

# STATE OF NEW YORK

S. 1716

A. 1431

2019-2020 Regular Sessions

## SENATE - ASSEMBLY

January 15, 2019

IN SENATE -- Introduced by Sens. BAILEY, BENJAMIN, BIAGGI, COMRIE, GIANARIS, HOYLMAN, KAVANAGH, KRUEGER, MONTGOMERY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SAVINO, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

IN ASSEMBLY -- Introduced by M. of A. LENTOL, TAYLOR, PERRY, ORTIZ, JEAN-PIERRE, WEPRIN, DICKENS, JAFFEE, BURKE, CRUZ, FALL, FRONTUS, JACOBSON, RAYNOR, REYES -- read once and referred 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 Article 240 of the criminal procedure law is REPEALED.  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:  
4 ARTICLE 245  
5 DISCOVERY  
6 Section 245.05 First court appearance.  
7 245.10 Timing of discovery.  
8 245.20 Automatic discovery.  
9 245.25 Disclosure prior to certain guilty pleas.  
10 245.30 Court orders for preservation, access or discovery.  
11 245.35 Court ordered procedures to facilitate compliance.  
12 245.40 Non-testimonial evidence from the defendant.  
13 245.45 DNA comparison order.  
14 245.50 Certificates of compliance; readiness for trial.  
15 245.55 Flow of information.  
16 245.60 Continuing duty to disclose.

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

LBD05655-05-9

1           245.65 Work product.

2           245.70 Protective orders.

3           245.75 Waiver of discovery by defendant.

4           245.80 Remedies or sanctions for non-compliance.

5           245.85 Admissibility of discovery.

6           245.90 Depositions.

7   § 245.05 First court appearance.

8       Certain items in prosecution's possession. At the defendant's first  
9 court appearance after commencement of a criminal action, the prose-  
10 cution shall disclose to the defendant any (a) police or other law  
11 enforcement agency reports and written witness statements relating to  
12 the criminal action or proceeding against the defendant that are within  
13 the prosecution's possession at that time; (b) electronic recordings  
14 relating to the criminal action or proceeding against the defendant that  
15 are within the prosecution's possession at that time, in accordance with  
16 paragraph (g) of subdivision one of section 245.20 of this article; and  
17 (c) exculpatory information known to the prosecution at that time. If in  
18 the exercise of reasonable diligence and due to the limited availability  
19 of resources for downloading or copying recordings, a copy of an elec-  
20 tronic recording discoverable under this section is unavailable at the  
21 first appearance, a copy shall be made and disclosed to the defendant as  
22 soon as practicable but not later than five calendar days after the  
23 first appearance. Portions of materials under this section claimed to be  
24 non-discoverable may be withheld pending a prompt request by the prose-  
25 cution for a determination and ruling of the court under section 245.70  
26 of this article; but the discoverable portions of such materials shall  
27 be disclosed to the extent practicable.

28   § 245.10 Timing of discovery.

29       1. Prosecution's performance of obligations. (a) The prosecution shall  
30 perform its initial discovery obligations under subdivision one of  
31 section 245.20 of this article as soon as practicable but not later  
32 than fifteen calendar days after the defendant's arraignment on an  
33 indictment, superior court information, prosecutor's information, infor-  
34 mation, or simplified information. Portions of materials claimed to be  
35 non-discoverable may be withheld pending a determination and ruling of  
36 the court under section 245.70 of this article; but the defendant shall  
37 be notified in writing that information has not been disclosed under a  
38 particular subdivision of this section, and the discoverable portions of  
39 such materials shall be disclosed to the extent practicable. When the  
40 discoverable materials are exceptionally voluminous, the time period in  
41 this paragraph may be stayed by up to an additional thirty calendar days  
42 without need for a motion pursuant to subdivision two of section 245.70  
43 of this article.

44       (b) The prosecution shall perform its supplemental discovery obli-  
45 gations under subdivision three of section 245.20 of this article as  
46 soon as practicable but not later than fifteen calendar days prior to  
47 the first scheduled trial date.

48       (c) The prosecution shall disclose materials under paragraph (a) of  
49 subdivision one of section 245.20 of this article to any defendant who  
50 has been arraigned in a local criminal court upon a currently undisposed  
51 of felony complaint charging an offense which is a subject of a prospec-  
52 tive or pending grand jury proceeding, no later than forty-eight hours  
53 before the time scheduled for the defendant to testify at a grand jury  
54 proceeding pursuant to subdivision five of section 190.50 of this part.

