

STATE OF NEW YORK

4952--A

2021-2022 Regular Sessions

IN ASSEMBLY

February 9, 2021

Introduced by M. of A. JOYNER -- read once and referred to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act and the judiciary law, in relation to the discovery provisions applicable to juvenile delinquency proceedings in family court; and to repeal certain provisions of the family court act relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Sections 331.1, 331.2, 331.3, 331.4, 331.5, 331.6 and 331.7 of the family court act are REPEALED.

§ 2. The family court act is amended by adding thirteen new sections 331.1, 331.2, 331.3, 331.4, 331.5, 331.6, 331.7, 331.8, 331.9, 331.10, 331.11, 331.12 and 331.13 to read as follows:

§ 331.1. Initial appearance. 1. Disclosure. At the respondent's initial appearance, as defined in section 320.1 of this article, if the court directs detention pursuant to subdivision three of section 320.5 of this article, the presentment agency shall forthwith disclose to the respondent, and permit the respondent to discover, inspect, copy, photograph and test, all items and information set forth in paragraphs (a) through (u) of subdivision one of section 331.3 of this part that are within the presentment agency's possession at the time of the initial appearance. If the court does not direct detention, the presentment agency shall disclose to the respondent:

(a) any police or other law enforcement agency reports and written witness statements relating to the juvenile delinquency proceeding against the respondent that are within the presentment agency's possession at that time;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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(b) electronic recordings relating to the juvenile delinquency proceeding against the respondent that are within the presentment agency's possession at that time, in accordance with paragraph (g) of subdivision one of section 331.3 of this part; and

(c) exculpatory information known to the presentment agency at that time.

(d) where the charges were removed from a youth part pursuant to article seven hundred twenty-five of the criminal procedure law and the attorney for the child did not represent the respondent in the youth part, all discovery material previously provided pursuant to article two hundred forty-five of the criminal procedure law.

2. Copy of records. If in the exercise of reasonable diligence and due to the limited availability of resources for downloading or copying recordings, a copy of an electronic recording discoverable under this section is unavailable at the initial appearance, a copy shall be made and disclosed to the respondent as soon as practicable but not later than five calendar days after the initial appearance, provided, however, that if the respondent is in detention, a copy shall be made not later than three days after the initial appearance. Portions of materials under this section claimed to be non-discoverable may be withheld pending a prompt request by the presentment agency for a determination and ruling of the court under section 331.11 of this part; but the discoverable portions of such materials shall be disclosed to the extent practicable.

§ 331.2. Timing of discovery after the initial appearance. 1. Presentment agency's performance of obligations. (a) The presentment agency shall perform its initial discovery obligations under subdivision one of section 331.3 of this part as soon as practicable but not later than fifteen calendar days after the respondent's initial appearance or, if the respondent is in detention, not later than three days prior to the first scheduled fact-finding hearing date, or seven days after the initial appearance, whichever is earlier. Portions of materials claimed to be non-discoverable may be withheld pending a determination and ruling of the court under section 331.11 of this part; but the respondent shall be notified in writing that information has not been disclosed under a particular subdivision of this section, and the discoverable portions of such materials shall be disclosed to the extent practicable. When the discoverable materials are exceptionally voluminous, the time periods in this paragraph may be stayed by up to an additional ten calendar days or, if the respondent is in detention, up to an additional period of three days without need for a motion pursuant to subdivision two of section 331.11 of this part.

(b) The presentment agency shall perform its supplemental discovery obligations under subdivision three of section 331.3 of this part as soon as practicable but not later than fifteen calendar days prior to the first scheduled fact-finding hearing date, unless the respondent is in detention, in which case the presentment agency shall fulfill its supplemental discovery obligations not later than three days prior to the first scheduled fact-finding hearing date.

2. Respondent's performance of obligations. The respondent shall perform his or her discovery obligations under subdivision four of section 331.3 of this part not later than twenty-five calendar days after being served with the presentment agency's certificate of compliance pursuant to subdivision two of section 331.6 of this part or not later than three days prior to the first scheduled fact-finding hearing date, whichever is earlier. Portions of materials claimed to be non-dis-

1 coverable may be withheld pending a determination and ruling of the
2 court under section 331.11 of this part; but the presentment agency
3 shall be notified in writing that information has not been disclosed
4 under a particular section.

5 3. Timing adjustment. The time periods in this section may be adjusted
6 by the court upon a finding of good cause based upon the needs of the
7 case, the detention status of the respondent and the need for a fair and
8 expeditious resolution of the proceeding.

9 § 331.3. Automatic discovery. 1. Initial discovery for the respondent.
10 The presentment agency shall disclose to the respondent, and permit the
11 respondent to discover, inspect, copy, photograph and test, all items
12 and information that relate to the subject matter of the case and are in
13 the possession, custody or control of the presentment agency or persons
14 under the presentment agency's direction or control, including but not
15 limited to:

16 (a) All written or recorded statements, and the substance of all oral
17 statements, made by the respondent or a co-respondent to a public serv-
18 ant engaged in law enforcement activity or to a person then acting under
19 his or her direction or in cooperation with him or her.

