

# STATE OF NEW YORK

8707

## IN SENATE

May 10, 2018

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

AN ACT to amend the criminal procedure law and the penal law, in relation to establishing new criminal discovery rules; and to repeal article 240 of the criminal procedure law relating thereto

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

1 Section 1. Article 240 of the criminal procedure law is REPEALED.

2 § 2. The criminal procedure law is amended by adding a new article 245  
3 to read as follows:

### ARTICLE 245

#### DISCOVERY

#### Section 245.10 Timing of discovery.

##### 245.20 Automatic discovery.

##### 245.25 Disclosure prior to guilty plea deadline.

##### 245.30 Court orders for preservation, access or discovery.

##### 245.35 Court ordered procedures to facilitate compliance.

##### 245.40 Non-testimonial evidence from the defendant.

##### 245.45 DNA comparison order.

##### 245.50 Certificates of compliance.

##### 245.55 Flow of information.

##### 245.60 Continuing duty to disclose.

##### 245.65 Work product.

##### 245.70 Protective orders.

##### 245.75 Waiver of discovery by defendant.

##### 245.80 Remedies or sanctions for non-compliance.

##### 245.85 Admissibility of discovery.

#### § 245.10 Timing of discovery.

1. Prosecution's performance of obligations. (a) The prosecution shall perform its initial discovery obligations under subdivision one of section 245.20 of this article as soon as practicable but not later than fifteen calendar days after the defendant's arraignment on an indictment, superior court information, prosecutor's information, information, or simplified information. Portions of materials claimed to be

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

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1 non-discoverable may be withheld pending a determination and ruling of  
2 the court under section 245.70 of this article; but the defendant shall  
3 be notified in writing that information has not been disclosed under a  
4 particular subdivision of such section, and the discoverable portions of  
5 such materials shall be disclosed if practicable. When the discoverable  
6 materials are exceptionally voluminous, the time period in this para-  
7 graph may be stayed by up to an additional thirty calendar days without  
8 need for a motion pursuant to subdivision two of section 245.70 of this  
9 article.

10 (b) The prosecution shall perform its supplemental discovery obli-  
11 gations under subdivision three of section 245.20 of this article as  
12 soon as practicable but not later than fifteen calendar days before  
13 trial.

14 (c) Upon timely defense request, the prosecution shall disclose mate-  
15 rials under paragraph (a) of subdivision one of section 245.20 of this  
16 article to any defendant who has been arraigned in a local criminal  
17 court upon a currently undisposed of felony complaint charging an  
18 offense which is a subject of a prospective or pending grand jury  
19 proceeding, no later than forty-eight hours before the time scheduled  
20 for the defendant to testify at a grand jury proceeding pursuant to  
21 subdivision five of section 190.50 of this part.

22 2. Defendant's performance of obligations. The defendant shall perform  
23 his or her discovery obligations under subdivision four of section  
24 245.20 of this article not later than thirty calendar days after being  
25 served with the prosecution's certificate of compliance pursuant to  
26 subdivision one of section 245.50 of this article, except that portions  
27 of materials claimed to be non-discoverable may be withheld pending a  
28 determination and ruling of the court under section 245.70 of this arti-  
29 cle; but the prosecution must be notified in writing that information  
30 has not been disclosed under a particular section.

31 § 245.20 Automatic discovery.

32 1. Initial discovery for the defendant. The prosecution shall disclose  
33 to the defendant, and permit the defendant to discover, inspect, copy or  
34 photograph, each of the following items and information when it relates  
35 to the subject matter of the case and is in the possession, custody or  
36 control of the prosecution or persons under the prosecution's direction  
37 or control:

38 (a) All written or recorded statements, and the substance of all oral  
39 statements, made by the defendant or a co-defendant to a public servant  
40 engaged in law enforcement activity or to a person then acting under his  
41 or her direction or in cooperation with him or her, other than state-  
42 ments made in the course of the criminal transaction.

43 (b) All transcripts of the testimony of a person who has testified  
44 before a grand jury, including but not limited to the defendant or a  
45 co-defendant. If in the exercise of reasonable diligence, and due to the  
46 limited availability of transcription resources, a transcript is  
47 unavailable for disclosure within the time period specified in subdivi-  
48 sion one of section 245.10 of this article, such time period may be  
49 stayed by up to an additional thirty calendar days without need for a  
50 motion pursuant to subdivision two of section 245.70 of this article;  
51 except that such disclosure shall be made as soon as practicable and not  
52 later than thirty calendar days before a scheduled trial date, unless  
53 an order is obtained pursuant to section 245.70 of this article. When  
54 the court is required to review grand jury transcripts, the prosecution  
55 shall disclose such transcripts to the court expeditiously upon receipt

1 by the prosecutor, notwithstanding the otherwise-applicable time periods  
2 for disclosure in this article.

3 (c) The names of, and addresses or adequate alternative contact infor-  
4 mation for, all persons other than law enforcement personnel whom the  
5 prosecutor knows to have evidence or information relevant to any offense  
6 charged or to a potential defense thereto, including a designation by  
7 the prosecutor as to which of those persons may be called as witnesses.  
8 Information under this subdivision relating to a confidential informant  
9 may be withheld, and redacted from discovery materials, without need for  
10 a motion pursuant to section 245.70 of this article; but the defendant  
11 shall be notified in writing that such information has not been  
12 disclosed, unless the court rules otherwise for good cause shown.

13 (d) The name and work affiliation of all law enforcement personnel  
14 whom the prosecutor knows to have evidence or information relevant to  
15 any offense charged or to a potential defense thereto, including a  
16 designation by the prosecutor as to which of those persons may be called  
17 as witnesses. Information under this subdivision relating to undercover  
18 personnel may be withheld, and redacted from discovery materials, with-  
19 out need for a motion pursuant to section 245.70 of this article; but  
20 the defendant shall be notified in writing that such information has not  
21 been disclosed, unless the court rules otherwise for good cause shown.

22 (e) All statements, written or recorded or summarized in any writing  
23 or recording, made by persons who have evidence or information relevant  
24 to any offense charged or to a potential defense thereto, including all  
25 police reports and law enforcement agency reports. This provision also  
26 includes statements, written or recorded or summarized in any writing or  
27 recording, by persons to be called as witnesses at pre-trial hearings.

28 (f) Expert opinion evidence, including the name, business address,  
29 current curriculum vitae, and a list of publications of each expert  
30 witness whom the prosecutor intends to call as a witness at trial or a  
31 pre-trial hearing, and all reports prepared by the expert that pertain  
32 to the case, or if no report is prepared, a written statement of the  
33 facts and opinions to which the expert is expected to testify and a  
34 summary of the grounds for each opinion. This paragraph does not alter  
35 or in any way affect the procedures, obligations or rights set forth in  
36 section 250.10 of this title. If in the exercise of reasonable dili-  
37 gence this information is unavailable for disclosure within the time  
38 period specified in subdivision one of section 245.10 of this article,  
39 that period shall be stayed without need for a motion pursuant to  
40 subdivision two of section 245.70 of this article; except that the  
41 disclosure shall be made as soon as practicable and not later than sixty  
42 calendar days before a scheduled trial date, unless an order is obtained  
43 pursuant to section 245.70 of this article. When the prosecution's  
44 expert witness is being called in response to disclosure of an expert  
45 witness by the defendant, the court shall alter a scheduled trial date,  
46 if necessary, to allow the prosecution thirty calendar days to make the  
47 disclosure and the defendant thirty calendar days to prepare and respond  
48 to the new materials.

