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Legal Aid Hails Senate for Introducing Common-Sense Legislation to Strengthen Evidence-Sharing Practices Across New York State

Legislation Codifies Court of Appeals Decision - People v. Bay - to Ensure Judges Fairly Evaluate Prosecutors' Efforts to Comply with Discovery Obligations

Public Defenders Reaffirm Need for Policy to Be Removed from the Budget Process and Allow for Full Debate and Feedback from Impacted New Yorkers

(ALBANY, NY) – The Legal Aid Society released the following statement in response to Senator Cordell Cleare introducing common-sense legislation ([S7313](#)) aimed at strengthening evidence-sharing practices across New York State by codifying *People v. Bay*, a ruling from the New York State Court of Appeals:

“The Legal Aid Society hails Senator Cordell Cleare for introducing this common-sense legislation that will strengthen evidence-sharing practices throughout New York State by codifying [People v. Bay](#). Specifically, the legislation sets clear standards for how judges assess prosecutors' efforts to meet discovery obligations. The bill ensures judges consider the complexity of the case and the prosecutor's actions before certifying compliance, providing clearer guidelines for judges in criminal cases.

“Instead of the Governor's ill-conceived and reckless proposal to upend New York State's discovery statute—while bringing the budget process to a complete standstill despite daily threats to our democracy and New Yorkers' well-being from the new administration—this is a surgical measure inspired by New York's highest court, and it should be debated robustly outside the budget, with full input from those potentially impacted by this measure.”

PURPOSE:

The purpose of this legislation is to codify standards by which judges would evaluate the prosecution's efforts to comply with their discovery obligations. It seeks to ensure that judges consider *all* of the prosecutor's efforts and the complexity of the case when determining whether the prosecution exercised due diligence before filing a certificate of compliance. Specifically, this bill would codify the factors laid out by the Court of Appeals in *People v. Bay*, 41 NY3d 200 (2023). These factors provide a roadmap from which judges may fairly assess the prosecution's diligence.

SUMMARY OF PROVISIONS:

Section one of this bill would amend Criminal Procedure Law ("CPL") § 245.50 to add a new subdivision that would codify *People v. Bay*, 41 NY3d 200 (2023). The bill would specifically codify the portion of the case that articulates the factors a trial court is to consider, in instances of late disclosure, when determining whether the

prosecution exercised diligence in fulfilling its disclosure obligations. These factors are aimed at evaluating the prosecutor's efforts to learn of and provide discoverable material prior to certifying compliance pursuant to subdivision one of section 245.50.

JUSTIFICATION:

As New York's highest court, the Court of Appeals, stated in *Bay* concerning CPL Article 245, "the statute nowhere defines 'due diligence.'" But as the court explained, "it is a familiar and flexible standard that requires the People 'to make reasonable efforts' to comply with statutory directives." *id.* at 211. Adding the Court's further definition to the statute in this context would help assure that trial courts properly interpret the law. The court also clarified that good faith *alone* is not enough, stating, "the plain terms of the statute make clear that while good faith is required, it is not sufficient standing alone and cannot cure a lack of diligence." *id.* at 212.

In an effort to provide a definition for trial courts to follow, the *Bay* decision set forth a non-exclusive list of factors that are relevant to an evaluation of whether a prosecutor has exercised the requisite diligence. Those factors are not currently codified. But, when trial courts faithfully apply the *Bay* factors in evaluating prosecutors' efforts to fulfill their discovery obligations, and determine that a prosecutor has been diligent, cases are not automatically dismissed despite the late disclosure of evidence.

This bill is offered to assist judges in criminal proceedings across the state when a dispute arises concerning prosecutorial diligence in obtaining and sharing discovery. This bill would address concerns expressed by some New York prosecutors and ensure the furtherance of justice and equity in our criminal legal system.

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