20 (b) All transcripts of the testimony of a person who has testified
21 before a grand jury in a related criminal proceeding, including but not
22 limited to the respondent or a co-respondent. The presentment agency
23 shall request that the prosecutor of the matter before the grand jury
24 provide a transcript of the testimony and, upon receipt of the request,
25 the prosecutor shall promptly apply to the appropriate criminal court,
26 with written notice to the presentment agency and the respondent, for a
27 written order pursuant to section three hundred twenty-five of the judi-
28 ciary law releasing a transcript to the presentment agency; provided,
29 however, that the transcripts of the grand jury proceedings in a case
30 removed from the youth part pursuant to article seven hundred twenty-
31 five of the criminal procedure law shall be annexed to the petition or
32 transferred to the family court in accordance with subdivision seven of
33 section 311.1 of this article. If in the exercise of reasonable dili-
34 gence, and due to the limited availability of transcription resources, a
35 transcript is unavailable for disclosure within the time period speci-
36 fied in subdivision one of section 331.2 of this part, such time period
37 may be stayed by up to an additional fifteen calendar days or, if the
38 respondent is in detention, an additional period of three days, without
39 need for a motion pursuant to subdivision two of section 331.11 of this
40 part; provided, however, that such disclosure shall be made as soon as
41 practicable and not later than fifteen calendar days prior to the first
42 scheduled fact-finding hearing date, unless the respondent is in
43 detention, in which case such disclosure shall be made not later than
44 three days prior to the first scheduled fact-finding hearing date,
45 unless an order is obtained pursuant to section 331.11 of this part.
46 When the court is required to review grand jury transcripts, the
47 presentment agency shall disclose such transcripts to the court expe-
48 ditiously upon receipt by such agency, notwithstanding the otherwise
49 applicable time periods for disclosure in this part.

50 (c) The names of, and adequate alternative contact information for,
51 all persons other than law enforcement personnel whom the presentment
52 agency knows to have evidence or information relevant to any act of
53 juvenile delinquency charged or to any potential defense thereto,
54 including a designation by the presentment agency as to which of those
55 persons may be called as witnesses. Nothing in this paragraph shall
56 require the disclosure of physical addresses; provided, however, upon a

1 motion and good cause shown the court may direct the disclosure of a
2 physical residence. Information under this subdivision relating to a
3 confidential informant may be withheld, and redacted from discovery
4 materials, without need for a motion pursuant to section 331.11 of this
5 part; but the presentment agency shall notify the respondent in writing
6 that such information has not been disclosed, unless the court rules
7 otherwise for good cause shown.

8 (d) The name and work affiliation of all law enforcement personnel
9 whom the presentment agency knows to have evidence or information rele-
10 vant to any offense charged or to any potential defense thereto, includ-
11 ing a designation by the presentment agency as to which of those persons
12 may be called as witnesses. Information under this subdivision relating
13 to undercover personnel may be withheld, and redacted from discovery
14 materials, without need for a motion pursuant to section 331.11 of this
15 part; but the presentment agency shall notify the respondent in writing
16 that such information has not been disclosed, unless the court rules
17 otherwise for good cause shown.

18 (e) All statements, written or recorded or summarized in any writing
19 or recording, made by persons who have evidence or information relevant
20 to any offense charged or to any potential defense thereto, including
21 all police reports, notes of police and other investigators, and law
22 enforcement agency reports. This provision also includes statements,
23 written or recorded or summarized in any writing or recording, by
24 persons to be called as witnesses at pre-fact-finding hearings.

25 (f) Expert opinion evidence, including the name, business address,
26 current curriculum vitae, a list of publications, and all proficiency
27 tests and results administered or taken in the current employment or
28 within the past ten years, whichever is longer, of each expert witness
29 whom the presentment agency intends to call as a witness at the fact-
30 finding hearing or at a pre-trial motion hearing, and all reports
31 prepared by the expert that pertain to the case, or if no report is
32 prepared, a written statement of the facts and opinions to which the
33 expert is expected to testify and a summary of the grounds for each
34 opinion. If in the exercise of reasonable diligence this information is
35 unavailable for disclosure within the time period specified in subdivi-
36 sion one of section 331.2 of this part, that period shall be stayed
37 without need for a motion pursuant to subdivision two of section 331.11
38 of this part; except that the presentment agency shall notify the
39 respondent in writing that such information has not been disclosed, and
40 such disclosure shall be made as soon as practicable and not later than
41 fifteen calendar days prior to the first scheduled fact-finding hearing
42 date, or, if the respondent is in detention, not later than three days
43 prior to the first scheduled fact-finding hearing date, unless an order
44 is obtained pursuant to section 331.11 of this part. When the present-
45 ment agency's expert witness is being called in response to disclosure
46 of an expert witness by the respondent, the court shall alter a sched-
47 uled fact-finding hearing date, if necessary, to allow the presentment
48 agency fifteen calendar days to make the disclosure and the respondent
49 fifteen calendar days to prepare and respond to the new materials,
50 unless the respondent is in detention, in which case the court may alter
51 the scheduled fact-finding hearing date, if necessary, to allow the
52 presentment agency an additional three days to make the disclosure and
53 the respondent three days to prepare and respond to the new materials.

54 (g) All tapes or other electronic recordings, including all electronic
55 recordings of 911 telephone calls made or received in connection with
56 the alleged incident of juvenile delinquency, and a designation by the

1 presentment agency as to which of the recordings under this paragraph
2 the presentment agency intends to introduce at fact-finding hearing or a
3 pre-trial motion hearing. If the discoverable materials under this para-
4 graph exceed ten hours in total length, the presentment agency may
5 disclose only the recordings that it intends to introduce at fact-find-
6 ing hearing or a pre-fact-finding hearing, along with a list of the
7 source and approximate quantity of other recordings and their general
8 subject matter if known, and the respondent shall have the right upon
9 request to obtain recordings not previously disclosed. The presentment
10 agency shall disclose the requested materials as soon as practicable and
11 not less than fifteen calendar days after the respondent's request, or,
12 if the respondent is in detention, not less than three days after the
13 respondent's request, unless an order is obtained pursuant to section
14 331.11 of this part.

15 (h) All photographs and drawings made or completed by a public servant
16 engaged in law enforcement activity, or which were made by a person whom
17 the presentment agency intends to call as a witness at fact-finding or a
18 pre-trial motion hearing or which relate to the subject matter of the
19 proceeding.

