

5013

2013-2014 Regular Sessions

I N A S S E M B L Y

February 14, 2013

Introduced by M. of A. STEVENSON -- read once and referred to the
Committee on Codes

AN ACT to amend the criminal procedure law, in relation to mandating
prosecutorial disclosure of exculpatory evidence

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The criminal procedure law is amended by adding a new
2 section 240.25 to read as follows:

3 S 240.25 DISCOVERY; PROSECUTION'S DUTY TO DISCLOSE EXCULPATORY EVIDENCE.

4 1. IN ADDITION TO THE REQUIREMENTS OF SECTION 240.20 OF THIS ARTICLE,
5 THE PROSECUTION SHALL DISCLOSE TO THE DEFENDANT AND MAKE AVAILABLE FOR
6 INSPECTION, PHOTOGRAPHIC, COPYING OR TESTING, THE FOLLOWING PROPERTY
7 WITHIN TWENTY DAYS AFTER RECEIPT OF A WRITTEN DEMAND MADE BY THE DEFEND-
8 ANT:

9 (A) ANY AND ALL EXCULPATORY MATERIALS THEN IN THE POSSESSION OF THE
10 PROSECUTION OR ANY BRANCH OF LAW ENFORCEMENT INVOLVED IN THE PROSECUTION
11 OF THE DEFENDANT, OR EXCULPATORY MATERIALS WHICH MAY COME INTO THE
12 POSSESSION OF THE PROSECUTION OR ANY BRANCH OF LAW ENFORCEMENT INVOLVED
13 IN THE PROSECUTION OF THE DEFENDANT THROUGH THE EXERCISE OF DUE DILI-
14 GENCE PURSUANT TO SECTION 240.60 OF THIS ARTICLE;

15 (B) EVIDENCE WHICH DISPROVES THE IDENTITY OF THE DEFENDANT AS THE
16 PERPETRATOR OF THE CRIME AT ISSUE IN THE CRIMINAL ACTION OR PROCEEDING
17 PENDING AGAINST THE DEFENDANT;

18 (C) EVIDENCE WHICH TENDS TO DISPROVE AN ELEMENT OF ANY CRIME CHARGED
19 IN SUCH ACTION OR PROCEEDING;

20 (D) EVIDENCE WHICH CONSTITUTES A PRIOR REPRESENTATION OF A WITNESS
21 ACCOUNT WHICH VARIES IN ANY DEGREE FROM ANY STATEMENTS OF THE WITNESS,
22 WHENEVER MADE, WITH REGARD TO A DESCRIPTION OF THE EVENTS SURROUNDING
23 THE CRIME AT ISSUE IN SUCH ACTION OR PROCEEDING;

24 (E) EVIDENCE THAT A WITNESS HAS A PRIOR CRIMINAL HISTORY;

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

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1 (F) EVIDENCE THAT A WITNESS HAS ENGAGED IN ACTS WHICH WOULD BEAR UPON
2 HIS OR HER CREDIBILITY AND THE INTEGRITY OF HIS OR HER TESTIMONY; OR

3 (G) EVIDENCE WHICH WOULD CAUSE A REASONABLE PERSON TO QUESTION THE
4 VERACITY OF A WITNESS, SUCH AS MOTIVE, BIAS, COMPENSATION, OR INFORMA-
5 TION WHICH WOULD TEND TO DEVALUE THE TESTIMONY OFFERED.

6 2. THE PROSECUTOR SHALL MAKE A DILIGENT, GOOD FAITH EFFORT TO ASCER-
7 TAIN THE EXISTENCE OF DEMANDED PROPERTY AND TO CAUSE SUCH PROPERTY TO BE
8 MADE AVAILABLE FOR DISCOVERY WHERE IT EXISTS BUT IS NOT WITHIN THE
9 PROSECUTOR'S POSSESSION, CUSTODY OR CONTROL; PROVIDED, THAT THE PROSECU-
10 TOR SHALL NOT BE REQUIRED TO OBTAIN BY SUBPOENA DUCES TECUM DEMANDED
11 MATERIAL WHICH THE DEFENDANT MAY THEREBY OBTAIN.