55       2. Defendant's performance of obligations. The defendant shall perform  
56 his or her discovery obligations under subdivision four of section

1 245.20 of this article not later than thirty calendar days after being  
2 served with the prosecution's certificate of compliance pursuant to  
3 subdivision one of section 245.50 of this article, except that portions  
4 of materials claimed to be non-discoverable may be withheld pending a  
5 determination and ruling of the court under section 245.70 of this arti-  
6 cle; but the prosecution must be notified in writing that information  
7 has not been disclosed under a particular section.

8 § 245.20 Automatic discovery.

9 1. Initial discovery for the defendant. The prosecution shall disclose  
10 to the defendant, and permit the defendant to discover, inspect, copy,  
11 photograph and test, all items and information that relate to the  
12 subject matter of the case and are in the possession, custody or control  
13 of the prosecution or persons under the prosecution's direction or  
14 control, including but not limited to:

15 (a) All written or recorded statements, and the substance of all oral  
16 statements, made by the defendant or a co-defendant to a public servant  
17 engaged in law enforcement activity or to a person then acting under his  
18 or her direction or in cooperation with him or her.

19 (b) All transcripts of the testimony of a person who has testified  
20 before a grand jury, including but not limited to the defendant or a  
21 co-defendant. If in the exercise of reasonable diligence, and due to the  
22 limited availability of transcription resources, a transcript is  
23 unavailable for disclosure within the time period specified in subdivi-  
24 sion one of section 245.10 of this article, such time period may be  
25 stayed by up to an additional thirty calendar days without need for a  
26 motion pursuant to subdivision two of section 245.70 of this article;  
27 except that such disclosure shall be made as soon as practicable and not  
28 later than thirty calendar days before the first scheduled trial date,  
29 unless an order is obtained pursuant to section 245.70 of this article.  
30 When the court is required to review grand jury transcripts, the prose-  
31 cution shall disclose such transcripts to the court expeditiously upon  
32 receipt by the prosecutor, notwithstanding the otherwise-applicable time  
33 periods for disclosure in this article.

34 (c) The names of, and addresses or adequate alternative contact infor-  
35 mation for, all persons other than law enforcement personnel whom the  
36 prosecutor knows to have evidence or information relevant to any offense  
37 charged or to any potential defense thereto, including a designation by  
38 the prosecutor as to which of those persons may be called as witnesses.  
39 Information under this subdivision relating to a confidential informant  
40 may be withheld, and redacted from discovery materials, without need for  
41 a motion pursuant to section 245.70 of this article; but the prosecution  
42 shall notify the defendant in writing that such information has not been  
43 disclosed, unless the court rules otherwise for good cause shown.

44 (d) The name and work affiliation of all law enforcement personnel  
45 whom the prosecutor knows to have evidence or information relevant to  
46 any offense charged or to any potential defense thereto, including a  
47 designation by the prosecutor as to which of those persons may be called  
48 as witnesses. Information under this subdivision relating to undercover  
49 personnel may be withheld, and redacted from discovery materials, with-  
50 out need for a motion pursuant to section 245.70 of this article; but  
51 the prosecution shall notify the defendant in writing that such informa-  
52 tion has not been disclosed, unless the court rules otherwise for good  
53 cause shown.

54 (e) All statements, written or recorded or summarized in any writing  
55 or recording, made by persons who have evidence or information relevant  
56 to any offense charged or to any potential defense thereto, including

1 all police reports, notes of police and other investigators, and law  
2 enforcement agency reports. This provision also includes statements,  
3 written or recorded or summarized in any writing or recording, by  
4 persons to be called as witnesses at pre-trial hearings.