20 (i) All photographs, photocopies and reproductions made by or at the
21 direction of law enforcement personnel of any property prior to its
22 release.

23 (j) All reports, documents, records, data, calculations or writings,
24 including but not limited to preliminary tests and screening results and
25 bench notes and analyses performed or stored electronically, concerning
26 physical or mental examinations, or scientific tests or experiments or
27 comparisons, relating to the juvenile delinquency proceeding which were
28 made by or at the request or direction of a public servant engaged in
29 law enforcement activity, or which were made by a person whom the
30 presentment agency intends to call as a witness at fact-finding or a
31 pre-trial motion hearing, or which the presentment agency intends to
32 introduce at fact-finding or a pre-trial motion hearing. Information
33 under this paragraph also includes, but is not limited to, laboratory
34 information management system records relating to such materials, any
35 preliminary or final findings of non-conformance with accreditation,
36 industry or governmental standards or laboratory protocols, and any
37 conflicting analyses or results by laboratory personnel regardless of
38 the laboratory's final analysis or results. If the presentment agency
39 submitted one or more items for testing to, or received results from, a
40 forensic science laboratory or similar entity not under the presentment
41 agency's direction or control, the court on motion of a party shall
42 issue subpoenas or orders to such laboratory or entity to cause materi-
43 als under this paragraph to be made available for disclosure.

44 (k) All evidence and information, including that which is known to
45 police or other law enforcement agencies acting on the government's
46 behalf in the case, that tends to: (i) negate the respondent's guilt as
47 to a charged act of juvenile delinquency; (ii) reduce the degree of or
48 mitigate the respondent's culpability as to a charged act of juvenile
49 delinquency; (iii) support a potential defense to a charged act of juve-
50 nile delinquency; (iv) impeach the credibility of a testifying present-
51 ment agency witness; (v) undermine evidence of the respondent's identity
52 as a perpetrator of a charged act of juvenile delinquency; (vi) provide
53 a basis for a motion to suppress evidence; or (vii) mitigate the
54 restrictiveness of the disposition. Information under this subdivision
55 shall be disclosed whether or not such information is recorded in tangi-
56 ble form and irrespective of whether the presentment agency credits the

1 information. The presentment agency shall disclose the information expe-
2 ditiously upon its receipt and shall not delay disclosure if it is
3 obtained earlier than the time period for disclosure in subdivision one
4 of section 331.2 of this part.

5 (l) A summary of all promises, rewards and inducements made to, or in
6 favor of, persons who may be called as witnesses, as well as requests
7 for consideration by persons who may be called as witnesses and copies
8 of all documents relevant to a promise, reward or inducement.

9 (m) A list of all tangible objects obtained from, or allegedly
10 possessed by, the respondent or a co-respondent. The list shall include
11 a designation by the presentment agency as to which objects were phys-
12 ically or constructively possessed by the respondent and were recovered
13 during a search or seizure by a public servant or an agent thereof, and
14 which tangible objects were recovered by a public servant or an agent
15 thereof after allegedly being abandoned by the respondent. If the
16 presentment agency intends to prove the respondent's possession of any
17 tangible objects by means of a statutory presumption of possession, it
18 shall designate such intention as to each such object. If reasonably
19 practicable, the presentment agency shall also designate the location
20 from which each tangible object was recovered. There is also a right to
21 inspect, copy, photograph and test the listed tangible objects.

22 (n) Whether a search warrant has been executed and all documents
23 relating thereto, including but not limited to the warrant, the warrant
24 application, supporting affidavits, a police inventory of all property
25 seized under the warrant, and a transcript of all testimony or other
26 oral communications offered in support of the warrant application.

27 (o) All tangible property that relates to the subject matter of the
28 case, along with a designation of which items the presentment agency
29 intends to introduce in its case-in-chief at fact-finding hearing or at
30 a pre-trial motion hearing. If in the exercise of reasonable diligence
31 the presentment agency has not formed an intention within the time peri-
32 od specified in subdivision one of section 331.2 of this part that an
33 item under this paragraph will be introduced at fact-finding hearing or
34 at a pre-trial motion hearing, the presentment agency shall notify the
35 respondent in writing, and the time period in which to designate items
36 as exhibits shall be stayed without need for a motion pursuant to subdivi-
37 sion two of section 331.11 of this part; but the disclosure shall be
38 made as soon as practicable, but not later than fifteen calendar days
39 prior to the first scheduled fact-finding hearing date, unless the
40 respondent is in detention, in which case such disclosure shall be made
41 no later than three days prior to the first scheduled fact-finding hear-
42 ing date. All property under this paragraph is subject to the continuing
43 duty to disclose pursuant to section 331.9 of this part.

44 (p) The results of complete checks of juvenile delinquency fingerprint
45 records or criminal history records, as applicable, as well as any
46 history of juvenile delinquency adjudications known to the presentment
47 agency and not sealed, for all respondents and all persons designated as
48 potential presentment agency witnesses pursuant to paragraph (c) of this
49 subdivision, other than those witnesses who are experts.

50 (q) When it is known to the presentment agency, the existence of any
51 pending criminal action against all persons designated as potential
52 presentment agency witnesses pursuant to paragraph (c) of this subdivi-
53 sion.

54 (r) The approximate date, time and place of the offense or offenses
55 charged and of the respondent's seizure and arrest.

1 (s) In any juvenile delinquency proceeding alleging a violation of the
2 vehicle and traffic law, all records of calibration, certification,
3 inspection, repair or maintenance of machines and instruments utilized
4 to perform any scientific tests and experiments, including but not
5 limited to any test of a person's breath, blood, urine or saliva, for
6 the period of six months prior and six months after such test was
7 conducted, including the records of gas chromatography related to the
8 certification of all reference standards and the certification certifi-
9 cate, if any, held by the operator of the machine or instrument.

