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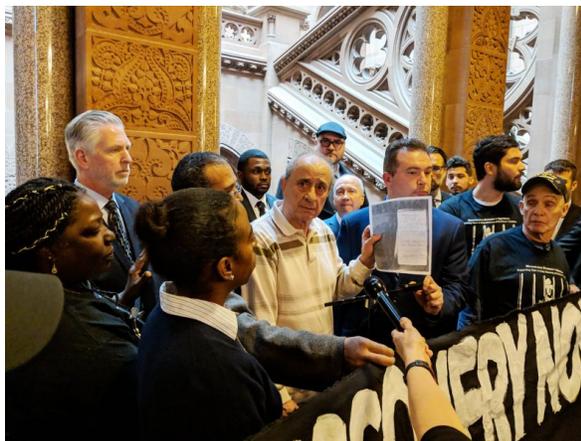
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Momentum Building Among NY Lawmakers to Boost Criminal Discovery

Democrats in the Assembly were planning to privately discuss legislation to enact discovery reform later Tuesday afternoon.

By Dan M. Clark | February 05, 2019

Efforts to revamp the state's decades-old laws on [criminal discovery](#).



Advocates rally for criminal discovery reform at the state capitol in Albany, NY, Tuesday Feb. 5. Photo: Dan M. Clark

(<https://www.law.com/newyorklawjournal/2019/02/01/ny-lawmakers-move-closer-to-approving-criminal-justice-reform-legislation/>) continued in Albany on Tuesday as advocates and elected officials gathered at the state capitol to push for the reform, which appeared to gain momentum among lawmakers in recent days.

A bill that would mandate the exchange of evidence that prosecutors and defendants intend to present at trial early on in a criminal proceeding could be approved as early as next week, lawmakers have said.

Assemblyman Joseph Lentol, D-Brooklyn, said the Legislature is planning to include discovery reform in a broader package of bills related to criminal justice reform. Assembly Speaker Carl Heastie, D-Bronx, said last week that lawmakers would likely unveil that legislation before the end of next week.

The main sticking point on criminal justice reform at the moment is whether the state should do away with monetary bail altogether and instead allow most defendants to walk free until their trial date. That reform is intended to allow defendants who cannot afford bail the same opportunity to avoid incarceration before trial as those with more financial resources.

Lentol said aside from that issue and a few other technical differences, the Assembly and Senate are mostly in line on the upcoming series of bills.

"I think we're close to the Senate on many of the items that need to be discussed for our criminal justice reform package," Lentol said.

Democrats in the Assembly were planning to privately discuss legislation to enact discovery reform later Tuesday afternoon, Lentol said. He sponsors the bill in the Assembly, where Democrats in the majority have historically coalesced around criminal justice reforms that would benefit defendants.

This is the first year after nearly a decade that those reforms could become law after Democrats flipped the State Senate from Republican control in last year's elections. State Sen. Jamaal Bailey, D-Bronx, chairman of the Codes Committee, sponsors the discovery bill in the Senate. He rallied with advocates on Tuesday for the legislation.

"If we look at our criminal justice system, it's supposed to be predicated on fairness," Bailey said. "This is not to give defense attorneys an advantage. This is not to disadvantage prosecutors. This is about fairness."

Advocates for the reform have pointed to the disparity on discoverable material between criminal cases and civil matters. During a civil proceeding, material to be used at trial is openly exchanged between attorneys for both parties. Criminal discovery in New York works differently and can often be withheld from the defense until days before trial.

The bill sponsored by Lentol and Bailey would require the first phase of discoverable material to be sent to the defense within 15 days of an arraignment, which prosecutors have said would not be enough time in many cases. Albany County District Attorney

David Soares, the current president of the District Attorneys Association of the State of New York, said as much in testimony submitted to the Legislature on criminal justice reform last week.

“In many counties in our state, our prosecutors are dealing with multiple police agencies, including the state police,” Soares wrote. “Each police agency has their own manner and turnaround time when providing reports. Some police agencies can take up to 30 days to provide a police report.”

There are also concerns about what kind of material would be available to defendants well ahead of trial, such as the names and personal information of victims and witnesses. Soares wrote in his testimony that identifying those individuals may add to witness intimidation and reduce the likelihood in future cases that people will come forward with information.

“Prematurely exposing the identity of witnesses could result in more harassment, intimidation and violence against innocent citizens,” Soares said. “Witnesses could increasingly refuse to cooperate if they know that their name, address and contact information will be given to the defendant well before trial.”

Andrew Kossover, legislative chairman of the New York State Association of Criminal Defense Lawyers, said the bill being considered addresses that concern by allowing prosecutors to request a protective order on an individual’s identifiable information. That would be at the discretion of the judge overseeing the case.

“The bill allows for the district attorney to go to the judge and request a protective order and a judge generally will err on the side of caution and grant said protective order, and that means the district attorney is good and doesn’t have to release that information,” Kossover said.

He also argued that, in many cases, defense attorneys already accept discoverable material from prosecutors that’s been heavily redacted to hide the identities of individuals. A protective order would be the last resort for a prosecutor when the defense does not agree to accept the redacted material.

Kossover stood with a handful of other criminal justice reform groups on Tuesday to rally for the legislation. The Repeal the Blindfold Coalition includes more than 15 organizations comprised of defense lawyers, former law enforcement officials, and others that support discovery reform.

If the proposal is not approved by lawmakers in the coming weeks, it will likely be included in legislation on the state budget, which is commonly used as a catchall for certain bills during the first three months of the year. The spending plan is due at the end of March, but lawmakers could also take up the reforms at any point after the budget is passed until the session is scheduled to end in June.

READ MORE:

[NY Lawmakers Move Closer to Approving Criminal Justice Reform Legislation](https://www.law.com/newyorklawjournal/2019/02/01/ny-lawmakers-move-closer-to-approving-criminal-justice-reform-legislation/)

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[Stricter Discovery Deadlines Are Subject of Bill in NY Legislature](https://www.law.com/newyorklawjournal/2019/01/24/stricter-discovery-deadlines-are-subject-of-bill-in-ny-legislature/)

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