12 3. THE PROSECUTION MAY REQUEST AN IN CAMERA REVIEW OF ANY EVIDENCE
13 DEMANDED BY THE DEFENDANT PURSUANT TO SUBDIVISION ONE OF THIS SECTION.
14 AFTER AN IN CAMERA REVIEW OF THE MATERIALS PROVIDED AND AFTER AFFORDING
15 ALL PARTIES A REASONABLE OPPORTUNITY TO BE HEARD, THE COURT SHALL
16 PROMPTLY MAKE A WRITTEN DETERMINATION WHETHER THE REQUESTED REVIEW OF
17 THE INFORMATION CAN REASONABLY BE EXPECTED TO CAUSE SUBSTANTIAL AND
18 IDENTIFIABLE HARM TO OTHERS WHICH OUTWEIGHS THE DEFENDANT'S RIGHT OF
19 ACCESS TO THE INFORMATION OR WHETHER THE REQUESTED REVIEW WOULD HAVE A
20 DETRIMENTAL EFFECT ON THE ACTION OR PROCEEDING, OR WHETHER ALL OR PART
21 OF THE MATERIALS SOUGHT TO BE REVIEWED CONSTITUTE PERSONAL NOTES AND
22 OBSERVATIONS, AND SHALL ACCORDINGLY DETERMINE WHETHER ACCESS TO ALL OR
23 PART OF SUCH MATERIALS BY THE DEFENDANT SHALL BE GRANTED. IN THE EVENT
24 THAT THE COURT DETERMINES THAT THE REQUEST FOR ACCESS SHALL BE GRANTED
25 TO THE DEFENDANT IN WHOLE OR IN PART, THE COURT SHALL NOTIFY ALL PARTIES
26 AND THE COURT SHALL GRANT ACCESS TO THE DEFENDANT PURSUANT TO SUCH
27 DETERMINATION.

28 4. IF THE COURT FINDS THAT THE PROSECUTION HAS FAILED TO COMPLY WITH
29 ANY OF THE PROVISIONS OF THIS SECTION, THE COURT MAY ORDER THE PROSE-
30 CUTION TO PERMIT DISCOVERY OF THE PROPERTY NOT PREVIOUSLY DISCLOSED,
31 GRANT A CONTINUANCE, ISSUE A PROTECTIVE ORDER, PROHIBIT THE INTRODUCTION
32 OF CERTAIN EVIDENCE OR THE CALLING OF CERTAIN WITNESSES OR TAKE ANY
33 OTHER APPROPRIATE ACTION.

34 5. IF THE COURT FINDS THAT THE PROSECUTION HAS WILLFULLY FAILED TO
35 COMPLY WITH ANY OF THE PROVISIONS OF THIS SECTION THE COURT MAY:

36 (A) DISMISS THE CRIMINAL ACTION OR PROCEEDING OR, IF DISMISSAL IS NOT
37 SUPPORTED BY THE RECORD, INSTRUCT THE JURY THAT AN ADVERSE INFERENCE MAY
38 BE DRAWN AGAINST THE PROSECUTION FOR THEIR FAILURE TO PROVIDE THE
39 REQUESTED DISCLOSURE;

40 (B) FINE THE INDIVIDUAL PROSECUTOR AND THE DISTRICT ATTORNEY'S OFFICE
41 JOINTLY AND SEVERALLY THE AMOUNT OF TWO THOUSAND FIVE HUNDRED DOLLARS
42 FOR EACH WILLFUL VIOLATION OF SUBDIVISION ONE OF THIS SECTION; OR

43 (C) WHERE AN INDIVIDUAL PROSECUTOR OR DISTRICT ATTORNEY'S OFFICE HAS
44 BEEN PREVIOUSLY FINED FOR VIOLATING THIS SECTION, FINE THE INDIVIDUAL
45 PROSECUTOR AND THE DISTRICT ATTORNEY'S OFFICE JOINTLY AND SEVERALLY THE
46 AMOUNT OF FIVE THOUSAND DOLLARS FOR EACH WILLFUL VIOLATION OF SUBDIVI-
47 SION ONE OF THIS SECTION.

48 S 2. This act shall take effect immediately.