10 (t) Any presentment agency alleging a violation of section 156.05 or
11 156.10 of the penal law, the time, place and manner such violation
12 occurred.

13 (u) (i) A copy of all electronically created or stored information
14 seized or obtained by or on behalf of law enforcement from: (A) the
15 respondent as described in subparagraph (ii) of this paragraph; or (B) a
16 source other than the respondent which relates to the subject matter of
17 the proceeding.

18 (ii) If the electronically created or stored information originates
19 from a device, account, or other electronically stored source that the
20 presentment agency believes the respondent owned, maintained, or had
21 lawful access to and is within the possession, custody or control of the
22 presentment agency or persons under the presentment agency's direction
23 or control, the presentment agency shall provide a complete copy of the
24 electronically created or stored information from the device or account
25 or other source, and a designation by the presentment agency as to which
26 portions it intends to introduce.

27 (iii) If possession of such electronically created or stored informa-
28 tion would be a crime if committed by an adult under New York state or
29 federal law, the presentment agency shall make those portions of the
30 electronically created or stored information that are not criminal to
31 possess available as specified under this paragraph and shall afford
32 counsel for the respondent access to inspect contraband portions at a
33 supervised location that provides regular and reasonable hours for such
34 access, such as a presentment agency's office, police station, or court.

35 (iv) This paragraph shall not be construed to alter or in any way
36 affect the right to be free from unreasonable searches and seizures or
37 such other rights a suspect or respondent may derive from the state
38 constitution or the United States constitution. If in the exercise of
39 reasonable diligence the information under this paragraph is not avail-
40 able for disclosure within the time period required by subdivision one
41 of section 331.2 of this part, that period shall be stayed without need
42 for a motion pursuant to subdivision two of section 331.11 of this part,
43 except that the presentment agency shall notify the respondent in writ-
44 ing that such information has not been disclosed, and such disclosure
45 shall be made as soon as practicable and not later than fifteen calendar
46 days prior to the first scheduled fact-finding hearing date or, if the
47 respondent is in detention, such disclosure shall be made no later than
48 three days prior to the first scheduled fact-finding hearing date,
49 unless an order is obtained pursuant to section 331.11 of this part.

50 2. Duties of the presentment agency. The presentment agency shall make
51 a diligent, good faith effort to ascertain the existence of material or
52 information discoverable under subdivision one of this section and to
53 cause such material or information to be made available for discovery
54 where it exists but is not within the presentment agency's possession,
55 custody or control; provided that the presentment agency shall not be
56 required to obtain by subpoena duces tecum material or information which

1 the respondent may thereby obtain. For purposes of subdivision one of
2 this section, all items and information related to the presentment agen-
3 cy of a charge in the possession of any New York state or local police
4 or law enforcement agency, and any information in the possession of a
5 laboratory having contact with evidence related to the presentment agen-
6 cy of a charge, shall be deemed to be in the possession of the present-
7 ment agency. This subdivision shall not require the presentment agency
8 to ascertain the existence of witnesses not known to the police or
9 another law enforcement agency, or the written or recorded statements
10 thereof, under paragraph (c) or (e) of subdivision one of this section.

11 3. Supplemental discovery for the respondent. The presentment agency
12 shall disclose to the respondent a list of all misconduct and acts of
13 juvenile delinquency of the respondent not charged in the petition,
14 which the presentment agency intends to use at fact-finding hearing for
15 purposes of (a) impeaching the credibility of the respondent, or (b) as
16 substantive proof of any material issue in the proceeding. In addition,
17 the presentment agency shall designate whether it intends to use each
18 listed act for impeachment and/or as substantive proof.

19 4. Reciprocal discovery for the presentment agency. (a) The respondent
20 shall, subject to constitutional limitations, disclose to the present-
21 ment agency, and permit the presentment agency to discover, inspect,
22 copy or photograph, any material and relevant evidence within the
23 respondent's or counsel for the respondent's possession or control that
24 is discoverable under paragraphs (f), (g), (h), (j), (l) and (o) of
25 subdivision one of this section, which the respondent intends to intro-
26 duce at fact-finding or a pre-trial motion hearing, and the names,
27 addresses, birth dates, and all statements, written or recorded or
28 summarized in any writing or recording, of those persons other than the
29 respondent whom the respondent intends to call as witnesses at fact-
30 finding hearing or at a pre-trial motion hearing.

31 (b) Disclosure of the name, address, birth date, and all statements,
32 written or recorded or summarized in any writing or recording, of a
33 person whom the respondent intends to call as a witness for the sole
34 purpose of impeaching a presentment agency witness is not required until
35 after the presentment agency witness has testified at fact-finding hear-
36 ing.

37 (c) If in the exercise of reasonable diligence the reciprocally
38 discoverable information under paragraph (f) or (o) of subdivision one
39 of this section is unavailable for disclosure within the time period
40 specified in subdivision two of section 331.2 of this part, such time
41 period shall be stayed without need for a motion pursuant to subdivision
42 two of section 331.11 of this part; but the disclosure shall be made as
43 soon as practicable, provided, however, that if the respondent is in
44 detention, such disclosure shall be made no later than three days prior
45 to the first scheduled fact-finding hearing date. All reciprocally
46 discoverable information under this subdivision is subject to the
47 continuing duty to disclose pursuant to section 331.9 of this part.

48 5. Stay of automatic discovery; remedies and sanctions. Sections
49 331.1 and 331.2 of this part and subdivisions one, two, three and four
50 of this section shall have the force and effect of a court order, and
51 failure to provide discovery pursuant to such section or subdivision may
52 result in application of any remedies or sanctions permitted for non-
53 compliance with a court order under section 331.12 of this part. Howev-
54 er, if in the judgment of either party, good cause exists for declining
55 to make any of the disclosures set forth above, such party may move for
56 a protective order pursuant to section 331.11 of this part and

1 production of the item shall be stayed pending a ruling by the court.
2 The opposing party shall be notified in writing that information has not
3 been disclosed under a particular section. When some parts of material
4 or information are discoverable but in the judgment of a party good
5 cause exists for declining to disclose other parts, the discoverable
6 parts shall be disclosed and the disclosing party shall give notice in
7 writing that non-discoverable parts have been withheld.

