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*****FOR IMMEDIATE RELEASE*****

361 Trial and Appellate Attorneys, Advocates Call on Governor Hochul to Sign Appeal Waiver Bill into Law

(NEW YORK, NY) – 361 attorneys and advocates representing various public and appellate defender offices, as well as advocacy organizations, hailing from 24 New York counties, issued an open [letter](#) today urging Governor Kathy Hochul to sign [legislation](#), which was just transmitted by the New York State Legislature, that would reinvigorate access to justice and facilitate court efficiency by restoring the power of appellate courts to review police misconduct for convictions on appeal.

Appellate review of suppression decisions has long been enshrined in New York law yet has been thwarted by local prosecutor offices' widespread insistence on "waivers of appeal." These waivers shield police misconduct, eliminate a vital oversight tool, and subvert the intent of the legislature in establishing appellate review for all cases, even those that end in pleas. This legislation simply restores appellate courts' legislatively-granted review power.

The letter states:

In short, as Chief Judge Rowan D. Wilson has recognized, in practice appeal waivers have "wreaked havoc on the lower courts, district attorneys, defense counsel and defendants," and demonstrably are "not worth any of the[ir] hypothetical benefits." People v. Thomas, 34 N.Y.3d 545 (2019). By allowing the appellate courts to review suppression rulings regardless of appeal waivers tacked onto plea deals, New York can restore the legislature's intent, protect the constitutional rights of all people accused of crimes, and discourage law enforcement misconduct.

"Appellate review of suppression decisions promotes justice and public confidence in the system. This review ensures that flagrant police misconduct does not go unchecked. It also serves to correct fundamental errors of constitutional dimension, including racial disparities in policing, coerced confessions, and unfairly suggestive identification procedures," said **Tina Luongo, Chief Attorney of the Criminal Defense Practice at The Legal Aid Society**. "This Appeal Waiver bill will improve the fairness of the proceedings by allowing the appellate court to reexamine whether or not certain evidence should have been admitted. Greater judicial scrutiny also decreases the likelihood of the grave injustice of wrongful convictions for our clients. We encourage Governor Hochul to sign this legislation immediately."

Yung-Mi Lee, President, New York State Association of Criminal Defense Lawyers said “Waivers of appeal of suppression issues are against public policy. When prosecutors routinely demand blanket appeal waivers even when police misconduct occurs, the deterrent effect of suppression can never operate as intended to deter constitutional violations. We remind the governor of the multi-year, state sanctioned ‘reign of terror’ on Black and brown New Yorkers that was ‘Stop and Frisk.’ Waivers clearly played an important role in keeping that racist practice alive. New York can make its criminal justice system fairer simply by enabling the Appellate Divisions to exercise their suppression review power unfettered, as originally intended. We strongly urge the governor to sign this key legislation to help create a fairer criminal legal system for all New Yorkers.”

“CDANY urges Governor Hochul to sign the Appeal Waiver Bill,” said **Clare Degnan, President of the Chief Defenders Association of New York**. “Accountability for the entire criminal justice system relies upon the fundamental right of an accused person to appellate review of the actions of all parties. The Appeal Waiver Bill rights a wrong in the system by permitting review of the constitutionality of defendants' arrests. The checks and balances of these reviews must be encouraged to ensure a more fair and just system for all.”

“Denying appellate review of suppression claims only serves to insulate police misconduct from necessary scrutiny,” said **Patricia Pazner, Attorney-in-Charge, Appellate Advocates**. “Ensuring that claims of unconstitutional searches and seizures, coerced confessions, and suggestive identification procedures receive appellate review will discourage unlawful police practices, safeguard against wrongful convictions, and restore public confidence in law enforcement and the criminal justice system. I therefore strongly encourage Governor Hochul to sign S939/A152.”

“Waivers of appeal of suppression issues are yet another abhorrently coercive aspect of the criminal legal system that must be urgently addressed,” said **Lori Zeno, Executive Director & Founder at Queens Defenders**. “They work to strip individuals of their fundamental constitutional protections against law enforcement overreach while obscuring police misconduct that would otherwise come to light. The elevation of finality of court processes over fundamental rights strikes at the heart of the integrity of our legal system and is quite simply bad public policy. The killings of Eric Garner, Akai Gurley, and Daniel Prude and other New Yorkers have shown us the horrific consequences of unchecked police misconduct that has traditionally been born by our city’s Black and Brown communities. I am strongly urging Governor Hochul to sign the Appeal Waiver Bill S939/A152 to make sure no more names are added to this list and to protect the fundamental rights of all New Yorkers to appellate review.”

“Appeal waivers allow convictions to stand that are often predicated upon serious errors of law or instances of injustice that should be remedied,” said **Jackie Godigian, Supervising Policy Counsel at Brooklyn Defenders**. “Without appellate review, violations of people's rights go uncorrected, trial courts are denied the benefit of appellate guidance, and police and prosecutorial misconduct go unchecked. We strongly urge Governor Hochul to enact A.152/ S.939, which would prohibit appeal waivers for suppression hearings and preserve the right to seek appellate review.”

“The Appeal Review bill will ensure that there is appellate review of suppression issues involving significant constitutional and statutory due process violations that arise from law enforcement conduct, including false confessions, unreliable identification procedures, and unlawful searches of persons and property,” said **Susan Bryant, Executive Director, New York State Defenders Association**. “The routine practice of requiring individuals to waive their appellate rights as a condition of a plea agreement permits violations of individual rights to go unchecked, leading to reduced confidence in law enforcement and our criminal legal system. Ensuring appellate review will also allow appellate courts to focus on the substantive issues rather than engaging in a case-by-case analysis of the validity of an appeal waiver, which is inefficient. We urge the Governor to sign S.939/A.152.”

“Now, more than ever, police misconduct must be exposed and condemned. Yet government-extracted appeal waivers not only strip individuals of their fundamental right to appellate review, but also shield police misconduct from the public eye, said **Mark Zeno, Legal Director at the Center for Appellate Litigation**. The appeal-

waiver bill does no more than restore a right that the Legislature presciently enshrined more than fifty years ago with the passage of the Criminal Procedure Law. Then, as now, CPL 710.70(2) protects the right of a person convicted of a crime to appeal an adverse suppression ruling. In the decades since the passage of the CPL, District Attorneys across the state have systematically circumvented and eliminated that protection, exploiting the power imbalance the government holds over an accused, by insisting that persons pleading guilty waive their right to appeal adverse suppression rulings as a condition of their plea. The appeal-waiver bill does no more than restore that right. We urge Governor Hochul to restore New Yorker's rights and the Legislature's intent by signing S939/A152."

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