

## **MODEL RESOLUTION**

### **In Support of Changes to New York’s Discovery Laws Proposed in Governor Hochul’s Fiscal Year 2026 Executive Budget**

**WHEREAS**, in criminal cases discovery is the process by which the prosecution provides evidence to the defense. Defense attorneys review evidence prior to trial to prepare for a defense or to negotiate a plea deal, and

**WHEREAS**, early and thorough discovery of evidence that could prove or undermine the government’s case is not only fair to defendants, but also facilitates meaningful plea discussions and efficient resolution of cases, and

**WHEREAS**, in 2019, New York reformed its discovery laws creating Criminal Procedure Law Article 245, and

**WHEREAS**, prosecutors are now obligated to collect all material that “relates to” a case within New York’s uniquely short timeframes, and then to certify that they have turned over the entirety of evidence by filing a Certificate of Compliance (COC), and

**WHEREAS**, the breadth and scope of discoverable material under New York’s new discovery statute is unparalleled nationwide, and includes any material that merely “relates to” an incident regardless of its utility, relevance, or admissibility, and

**WHEREAS**, New York is the only state in the nation that ties its discovery laws to its speedy trial laws, and the only state in the nation that requires cases to be dismissed due to minor discovery violations,

**WHEREAS**, judges are dismissing cases solely because prosecutors cannot provide every last piece of discoverable material--no matter how meaningless or irrelevant--in the time frames required by the law, and

**WHEREAS**, as a result, prosecutors are expending their limited resources making repetitive, and often futile, efforts to chase down records – the vast majority with no evidentiary value – in tens of thousands of cases, and

**WHEREAS**, the current laws create unreasonable drain on resources and forces D.A.’s offices to make difficult decision on which cases they can prosecute, and

**WHEREAS**, according to the Office of Court Administration (OCA) data, the overall NYC case dismissal rate was 62% in 2023, compared to 42% in 2019 pre-reform,

**WHEREAS**, during that period, according to OCA data, there has been a 48% increase in the case dismissal rate, and 20,538 more cases dismissed citywide in 2023 compared to 2019, and

**WHEREAS**, each of these cases dismissed represents a victim of a crime who does not see justice in their case, and

**WHEREAS**, Governor Kathy Hochul has included language in her Fiscal Year 2026 Executive Budget to amend New York's discovery statute, and

**WHEREAS**, the Governor's proposal would clearly define the subset of discoverable materials that must be turned over before the prosecution can certify their compliance with their discovery obligations to avoid the dismissal of a case, and

**WHEREAS**, under this standard, prosecutors would be able to certify their compliance once they have turned over all materials relevant to the subject matter of the charges against the defendant in the instant case in the prosecutor's actual possession after exercising good faith and due diligence to collect materials, and

**WHEREAS**, the proposal would ensure that other remedies are used in circumstances when violations are minor, such as instances when the defendant does not suffer any prejudice, while still allowing for mandatory dismissal of any case in which the prosecution fails to provide the most important material that the statute requires.

**WHEREAS**, even with these needed amendments, New York State would still have the most open and transparent discovery regime of any state in the United States, and

**THEREFORE**, let be resolved, that (Community Board xx) calls on the New York State Legislature to pass the discovery amendments that were included in the 2026-2027 Executive Budget in order to ensure justice for victims, while maintaining the rights of those accused of crimes.