STATE OF NEW YORK

5005

2017-2018 Regular Sessions

IN SENATE

March 3, 2017

Introduced by Sens. BAILEY, PARKER -- 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 requirements and procedures and to repeal 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. Article 240 of the criminal procedure law is REPEALED and a new article 240 is added to read as follows:

ARTICLE 240

AUTOMATIC DISCOVERY PROCEDURE AND REQUIREMENTS

Section 240.10 Automatic discovery.
240.20 Reciprocal discovery.
240.30 Depositions.
240.35 Non-testimonial evidence from the defendant.
240.40 Preservation of evidence.
240.43 Discretionary discovery by order of the court.
240.44 Certificates of compliance.
240.45 Continuing duty to disclose.
240.50 Protective orders.
240.60 Remedies and sanctions for noncompliance with this article.
240.70 Lost or destroyed materials.

§ 240.10 Automatic discovery.

The prosecution is hereby required to provide discovery materials without a motion by defense before or at arraignment. The prosecution shall disclose to the defendant, and permit the defendant to discover, inspect, copy or photograph, all items and information when in possession, custody or control of the prosecution or persons under the prosecution's direction or control including but not limited to:

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

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1. Witness contact information and all written and recorded statements, and the substance of all oral statements. The probation department is required to provide the parties with a record of all convictions, complaints, and indictments against all of the prospective prosecution witnesses and all defendants within five days of the prosecution's disclosure of its witnesses' names and addresses to the defense.

2. All transcripts of the testimony of a person who has testified before any grand jury when the testimony relates to the subject matter of the case.

3. Identification information of all law enforcement personnel whom the prosecutor knows to have evidence or information relevant to any offense charged or to a potential defense thereto.

4. Statements of identification procedures.

5. All tangible objects and exhibits.

6. All defendants' statements.

7. All exculpatory facts in possession of the prosecution or of persons under the prosecution's direction or who investigated the case; not limited to "materially exculpatory" evidence.

8. All statements written or recorded which relate to the subject matter.

9. Intended expert opinion including all contact information, publications of intended witness, and reports prepared by the expert that pertain to the case.

10. Summary of all corporeal or non-corporeal or voice identification procedures.

11. Summary of all promises, rewards and inducements made to persons who may be called as witnesses.

12. Whether the prosecution has any evidence or information that may have been provided by a confidential or jailhouse informant.

13. Whether a search warrant has been executed and all information relating thereto.

14. Whether there has been any electronic surveillance.

§ 240.20 Reciprocal discovery.

The defense, subject to constitutional limitations, has reciprocal discovery obligations after it receives the prosecutor's discovery package. The defense must disclose all relevant material evidence within the defendant's possession including the names, addresses, dates of birth and statements by individuals whom the defense intends to call at trial, intended expert opinion evidence, photographs, tangible objects, exhibits, scientific test reports; and information regarding any inducements or promises to any witness.

§ 240.30 Depositions.

Any time after the filing of an accusatory instrument, the court in its discretion may, upon motion of any party, order the examination of any person except the defendant upon oral deposition if the party shows that the person's testimony is material to the case or necessary to adequately prepare a defense.

§ 240.35 Non-testimonial evidence from the defendant.

After the filing of an accusatory instrument, and subject to constitutional limitations, the court may, upon motion by the prosecution showing probable cause to believe the defendant has committed the crime, a clear indication that relevant material evidence will be found, and that the method used to secure it is safe and reliable, require a defendant to provide non-testimonial evidence, including to appear in a lineup and other evidence.

§ 240.40 Preservation of evidence.

Evidentiary materials are required to be maintained in their original condition and shall include but not be limited to:

1. Videotape of interviews at the police station or other facilities: No oral, written or sign language statement of a suspect made during an interview shall be admissible as substantive evidence against that person in any criminal proceeding unless an electronic recording, which must be focused upon both the questioner and the suspect throughout and must include not only audio but also visual recording, is made of the complete interview.

2. Telephone calls and police radio transmissions: When electronic recordings of 911 telephone calls or police radio transmissions are made in connection with an investigation, the arresting officer or lead detective must expeditiously notify the prosecution in writing of the existence of all recordings.

3. Material possessed by other government personnel or third parties: The prosecution is required to notify the defense whenever it receives information about the existence of any otherwise discoverable item that is not within the possession, custody or control of law enforcement, and the parties can move for a court order requiring the preservation of such items by a third party.

§ 240.43 Discretionary discovery by order of the court.

Upon the request by the defendant, to the court, if the defendant is unable without undue hardship to obtain the substantial equivalent by other means, the court may order the prosecution, or any individual, agency or other entity to make available for disclosure to the defendant any material of information which potentially relates to the subject matter of the case or is otherwise relevant.

§ 240.44 Certificates of compliance.

The prosecution and defense must certify in writing that they have exercised due diligence in complying with their discovery obligations and this certification must identify each item that was provided.

§ 240.45 Continuing duty to disclose.

If the prosecution or the defendant subsequently learns of additional material or information which it would have a duty to disclose pursuant to any provisions of this article, it shall immediately notify the other party and disclose the additional material or information as required by this chapter.

§ 240.50 Protective orders.

The court may order that discovery or inspection be denied, restricted, conditioned or deferred, or may grant discovery to the defendant on the condition that the material be available only to counsel for the defendant.

§ 240.60 Remedies and sanctions for noncompliance with this article.

A range of legal remedies are available for failing to comply with any discovery order issued or imposed. This includes but shall not be limited to the ability of the court to make a further order of discovery, grant a continuance, order that the hearing be reopened, order that a witness be called or recalled, order a mistrial or dismissal of some charges.

§ 240.70 Lost or destroyed materials.

When material or information is discoverable, but cannot be disclosed because it has been lost or destroyed, the court shall impose an appropriate remedy or sanction which is proportionate to the potential ways in which the lost or destroyed material could have been helpful to the party entitled to disclosure.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to all arraignments commencing on or after such effective date.