49 (g) All tapes or other electronic recordings which the prosecution  
50 intends to introduce at trial or a pre-trial hearing.

51 (h) All photographs and drawings made or completed by a public servant  
52 engaged in law enforcement activity, or which were made by a person  
53 whom the prosecutor intends to call as a witness at trial or a pre-trial  
54 hearing, or which the prosecution intends to introduce at trial or a  
55 pre-trial hearing.

1 (i) All photographs, photocopies and reproductions made by or at the  
2 direction of law enforcement personnel of any property prior to its  
3 release pursuant to section 450.10 of the penal law.

4 (j) All reports, documents, data, calculations or writings, including  
5 but not limited to preliminary tests or screening results and bench  
6 notes, concerning physical or mental examinations, or scientific tests  
7 or experiments or comparisons, and analyses performed electronically,  
8 relating to the criminal action or proceeding which were made by or at  
9 the request or direction of a public servant engaged in law enforcement  
10 activity, or which were made by a person whom the prosecutor intends to  
11 call as a witness at trial or a pre-trial hearing, or which the prose-  
12 cution intends to introduce at trial or a pre-trial hearing.

13 (k) All evidence and information, including that which is known to  
14 police or other law enforcement agencies acting on the government's  
15 behalf in the case, that tends to: (i) negate the defendant's guilt as  
16 to a charged offense; (ii) reduce the degree of or mitigate the defend-  
17 ant's culpability as to a charged offense; (iii) support a potential  
18 defense to a charged offense; (iv) impeach the credibility of a testi-  
19 fying prosecution witness; (v) undermine evidence of the defendant's  
20 identity as a perpetrator of a charged offense; (vi) provide a basis for  
21 a motion to suppress evidence; or (vii) mitigate punishment. Informa-  
22 tion under this subdivision shall be disclosed whether or not such  
23 information is recorded in tangible form and irrespective of whether the  
24 prosecutor credits the information. The prosecutor shall disclose the  
25 information expeditiously upon its receipt and shall not delay disclo-  
26 sure if it is obtained earlier than the time period for disclosure in  
27 subdivision one of section 245.10 of this article.

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

32 (m) A list of all tangible objects obtained from, or allegedly  
33 possessed by, the defendant or a co-defendant. The list shall include a  
34 designation by the prosecutor as to which objects were physically or  
35 constructively possessed by the defendant and were recovered during a  
36 search or seizure by a public servant or an agent thereof, and which  
37 tangible objects were recovered by a public servant or an agent thereof  
38 after allegedly being abandoned by the defendant. If the prosecution  
39 intends to prove the defendant's possession of any tangible objects by  
40 means of a statutory presumption of possession, it shall designate such  
41 intention as to each such object. If reasonably practicable, the prose-  
42 cution shall also designate the location from which each tangible object  
43 was recovered. There is also a right to inspect or copy or photograph  
44 the listed tangible objects.

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

50 (o) All tangible property that the prosecution intends to introduce in  
51 its case-in-chief at trial or a pre-trial hearing. If in the exercise of  
52 reasonable diligence the prosecutor has not formed an intention within  
53 the time period specified in subdivision one of section 245.10 of this  
54 article that an item under this subdivision will be introduced at trial  
55 or a pre-trial hearing, such time period shall be stayed without need  
56 for a motion pursuant to subdivision two of section 245.70 of this arti-

1 cle; but the disclosure shall be made as soon as practicable and subject  
2 to the continuing duty to disclose in section 245.60 of this article.

3 (p) The results of complete criminal history record checks for all  
4 defendants and all persons designated as potential prosecution witnesses  
5 pursuant to paragraph (c) of this subdivision, other than those  
6 witnesses who are experts.

7 (q) When it is known to the prosecution, the existence of any pending  
8 criminal action against all persons designated as potential prosecution  
9 witnesses pursuant to paragraph (c) of this subdivision.

10 (r) The approximate date, time and place of the offense or offenses  
11 charged and of the defendant's seizure and arrest.

12 (s) In any prosecution alleging a violation of the vehicle and traffic  
13 law, where the defendant is charged by indictment, superior court infor-  
14 mation, prosecutor's information, information, or simplified informa-  
15 tion, the most recent record of inspection, calibration and repair of  
16 machines and instruments utilized to perform any scientific tests and  
17 experiments and the certification certificate, if any, held by the oper-  
18 ator of the machine or instrument, and all other disclosures required  
19 under this article.

20 (t) In any prosecution alleging a violation of section 156.05 or  
21 156.10 of the penal law, the time, place and manner such violation  
22 occurred.

23 2. Discovery by the prosecution. The prosecutor shall make a dili-  
24 gent, good faith effort to ascertain the existence of material or infor-  
25 mation discoverable under subdivision one of this section and to cause  
26 such material or information to be made available for discovery where  
27 it exists but is not within the prosecutor's possession, custody or  
28 control; provided that the prosecutor shall not be required to obtain by  
29 subpoena duces tecum material or information which the defendant may  
30 thereby obtain. This provision shall not require the prosecutor to  
31 ascertain the existence of witnesses not known to police or another law  
32 enforcement agency, or the written or recorded statements thereof, under  
33 paragraph (c) or (e) of subdivision one of this section.

34 3. Supplemental discovery for the defendant. The prosecution shall  
35 disclose to the defendant a list of all misconduct and criminal acts of  
36 the defendant not charged in the indictment, superior court information,  
37 prosecutor's information, information, or simplified information, which  
38 the prosecution intends to use at trial for purposes of (a) impeaching  
39 the credibility of the defendant, or (b) as substantive proof of any  
40 material issue in the case. In addition the prosecution shall designate  
41 whether it intends to use each listed act for impeachment and/or as  
42 substantive proof.

43 4. Reciprocal discovery for the prosecution. (a) The defendant shall,  
44 subject to constitutional limitations, disclose to the prosecution, and  
45 permit the prosecution to discover, inspect, copy or photograph, any  
46 material and relevant evidence within the defendant's or counsel for the  
47 defendant's possession or control that is discoverable under paragraphs  
48 (f), (g), (h), (j), (l) and (o) of subdivision one of this section,  
49 which the defendant intends to offer at trial or a pre-trial hearing,  
50 and the names, addresses, birth dates, and all statements, written or  
51 recorded or summarized in any writing or recording, of those persons  
52 other than the defendant whom the defendant intends to call as witnesses  
53 at trial or a pre-trial hearing.

54 (b) Disclosure of the name, address, birth date, and all statements,  
55 written or recorded or summarized in any writing or recording, of a  
56 person whom the defendant intends to call as a witness for the sole



1 purpose of impeaching a prosecution witness is not required until after  
2 the prosecution witness has testified at trial.

3 (c) If in the exercise of reasonable diligence the reciprocally  
4 discoverable information under paragraph (f) or (o) of subdivision one  
5 of this section is unavailable for disclosure within the time period  
6 specified in subdivision two of section 245.10 of this article, such  
7 time period shall be stayed without need for a motion pursuant to subdivi-  
8 sion two of section 245.70 of this article; but the disclosure shall  
9 be made as soon as practicable and subject to the continuing duty to  
10 disclose in section 245.60 of this article.

