New York State Association of Chiefs of Police, Inc.
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DATE: March 27, 2018

PRESS RELEASE – FOR IMMEDIATE DISTRIBUTION

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There are a number of legislative proposals currently being considered as "criminal justice reforms" in New York State. The opinion of the New York State Association of Chiefs of Police, Inc., (NYSACOP), on these matters is as follows:

FUNDING FOR SCHOOL RESOURCE OFFICERS

NYSACOP is IN FAVOR of such legislation

The members of NYSACOP strongly support funding for police departments to work cooperatively with the school districts within their jurisdictions so officers can be hired and then assigned as School Resource Officers (SRO's) in those schools where districts desire such a presence. Many departments across New York State have worked to establish positive relationships with the school districts they service; and SRO's are already assigned in a number of those schools. Unfortunately, due to the funding demands, most of those districts do not have an SRO in every school. Other districts have expressed interest in establishing an SRO program to our members, but due to limited or no funding, have been unable to establish one. These programs have had a strong track record of success and help to foster positive police interactions with young people in the communities we serve; and we are strongly in favor of funding to expand or establish School Resource Officer programs across New York State.

BAIL REFORM

NYSACOP is OPPOSED to the current legislative proposal

A number of difficult issues are connected to overhauling New York State's bail system including how to approach pre-trial services, preventative detention and bail alternatives. Adequate funding must be provided for any successful changes to the bail system.

NYSACOP members are opposed to any proposal that provides for a presumption of release for misdemeanors and also feel strongly that New York State must provided sufficient funding for pretrial services so that the

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services are effective and that individual municipalities are not burdened by the costs.

We have to keep in mind how big New York State is and there is so much regional diversity amongst different municipalities.

- Year after year, New York continues to be a leader in public safety. New York is the fifth safest state in the country. New York has the lowest crime rate of any large state. (According to FBI, Crime in the United States annual report) New York also has the lowest imprisonment rate of any large state.

As for who is held and for what crimes, we all have to understand this needs to be done by careful consideration to make sure that the dangerous people are held. A presumption that those who commit non-violent felonies should be released without bail doesn't take into consideration some troubling examples.

- The drug dealer who sells heroin laced with fentanyl, or any deadly illicit drug for that matter, that causes a deadly overdose would be released.
- Someone who is found with 1000 bags of fentanyl, heroin or cocaine would be released.
- If someone is arrested for violating bail in a first instance or even a second instance they would be released.

New Jersey eliminated cash bail and moved to a system where judges can order defendants jailed based in part on a risk assessment that weighs the defendant's criminal history and the charges they face. They did not allocate money in the State budget for the system and relied on court fees for funding. A recent report to the Governor and legislature warns that the system is "simply not sustainable" and faces "substantial annual structural deficit" because its funding mechanism relies on court fees rather than State budget. The report found staff at the pretrial monitoring program lack resources to keep tabs on people released and lack resources to help defendants who suffer from mental health or addiction problems.

In certain cases family members or loved ones want a defendant to be held until they can get the help or treatment they need. For example, when someone is arrested and they are high on drugs if they are released family are members are concerned they will go right back to the bad behavior they were involved in. In these instances family members actually request that the person be held until they come down from the high or can get the professional help they need.

More people are dying from opioid overdoses than gunshots and DWIs combined. We are the safest state but not the healthiest. We are one of the most addicted states and we need to continue to address the opioid epidemic as well as the scourge of other drugs. Many of these proposals regarding changes to the bail system or discovery run counterintuitive to efforts to fight the opioid epidemic at all levels.

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DISCOVERY REFORM

NYSACOP is OPPOSED to the current legislative proposal

Our members have grave concerns that prematurely exposing the identity of witnesses will result in more harassment, intimidation and violence against innocent citizens. Witnesses will increasingly refuse to cooperate if they know that their name, address and contact information will be given to the defendant well before trial. Public confidence in the criminal justice system will be shattered.