5 (f) Expert opinion evidence, including the name, business address,  
6 current curriculum vitae, a list of publications, and all proficiency  
7 tests and results administered or taken in the current employment or  
8 within the past ten years, whichever is longer, of each expert witness  
9 whom the prosecutor intends to call as a witness at trial or a pre-trial  
10 hearing, and all reports prepared by the expert that pertain to the  
11 case, or if no report is prepared, a written statement of the facts and  
12 opinions to which the expert is expected to testify and a summary of the  
13 grounds for each opinion. This paragraph does not alter or in any way  
14 affect the procedures, obligations or rights set forth in section 250.10  
15 of this title. If in the exercise of reasonable diligence this informa-  
16 tion is unavailable for disclosure within the time period specified in  
17 subdivision one of section 245.10 of this article, that period shall be  
18 stayed without need for a motion pursuant to subdivision two of section  
19 245.70 of this article; except that the prosecution shall notify the  
20 defendant in writing that such information has not been disclosed, and  
21 such disclosure shall be made as soon as practicable and not later than  
22 sixty calendar days before the first scheduled trial date, unless an  
23 order is obtained pursuant to section 245.70 of this article. When the  
24 prosecution's expert witness is being called in response to disclosure  
25 of an expert witness by the defendant, the court shall alter a scheduled  
26 trial date, if necessary, to allow the prosecution thirty calendar days  
27 to make the disclosure and the defendant thirty calendar days to prepare  
28 and respond to the new materials.

29 (g) All tapes or other electronic recordings, including all electronic  
30 recordings of 911 telephone calls made or received in connection with  
31 the alleged criminal incident, and a designation by the prosecutor as to  
32 which of the recordings under this paragraph the prosecution intends to  
33 introduce at trial or a pre-trial hearing. If the discoverable materials  
34 under this paragraph exceed ten hours in total length, the prosecution  
35 may disclose only the recordings that it intends to introduce at trial  
36 or a pre-trial hearing, along with a list of the source and approximate  
37 quantity of other recordings and their general subject matter if known,  
38 and the defendant shall have the right upon request to obtain recordings  
39 not previously disclosed. The prosecution shall disclose the requested  
40 materials as soon as practicable and not less than fifteen calendar days  
41 after the defendant's request, unless an order is obtained pursuant to  
42 section 245.70 of this article.

43 (h) All photographs and drawings made or completed by a public servant  
44 engaged in law enforcement activity, or which were made by a person  
45 whom the prosecutor intends to call as a witness at trial or a pre-trial  
46 hearing, or which relate to the subject matter of the case.

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

50 (j) All reports, documents, records, data, calculations or writings,  
51 including but not limited to preliminary tests and screening results  
52 and bench notes and analyses performed or stored electronically,  
53 concerning physical or mental examinations, or scientific tests or  
54 experiments or comparisons, relating to the criminal action or proceed-  
55 ing which were made by or at the request or direction of a public serv-  
56 ant engaged in law enforcement activity, or which were made by a person

1 whom the prosecutor intends to call as a witness at trial or a pre-trial  
2 hearing, or which the prosecution intends to introduce at trial or a  
3 pre-trial hearing. Information under this paragraph also includes, but  
4 is not limited to, laboratory information management system records  
5 relating to such materials, any preliminary or final findings of non-  
6 conformance with accreditation, industry or governmental standards or  
7 laboratory protocols, and any conflicting analyses or results by labora-  
8 tory personnel regardless of the laboratory's final analysis or results.  
9 If the prosecution submitted one or more items for testing to, or  
10 received results from, a forensic science laboratory or similar entity  
11 not under the prosecution's direction or control, the court on motion of  
12 a party shall issue subpoenas or orders to such laboratory or entity to  
13 cause materials under this paragraph to be made available for disclo-  
14 sure.

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

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

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

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

52 (o) All tangible property that relates to the subject matter of the  
53 case, along with a designation of which items the prosecution intends to  
54 introduce in its case-in-chief at trial or a pre-trial hearing. If in  
55 the exercise of reasonable diligence the prosecutor has not formed an  
56 intention within the time period specified in subdivision one of section

1 245.10 of this article that an item under this subdivision will be  
2 introduced at trial or a pre-trial hearing, the prosecution shall notify  
3 the defendant in writing, and the time period in which to designate  
4 items as exhibits shall be stayed without need for a motion pursuant to  
5 subdivision two of section 245.70 of this article; but the disclosure  
6 shall be made as soon as practicable and subject to the continuing duty  
7 to disclose in section 245.60 of this article.