11 5. Stay of automatic discovery; remedies and sanctions. Section 245.10  
12 and subdivisions one, two, three and four of this section shall have  
13 the force and effect of a court order, and failure to provide discovery  
14 pursuant to such section or subdivision may result in application of any  
15 remedies or sanctions permitted for non-compliance with a court order  
16 under section 245.80 of this article. However, if in the judgment of  
17 either party good cause exists for declining to make any of the disclo-  
18 sures set forth above, such party may move for a protective order pursu-  
19 ant to section 245.70 of this article and production of the item shall  
20 be stayed pending a ruling by the court. The opposing party shall be  
21 notified in writing that information has not been disclosed under a  
22 particular section. When some parts of material or information are  
23 discoverable but in the judgment of a party good cause exists for  
24 declining to disclose other parts, the discoverable parts shall be  
25 disclosed and the disclosing party shall give notice in writing that  
26 non-discoverable parts have been withheld.

27 6. Redactions permitted. Either party may redact social security  
28 numbers and tax numbers from disclosures under this article.

29 § 245.25 Disclosure prior to guilty plea deadline.

30 1. Pre-indictment guilty pleas. Upon a felony complaint, where the  
31 prosecution has made a pre-indictment guilty plea offer requiring a plea  
32 to a crime, the defendant shall have the right upon timely request and  
33 reasonable notice to the prosecution to inspect any available police or  
34 other law enforcement agency report of a factual nature regarding the  
35 arrest or investigation of the charges, and/or any designated and avail-  
36 able items or information that could be of material importance to the  
37 decision on the guilty plea offer and would be discoverable prior to  
38 trial under subdivision one of section 245.20 of this article. The pros-  
39 ecution shall disclose the requested and designated items or informa-  
40 tion, as well as any known information that tends to be exculpatory or  
41 to support a defense to a charged offense, not less than three calendar  
42 days prior to the expiration date of any guilty plea offer by the prose-  
43 cution or any deadline imposed by the court for acceptance of a negoti-  
44 ated guilty plea offer. If the prosecution does not comply with a prop-  
45 er request made pursuant to this subdivision, the court may take  
46 appropriate action as necessary to address the non-compliance, including  
47 allowing a guilty plea to the original guilty plea offer notwithstanding  
48 other provisions of this chapter. The inspection rights under this  
49 subdivision do not apply to items or information that are the subject of  
50 a protective order under section 245.70 of this article; but if such  
51 information tends to be exculpatory, the court shall reconsider the  
52 protective order. The court may deny an inspection right under this  
53 subdivision when a reasonable person in the defendant's position would  
54 not consider the requested and designated item or information to be of  
55 material importance to the decision on the guilty plea offer. A defend-

ant may waive his or her rights under this subdivision; but a guilty plea offer may not be conditioned on such waiver.

2. Other guilty pleas. Upon an indictment, superior court information, prosecutor's information, information, simplified information, or misdemeanor complaint, where the prosecution has made a guilty plea offer requiring a plea to a crime, the defendant shall have the right upon timely request and reasonable notice to the prosecution to inspect any available police or other law enforcement agency report of a factual nature regarding the arrest or investigation of the charges, and/or any designated and available items or information that could be of material importance to the decision on the guilty plea offer and would be discoverable prior to trial under subdivision one of section 245.20 of this article. The prosecution shall disclose the requested and designated items or information, as well as any known information that tends to be exculpatory or to support a defense to a charged offense, not less than seven calendar days prior to the expiration date of any guilty plea offer by the prosecution or any deadline imposed by the court for a guilty plea. If the prosecution does not comply with a proper request made pursuant to this subdivision, the guilty plea offer may be deemed available to the defendant until seven calendar days after the prosecution has made the disclosure or the court may take other appropriate action as necessary to address the non-compliance. The inspection rights under this subdivision do not apply to items or information that are the subject of a protective order under section 245.70 of this article; but if such information tends to be exculpatory, the court shall reconsider the protective order. The court may deny an inspection right under this subdivision when a reasonable person in the defendant's position would not consider the requested and designated item or information to be of material importance to the decision on the guilty plea offer. A defendant may waive his or her rights under this subdivision, but a guilty plea offer may not be conditioned on such waiver.

§ 245.30 Court orders for preservation, access or discovery.

1. Order to preserve evidence. At any time, a party may move for a court order to any individual, agency or other entity in possession, custody or control of items which relate to the subject matter of the case or are otherwise relevant, requiring that such items be preserved for a specified period of time. The court shall hear and rule upon such motions expeditiously. The court may modify or vacate such an order upon a showing that preservation of particular evidence will create significant hardship, on condition that the probative value of that evidence is preserved by a specified alternative means.

2. Order to grant access to premises. At any time, the defendant may move for a court order to any individual, agency or other entity in possession, custody or control of a crime scene or other premises that relates to the subject matter of the case or is otherwise relevant, requiring that counsel for the defendant be granted prompt and reasonable access to inspect, photograph or measure such crime scene or premises, and that the condition of the crime scene or premises remain unchanged in the interim. The court shall hear and rule upon such motions expeditiously. The court may modify or vacate such an order upon a showing that granting access to a particular crime scene or premises will create significant hardship, on condition that the probative value of such location is preserved by a specified alternative means.

3. Discretionary discovery by order of the court. The court in its discretion may, upon a showing by the defendant that the request is reasonable and that the defendant is unable without undue hardship to

1 obtain the substantial equivalent by other means, order the prosecution,  
2 or any individual, agency or other entity subject to the jurisdiction of  
3 the court, to make available for disclosure to the defendant any materi-  
4 al or information which potentially relates to the subject matter of the  
5 case and is reasonably likely to be material. A motion under this subdi-  
6 vision must be on notice to any person or entity affected by the order.  
7 The court may, upon request of any person or entity affected by the  
8 order, modify or vacate the order if compliance would be unreasonable or  
9 will create significant hardship. The court may permit a party seeking  
10 or opposing a discretionary order of discovery under this subdivision,  
11 or another affected person or entity, to submit papers or testify on the  
12 record ex parte or in camera. Any such papers and a transcript of such  
13 testimony may be sealed and shall constitute a part of the record on  
14 appeal.

15 § 245.35 Court ordered procedures to facilitate compliance.

16 To facilitate compliance with this article, and to reduce or stream-  
17 line litigation of any disputes about discovery, the court in its  
18 discretion may issue an order:

19 1. Requiring that the prosecutor and counsel for the defendant dili-  
20 gently confer to attempt to reach an accommodation as to any dispute  
21 concerning discovery prior to seeking a ruling from the court;

22 2. Requiring a discovery compliance conference at a specified time  
23 prior to trial between the prosecutor, counsel for all defendants, and  
24 the court or its staff;

25 3. Requiring the prosecution to file an additional certificate of  
26 compliance that states that the prosecutor and/or an appropriate named  
27 agent has made reasonable inquiries of all police officers and other  
28 persons who have participated in investigating or evaluating the case  
29 about the existence of any favorable evidence or information within  
30 paragraph (k) of subdivision one of section 245.20 of this article,  
31 including such evidence or information that was not reduced to writing  
32 or otherwise memorialized or preserved as evidence, and has disclosed  
33 any such information to the defendant; and/or

34 4. Requiring other measures or proceedings designed to carry into  
35 effect the goals of this article.

36 § 245.40 Non-testimonial evidence from the defendant.

37 1. Availability. After the filing of an accusatory instrument, and  
38 subject to constitutional limitations, the court may, upon motion of  
39 the prosecution showing probable cause to believe the defendant has  
40 committed the crime, a clear indication that relevant material evidence  
41 will be found, and that the method used to secure such evidence is safe  
42 and reliable, require a defendant to provide non-testimonial evidence,  
43 including to:

44 (a) Appear in a lineup;

45 (b) Speak for identification by a witness or potential witness;

46 (c) Be fingerprinted;

47 (d) Pose for photographs not involving reenactment of an event;

48 (e) Permit the taking of samples of the defendant's blood, hair, and  
49 other materials of the defendant's body that involves no unreasonable  
50 intrusion thereof;

51 (f) Provide specimens of the defendant's handwriting; and

52 (g) Submit to a reasonable physical or medical inspection of the  
53 defendant's body.