8 6. Redactions permitted. Either party may redact social security
9 numbers and tax numbers from disclosures under this part.

10 7. Presumption of openness. There shall be a presumption in favor of
11 disclosure when interpreting sections 331.1, 331.2 and 331.4 of this
12 part and subdivision one of this section.

13 § 331.4. Disclosure prior to an admission by the respondent; waiver of
14 discovery by respondent. 1. Disclosure of crime. Where the presentment
15 agency has made an offer to accept an admission pursuant to section
16 321.3 of this article to an act that, if committed by an adult, would be
17 a crime, the presentment agency shall disclose to the respondent, and
18 permit the respondent to discover, inspect, copy, photograph and test,
19 all items and information that would be discoverable prior to the fact-
20 finding hearing under subdivision one of section 331.3 of this part and
21 are in the possession, custody or control of the presentment agency. The
22 presentment agency shall disclose the discoverable items and information
23 not less than three calendar days prior to the expiration date of the
24 offer by the presentment agency for the respondent to make an admission
25 or any deadline imposed by the court for acceptance of the offer of an
26 admission.

27 2. Timing of disclosure. If the presentment agency does not comply
28 with the requirements of this subdivision, then, notwithstanding any
29 other provision of law, such offer shall be deemed available to the
30 respondent until three calendar days after the presentment agency has
31 complied, absent extraordinary circumstances involving new adverse
32 information bearing on the respondent occurring or discovered in the
33 interim that, after appropriate notice and an opportunity for a hearing,
34 are shown by the presentment agency and found by the court. Where the
35 offer of an admission has lapsed or been withdrawn in light of non-com-
36 pliance by the presentment agency with this subdivision, the respondent
37 may make a motion alleging such non-compliance and the court shall
38 consider the impact of any non-compliance on the respondent's decision
39 to accept or reject the offer of an admission. If the court finds that
40 the non-compliance materially affected the respondent's decision and if
41 the presentment agency declines to reinstate the lapsed or withdrawn
42 plea offer, the court, as a presumptive minimum sanction, shall preclude
43 the admission at trial of any evidence not disclosed as required under
44 this subdivision. The court may take other additional appropriate
45 action as necessary to address the non-compliance.

46 3. Exception. The rights under this subdivision do not apply to items
47 or information that are the subject of a protective order under section
48 331.11 of this part; but if such information tends to be exculpatory,
49 the court shall reconsider the protective order.

50 4. Waiver. A respondent may provide a voluntary, knowing and intelli-
51 gent waiver in the presence of his or her counsel of his or her rights
52 under this section; but an offer of an admission may not be conditioned
53 on such waiver.

54 § 331.5. Court orders for preservation, access or discovery. 1. Order
55 to preserve evidence. At any time, a party may move for a court order to
56 any individual, agency or other entity in possession, custody or control

1 of items which relate to the subject matter of the case or are otherwise
2 relevant, requiring that such items be preserved for a specified period
3 of time. The court shall hear and rule upon such motions expeditiously.
4 The court may modify or vacate such an order upon a showing that preser-
5 vation of particular evidence will create significant hardship to such
6 individual, agency or entity, on condition that the probative value of
7 that evidence is preserved by a specified alternative means.

8 2. Order to grant access to premises. At any time, the respondent may
9 move for a court order to any individual, agency or other entity in
10 possession, custody or control of a crime scene or other premises that
11 relates to the subject matter of the case or is otherwise relevant,
12 requiring that counsel for the respondent be granted prompt and reason-
13 able access to inspect, photograph or measure such crime scene or prem-
14 ises, and that the condition of the crime scene or premises remain
15 unchanged in the interim. The court shall consider the respondent's
16 expressed need for access to the premises including the risk that the
17 respondent will be deprived of evidence or information relevant to the
18 case, the position of any individual or entity with possessory or owner-
19 ship rights to the premises, the nature of the privacy interest and any
20 perceived or actual hardship of the individual or entity with possessory
21 or ownership rights, and the position of the presentment agency with
22 respect to any application for access to the premises. The court may
23 deny access to the premises when the probative value of access to such
24 location has been or will be preserved by specified alternative means.
25 If the court grants access to the premises, the individual or entity
26 with ownership or possessory rights to the premises may request law
27 enforcement presence at the premises while the respondent's counsel or a
28 representative thereof is present.

29 3. Discretionary discovery by order of the court. The court in its
30 discretion may, upon a showing by the respondent that the request is
31 reasonable and that the respondent is unable without undue hardship to
32 obtain the substantial equivalent by other means, order the presentment
33 agency, or any individual, agency or other entity subject to the juris-
34 isdiction of the court, to make available for disclosure to the respondent
35 any material or information which potentially relates to the subject
36 matter of the case and is reasonably likely to be material.

37 4. Procedure. A motion under this section shall be on notice to any
38 individual, agency or entity affected by the order. A motion may be made
39 orally on the record so long as such notice is provided. The court may,
40 on its own or upon request of any individual, agency or entity affected
41 by the order, modify or vacate the order if compliance would be unrea-
42 sonable or will create significant hardship to such individual, agency
43 or entity. For good cause shown, the court may permit a party seeking or
44 opposing a discretionary order of discovery under this subdivision, or
45 another affected individual, agency or entity, to submit papers or, for
46 good cause shown, testify on the record ex parte or in camera. For good
47 cause shown, any such papers and a transcript of such testimony may be
48 sealed and shall constitute a part of the record on appeal.

