STATE OF NEW YORK

2072

2025-2026 Regular Sessions

IN SENATE

January 15, 2025

Introduced by Sen. SCARCELLA-SPANTON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to discovery rules and procedures; and repealing certain provisions of such law relating thereto

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

Section 1. Paragraph (c) of subdivision 1 of section 245.10 of the criminal procedure law, as added by section 2 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

(c) The prosecution shall disclose statements of the defendant as described in paragraph (a) of subdivision one of section 245.20 of this article to any defendant who has been arraigned in a local criminal court upon a currently undisposed of felony complaint charging an offense which is a subject of a prospective or pending grand jury proceeding, no later than [~~forty-eight~~] twenty-four hours before the time scheduled for the defendant to testify at a grand jury proceeding pursuant to subdivision five of section 190.50 of this part.

§ 2. Subdivisions 2 and 6 of section 245.20 of the criminal procedure law, as added by section 2 of part LLL of chapter 59 of the laws of 2019, are amended to read as follows:

2. Duties of the prosecution. The prosecutor shall make a diligent, good faith effort to ascertain the existence of material or information discoverable under subdivision one of this section and to cause such material or information to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control[~~; provided~~] . Material information that requires a subpoena duces tecum in order for the prosecutor [~~shall not be required~~] to obtain, and which the defendant may obtain by subpoena duces tecum, shall not be within the scope of automatic discovery for the purposes of subdivision one of this section, and the prosecutor shall not be

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

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required to obtain such material or information [~~which the defendant may thereby obtain~~] before filing a certificate of compliance pursuant to subdivision one of section 245.50 of this article. For purposes of subdivision one of this section, [~~all items and information related~~] all materials relevant to the subject matter of the charges against the defendant in the instant case to the prosecution of a charge in the possession of any New York state or local police or law enforcement agency shall be deemed to be in the possession of the prosecution. The prosecution shall also identify any laboratory having contact with evidence related to the prosecution of a charge. This subdivision shall not require the prosecutor to ascertain the existence of witnesses not known to the police or another law enforcement agency, or the written or recorded statements thereof, under paragraph (c) or (e) of subdivision one of this section.

6. Redactions permitted. Either party may redact social security numbers [~~and~~], tax numbers, witnesses' physical addresses, other forms of witnesses' contact information so long as the people have provided one form of adequate contact information contained in materials disclosed pursuant to paragraph (c) of subdivision one of this section, physical addresses and other forms of contact information for any persons contained in materials disclosed pursuant to paragraph (k) of subdivision one of this section, and information that does not relate to the subject matter of the case from disclosures under this article without the need to file a protective order pursuant to section 245.70 of this article.

§ 3. Subdivisions 1 and 3 of section 245.50 of the criminal procedure law, as amended by section 7 of part HHH of chapter 56 of the laws of 2020, are amended and a new subdivision 5 is added to read as follows:

1. By the prosecution. When the prosecution, after exercising good faith and due diligence, has provided [~~the discovery required by~~] all items and information set forth in subdivision one of section 245.20 of this article that are in the people's actual possession, except for discovery that is lost or destroyed as provided by paragraph (b) of subdivision one of section 245.80 of this article and except for any items or information that are the subject of an order pursuant to section 245.70 of this article, it shall serve upon the defendant and file with the court a certificate of compliance. The certificate of compliance shall state that, after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery, the prosecutor has disclosed and made available all known material and information subject to discovery that is in the prosecutor's actual possession. It shall also identify the items provided. If the prosecution provides additional discovery [~~is subsequently provided~~] prior to trial pursuant to section 245.60 of this article, a supplemental certificate shall be served upon the defendant and filed with the court identifying the additional material and information provided. [~~No adverse consequence to the prosecution or the prosecutor shall result from the~~] The filing of a supplemental certificate of compliance shall not impact the validity of the original certificate of compliance if filed in good faith and [~~reasonable under the circumstances; but the court may grant a remedy or sanction for a discovery violation as provided in~~] after exercising due diligence pursuant to section [~~245.80~~] 245.20 of this article. Nothing in this subdivision shall preclude the prosecution from continuing the prosecution's investigation and obtaining and disclosing new discoverable items and information after filing a certificate of compliance.