Current NY law recognizes while it is appropriate to confront a testifying witness in a courtroom it is inappropriate for a defendant to confront a citizen in their living room. The law balances the right of defendants to fashion a defense with the right of a witness to be free from harassment, tampering, manipulation and intimidation. NY law achieves a fair balance by providing a defendant pre-trial discovery rights well in excess of that required by the federal or state constitutions while prudently keeping in mind the privacy rights and security interests of ordinary citizens who will be confronted by the defendant should they testify in court. This system has worked for over 3 decades.

The accelerated discovery being proposed would require the prosecution to expose the identity of all cooperating citizens regardless of whether they will even testify well before trial. These changes are transformative, unwarranted and disastrous especially given the frequency of witness intimidation.

Our membership asks the following question, what is the justification for all of this?

Many defendants want to find out as much about witnesses as soon as possible not to unearth exculpatory information, but to identify, target and intimidate witnesses who possess incriminating information. There is no evidence that shows a nexus between the current NY discovery rules and wrongful convictions. There is overwhelming evidence that witness tampering and witness intimidation has a significant impact on the ability of law enforcement to bring criminals to justice.

Witness tampering and intimidation represents a fundamental threat to the rule of law. It makes it more difficult to detect crimes, because many will go unreported to the police. It also makes it extraordinarily difficult to prosecute crimes because it deprives the prosecution of credible witness testimony.

Recent violent events across the country have renewed the call for citizens that; “If you see something say something”. Those who saw something will realize that their identities will soon be known by the very person observed committing the crime as well as their friends and associates. Witnesses will need to be advised that their identities and contact information will likely be disclosed to the defendant sooner rather than later and regardless of whether the

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witnesses even testifies at trial. Even simple requests for tips that could lead to more information will come with the caveat that the tipsters name must be disclosed to the defendant or accused.

ASSET FORFEITURE REFORM

NYSACOP is OPPOSED to the current legislative proposal

The need for the current laws that have been in place regarding civil asset forfeiture are varied, but in its simplest form, many criminals commit crimes to make money, spend money and live a life of tax-free excess. This statute is to take the profit out of crime and make assets unavailable to fuel further criminal activities.

The constitutionality of a so called, "13-A procedure" is well settled and NY's law contains procedural protections for defendants. A seizure must be accompanied by a prior judicial order issued upon a significant evidentiary showing. The statute requires that all defendants receive notice and an opportunity to be heard within 5 days after seizure. Any party may ask the court for an order releasing property to pay reasonable attorney' fees and living expenses.

The current legislation helps victims of financial crimes. The only real way to get assets back to victims is to seize and forfeit them. This statute makes it possible to return stolen funds to crime victims.

It is a common practice for criminals to move money out of their names and into the names of third parties. Often third parties are not indicted but own an interest in property that constitutes proceeds of crime. Without this statute criminals will be encouraged to launder money and give ill-gotten gains to other individuals to hold for them. The current law allows prosecutors to seize and forfeit assets if they prove in court that the third party knew or should have known that the property was obtained or used illegally.

Narcotics distribution networks often separate the movement of money from the movement of the drugs themselves making it difficult to criminally prosecute the money movers. Under the current law prosecutors can sue parties who are knowingly hiding, laundering, or transporting narcotics proceeds.

The proposed Assembly Bill A9505 hurts victims of financial crimes and favors defense attorneys and defendants over the rights of crime victims. The bill removes prosecutors' ability to civilly restrain or seize property pre-trial that cannot be traced to criminal activity. Currently prosecutors can seize or freeze, pursuant to a pre-trial order, any property owned by a defendant equal in value to the proceeds of criminal activity, even if they property is not traceable to the criminal activity. The bill would provide that only after a judgment can you use untainted property to satisfy the judgment.

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Many defendants hide illegally obtained money, invest it in improvements to real property or spend it prior to arrest. Often the only way to make sure a victim gets some of their money back is to restrain untainted assets before the defendant knows he will be arrested. By the time a defendant is convicted he often cannot pay back a victim.