

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 Assem-
bly, do enact as follows:

1 Section 1. Article 240 of the criminal procedure law is REPEALED and a
2 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 arti- cle.

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 1. Witness contact information and all written and recorded state-
2 ments, and the substance of all oral statements. The probation depart-
3 ment is required to provide the parties with a record of all
4 convictions, complaints, and indictments against all of the prospective
5 prosecution witnesses and all defendants within five days of the prose-
6 cution's disclosure of its witnesses' names and addresses to the
7 defense.

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

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

14 4. Statements of identification procedures.

15 5. All tangible objects and exhibits.

16 6. All defendants' statements.

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

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

22 9. Intended expert opinion including all contact information, publica-
23 tions of intended witness, and reports prepared by the expert that
24 pertain to the case.

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

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

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

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

33 14. Whether there has been any electronic surveillance.

34 § 240.20 Reciprocal discovery.

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

43 § 240.30 Depositions.

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

49 § 240.35 Non-testimonial evidence from the defendant.

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

1 § 240.40 Preservation of evidence.

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

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

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

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

22 § 240.43 Discretionary discovery by order of the court.

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

29 § 240.44 Certificates of compliance.

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

33 § 240.45 Continuing duty to disclose.

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

39 § 240.50 Protective orders.

40 The court may order that discovery or inspection be denied,
41 restricted, conditioned or deferred, or may grant discovery to the
42 defendant on the condition that the material be available only to coun-
43 sel for the defendant.

44 § 240.60 Remedies and sanctions for noncompliance with this article.

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

51 § 240.70 Lost or destroyed materials.

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

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