



Hon. Andrea Stewart-Cousins  
 Senate Majority Leader  
 The Capitol, Room 330  
 Albany, NY 12247

Hon. Jeffrey Dinowitz  
 Chair, Codes Committee  
 Legislative Office Building Room 632  
 Albany, NY 12248

Hon. Carl Heastie  
 Assembly Speaker  
 Legislative Office Building Room 932  
 Albany, NY 12248

Hon. Jamaal Bailey  
 Chair, Codes Committee  
 Legislative Office Building Room 609  
 Albany, NY 12247

Re: The Impact of Discovery-Related Dismissals on Victims

Dear Majority Leader Stewart-Cousins, Speaker Heastie, Chair Dinowitz, and Chair Bailey:

We write to lend our collective voices in support of critically important changes to New York’s discovery laws proposed by Governor Hochul, because we have seen domestic violence prosecutions dismissed in record numbers for mere technical violations of discovery rules, leaving vulnerable survivors without urgently needed orders of protection and dashed hopes of justice. Just as alarming, we are seeing prosecutors plead down or adjourn in contemplation of dismissal serious domestic violence cases because they are too overburdened with overwhelming discovery compliance to provide survivors at grave risk of danger with the protection they need.

The Governor’s proposal would allow prosecutors to be deemed in “substantial compliance” with their discovery obligations when they have disclosed all items and information required by the People to present their case at trial. Right now, domestic violence cases are being frequently dismissed for failure to timely turn over a single document, even when all of its contents have previously been provided to defense counsel in a different form. Dismissal of a domestic violence case for a late disclosure of a single piece of paper in a voluminous record—when that late or missing record causes no prejudice to the defendant—not only does not serve the interests of justice but often leaves victims in greater danger than they were in originally.

We understand that some legislators and advocates have questioned the frequency of these dismissals and the scale of this problem. Because dismissed cases are sealed upon dismissal and because many domestic violence victims who are complainants in criminal prosecutions do not have advocates, it is impossible for us to provide that data or to offer detailed case information. However, we know from many conversations with victims statewide that these dismissals, caused by technical discovery violations long before any hearings or trial, have left victims without the orders of protection that they urgently need, while allowing perpetrators of domestic violence to evade accountability.

Advocates provided these horrific examples of the consequences of dismissals resulting from technical discovery violations:

**Case 1:** In September 2021, after years of abusing her physically, sexually, verbally, and financially, N's husband was arrested for strangling her until she could not breathe and bashing her head against the wall. Their infant son witnessed his mother's abuse. At the time, N was particularly weak and frail due to recent intensive chemotherapy treatments she was receiving following a breast cancer diagnosis. After his attack, N's husband prevented her from using her phone to call 911 and even disconnected the internet service so that she could not call for help until the day after the attack. When N's husband was arrested, she received a temporary order of protection from the Queens Criminal Court that excluded her husband from the marital residence. During following three months, N and her baby continued to reside in the marital residence. For the first time in years, they were mercifully spared her husband's ongoing abuse.

In mid-December 2021, the criminal case against the N's husband was dismissed on a technicality: the Assistant District Attorney was unable to comply with the new discovery requirements. N did not know about the dismissal. Shortly thereafter, N's husband filed a retaliatory Family Offense Petition against her in Family Court, falsely alleging that she had been the aggressor in the attack for which he had been arrested and prosecuted and excluding her from the home.

Four days after Christmas 2021, N's husband appeared at her home and attempted to gain entry. When N called the police, she was informed that the criminal case against her husband had been dismissed and her criminal court order of protection was no longer valid. The next evening N's husband returned to the marital residence accompanied by police officers. The officers told N that she had to immediately leave her home. She and her baby were put out on the street in the cold rain with only their coats, her empty wallet, her phone and the clothes on their backs. N and her baby were now homeless, and her abusive husband not only occupied her home but wielded an order of protection against her.

**Case 2:** K's husband subjected her to repeated incidents of domestic violence. He repeatedly verbally abused and threatened her, hit her on the head, yanked and pulled her hair, choked her, spat in her face, and poured alcohol on her. As a result of his abuse, K sustained bruises, marks, and pain to her face, neck, and body. Her husband repeatedly kicked her and her beloved pet dog out of the apartment in the middle of the night, forcing her to remain locked outside in the cold with little or no clothing, and frequently abused her dog, hitting him in the head and locking him

in a cage for twelve hours at a time, threatening, “If you let him out he will be punished.” K’s husband forced her to view explicit photos and videos he had taken of other sexual partners and coerced her to engage in sexual acts with others against her will.

In early 2020, after husband took explicit, humiliating photos of her while she was undressed and asleep, and then messaged them to share them with others or post online, K finally summoned the courage to call the police. K’s husband was arrested for dissemination of an unlawful surveillance image in the second degree. Immensely relieved to now have a criminal order of protection against her husband, K fully cooperated with the Kings Country DA’s office. She instructed the attorneys who represented her in both a family court order of protection case and an uncontested divorce to reach out to the DA’s office to ensure that her husband was deterred from ever sharing explicit photos of her with anyone else again.

In March 2021, the criminal case against K’s husband was nonetheless dismissed pursuant to CPL 30.30 because the Assistant District Attorney was unable to comply with the requirements of the new discovery law, and there no longer was an order of protection on behalf of K in effect. K was devastated that the criminal case was dismissed and that she lost her order of protection and is terrified that her husband will again weaponize the intimate images of her in his possession.

**Case 3:** F was born and raised in Peru. While in New York City, as part of an exchange program, she met and fell in love with the man who would become her husband. F returned to New York, married him, and eventually had a child with him. As time passed, the behavior of F’s husband became increasingly controlling, abusive, and disturbing: he pressured F to have unwanted sex during her high risk pregnancy; he strangled her; he threatened to kill her and threatened to kill himself; he grabbed her by the hair and snapped her head back repeatedly, causing her to cry out in pain; and he raped F in their bedroom in front of their baby, after which he threw her boots at her. F sought help from the police but initially they refused to assist her, apparently because her allegations principally involved sexual abuse by her husband. Eventually the police responded appropriately and arrested F’s husband. He was charged with Rape, Sexual Misconduct, Aggravated Harassment, Forcible Touching, and Criminal Contempt. The case was referred to the Integrated Domestic Violence Court in Queens. On April 9, 2021, F’s Sanctuary for Families attorney received the following message from the Assistant District Attorney prosecuting the criminal case against F’s husband: “[T]his will be the last time this case is on. Unfortunately, we’re going to have to concede 30.30 on the case. I’m going to call [F] after work to let her know. I really wish I would have been able to save this case, I’m sorry I couldn’t do more.” F was devastated to learn that the criminal charges against her husband were dismissed as the result of a discovery violation along with the criminal court order of protection issued on her behalf.

We know that the intent of discovery reform was to promote fairness and transparency by prohibiting prosecutors from delaying essential disclosures until the eve of trial. We strongly support such discovery reform, especially since domestic violence victims are all too often defendants in criminal cases. It does not advance fairness and transparency and certainly was not the legislature’s intent, however, to allow domestic violence offenders to evade justice and to leave their victims without lifesaving orders of protection and no possibility of justice on account of trivial and inconsequential discovery omissions by a prosecutor.

The changes proposed by Governor Hochul advance the important progress we've made improving the fairness of the criminal justice system. We strongly urge you to pass them in this year's State Budget.

Sincerely,

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