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

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

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

17 (s) In any prosecution alleging a violation of the vehicle and traffic  
18 law, where the defendant is charged by indictment, superior court infor-  
19 mation, prosecutor's information, information, or simplified informa-  
20 tion, all records of calibration, certification, inspection, repair or  
21 maintenance of machines and instruments utilized to perform any scien-  
22 tific tests and experiments, including but not limited to any test of a  
23 person's breath, blood, urine or saliva, for the period of six months  
24 prior and six months after such test was conducted, including the  
25 records of gas chromatography related to the certification of all refer-  
26 ence standards and the certification certificate, if any, held by the  
27 operator of the machine or instrument.

28 (t) In any prosecution alleging a violation of section 156.05 or  
29 156.10 of the penal law, the time, place and manner such violation  
30 occurred.

31 (u) (i) A copy of all electronically created or stored information  
32 seized or obtained by or on behalf of law enforcement from: (A) the  
33 defendant as described in subparagraph (ii) of this paragraph; or (B) a  
34 source other than the defendant which relates to the subject matter of  
35 the case.

36 (ii) If the electronically created or stored information originates  
37 from a device, account, or other electronically stored source that the  
38 prosecution believes the defendant owned, maintained, or had lawful  
39 access to and is within the possession, custody or control of the prose-  
40 cution or persons under the prosecution's direction or control, the  
41 prosecution shall provide a complete copy of the electronically created  
42 or stored information from the device or account or other source, and a  
43 designation by the prosecutor as to which portions it intends to intro-  
44 duce.

45 (iii) If possession of such electronically created or stored informa-  
46 tion would be a crime under New York state or federal law, the prose-  
47 cution shall make those portions of the electronically created or stored  
48 information that are not criminal to possess available as specified  
49 under this paragraph and shall afford counsel for the defendant access  
50 to inspect contraband portions at a supervised location that provides  
51 regular and reasonable hours for such access, such as a prosecutor's  
52 office, police station, or court.

53 (iv) This paragraph shall not be construed to alter or in any way  
54 affect the right to be free from unreasonable searches and seizures or  
55 such other rights a suspect or defendant may derive from the state  
56 constitution or the United States constitution. If in the exercise of

1 reasonable diligence the information under this paragraph is not avail-  
2 able for disclosure within the time period required by subdivision one  
3 of section 245.10 of this article, that period shall be stayed without  
4 need for a motion pursuant to subdivision two of section 245.70 of this  
5 article, except that the prosecution shall notify the defendant in writ-  
6 ing that such information has not been disclosed, and such disclosure  
7 shall be made as soon as practicable and not later than forty-five  
8 calendar days before the first scheduled trial date, unless an order is  
9 obtained pursuant to section 245.70 of this article.

10 2. Duties of the prosecution. The prosecutor shall make a diligent,  
11 good faith effort to ascertain the existence of material or information  
12 discoverable under subdivision one of this section and to cause such  
13 material or information to be made available for discovery where it  
14 exists but is not within the prosecutor's possession, custody or  
15 control; provided that the prosecutor shall not be required to obtain by  
16 subpoena duces tecum material or information which the defendant may  
17 thereby obtain. For purposes of subdivision one of this section, all  
18 items and information related to the prosecution of a charge in the  
19 possession of any New York state or local police or law enforcement  
20 agency, and any information in the possession of a laboratory having  
21 contact with evidence related to the prosecution of a charge, shall be  
22 deemed to be in the possession of the prosecution. This subdivision  
23 shall not require the prosecutor to ascertain the existence of witnesses  
24 not known to the police or another law enforcement agency, or the writ-  
25 ten or recorded statements thereof, under paragraph (c) or (e) of subdivi-  
26 vision one of this section.

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

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

47 (b) Disclosure of the name, address, birth date, and all statements,  
48 written or recorded or summarized in any writing or recording, of a  
49 person whom the defendant intends to call as a witness for the sole  
50 purpose of impeaching a prosecution witness is not required until after  
51 the prosecution witness has testified at trial.

52 (c) If in the exercise of reasonable diligence the reciprocally  
53 discoverable information under paragraph (f) or (o) of subdivision one  
54 of this section is unavailable for disclosure within the time period  
55 specified in subdivision two of section 245.10 of this article, such  
56 time period shall be stayed without need for a motion pursuant to subdivi-

1 vision two of section 245.70 of this article; but the disclosure shall  
2 be made as soon as practicable and subject to the continuing duty to  
3 disclose in section 245.60 of this article.