49 § 331.6. Court ordered procedures to facilitate compliance; certifi-
50 icates of compliance. 1. Discretion of courts. To facilitate compliance
51 with this part, and to reduce or streamline litigation of any disputes
52 about discovery, the court in its discretion may issue an order:

53 (a) requiring that the presentment agency and counsel for the respond-
54 ent diligently confer to attempt to reach an accommodation as to any
55 dispute concerning discovery prior to seeking a ruling from the court;

1 (b) requiring a discovery compliance conference at a specified time
2 prior to the fact-finding hearing between the presentment agency, coun-
3 sel for all respondents, and the court or its staff;

4 (c) requiring the presentment agency to file a certificate of compli-
5 ance that states that the presentment agency and/or an appropriate named
6 agent has made reasonable inquiries of all police officers and other
7 persons who have participated in investigating or evaluating the case
8 about the existence of any favorable evidence or information within
9 paragraph (k) of subdivision one of section 331.3 of this part, includ-
10 ing such evidence or information that was not reduced to writing or
11 otherwise memorialized or preserved as evidence, and has disclosed any
12 such information to the respondent; and/or

13 (d) requiring other measures or proceedings designed to carry into
14 effect the goals of this part.

15 2. Certificates of compliance. (a) When the presentment agency has
16 provided the discovery required by subdivision one of section 331.3 of
17 this part, except for any items or information that are the subject of
18 an order pursuant to section 331.11 of this part, it shall serve upon
19 the respondent and file with the court a certificate of compliance. The
20 certificate of compliance shall state that, after exercising due dili-
21 gence and making reasonable inquiries to ascertain the existence of
22 material and information subject to discovery, the presentment agency
23 has disclosed and made available all known material and information
24 subject to discovery. It shall also identify the items provided. If
25 additional discovery is subsequently provided prior to the fact-finding
26 hearing pursuant to section 331.9 of this part, a supplemental certif-
27 icate shall be served upon the respondent and filed with the court iden-
28 tifying the additional material and information provided. No adverse
29 consequence to the presentment agency or the prosecutor shall result
30 from the filing of a certificate of compliance in good faith; but the
31 court may grant a remedy or sanction for a discovery violation as
32 provided in section 331.12 of this part.

33 (b) When the respondent has provided all discovery required by subdi-
34 vision four of section 331.3 of this part, except for any items or
35 information that are the subject of an order pursuant to section 331.11
36 of this part, counsel for the respondent shall serve upon the present-
37 ment agency and file with the court a certificate of compliance. The
38 certificate shall state that, after exercising due diligence and making
39 reasonable inquiries to ascertain the existence of material and informa-
40 tion subject to discovery, counsel for the respondent has disclosed and
41 made available all known material and information subject to discovery.
42 It shall also identify the items provided. If additional discovery is
43 subsequently provided prior to trial pursuant to section 331.9 of this
44 part, a supplemental certificate shall be served upon the presentment
45 agency and filed with the court identifying the additional material and
46 information provided. No adverse consequence to the respondent or coun-
47 sel for the respondent shall result from the filing of a certificate of
48 compliance in good faith; but the court may grant a remedy or sanction
49 for a discovery violation as provided in section 331.12 of this part.

50 § 331.7. Non-testimonial evidence from the respondent; DNA comparison
51 order. 1. Availability. After the filing of the petition, and subject
52 to constitutional limitations, the court may, upon motion of the
53 presentment agency showing probable cause to believe the respondent has
54 committed the act that if committed by an adult would constitute a
55 crime, a clear indication that relevant material evidence will be found,

1 and that the method used to secure such evidence is safe and reliable,
2 require a respondent to provide non-testimonial evidence, including to:

3 (a) appear in a lineup;
4 (b) speak for identification by a witness or potential witness;
5 (c) be fingerprinted if authorized in accordance with section 306.1 of
6 this article;

7 (d) pose for photographs not involving reenactment of an event,
8 provided respondent is subject to photographing pursuant to section
9 306.1 of this article;

10 (e) permit the taking of samples of the respondent's blood, hair, and
11 other materials of the respondent's body that involves no unreasonable
12 intrusion thereof or a risk of serious physical injury thereto;

13 (f) provide specimens of the respondent's handwriting; and

14 (g) submit to a reasonable physical or medical inspection of the
15 respondent's body.

16 2. Limitations. This section shall not be construed to alter or in any
17 way affect the issuance of a similar court order, as may be authorized
18 by law, before the filing of the petition, consistent with such rights
19 as the respondent may derive from this article, the state constitution
20 or the United States constitution. This section shall not be construed
21 to alter or in any way affect the administration of a chemical test
22 where otherwise authorized. An order pursuant to this section may be
23 denied, limited or conditioned as provided in section 331.11 of this
24 part.

25 3. DNA comparison order. Where property in the presentment agency's
26 possession, custody, or control consists of a DNA profile obtained from
27 probative biological material gathered in connection with the investi-
28 gation of the crime, and the respondent establishes: (a) that such
29 profile complies with federal bureau of investigation or state require-
30 ments, whichever are applicable and as such requirements are applied to
31 law enforcement agencies seeking a keyboard search or similar compar-
32 ison, and (b) that the data meets state DNA index system or national DNA
33 index system criteria as such criteria are applied to law enforcement
34 agencies seeking such a keyboard search or similar comparison, the court
35 may, upon motion of a respondent against whom a petition is pending,
36 order an entity that has access to the combined DNA index system or its
37 successor system to compare such DNA profile against DNA databanks by
38 keyboard searches, or a similar method that does not involve uploading,
39 upon notice to both parties and the entity required to perform the
40 search, upon a showing by the respondent that such a comparison is mate-
41 rial to the presentation of his or her defense and that the request is
42 reasonable. For purposes of this section, a "keyboard search" shall mean
43 a search of a DNA profile against the databank in which the profile that
44 is searched is not uploaded to or maintained in the databank. Nothing in
45 this section authorizes the taking of a DNA profile from the respondent
46 or any other person unless specifically authorized by law.