54 2. Limitations. This section shall not be construed to alter or in any  
55 way affect the issuance of a similar court order, as may be authorized  
56 by law, before the filing of an accusatory instrument, consistent with



1 such rights as the defendant may derive from the state constitution or  
2 the United States constitution. This section shall not be construed to  
3 alter or in any way affect the administration of a chemical test where  
4 otherwise authorized. An order pursuant to this section may be denied,  
5 limited or conditioned as provided in section 245.70 of this article.  
6 § 245.45 DNA comparison order.

7 Where property in the prosecution's possession, custody, or control  
8 consists of a deoxyribonucleic acid ("DNA") profile obtained from  
9 probative biological material gathered in connection with the investi-  
10 gation of the crime, or the defendant, or the prosecution of the defend-  
11 ant, and the defendant establishes (a) that such profile complies with  
12 federal bureau of investigation or state requirements, whichever are  
13 applicable and as such requirements are applied to law enforcement agen-  
14 cies seeking a keyboard search or similar comparison, and (b) that the  
15 data meets state DNA index system or national DNA index system criteria  
16 as such criteria are applied to law enforcement agencies seeking such a  
17 keyboard search or similar comparison, the court may, upon motion of a  
18 defendant against whom an indictment, superior court information,  
19 prosecutor's information, information, or simplified information is  
20 pending, order an entity that has access to the combined DNA index  
21 system or its successor system to compare such DNA profile against DNA  
22 databanks by keyboard searches, or a similar method that does not  
23 involve uploading, upon notice to both parties and the entity required  
24 to perform the search, upon a showing by the defendant that such a  
25 comparison is material to the presentation of his or her defense and  
26 that the request is reasonable. For purposes of this section, a  
27 "keyboard search" shall mean a search of a DNA profile against the  
28 databank in which the profile that is searched is not uploaded to or  
29 maintained in the databank.

30 § 245.50 Certificates of compliance.

31 1. By the prosecution. When the prosecution has provided the discovery  
32 required by subdivision one of section 245.20 of this article, except  
33 for any items or information that are the subject of an order pursuant  
34 to section 245.70 of this article, it shall serve upon the defendant and  
35 file with the court a certificate of compliance. The certificate of  
36 compliance shall state that, after exercising due diligence and making  
37 reasonable inquiries to ascertain the existence of material and infor-  
38 mation subject to discovery, the prosecutor has disclosed and made  
39 available all known material and information subject to discovery. It  
40 shall also identify the items provided. If additional discovery is  
41 subsequently provided prior to trial pursuant to section 245.60 of this  
42 article, a supplemental certificate shall be served upon the defendant  
43 and filed with the court identifying the additional material and infor-  
44 mation provided. No adverse consequence to the prosecution or the prose-  
45 cutor shall result from the filing of a certificate of compliance in  
46 good faith; but the court may grant a remedy or sanction for a discov-  
47 ery violation as provided in section 245.80 of this article.

48 2. By the defendant. When the defendant has provided all discovery  
49 required by subdivision four of section 245.20 of this article, except  
50 for any items or information that are the subject of an order pursuant  
51 to section 245.70 of this article, counsel for the defendant shall serve  
52 upon the prosecution and file with the court a certificate of compli-  
53 ance. The certificate shall state that, after exercising due diligence  
54 and making reasonable inquiries to ascertain the existence of material  
55 and information subject to discovery, counsel for the defendant has  
56 disclosed and made available all known material and information subject

1 to discovery. It shall also identify the items provided. If additional  
2 discovery is subsequently provided prior to trial pursuant to section  
3 245.60 of this article, a supplemental certificate shall be served upon  
4 the prosecution and filed with the court identifying the additional  
5 material and information provided. No adverse consequence to the  
6 defendant or counsel for the defendant shall result from the filing of a  
7 certificate of compliance in good faith; but the court may grant a reme-  
8 dy or sanction for a discovery violation as provided in section 245.80  
9 of this article.

10 § 245.55 Flow of information.

11 1. Sufficient communication for compliance. The district attorney and  
12 the assistant responsible for the case, or, if the matter is not being  
13 prosecuted by the district attorney, the prosecuting agency and its  
14 assigned representative, shall endeavor to ensure that a flow of infor-  
15 mation is maintained between the police and other investigative person-  
16 nel and his or her office sufficient to place within his or her  
17 possession or control all material and information pertinent to the  
18 defendant and the offense or offenses charged, including, but not limit-  
19 ed to, any evidence or information discoverable under paragraph (k) of  
20 subdivision one of section 245.20 of this article.

21 2. Provision of law enforcement agency files. Absent a court order or  
22 clear security requirement, upon request by the prosecution, a New York  
23 state law enforcement agency shall make available to the prosecution a  
24 complete copy of its complete files related to the investigation of the  
25 case or the prosecution of the defendant for compliance with this arti-  
26 cle.

27 3. 911 telephone call and police radio transmission electronic  
28 recordings, police worn body camera recordings and other police  
29 recordings. (a) Whenever an electronic recording of a 911 telephone  
30 call or a police radio transmission or video or audio footage from a  
31 police body-worn camera or other police recording was made or received  
32 in connection with the investigation of an apparent criminal incident,  
33 the arresting officer or lead detective shall expeditiously notify the  
34 prosecution in writing upon the filing of an accusatory instrument of  
35 the existence of all such known recordings. The prosecution shall expe-  
36 ditiously take whatever reasonable steps are necessary to ensure that  
37 all known electronic recordings of 911 telephone calls, police radio  
38 transmissions and video and audio footage and other police recordings  
39 made or available in connection with the case are preserved throughout  
40 the pendency of the case. Upon the defendant's timely request and desig-  
41 nation of a specific electronic recording of a 911 telephone call, the  
42 prosecution shall also expeditiously take whatever reasonable steps are  
43 necessary to ensure that it is preserved throughout the pendency of the  
44 case.

45 (b) If the prosecution fails to disclose such an electronic recording  
46 to the defendant pursuant to paragraph (e), (g) or (k) of subdivision  
47 one of section 245.20 of this article due to a failure to comply with  
48 this obligation by police officers or other law enforcement or prose-  
49 cution personnel, the court upon motion of the defendant shall impose an  
50 appropriate remedy or sanction pursuant to section 245.80 of this arti-  
51 cle.

52 § 245.60 Continuing duty to disclose.

53 If either the prosecution or the defendant subsequently learns of  
54 additional material or information which it would have been under a duty  
55 to disclose pursuant to any provisions of this article at the time of a  
56 previous discovery obligation or discovery order, it shall expeditiously

1 notify the other party and disclose the additional material or informa-  
2 tion as required for initial discovery under this article. This  
3 provision also requires expeditious disclosure by the prosecution of  
4 material or information that became relevant to the case or discoverable  
5 based upon reciprocal discovery received from the defendant pursuant to  
6 subdivision four of section 245.20 of this article.

7 § 245.65 Work product.