4 5. Stay of automatic discovery; remedies and sanctions. Sections  
5 245.05 and 245.10 and subdivisions one, two, three and four of this  
6 section shall have the force and effect of a court order, and failure to  
7 provide discovery pursuant to such section or subdivision may result in  
8 application of any remedies or sanctions permitted for non-compliance  
9 with a court order under section 245.80 of this article. However, if in  
10 the judgment of either party good cause exists for declining to make any  
11 of the disclosures set forth above, such party may move for a protective  
12 order pursuant to section 245.70 of this article and production of the  
13 item shall be stayed pending a ruling by the court. The opposing party  
14 shall be notified in writing that information has not been disclosed  
15 under a particular section. When some parts of material or information  
16 are discoverable but in the judgment of a party good cause exists for  
17 declining to disclose other parts, the discoverable parts shall be  
18 disclosed and the disclosing party shall give notice in writing that  
19 non-discoverable parts have been withheld.

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

22 7. Presumption of openness. There shall be a presumption in favor of  
23 disclosure when interpreting sections 245.05, 245.10 and 245.25, and  
24 subdivision one of section 245.20, of this article.

25 § 245.25 Disclosure prior to certain guilty pleas.

26 1. Pre-indictment guilty pleas. Upon a felony complaint, where the  
27 prosecution has made a pre-indictment guilty plea offer requiring a plea  
28 to a crime, the prosecutor must disclose to the defense, and permit the  
29 defense to discover, inspect, copy, photograph and test, all items and  
30 information that would be discoverable prior to trial under subdivision  
31 one of section 245.20 of this article and are in the possession, custody  
32 or control of the prosecution. The prosecution shall disclose the  
33 discoverable items and information not less than three calendar days  
34 prior to the expiration date of any guilty plea offer by the prosecution  
35 or any deadline imposed by the court for acceptance of the guilty plea  
36 offer. If the prosecution does not comply with the requirements of this  
37 subdivision, then, notwithstanding any other provision of law, such  
38 offer shall be deemed available to the defendant until three calendar  
39 days after the prosecution has complied, absent extraordinary circum-  
40 stances involving new adverse information bearing on the defendant  
41 occurring or discovered in the interim that, after appropriate notice  
42 and an opportunity for a hearing, are shown by the prosecution and found  
43 by the court. The court may take other additional appropriate action as  
44 necessary to address the non-compliance. The rights under this subdivi-  
45 sion do not apply to items or information that are the subject of a  
46 protective order under section 245.70 of this article; but if such  
47 information tends to be exculpatory, the court shall reconsider the  
48 protective order. A defendant may waive his or her rights under this  
49 subdivision; but a guilty plea offer may not be conditioned on such  
50 waiver.

51 2. Other guilty pleas. Upon an indictment, superior court information,  
52 prosecutor's information, information, simplified information, or  
53 misdemeanor complaint, where the prosecution has made a guilty plea  
54 offer requiring a plea to a crime, the prosecutor must disclose to the  
55 defense, and permit the defense to discover, inspect, copy, photograph  
56 and test, all items and information that would be discoverable prior to



1 trial under subdivision one of section 245.20 of this article and are  
2 within the possession, custody or control of the prosecution. The prose-  
3 cution shall disclose the discoverable items and information not less  
4 than seven calendar days prior to the expiration date of any guilty plea  
5 offer by the prosecution or any deadline imposed by the court for  
6 acceptance of the guilty plea offer. If the prosecution does not comply  
7 with the requirements of this subdivision, then, notwithstanding any  
8 other provision of law, such offer shall be deemed available to the  
9 defendant until seven calendar days after the prosecution has complied,  
10 absent extraordinary circumstances involving new adverse information  
11 bearing on the defendant occurring or discovered in the interim that,  
12 after appropriate notice and an opportunity for a hearing, are shown by  
13 the prosecution and found by the court. The court may take other addi-  
14 tional appropriate action as necessary to address the non-compliance.  
15 The rights under this subdivision do not apply to items or information  
16 that are the subject of a protective order under section 245.70 of this  
17 article; but if such information tends to be exculpatory, the court  
18 shall reconsider the protective order. A defendant may waive his or her  
19 rights under this subdivision; but a guilty plea offer may not be condi-  
20 tioned on such waiver.

21 § 245.30 Court orders for preservation, access or discovery.