47 § 331.8. Flow of information. 1. Sufficient communication for compli-
48 ance. The presentment agency shall endeavor to ensure that a flow of
49 information is maintained with the police and other investigative
50 personnel and sufficient to place within the presentment agency's
51 possession or control all material and information pertinent to the
52 respondent and the offense or offenses charged, including, but not
53 limited to, any evidence or information discoverable under paragraph (k)
54 of subdivision one of section 331.3 of this part.

55 2. Provision of law enforcement agency files. Absent a court order or
56 a requirement that the respondent's counsel obtain a security clearance

1 mandated by law or authorized government regulation, upon request by the
2 presentment agency, each New York state and local law enforcement agency
3 shall make available to the presentment agency a complete copy of its
4 complete records and files related to the investigation of the case or
5 related to the presentment agency regarding compliance with this part.

6 3. 911 telephone call and police radio transmission electronic
7 recordings, police-worn body camera recordings and other police
8 recordings. (a) Whenever an electronic recording of a 911 telephone call
9 or a police radio transmission or video or audio footage from a police-
10 worn body camera or other police recording was made or received in
11 connection with the investigation of an apparent criminal incident, the
12 arresting officer or lead detective shall expeditiously notify the
13 presentment agency in writing upon the filing of the petition of the
14 existence of all such known recordings. The presentment agency shall
15 expeditiously take whatever reasonable steps are necessary to ensure
16 that all known electronic recordings of 911 telephone calls, police
17 radio transmissions and video and audio footage and other police
18 recordings made or available in connection with the case are preserved.
19 Upon the respondent's timely request and designation of a specific elec-
20 tronic recording of a 911 telephone call, the presentment agency shall
21 also expeditiously take whatever reasonable steps are necessary to
22 ensure that it is preserved.

23 (b) If the presentment agency fails to disclose such an electronic
24 recording to the respondent pursuant to paragraph (e), (g) or (k) of
25 subdivision one of section 331.3 of this part due to a failure to comply
26 with this obligation by police officers or other law enforcement or
27 prosecution personnel, the court upon motion of the respondent shall
28 impose an appropriate remedy or sanction pursuant to section 331.12 of
29 this part.

30 § 331.9. Continuing duty to disclose. If either the presentment agency
31 or the respondent subsequently learns of additional material or informa-
32 tion which it would have been under a duty to disclose pursuant to any
33 provisions of this part had it known of it at the time of a previous
34 discovery obligation or discovery order, it shall expeditiously notify
35 the other party and disclose the additional material and information as
36 required for automatic discovery under this part. This section also
37 requires expeditious disclosure by the presentment agency of material or
38 information that became relevant to the case or discoverable based on
39 reciprocal discovery received from the respondent pursuant to subdivi-
40 sion four of section 331.3 of this part.

41 § 331.10. Work product. This part does not authorize discovery by a
42 party of those portions of records, reports, correspondence, memoranda,
43 or internal documents of the adverse party which are only the legal
44 research, opinions, theories or conclusions of the adverse party or its
45 attorney or the attorney's agents, or of statements of a respondent,
46 written or recorded or summarized in any writing or recording, made to
47 the attorney for the respondent or the attorney's agents.

48 § 331.11. Protective orders. 1. Any discovery subject to protective
49 order. Upon a showing of good cause by either party, the court may at
50 any time order that discovery or inspection of any kind of material or
51 information under this part be denied, restricted, conditioned or
52 deferred, or make such other order as is appropriate. The court may
53 impose as a condition on discovery to a respondent that the material or
54 information to be discovered be available only to counsel for the
55 respondent; or, alternatively, that counsel for the respondent, and
56 persons employed by the attorney or appointed by the court to assist in

1 the preparation of a respondent's case, may not disclose physical copies
2 of the discoverable documents to a respondent or to anyone else,
3 provided that the presentment agency affords the respondent access to
4 inspect redacted copies of the discoverable documents at a supervised
5 location that provides regular and reasonable hours for such access,
6 such as a presentment agency's office, police station, facility of
7 detention, or court. Should the court impose as a condition that some
8 material or information be available only to counsel for the respondent,
9 the court shall inform the respondent on the record that his or her
10 attorney is not permitted by law to disclose such material or informa-
11 tion to the respondent. The court may permit a party seeking or opposing
12 a protective order under this section, or another affected person, to
13 submit papers or testify on the record ex parte or in camera. Any such
14 papers and a transcript of such testimony may be sealed and shall
15 constitute a part of the record on appeal. This section does not alter
16 the allocation of the burden of proof with regard to matters at issue,
17 including privilege.

18 2. Modification of time periods for discovery. Upon motion of a party
19 in an individual case, the court may alter the time periods for discov-
20 ery imposed by this part upon a showing of good cause.

21 3. Prompt hearing. Upon request for a protective order, the court
22 shall conduct an appropriate hearing within three business days to
23 determine whether good cause has been shown and when practicable shall
24 render decision expeditiously. Any materials submitted and a transcript
25 of the proceeding may be sealed and shall constitute a part of the
26 record on appeal.