8 This article does not authorize discovery by a party of those portions  
9 of records, reports, correspondence, memoranda, or internal documents of  
10 the adverse party which are only the legal research, opinions, theories  
11 or conclusions of the adverse party or its attorney or the attorney's  
12 agents, or of statements of a defendant, written or recorded or summa-  
13 rized in any writing or recording, made to the attorney for the defend-  
14 ant or the attorney's agents.

15 § 245.70 Protective orders.

16 1. Any discovery subject to protective order. Upon a showing of good  
17 cause by either party, the court may at any time order that discovery or  
18 inspection of any kind of material or information under this article be  
19 denied, restricted, conditioned or deferred, or make such other order as  
20 is appropriate. The court may impose as a condition on discovery to a  
21 defendant that the material or information to be discovered be available  
22 only to counsel for the defendant; or, alternatively, that counsel for  
23 the defendant, and persons employed by the attorney or appointed by the  
24 court to assist in the preparation of a defendant's case, may not  
25 disclose physical copies of the discoverable documents to a defendant or  
26 to anyone else, provided that the prosecution affords the defendant  
27 access to inspect redacted copies of the discoverable documents at a  
28 supervised location that provides regular and reasonable hours for such  
29 access, such as a prosecutor's office, police station, facility of  
30 detention, or court. The court may permit a party seeking or opposing a  
31 protective order under this section, or another affected person, to  
32 submit papers or testify on the record ex parte or in camera. Any such  
33 papers and a transcript of such testimony may be sealed and shall  
34 constitute a part of the record on appeal. This section does not alter  
35 the allocation of the burden of proof with regard to matters at issue,  
36 including privilege.

37 2. Modification of time periods for discovery. Upon motion of a party  
38 in an individual case, the court may alter the time periods for discov-  
39 ery imposed by this article upon a showing of good cause.

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

46 4. Showing of good cause. Good cause under this section may include:  
47 constitutional rights or limitations; danger to the integrity of phys-  
48 ical evidence; a substantial risk of physical harm, intimidation,  
49 economic reprisal, bribery or unjustified annoyance or embarrassment to  
50 any person; a substantial risk of an adverse effect upon the legitimate  
51 needs of law enforcement, including the protection of the confidential-  
52 ity of informants; danger to any person stemming from factors such as a  
53 defendant's gang affiliation, prior history of interfering with  
54 witnesses, or threats or intimidating actions directed at potential  
55 witnesses; or other similar factors that also outweigh the usefulness  
56 of the discovery.

1     5. Successor counsel or pro se defendant. In cases in which the attor-  
2 ney-client relationship is terminated prior to trial for any reason,  
3 any material or information disclosed subject to a condition that it be  
4 available only to counsel for the defendant, or limited in dissemination  
5 by protective order or otherwise, shall be provided only to successor  
6 counsel for the defendant under the same condition or conditions or be  
7 returned to the prosecution, unless the court rules otherwise for good  
8 cause shown or the prosecutor gives written consent. Any work product  
9 derived from such material or information shall not be provided to the  
10 defendant, unless the court rules otherwise or the prosecutor gives  
11 written consent. If the defendant is acting as his or her own attorney,  
12 the court may regulate the time, place and manner of access to any  
13 discoverable material or information; and it may as appropriate appoint  
14 persons to assist the defendant in the investigation or preparation of  
15 the case. Upon motion or application of a defendant acting as his or her  
16 own attorney, the court may at any time modify or vacate any condition  
17 or restriction relating to access to discoverable material or informa-  
18 tion, for good cause shown.

19     6. Expedited review of adverse ruling. (a) A party that has unsucces-  
20 fully sought, or unsuccessfully opposed the granting of, a protective  
21 order under this section relating to the name, address, contact informa-  
22 tion or statements of a person may obtain expedited review of that  
23 ruling by an individual justice of the intermediate appellate court to  
24 which an appeal from a judgment of conviction in the case would be  
25 taken.

26     (b) Such review shall be sought within two business days of the  
27 adverse or partially adverse ruling, by order to show cause filed with  
28 the intermediate appellate court. The order to show cause shall in addi-  
29 tion be timely served on the lower court and on the opposing party, and  
30 shall be accompanied by a sworn affirmation stating in good faith (i)  
31 that the ruling affects substantial interests, and (ii) that diligent  
32 efforts to reach an accommodation of the underlying discovery dispute  
33 with opposing counsel failed or that no accommodation was feasible;  
34 except that service on the opposing party, and a statement regarding  
35 efforts to reach an accommodation, are unnecessary where the opposing  
36 party was not made aware of the application for a protective order and  
37 good cause exists for omitting service of the order to show cause on the  
38 opposing party. The lower court's order subject to review shall be  
39 stayed until the appellate justice renders decision.

40     (c) The assignment of the individual appellate justice, and the mode  
41 of and procedure for the review, are determined by rules of the individ-  
42 ual appellate courts. The appellate justice may consider any relevant  
43 and reliable information bearing on the issue, and may dispense with  
44 written briefs other than supporting and opposing materials previously  
45 submitted to the lower court. The appellate justice may dispense with  
46 the issuance of a written opinion in rendering his or her decision, and  
47 when practicable shall render decision expeditiously. Such review and  
48 decision shall not affect the right of a defendant, in a subsequent  
49 appeal from a judgment of conviction, to claim as error the ruling  
50 reviewed.

51     7. Compliance with protective order. Any protective order issued under  
52 this article is a mandate of the court for purposes of the offense of  
53 criminal contempt in subdivision three of section 215.50 of the penal  
54 law.

55     § 245.75 Waiver of discovery by defendant.

1 A defendant who does not seek discovery from the prosecution under  
2 this article shall so notify the prosecution and the court at the  
3 defendant's arraignment on an indictment, superior court information,  
4 prosecutor's information, information, or simplified information, or  
5 expeditiously thereafter but before receiving discovery from the prose-  
6 cution pursuant to subdivision one of section 245.20 of this article,  
7 and the defendant need not provide discovery to the prosecution pursuant  
8 to subdivision four of section 245.20 and section 245.60 of this arti-  
9 cle. A waiver shall be in writing and signed by the defendant and coun-  
10 sel for the defendant. Such a waiver does not alter or in any way  
11 affect the procedures, obligations or rights set forth in sections  
12 250.10, 250.20 and 250.30 of this title, or otherwise established or  
13 required by law. The prosecution may not condition a guilty plea offer  
14 on the defendant's execution of a waiver under this section.

15 § 245.80 Remedies or sanctions for non-compliance.

16 1. Need for remedy or sanction. (a) When material or information is  
17 discoverable under this article but is disclosed belatedly, the court  
18 shall impose an appropriate remedy or sanction if the party entitled to  
19 disclosure shows that it was prejudiced. Regardless of a showing of  
20 prejudice the party entitled to disclosure shall be given reasonable  
21 time to prepare and respond to the new material.

22 (b) When material or information is discoverable under this article  
23 but cannot be disclosed because it has been lost or destroyed, the court  
24 shall impose an appropriate remedy or sanction if the party entitled to  
25 disclosure shows that the lost or destroyed material may have contained  
26 some information relevant to a contested issue. The appropriate remedy  
27 or sanction is that which is proportionate to the potential ways in  
28 which the lost or destroyed material reasonably could have been helpful  
29 to the party entitled to disclosure.