3. Trial readiness. Notwithstanding the provisions of any other law, absent an individualized finding of special circumstances in the instant case by the court before which the charge is pending, the prosecution shall not be deemed ready for trial for purposes of section 30.30 of this chapter until it has filed a proper certificate pursuant to subdivision one of this section. [~~A court may deem the prosecution ready for trial pursuant to section 30.30 of this chapter where information that might be considered discoverable under this article cannot be disclosed because it has been lost, destroyed, or otherwise unavailable as provided by paragraph (b) of subdivision one of section 245.80 of this article, despite diligent and good faith efforts, reasonable under the circumstances. Provided, however, that the court may grant a remedy or sanction for a discovery violation as provided by section 245.80 of this article.~~]

5. Notwithstanding any other provision of law to the contrary, no adverse consequence to the prosecution or the prosecutor, including the invalidation of a certificate of compliance or statement of readiness, shall result from the filing of a certificate of compliance or a supplemental certificate of compliance that was made in good faith and is reasonable under the circumstances. Belated or missing disclosures shall be cured by supplemental discovery pursuant to subdivisions one and two of this section. If the party entitled to the belated or missing disclosures shows that such party has been prejudiced by such belated or missing disclosure, the court shall grant an appropriate and proportionate remedy statement pursuant to section 245.80 of this article. A certificate of compliance or statement of readiness shall be invalidated only upon a showing that no other remedy authorized pursuant to section 245.80 of this article can sufficiently cure any prejudice resulting from the belated or missing disclosure.

§ 4. Subdivision 1-a of section 245.50 of the criminal procedure law is REPEALED.

§ 5. Paragraph (c) of subdivision 4 of section 245.50 of the criminal procedure law, as added by section 1 of subpart D of part UU of chapter 56 of the laws of 2022, is amended and a new paragraph (d) is added to read as follows:

(c) Challenges related to the sufficiency of a certificate of compliance or supplemental certificates of compliance **filed pursuant to subdivision one of this section** shall be addressed by motion [~~as soon as practicable, provided that nothing in this section shall be construed to waive a party's right to make further challenges, including but not limited to a motion pursuant to section 30.30~~] **within thirty-five days** of [~~this chapter~~] **the filing of the certificate**. **Failure to challenge a certificate of compliance or supplemental certificate of compliance within such time period shall constitute a waiver of that challenge; provided, however, that for good cause shows, the court may extend such time period beyond thirty-five days. Good cause includes, but shall not be limited to, voluminous discovery and the complexity of the case. Denial of a motion challenging the sufficiency of a certificate of compliance or supplemental certificate of compliance, or a waiver of such challenge, shall not preclude the imposition of any remedy or sanction authorized pursuant to section 245.80 of this article.**

(d) A certificate of compliance or supplemental certificate of compliance shall not be invalidated where the people rely on a good faith interpretation of the disclosure requirements of this article, and there is no controlling precedent to the contrary from the intermediate appel-

late court to which an appeal from a judgment of conviction would be had or the New York court of appeals.

§ 6. Paragraph (a) of subdivision 4 and subdivision 5 of section 30.30 of the criminal procedure law, as amended by section 1 of part KKK of chapter 59 of the laws of 2019, are amended to read as follows:

(a) a reasonable period of delay resulting from other proceedings concerning the defendant, including but not limited to: proceedings for the determination of competency and the period during which defendant is incompetent to stand trial; demand to produce; request for a bill of particulars; pre-trial motions; appeals; trial of other charges; [~~and~~] the period during which such matters are under consideration by the court; and, unless the defendant waives such defendant's right to file a challenge to the people's discovery certificate of compliance pursuant to section 245.50 of this chapter, the period between the filing of the people's certificate of compliance and the court's decision on the defendant's challenge to the certificate of compliance; or

5. Whenever pursuant to this section a prosecutor states or otherwise provides notice that the people are ready for trial, the court shall make inquiry on the record as to [~~their~~] the people's actual readiness. If, after conducting its inquiry, the court determines that the people are not ready to proceed to trial, the prosecutor's statement or notice of readiness shall not be valid for purposes of this section. Any statement of trial readiness must be accompanied or preceded by a certification of good faith compliance with the disclosure requirements of section 245.20 of this chapter and the defense shall be afforded an opportunity to be heard on the record as to whether the disclosure requirements have been met. The court may deem the people not ready for trial if it finds that the people's certificate of compliance was invalid and the defense shows that it was prejudiced as a result of the people's non-disclosure or belated disclosure of discoverable materials and no other remedy authorized pursuant to section 245.80 of this chapter can sufficiently cure such prejudice. This subdivision shall not apply to cases where the defense has waived disclosure requirements.

§ 7. This act shall take effect immediately.