27 4. Showing of good cause. In determining good cause under this section
28 the court may consider: constitutional rights or limitations; danger to
29 the integrity of physical evidence or the safety of a witness; risk of
30 intimidation, economic reprisal, bribery, harassment or unjustified
31 annoyance or embarrassment to any person, and the nature, severity and
32 likelihood of that risk; a risk of an adverse effect upon the legitimate
33 needs of law enforcement, including the protection of the confidentiali-
34 ty of informants, and the nature, severity and likelihood of that risk;
35 the nature and circumstances of the factual allegations in the case;
36 whether the respondent has a history of witness intimidation or tamper-
37 ing and the nature of that history; the nature of the stated reasons in
38 support of a protective order; the nature of the witness identifying
39 information that is sought to be addressed by a protective order,
40 including the option of employing adequate alternative contact informa-
41 tion; danger to any person stemming from factors such as a respondent's
42 substantiated affiliation with a criminal enterprise as defined in
43 subdivision three of section 460.10 of the penal law; and other similar
44 factors found to outweigh the usefulness of the discovery.

45 5. Successor counsel. In cases in which the attorney-client relation-
46 ship is terminated prior to trial for any reason, any material or infor-
47 mation disclosed subject to a condition that it be available only to
48 counsel for the respondent, or limited in dissemination by protective
49 order or otherwise, shall be provided only to successor counsel for the
50 respondent under the same condition or conditions or be returned to the
51 presentment agency, unless the court rules otherwise for good cause
52 shown or the presentment agency gives written consent. Any work product
53 derived from such material or information shall not be provided to the
54 respondent, unless the court rules otherwise or the presentment agency
55 gives written consent; provided, however, any such work product may be
56 provided to the successor counsel.

1 6. Compliance with protective order. Any protective order issued under
2 this part is a mandate of the court for purposes of the offense of crim-
3 inal contempt in subdivision three of section 215.50 of the penal law.

4 § 331.12. Remedies or sanctions for non-compliance. 1. Need for remedy
5 or sanction. (a) When material or information is discoverable under this
6 part but is disclosed belatedly, the court shall impose an appropriate
7 remedy or sanction if the party entitled to disclosure shows that it was
8 prejudiced. Regardless of a showing of prejudice the party entitled to
9 disclosure shall be given reasonable time to prepare and respond to the
10 new material.

11 (b) When material or information is discoverable under this part but
12 cannot be disclosed because it has been lost or destroyed, the court
13 shall impose an appropriate remedy or sanction if the party entitled to
14 disclosure shows that the lost or destroyed material may have contained
15 some information relevant to a contested issue. The appropriate remedy
16 or sanction is that which is proportionate to the potential ways in
17 which the lost or destroyed material reasonably could have been helpful
18 to the party entitled to disclosure.

19 2. Available remedies or sanctions. For failure to comply with any
20 discovery order imposed or issued pursuant to this part, the court may
21 make a further order for discovery, grant a continuance, order that a
22 hearing be reopened, order that a witness be called or recalled, draw an
23 adverse inference regarding the non-compliance, preclude or strike a
24 witness's testimony or a portion of a witness's testimony, admit or
25 exclude evidence, order a mistrial, order the dismissal of all or some
26 of the charges, or make such other order as it deems just under the
27 circumstances; except that any sanction against the respondent shall
28 comport with the respondent's constitutional right to present a defense,
29 and precluding a witness from testifying on behalf of the respondent
30 shall be permissible only upon a finding that the respondent's failure
31 to comply with the discovery obligation or order was willful and moti-
32 vated by a desire to obtain a tactical advantage.

33 3. Consequences of non-disclosure of statement of witness testifying
34 for the presentment agency. The failure of the presentment agency to
35 disclose any written or recorded statement made by a witness testifying
36 on the agency's behalf, which relates to the subject matter of the
37 witness's testimony, shall not constitute grounds for any court to order
38 a new pre-trial hearing or set aside an adjudication, or reverse, modify
39 or vacate an adjudication, in the absence of a showing by the respondent
40 that there is a reasonable possibility that the non-disclosure mate-
41 rially contributed to the result of the trial or other proceeding;
42 provided, however, that nothing in this section shall affect or limit
43 any right the respondent may have to a reopened pre-trial hearing when
44 such statements were disclosed before the close of evidence at the fact-
45 finding hearing.

46 § 331.13. Admissibility of discovery. The fact that a party has indi-
47 cated during the discovery process an intention to offer specified
48 evidence or to call a specified witness is not admissible in evidence or
49 grounds for adverse comment at a pre-trial or fact-finding hearing.

50 § 3. Subdivision 2 of section 325 of the judiciary law, as added by
51 chapter 920 of the laws of 1982, is amended to read as follows:

52 2. Where an application follows a demand to produce any transcript of
53 testimony at a grand jury proceeding pursuant to paragraph (b) of subdi-
54 vision [two] one of section [331.2 or paragraph (a) of subdivision one
55 of section 331.4] 331.3 of the family court act the presentment agency

1 and respondent shall be given notice of such application and an opportu-
2 nity to be heard.

3 § 4. Subdivision 5 of section 330.1 of the family court act, as added
4 by chapter 398 of the laws of 1983, is amended to read as follows:

5 5. Court ordered bill of particulars. Where a presentment agency has
6 timely served a written refusal pursuant to subdivision four of this
7 section and upon motion, made in writing, of a respondent, who has made
8 a request for a bill of particulars and whose request has not been
9 complied with in whole or in part, the court must, to the extent a
10 protective order is not warranted, order the presentment agency to
11 comply with the request if it is satisfied that the items of factual
12 information requested are authorized to be included in a bill of partic-
13 ulars, and that such information is necessary to enable the respondent
14 adequately to prepare or conduct his defense and, if the request was
15 untimely, a finding of good cause for the delay. Where a presentment
16 agency has not timely served a written refusal pursuant to subdivision
17 four of this section the court must, unless it is satisfied that the
18 presentment agency has shown good cause why such an order should not be
19 issued, issue an order requiring the presentment agency to comply or
20 providing for any other order authorized by subdivision one of section
21 [~~331.6~~] 331.12 of this part.

22 § 5. This act shall take effect January 1, 2023.