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

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

45 3. Discretionary discovery by order of the court. The court in its  
46 discretion may, upon a showing by the defendant that the request is  
47 reasonable and that the defendant is unable without undue hardship to  
48 obtain the substantial equivalent by other means, order the prosecution,  
49 or any individual, agency or other entity subject to the jurisdiction of  
50 the court, to make available for disclosure to the defendant any materi-  
51 al or information which potentially relates to the subject matter of the  
52 case and is reasonably likely to be material.

53 4. Procedure. A motion under this section must be on notice to any  
54 individual, agency or entity affected by the order. The court may, upon  
55 request of any individual, agency or entity affected by the order, modi-  
56 fy or vacate the order if compliance would be unreasonable or will

1 create significant hardship to such individual, agency or entity. For  
2 good cause shown, the court may permit a party seeking or opposing a  
3 discretionary order of discovery under this subdivision, or another  
4 affected individual, agency or entity, to submit papers or, for good  
5 cause shown, testify on the record ex parte or in camera. For good cause  
6 shown, any such papers and a transcript of such testimony may be sealed;  
7 such papers and transcripts shall constitute a part of the record on  
8 appeal.

9 § 245.35 Court ordered procedures to facilitate compliance.

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

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

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

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

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

30 § 245.40 Non-testimonial evidence from the defendant.

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

38 (a) Appear in a lineup;

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

40 (c) Be fingerprinted;

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

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

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

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

48 2. Limitations. This section shall not be construed to alter or in any  
49 way affect the issuance of a similar court order, as may be authorized  
50 by law, before the filing of an accusatory instrument, consistent with  
51 such rights as the defendant may derive from the state constitution or  
52 the United States constitution. This section shall not be construed to  
53 alter or in any way affect the administration of a chemical test where  
54 otherwise authorized. An order pursuant to this section may be denied,  
55 limited or conditioned as provided in section 245.70 of this article.

56 § 245.45 DNA comparison order.

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

24 § 245.50 Certificates of compliance; readiness for trial.

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

42 2. By the defendant. When the defendant has provided all discovery  
43 required by subdivision four of section 245.20 of this article, except  
44 for any items or information that are the subject of an order pursuant  
45 to section 245.70 of this article, counsel for the defendant shall serve  
46 upon the prosecution and file with the court a certificate of compli-  
47 ance. The certificate shall state that, after exercising due diligence  
48 and making reasonable inquiries to ascertain the existence of material  
49 and information subject to discovery, counsel for the defendant has  
50 disclosed and made available all known material and information subject  
51 to discovery. It shall also identify the items provided. If additional  
52 discovery is subsequently provided prior to trial pursuant to section  
53 245.60 of this article, a supplemental certificate shall be served upon  
54 the prosecution and filed with the court identifying the additional  
55 material and information provided. No adverse consequence to the  
56 defendant or counsel for the defendant shall result from the filing of a

1 certificate of compliance in good faith; but the court may grant a reme-  
2 dy or sanction for a discovery violation as provided in section 245.80  
3 of this article.

4 3. Trial readiness. Notwithstanding the provisions of any other law,  
5 absent an individualized finding of exceptional circumstances by the  
6 court before which the charge is pending, the prosecution shall not be  
7 deemed ready for trial for purposes of section 30.30 of this chapter  
8 until it has filed a proper certificate pursuant to subdivision one of  
9 this section.

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 a requirement that defense counsel obtain a security clearance mandated  
23 by law or authorized government regulation, upon request by the prose-  
24 cution, each New York state and local law enforcement agency shall make  
25 available to the prosecution a complete copy of its complete records and  
26 files related to the investigation of the case or the prosecution of the  
27 defendant for compliance with this article.

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

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 had it known of  
56 it at the time of a previous discovery obligation or discovery order, it

1 shall expeditiously notify the other party and disclose the additional  
2 material and information as required for initial discovery under this  
3 article. This section also requires expeditious disclosure by the prose-  
4 cution of material or information that became relevant to the case or  
5 discoverable based on reciprocal discovery received from the defendant  
6 pursuant to 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 ri- zed 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 harassment to any person; a substantial  
50 risk of an adverse effect upon the legitimate needs of law enforcement,  
51 including the protection of the confidentiality of informants; danger to  
52 any person stemming from factors such as a defendant's substantiated  
53 affiliation with a gang engaged in criminal activity, prior history of  
54 interfering with witnesses, or threats or intimidating actions directed  
55 at potential witnesses; or other similar factors that also outweigh the  
56 usefulness 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 unsuccess-  
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 is shown for omitting service of the order to show cause on  
38 the opposing party. The lower court's order subject to review shall be  
39 stayed until the appellate justice renders a determination.