30 2. Available remedies or sanctions. For failure to comply with any  
31 discovery order imposed or issued pursuant to this article, the court  
32 may make a further order for discovery, grant a continuance, order that  
33 a hearing be reopened, order that a witness be called or recalled,  
34 instruct the jury that it may draw an adverse inference regarding the  
35 non-compliance, preclude or strike a witness's testimony or a portion of  
36 a witness's testimony, admit or exclude evidence, order a mistrial,  
37 order the dismissal of all or some of the charges, or make such other  
38 order as it deems just under the circumstances; except that any sanction  
39 against the defendant shall comport with the defendant's constitutional  
40 right to present a defense, and precluding a defense witness from  
41 testifying shall be permissible only upon a finding that the defendant's  
42 failure to comply with the discovery obligation or order was willful  
43 and motivated by a desire to obtain a tactical advantage.

44 3. Consequences of non-disclosure of statement of testifying prose-  
45 cution witness. The failure of the prosecutor or any agent of the prose-  
46 cutor to disclose any written or recorded statement made by a prose-  
47 cution witness which relates to the subject matter of the witness's  
48 testimony shall not constitute grounds for any court to order a new  
49 pre-trial hearing or set aside a conviction, or reverse, modify or  
50 vacate a judgment of conviction, in the absence of a showing by the  
51 defendant that there is a reasonable possibility that the non-disclosure  
52 materially contributed to the result of the trial or other proceeding;  
53 provided, however, that nothing in this section shall affect or limit  
54 any right the defendant may have to a reopened pre-trial hearing when  
55 such statements were disclosed before the close of evidence at trial.

56 § 245.85 Admissibility of discovery.



1 The fact that a party has indicated during the discovery process an  
2 intention to offer specified evidence or to call a specified witness is  
3 not admissible in evidence or grounds for adverse comment at a hearing  
4 or a trial.

5 § 3. Subdivision 3 of section 610.20 of the criminal procedure law is  
6 amended and a new subdivision 4 is added to read as follows:

7 3. An attorney for a defendant in a criminal action or proceeding, as  
8 an officer of a criminal court, may issue a subpoena of such court,  
9 subscribed by himself, for the attendance in such court of any witness  
10 whom the defendant is entitled to call in such action or proceeding. An  
11 attorney for a defendant may not issue a subpoena duces tecum of the  
12 court directed to any department, bureau or agency of the state or of a  
13 political subdivision thereof, or to any officer or representative ther-  
14 eof, unless the subpoena is endorsed by the court and provides at least  
15 three days for the production of the requested materials. In the case of  
16 an emergency, the court may by order dispense with the three-day  
17 production period. Such a subpoena duces tecum may be issued in behalf  
18 of a defendant upon order of a court pursuant to the rules applicable to  
19 civil cases as provided in section twenty-three hundred seven of the  
20 civil practice law and rules.

21 4. The showing required to sustain any subpoena under this section is  
22 that the testimony or evidence sought is reasonably likely to be rele-  
23 vant and material to the proceedings, and the subpoena is not overbroad  
24 or unreasonably burdensome.

25 § 4. Section 65.20 of the criminal procedure law, as added by chapter  
26 505 of the laws of 1985, subdivision 2 as added, the opening paragraph  
27 of subdivision 10 as amended and subdivisions 3, 4, 5, 6, 7, 8, 9, 10,  
28 11, 12 and 13 as renumbered by chapter 548 of the laws of 2007, subdivi-  
29 sion 7 and paragraph (k) of subdivision 10 as amended by chapter 320 of  
30 the laws of 2006 and subdivisions 11 and 12 as amended by chapter 455 of  
31 the laws of 1991, is amended to read as follows:

32 § 65.20 Closed-circuit television; procedure for application and grounds  
33 for determination.

34 1. Prior to the commencement of a criminal proceeding; other than a  
35 grand jury proceeding, either party may apply to the court for an order  
36 declaring that a child witness is vulnerable.

37 2. A child witness should be declared vulnerable when the court, in  
38 accordance with the provisions of this section, determines by clear and  
39 convincing evidence that the child witness would suffer serious mental  
40 or emotional harm that would substantially impair the child witness'  
41 ability to communicate with the finder of fact without the use of live,  
42 two-way closed-circuit television.

43 3. A motion pursuant to subdivision one of this section must be made  
44 in writing at least eight days before the commencement of trial or other  
45 criminal proceeding upon reasonable notice to the other party and with  
46 an opportunity to be heard.

47 4. The motion papers must state the basis for the motion and must  
48 contain sworn allegations of fact which, if true, would support a deter-  
49 mination by the court that the child witness is vulnerable. Such allega-  
50 tions may be based upon the personal knowledge of the deponent or upon  
51 information and belief, provided that, in the latter event, the sources  
52 of such information and the grounds for such belief are stated.

53 5. The answering papers may admit or deny any of the alleged facts and  
54 may, in addition, contain sworn allegations of fact relevant to the  
55 motion, including the rights of the defendant, the need to protect the

1 child witness and the integrity of the truth-finding function of the  
2 trier of fact.

3 6. Unless all material facts alleged in support of the motion made  
4 pursuant to subdivision one of this section are conceded, the court  
5 shall, in addition to examining the papers and hearing oral argument,  
6 conduct an appropriate hearing for the purpose of making findings of  
7 fact essential to the determination of the motion. Except as provided in  
8 subdivision [~~six~~] seven of this section, it may subpoena or call and  
9 examine witnesses, who must either testify under oath or be permitted to  
10 give unsworn testimony pursuant to subdivision two of section 60.20 and  
11 must authorize the attorneys for the parties to do the same.

12 7. Notwithstanding any other provision of law, the child witness who  
13 is alleged to be vulnerable may not be compelled to testify at such  
14 hearing or to submit to any psychological or psychiatric examination.  
15 The failure of the child witness to testify at such hearing shall not be  
16 a ground for denying a motion made pursuant to subdivision one of this  
17 section. Prior statements made by the child witness relating to any  
18 allegations of conduct constituting an offense defined in article one  
19 hundred thirty of the penal law or incest as defined in section 255.25,  
20 255.26 or 255.27 of such law or to any allegation of words or conduct  
21 constituting an attempt to prevent, impede or deter the child witness  
22 from cooperating in the investigation or prosecution of the offense  
23 shall be admissible at such hearing, provided, however, that a declara-  
24 tion that a child witness is vulnerable may not be based solely upon  
25 such prior statements.

26 8. (a) Notwithstanding any of the provisions of article forty-five of  
27 the civil practice law and rules, any physician, psychologist, nurse or  
28 social worker who has treated a child witness may testify at a hearing  
29 conducted pursuant to subdivision [~~five~~] six of this section concerning  
30 the treatment of such child witness as such treatment relates to the  
31 issue presented at the hearing, provided that any otherwise applicable  
32 statutory privileges concerning communications between the child witness  
33 and such physician, psychologist, nurse or social worker in connection  
34 with such treatment shall not be deemed waived by such testimony alone,  
35 except to the limited extent of permitting the court alone to examine in  
36 camera reports, records or documents, if any, prepared by such physi-  
37 cian, psychologist, nurse or social worker. If upon such examination the  
38 court determines that such reports, records or documents, or any one or  
39 portion thereof, contain information material and relevant to the issue  
40 of whether the child witness is a vulnerable child witness, the court  
41 shall disclose such information to both the attorney for the defendant  
42 and the district attorney.

43 (b) At any time after a motion has been made pursuant to subdivision  
44 one of this section, upon the demand of the other party the moving party  
45 must furnish the demanding party with a copy of any and all of such  
46 records, reports or other documents in the possession of such other  
47 party and must, in addition, supply the court with a copy of all such  
48 reports, records or other documents which are the subject of the demand.  
49 At any time after a demand has been made pursuant to this paragraph, the  
50 moving party may demand that property of the same kind or character in  
51 possession of the party that originally made such demand be furnished to  
52 the moving party and, if so furnished, be supplied, in addition, to the  
53 court.

