

December 14, 2023

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224
Via electronic mail Governor.Hochul@exec.ny.gov

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Dear Governor Hochul,

We the undersigned join to express our strong hope that you will sign **S939/A152**; a straight-forward bill that will reinvigorate access to justice and facilitate court efficiency by restoring the power of appellate courts to review police misconduct. We join the support of trial and appellate defenders from across our state, defender associations, law professors, bar associations and advocacy organizations who have long supported this important legislation.

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. S939/A152 simply restores appellate courts' legislatively-granted review power.

New York law provides broad appellate review of suppression rulings that may involve police and official misconduct. Indeed, the Legislature determined that this review is so important that it may be exercised *even when the defendant pleads guilty, and even where the sentence is the result of a plea bargain*. See C.P.L. § 710.70. Appellate review of suppression decisions is thus an integral part of our legal system. It promotes sound justice and public confidence in the system. It ensures that both honest human errors and flagrant official misconduct are reviewed, exposed, and remedied. And it provides critical protection against fundamental constitutional violations and wrongful convictions.

Racial disparities in policing make unfettered access to appellate review of suppression rulings even more important. It is undeniable that racial biases continue to play a role in policing, and illegal searches and seizures still target communities of color. Given these realities, it is imperative that, when critical evidence in a criminal prosecution – identifications, statements, or physical evidence – arises from police searches and seizures, police-arranged identification procedures, or police interrogation tactics, the appellate courts remain available forums to provide people with meaningful access to justice. In fact, because of qualified immunity and other barriers to civil relief, suppression of illegally obtained evidence is one of the best and only mechanisms we have to curtail this misconduct.

Unfortunately, District Attorneys offices' widespread insistence on appeal waivers has largely undercut this fundamental component of our justice system. Prosecutors now commonly require an appeal waiver for any negotiated felony plea deal. All too often, this extra-judicial requirement sweeps police misconduct under the rug. Those who plead guilty are unable to access appellate review of their cases for suppression rulings.

There is no principled reason for requiring defendants to waive their right to appellate review. As long experience has amply demonstrated, appeal waivers do not reduce the number of appeals. Instead, they simply increase the amount of work that lawyers and the courts must undertake when processing appeals, as all parties must spend valuable time and resources addressing the validity of the appeal waiver. Instead of a 25-page brief arguing for the suppression of evidence due to police misconduct, defense counsel must write a 40-page brief, including an additional, complex multi-factor analysis attacking the validity of the waiver. The appellate prosecutor's workload, and the court's, are similarly increased. It is thus no surprise that the Office of Court Administration supports S939/A152. Signing this bill into law will greatly increase efficiency for all parties, which translates to overall cost savings for the state.

Because any "floodgates" concern is plainly false, the only other function that appeal waivers serve is shielding police misconduct from review. Under S939/A152, appeals will continue as they have, just more efficiently. If there is a valid suppression issue, police misconduct will come to light and be corrected. If there is not, the appellant will lose. Opposition to this course is thus simply an attempt to prevent valid misconduct issues from being brought to light. It is bad for people accused of crimes, bad for confidence in law enforcement and our legal system, and bad for New Yorkers— particularly for New Yorkers of color.

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.

For all these reasons, restoring appellate review of suppression decisions is a key step in the right direction for New York. We, the undersigned hail from counties across the state; Albany, Bronx, Brooklyn, Broome, Cayuga, Dutchess, Erie, Greene, Kings, Livingston, Monroe, Nassau, New York, Oneida, Onondaga, Ontario, Richmond, Rockland, Suffolk, Tompkins, Ulster, Wayne, Westchester and Wyoming. We stand together, across our great state, and strongly urge you, our Governor, to sign S939/A152 into law.

Sincerely,

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The Bronx Defenders
Center for Appellate Litigation
Chief Defender Association of New York
Children's Defense Fund, NY
Criminal Defense Clinic, Benjamin N. Cardozo School of Law School
Erie County Assigned Counsel Plan
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G.A.N.G.S. Coalition
Legal Action Center
Legal Aid Bureau of Buffalo, Inc
The Legal Aid Society
The Legal Aid Society of Westchester County
Long Island Advocates for Police Accountability, Inc.
Neighborhood Defender Services
New York County Defender Services
New York State Defender Association
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