40 (c) The assignment of the individual appellate justice, and the mode  
41 of and procedure for the review, shall be determined by rules of the  
42 individual appellate courts. The appellate justice may consider any  
43 relevant and reliable information bearing on the issue, and may dispense  
44 with written briefs other than supporting and opposing materials previ-  
45 ously submitted to the lower court. The appellate justice may dispense  
46 with the issuance of a written opinion in rendering his or her decision,  
47 and when practicable shall render decision and order expeditiously. Such  
48 review, decision and order shall not affect the right of a defendant, in  
49 a subsequent appeal from a judgment of conviction, to claim as error the  
50 ruling 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, signed for the individual case by  
10 counsel for the defendant and filed with the court. Such a waiver does  
11 not alter or in any way affect the procedures, obligations or rights set  
12 forth in sections 250.10, 250.20 and 250.30 of this title, or otherwise  
13 established or required by law. The prosecution may not condition a  
14 guilty plea offer on the defense's execution of a waiver under this  
15 section.

16 § 245.80 Remedies or sanctions for non-compliance.

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

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

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

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

1 § 245.85 Admissibility of discovery.

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

6 § 245.90 Depositions.

7 1. At any time after arraignment on a felony complaint, an indictment  
8 or a superior court information charging a felony, upon service of a  
9 subpoena issued for purposes of this section by the court, the prosecu-  
10 tor or the attorney for the defendant in a manner otherwise consistent  
11 with section 610.20 of this chapter, either party may obtain the deposi-  
12 tion on oral examination of any person who: (a) at the time of one or  
13 more relevant events, was a police or law enforcement officer or other  
14 government employee and whose testimony would be relevant to the subject  
15 matter of the case provided, however, that the prosecution may not  
16 depose a defendant, and the defendant may not depose such an officer or  
17 employee with respect to a charge in which such officer or employee is  
18 the alleged victim; or (b) is an expert identified in discovery, or who  
19 worked on the case on behalf of the prosecution, or whom a party intends  
20 to call to testify.

21 2. Each officer, employee or expert may be deposed under this section  
22 only once in such case by a defendant or the prosecution, absent a court  
23 order permitting a successive deposition for good cause shown.

24 3. Deposition of a person under this section shall be taken in the  
25 county where the person lives or works, or in another location agreed to  
26 by the parties, or at a location designated by order of the judge or  
27 justice assigned to the case. The deposition of any person confined in a  
28 correctional facility or local correctional facility shall be taken  
29 where the person is confined, unless otherwise ordered by the court.

30 4. Counsel for all parties shall be permitted to be present at a depo-  
31 sition. The defendant and any co-defendant shall not be physically pres-  
32 ent at a deposition under this section except by agreement of the  
33 parties, or a court order granted on a showing of good cause by the  
34 defendant or any co-defendant. The party setting the deposition shall  
35 give reasonable notice of the deposition in writing to the witness to be  
36 deposed and to counsel for all parties and co-defendants. The attorneys  
37 for the defendant and any co-defendants shall seek to coordinate any  
38 depositions to avoid multiple depositions of a single witness; any party  
39 that asserts multiple depositions of a single witness are being sched-  
40 uled for a prohibited purpose may seek a protective order pursuant to  
41 section 245.70 of this article.

42 5. Either party may discover by deposition the facts and opinions to  
43 which such an expert is expected to testify. Unless manifest injustice  
44 would result, the court shall require that the party seeking discovery  
45 pay the expert a reasonable hourly fee for travel time and the time the  
46 expert is deposed.

