offense charged or to any potential defense, or to seek an order of protection in every such case. Giving victim and witness names and contact information so soon after arraignment dissuades victims and witnesses from stepping forward and reporting crime or cooperating with an investigation. The result is an erosion of faith in the criminal justice system for victims, some of which have suffered great physical and mental abuse at the hands of their attacker. The law even includes a provision that allows defendants to move for a court order to access crime scenes, including an individual's home. As you are aware, this provision has been deemed unconstitutional by a court in Suffolk County.

In order to enable the prosecution to meet its discovery obligations and still provide the defense with discoverable material in a timely fashion, as well as offer protection to victims and witnesses, we propose a staggered approach to discovery. Under this system, the prosecution must provide initial discovery in accordance with the timelines provided for in the current law. The discovery provided at this point will give defendant's enough information to make informed decisions on how to proceed with the criminal charges levied against them, but will ease the crushing burdens on prosecutors and police. The prosecution must then provide supplemental discovery 30 days prior to the first scheduled trial date, as opposed to 15 days. However, our proposal also calls for a third category of discovery—sensitive discovery, which includes any information that tends to disclose the identity of a victim or witness. Sensitive information would be provided within 15 days prior to the start of the trial in misdemeanor cases and 30 days prior to the first scheduled trial date in felony cases, after both the prosecution and the defense have filed certificates of compliance or at a time specified pursuant to a judicial protective order. The defense may still make a motion to the court for disclosure upon a showing that the defense would be prejudiced or suffer a hardship without disclosure of this sensitive information.

Under our proposal, the prosecution is required to disclose to the defendant all items and information that are relevant and material to the subject matter of the case. This is a rational basis for discovery and will provide defendants with everything they need to properly defend their case.

Our proposal also eases the burden on the prosecution, while not prejudicing the defense by allowing the prosecution to file a certificate of compliance when the prosecution has substantially complied with discovery. The court will use this standard when determining whether a defendant has been prejudiced by a failure to disclose. A case can and should be dismissed if critical discovery is not provided on time. However, superfluous, duplicative and irrelevant paperwork should not be the basis for dismissal. This provision prevents the dismissal of serious charges on a technicality when the defense is not provided with a piece of material that is not relevant or material to a defense.



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Finally, in order to address the issue of granting the defense access to a crime scene when that scene is a victim's home, our proposal calls for the defendant to show, by clear and convincing evidence, a hardship or prejudice that cannot be remedied without access to the premises, and that no less intrusive means are available.

Raise the Age

We also agree with the Raise the Age legislation that was enacted. Youths under 18 accused of minor crimes should not be subjected to the brunt of the criminal justice system. Their cases should be adjudicated in family court, where they can receive programs and services that will assist in enabling them to lead productive lives. New York was an outlier in allowing youth as young as 16 to routinely be charged as adults and the legislature was correct to change that anomaly. However, there are some nuances in the laws that should be addressed in the interest of public safety.

Under current law, for any delinquency case that does not involve a designated felony, a proceeding cannot be commenced in family court after a youth's eighteenth birthday. The majority of delinquency cases do not charge a designated felony. If a 17-year-old commits a non-designated felony crime just weeks or days short of their eighteenth birthday, they can avoid prosecution if the case is not commenced before they turn eighteen. Our proposal addresses this loophole and extends the statute of limitations for 16 and 17-year-olds.

Further, whenever a person 16 or 17-years-old commits a felony, they are charged as adolescent offenders and the case begins in the youth part of superior court. In these cases, the judge must decide whether to keep the case in youth part where the youth will be prosecuted essentially as an adult, or transfer the case to family court where the youth will face juvenile proceedings. In making the determination, a sitting judge in superior court has no access to family court records and is forced to determine whether or not to transfer a case without a complete picture of the youth's criminal history. Consequently, 16 and 17-years-olds appearing in youth part on violent felony cases are treated as perpetual first time offenders.

Our proposal amends this provision requiring the family court to make available to the youth part judge, all records related to the adolescent offender's family court adjudications. This amendment will allow the youth part judges to consider the complete history of the adolescent offender's, including whether prior cases have been transferred to the family court, when deciding whether to transfer the matter to family court or keep the matter in the youth part of superior court. Our proposal additionally enables youth part judges to consider factors such as the impact of a removal on the safety or welfare of the community and other pending charges against the individual.

Finally, current law provides that, in deciding whether a case involving violent felony charges should remain in the youth part of superior court or be transferred to family court, the prosecution must prove by a preponderance of the evidence that the defendant caused; (1) significant physical



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injury to a person; (2) displayed a firearm or deadly weapon in furtherance of the offense; and/or (3) unlawfully engaged in sexual conduct; or (4) there are other “extraordinary circumstances.” Courts have held that mere possession of a firearm is not enough for the case to remain in the youth part. The prosecution must show the firearm was displayed in furtherance of another offense. This is a difficult barrier to overcome, allowing adolescent offenders with histories of gun possession to have their cases adjudicated in family court. Our proposal calls for the prosecution to prove that the defendant possessed a firearm, or what appeared to be a firearm, or actively participated in a crime where a co-defendant possessed a firearm, or what appeared to be a firearm. This amendment is particularly important in light of youth gun violence, which is plaguing our state.

Desk Appearance Tickets (DATs)

The recent criminal justice laws also mandate that DATs must be issued for all misdemeanors and class E felonies with some limited exceptions. Thus, a person charged with offenses such as criminal possession of a weapon in the fourth degree, criminal possession of a firearm, criminal possession of a weapon on school grounds, and other serious crimes receive a DAT with a future date assigned for arraignment. This law enables career criminals to repeatedly commit crimes against victims and be released with a DAT from a police stationhouse within hours, with a future court date that they may not appear for. Our proposal calls for giving police discretion over whether to issue a DAT for serious crimes like criminal possession of a weapon, arson, hate crimes, and others crimes that endanger the public’s safety. Additionally, we propose that police be given the discretion to issue a DAT when the person has received one in the prior eighteen months. This would enhance public safety by preventing career criminals from being perpetually released on a DAT, free to continue to commit crimes that affect the welfare and safety of our communities.

Thank you for taking the time to review these proposals that we believe will improve public safety within the framework of reform that was enacted in recent years. I am available to discuss any of these critical issues with you as we work together to keep New Yorkers safe and advance a fair system of justice.

Sincerely,

Timothy Parisi

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President
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