54 9. (a) Prior to the commencement of the hearing conducted pursuant to  
55 subdivision [~~five~~] six of this section, the district attorney shall,  
56 subject to a protective order, comply with the provisions of paragraph

1 (c) of subdivision one of section [~~240.45~~] 245.20 of this chapter as  
2 they concern any witness whom the district attorney intends to call at  
3 the hearing and the child witness.

4 (b) Before a defendant calls a witness at such hearing, he or she  
5 must, subject to a protective order, comply with the provisions of  
6 subdivision [~~two~~] four of section [~~240.45~~] 245.20 of this chapter as  
7 they concern all the witnesses the defendant intends to call at such  
8 hearing.

9 10. The court may consider, in determining whether there are factors  
10 which would cause the child witness to suffer serious mental or  
11 emotional harm, a finding that any one or more of the following circum-  
12 stances have been established by clear and convincing evidence:

13 (a) The manner of the commission of the offense of which the defendant  
14 is accused was particularly heinous or was characterized by aggravating  
15 circumstances.

16 (b) The child witness is particularly young or otherwise particularly  
17 subject to psychological harm on account of a physical or mental condi-  
18 tion which existed before the alleged commission of the offense.

19 (c) At the time of the alleged offense, the defendant occupied a posi-  
20 tion of authority with respect to the child witness.

21 (d) The offense or offenses charged were part of an ongoing course of  
22 conduct committed by the defendant against the child witness over an  
23 extended period of time.

24 (e) A deadly weapon or dangerous instrument was allegedly used during  
25 the commission of the crime.

26 (f) The defendant has inflicted serious physical injury upon the child  
27 witness.

28 (g) A threat, express or implied, of physical violence to the child  
29 witness or a third person if the child witness were to report the inci-  
30 dent to any person or communicate information to or cooperate with a  
31 court, grand jury, prosecutor, police officer or peace officer concern-  
32 ing the incident has been made by or on behalf of the defendant.

33 (h) A threat, express or implied, of the incarceration of a parent or  
34 guardian of the child witness, the removal of the child witness from the  
35 family or the dissolution of the family of the child witness if the  
36 child witness were to report the incident to any person or communicate  
37 information to or cooperate with a court, grand jury, prosecutor, police  
38 officer or peace officer concerning the incident has been made by or on  
39 behalf of the defendant.

40 (i) A witness other than the child witness has received a threat of  
41 physical violence directed at such witness or to a third person by or on  
42 behalf of the defendant.

43 (j) The defendant, at the time of the inquiry, (i) is living in the  
44 same household with the child witness, (ii) has ready access to the  
45 child witness or (iii) is providing substantial financial support for  
46 the child witness.

47 (k) The child witness has previously been the victim of an offense  
48 defined in article one hundred thirty of the penal law or incest as  
49 defined in section 255.25, 255.26 or 255.27 of such law.

50 (l) According to expert testimony, the child witness would be partic-  
51 ularly [~~susceptible~~] susceptible to psychological harm if required to  
52 testify in open court or in the physical presence of the defendant.

53 11. Irrespective of whether a motion was made pursuant to subdivision  
54 one of this section, the court, at the request of either party or on its  
55 own motion, may decide that a child witness may be vulnerable based on  
56 its own observations that a child witness who has been called to testify

1 at a criminal proceeding is suffering severe mental or emotional harm  
2 and therefore is physically or mentally unable to testify or to continue  
3 to testify in open court or in the physical presence of the defendant  
4 and that the use of live, two-way closed-circuit television is necessary  
5 to enable the child witness to testify. If the court so decides, it must  
6 conduct the same hearing that subdivision [~~five~~] six of this section  
7 requires when a motion is made pursuant to subdivision one of this  
8 section, and it must make findings of fact pursuant to subdivisions  
9 [~~nine~~] ten and [~~eleven~~] twelve of this section, before determining that  
10 the child witness is vulnerable.

11 12. In deciding whether a child witness is vulnerable, the court shall  
12 make findings of fact which reflect the causal relationship between the  
13 existence of any one or more of the factors set forth in subdivision  
14 [~~nine~~] ten of this section or other relevant factors which the court  
15 finds are established and the determination that the child witness is  
16 vulnerable. If the court is satisfied that the child witness is vulner-  
17 able and that, under the facts and circumstances of the particular case,  
18 the defendant's constitutional rights to an impartial jury or of  
19 confrontation will not be impaired, it may enter an order granting the  
20 application for the use of live, two-way closed-circuit television.

21 13. When the court has determined that a child witness is a vulnerable  
22 child witness, it shall make a specific finding as to whether placing  
23 the defendant and the child witness in the same room during the testimo-  
24 ny of the child witness will contribute to the likelihood that the child  
25 witness will suffer severe mental or emotional harm. If the court finds  
26 that placing the defendant and the child witness in the same room during  
27 the testimony of the child witness will contribute to the likelihood  
28 that the child witness will suffer severe mental or emotional harm, the  
29 order entered pursuant to subdivision [~~eleven~~] twelve of this section  
30 shall direct that the defendant remain in the courtroom during the  
31 testimony of the vulnerable child witness.

32 § 5. Subdivision 5 of section 200.95 of the criminal procedure law, as  
33 added by chapter 558 of the laws of 1982, is amended to read as follows:

34 5. Court ordered bill of particulars. Where a prosecutor has timely  
35 served a written refusal pursuant to subdivision four of this section  
36 and upon motion, made in writing, of a defendant, who has made a request  
37 for a bill of particulars and whose request has not been complied with  
38 in whole or in part, the court must, to the extent a protective order is  
39 not warranted, order the prosecutor to comply with the request if it is  
40 satisfied that the items of factual information requested are authorized  
41 to be included in a bill of particulars, and that such information is  
42 necessary to enable the defendant adequately to prepare or conduct his  
43 defense and, if the request was untimely, a finding of good cause for  
44 the delay. Where a prosecutor has not timely served a written refusal  
45 pursuant to subdivision four of this section the court must, unless it  
46 is satisfied that the people have shown good cause why such an order  
47 should not be issued, issue an order requiring the prosecutor to comply  
48 or providing for any other order authorized by [~~subdivision one of~~  
49 ~~section 240.70~~] section 245.80 of this part.

50 § 6. Paragraph (c) of subdivision 1 of section 255.10 of the criminal  
51 procedure law, as added by chapter 763 of the laws of 1974, is amended  
52 to read as follows:

53 (c) granting discovery pursuant to article [~~240~~] 245; or

54 § 7. Subdivision 1 of section 255.20 of the Criminal procedure law, as  
55 amended by chapter 369 of the laws of 1982, is amended to read as  
56 follows:

1 1. Except as otherwise expressly provided by law, whether the defend-  
2 ant is represented by counsel or elects to proceed pro se, all pre-trial  
3 motions shall be served or filed within forty-five days after arraign-  
4 ment and before commencement of trial, or within such additional time as  
5 the court may fix upon application of the defendant made prior to entry  
6 of judgment. In an action in which either (a) material or information  
7 has been disclosed pursuant to paragraph (m) or (n) of subdivision one  
8 of section 245.20, (b) an eavesdropping warrant and application have  
9 been furnished pursuant to section 700.70, or (c) a notice of intention  
10 to introduce evidence has been served pursuant to section 710.30, such  
11 period shall be extended until forty-five days after the last date of  
12 such service. If the defendant is not represented by counsel and has  
13 requested an adjournment to obtain counsel or to have counsel assigned,  
14 such forty-five day period shall commence on the date counsel initially  
15 appears on defendant's behalf.