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

49 3. An attorney for a defendant in a criminal action or proceeding, as  
50 an officer of a criminal court, may issue a subpoena of such court,  
51 subscribed by himself, for the attendance in such court of any witness  
52 whom the defendant is entitled to call in such action or proceeding. An  
53 attorney for a defendant may not issue a subpoena duces tecum of the  
54 court directed to any department, bureau or agency of the state or of a  
55 political subdivision thereof, or to any officer or representative ther-  
56 eof, unless the subpoena is indorsed by the court and provides at least



1 three days for the production of the requested materials. In the case of  
2 an emergency, the court may by order dispense with the three-day  
3 production period. [~~Such a subpoena duces tecum may be issued in behalf~~  
4 ~~of a defendant upon order of a court pursuant to the rules applicable to~~  
5 ~~civil cases as provided in section twenty three hundred seven of the~~  
6 ~~civil practice law and rules.~~]

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

11 § 4. Subdivision 9 of section 65.20 of the criminal procedure law, as  
12 added by chapter 505 of the laws of 1985 and as renumbered by chapter  
13 548 of the laws of 2007, is amended to read as follows:

14 9. (a) Prior to the commencement of the hearing conducted pursuant to  
15 subdivision [~~five~~] six of this section, the district attorney shall,  
16 subject to a protective order, comply with the provisions of subdivision  
17 one of section [~~240.45~~] 245.20 of this chapter as they concern any  
18 witness whom the district attorney intends to call at the hearing and  
19 the child witness.

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

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

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

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

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

47 § 7. Subdivision 1 of section 255.20 of the criminal procedure law, as  
48 amended by chapter 369 of the laws of 1982, is amended to read as  
49 follows:

50 1. Except as otherwise expressly provided by law, whether the defend-  
51 ant is represented by counsel or elects to proceed pro se, all pre-trial  
52 motions shall be served or filed within forty-five days after arraign-  
53 ment and before commencement of trial, or within such additional time as  
54 the court may fix upon application of the defendant made prior to entry  
55 of judgment. In an action in which either (a) material or information  
56 has been disclosed pursuant to paragraph (m) or (n) of subdivision one

1 of section 245.20 of this title, (b) an eavesdropping warrant and appli-  
2 cation have been furnished pursuant to section 700.70 of this chapter,  
3 or (c) a notice of intention to introduce evidence has been served  
4 pursuant to section 710.30 of this chapter, such period shall be  
5 extended until forty-five days after the last date of such service. If  
6 the defendant is not represented by counsel and has requested an  
7 adjournment to obtain counsel or to have counsel assigned, such forty-  
8 five day period shall commence on the date counsel initially appears on  
9 defendant's behalf.

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

12 § 340.30 Pre-trial discovery and notices of defenses.

13 The provisions of article two hundred [~~forty~~] forty-five of this part,  
14 concerning pre-trial discovery by a defendant under indictment in a  
15 superior court, and article two hundred fifty of this part, concerning  
16 pre-trial notice to the people by a defendant under indictment in a  
17 superior court who intends to advance a trial defense of mental disease  
18 or defect or of alibi, apply to a prosecution of an information in a  
19 local criminal court.

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

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

25 (i) the prosecutor shall, unless previously disclosed and subject to a  
26 protective order, make available to the defendant the statements and  
27 information specified in subdivision one of section [~~240.45~~] 245.20 of  
28 this part and make available for inspection, photographing, copying or  
29 testing the property specified in subdivision one of section [~~240.20~~]  
30 245.20; and

31 (ii) the defendant shall, unless previously disclosed and subject to a  
32 protective order, make available to the prosecution the statements and  
33 information specified in subdivision [~~two~~] four of section [~~240.45~~]  
34 245.20 and make available for inspection, photographing, copying or  
35 testing, subject to constitutional limitations, the reports, documents  
36 and other property specified [~~in subdivision one of section 240.30~~] in  
37 section 245.20 of this part.

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

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

46 (d) If the court finds that a party has failed to comply with any of  
47 the provisions of this section, the court may [~~enter~~] employ any of the  
48 [~~orders~~] remedies or sanctions specified in subdivision one of section  
49 [~~240.70~~] 245.80 of this part.

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

53 In conjunction with the filing or consideration of a motion to vacate  
54 a judgment pursuant to section 440.10 of this article by a defendant  
55 convicted after a trial, in cases where the court has ordered an eviden-  
56 tiary hearing upon such motion, the court may order that the people

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

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

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

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

39 § 460.80 Court ordered disclosure.

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

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

55 5. In addition to information required to be disclosed pursuant to  
56 article two hundred [~~forty~~] forty-five of the criminal procedure law,

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

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