16 § 8. Section 340.30 of the criminal procedure law is amended to read  
17 as follows:

18 § 340.30 Pre-trial discovery and notices of defenses.

19 The provisions of article two hundred [~~forty~~] forty-five, concerning  
20 pre-trial discovery by a defendant under indictment in a superior court,  
21 and article two hundred fifty, concerning pre-trial notice to the people  
22 by a defendant under indictment in a superior court who intends to  
23 advance a trial defense of mental disease or defect or of alibi, apply  
24 to a prosecution of an information in a local criminal court.

25 § 9. Subdivision 14 of section 400.27 of the criminal procedure law,  
26 as added by chapter 1 of the laws of 1995, is amended to read as  
27 follows:

28 14. (a) At a reasonable time prior to the sentencing proceeding or a  
29 mental retardation hearing:

30 [~~(i)~~] the prosecutor shall, unless previously disclosed and subject to  
31 a protective order, make available to the defendant the statements and  
32 information specified in subdivision one of section [~~240.45~~] 245.20 of  
33 this part and make available for inspection, photographing, copying or  
34 testing the property specified in subdivision one of section [~~240.20,~~  
35 ~~and~~

36 ~~(ii) the defendant shall, unless previously disclosed and subject to a~~  
37 ~~protective order, make available to the prosecution the statements and~~  
38 ~~information specified in subdivision two of section 240.45 and make~~  
39 ~~available for inspection, photographing, copying or testing, subject to~~  
40 ~~constitutional limitations, the reports, documents and other property~~  
41 ~~specified in subdivision one of section 240.30] 245.20 of this part.~~

42 (b) Where a party refuses to make disclosure pursuant to this section,  
43 the provisions of section [~~240.35, subdivision one of section 240.40 and~~  
44 ~~section 240.50~~] 245.70, 245.75 and/or 245.80 of this part shall apply.

45 (c) If, after complying with the provisions of this section or an  
46 order pursuant thereto, a party finds either before or during a sentenc-  
47 ing proceeding or mental retardation hearing, additional material  
48 subject to discovery or covered by court order, the party shall promptly  
49 make disclosure or apply for a protective order.

50 (d) If the court finds that a party has failed to comply with any of  
51 the provisions of this section, the court may [~~enter~~] employ any of the  
52 [~~orders~~] remedies or sanctions specified in subdivision one of section  
53 [~~240.70~~] 245.80 of this part.

54 § 10. The opening paragraph of paragraph (b) of subdivision 1 of  
55 section 440.30 of the criminal procedure law, as added by chapter 19 of  
56 the laws of 2012, is amended to read as follows:



1 In conjunction with the filing or consideration of a motion to vacate  
2 a judgment pursuant to section 440.10 of this article by a defendant  
3 convicted after a trial, in cases where the court has ordered an eviden-  
4 tiary hearing upon such motion, the court may order that the people  
5 produce or make available for inspection property[~~, as defined in subdi-~~  
6 ~~vision three of section 240.10 of this part,~~] in its possession, custo-  
7 dy, or control that was secured in connection with the investigation or  
8 prosecution of the defendant upon credible allegations by the defendant  
9 and a finding by the court that such property, if obtained, would be  
10 probative to the determination of defendant's actual innocence, and that  
11 the request is reasonable. The court shall deny or limit such a request  
12 upon a finding that such a request, if granted, would threaten the  
13 integrity or chain of custody of property or the integrity of the proc-  
14 esses or functions of a laboratory conducting DNA testing, pose a risk  
15 of harm, intimidation, embarrassment, reprisal, or other substantially  
16 negative consequences to any person, undermine the proper functions of  
17 law enforcement including the confidentiality of informants, or on the  
18 basis of any other factor identified by the court in the interests of  
19 justice or public safety. The court shall further ensure that any prop-  
20 erty produced pursuant to this paragraph is subject to a protective  
21 order, where appropriate. The court shall deny any request made pursuant  
22 to this paragraph where:

23 § 11. Subdivision 10 of section 450.10 of the penal law, as added by  
24 chapter 795 of the laws of 1984, is amended to read as follows:

25 10. Where there has been a failure to comply with the provisions of  
26 this section, and where the district attorney does not demonstrate to  
27 the satisfaction of the court that such failure has not caused the  
28 defendant prejudice, the court shall instruct the jury that it may  
29 consider such failure in determining the weight to be given such  
30 evidence and may also impose any other sanction set forth in subdivision  
31 one of section [~~240.70~~] 245.80 of the criminal procedure law; provided,  
32 however, that unless the defendant has convinced the court that such  
33 failure has caused him undue prejudice, the court shall not preclude the  
34 district attorney from introducing into evidence the property, photo-  
35 graphs, photocopies, or other reproductions of the property or, where  
36 appropriate, testimony concerning its value and condition, where such  
37 evidence is otherwise properly authenticated and admissible under the  
38 rules of evidence. Failure to comply with any one or more of the  
39 provisions of this section shall not for that reason alone be grounds  
40 for dismissal of the accusatory instrument.

41 § 12. Section 460.80 of the penal law, as added by chapter 516 of the  
42 laws of 1986, is amended to read as follows:

43 § 460.80 Court ordered disclosure.

44 Notwithstanding the provisions of article two hundred [~~forty~~] forty-  
45 five of the criminal procedure law, when forfeiture is sought pursuant  
46 to section 460.30 of this [~~chapter~~] article, the court may order discov-  
47 ery of any property not otherwise disclosed which is material and  
48 reasonably necessary for preparation by the defendant with respect to  
49 the forfeiture proceeding pursuant to such section. The court may issue  
50 a protective order denying, limiting, conditioning, delaying or regulat-  
51 ing such discovery where a danger to the integrity of physical evidence  
52 or a substantial risk of physical harm, intimidation, economic reprisal,  
53 bribery or unjustified annoyance or embarrassment to any person or an  
54 adverse effect upon the legitimate needs of law enforcement, including  
55 the protection of the confidentiality of informants, or any other factor  
56 or set of factors outweighs the usefulness of the discovery.

1 § 13. Subdivision 5 of section 480.10 of the penal law, as added by  
2 chapter 655 of the laws of 1990, is amended to read as follows:

3 5. In addition to information required to be disclosed pursuant to  
4 article two hundred [~~forty~~] forty-five of the criminal procedure law,  
5 when forfeiture is sought pursuant to this article, and following the  
6 defendant's arraignment on the special forfeiture information, the court  
7 shall order discovery of any information not otherwise disclosed which  
8 is material and reasonably necessary for preparation by the defendant  
9 with respect to a forfeiture proceeding brought pursuant to this arti-  
10 cle. Such material shall include those portions of the grand jury  
11 minutes and such other information which pertain solely to the special  
12 forfeiture information and shall not include information which pertains  
13 to the criminal charges. Upon application of the prosecutor, the court  
14 may issue a protective order pursuant to section [~~240.40~~] 245.70 of the  
15 criminal procedure law with respect to any information required to be  
16 disclosed pursuant to this subdivision.

17 § 14. This act shall take effect on the ninetieth day after it shall  
18 have become a law; provided, however, the amendments to section 65.20 of  
19 the criminal procedure law made by section four of this act shall not  
20 affect the repeal of such section and shall be deemed repealed there-  
21 with.