STATE OF NEW YORK

4883

2019-2020 Regular Sessions

IN ASSEMBLY

February 5, 2019

Introduced by M. of A. BLAKE, ARROYO, BARRON, COOK, D'URSO, HUNTER, HYNDMAN, LENTOL, MOSLEY, ORTIZ, QUART, RICHARDSON, SEAWRIGHT, VANEL -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the penal law, in relation to implementing automatic discovery; and to repeal certain provisions of the criminal procedure law relating thereto

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

Section 1. Article 240 of the criminal procedure law is REPEALED and a new article 240 is added to read as follows:

ARTICLE 240
AUTOMATIC DISCOVERY
Section 240.10 Automatic discovery; generally.
240.15 Automatic discovery; sanctions.
240.20 Automatic discovery; depositions.
240.25 Automatic discovery; notice and preservation of evidence.
240.30 Automatic discovery; remedies or sanctions for noncompliance.
240.35 Automatic discovery; discretionary discovery by order of the court.
240.40 Automatic discovery; order to grant access to premises.
240.45 Automatic discovery; certificate of compliance.
240.50 Automatic discovery; continuing duty.
240.55 Automatic discovery; work product.
240.60 Automatic discovery; protective orders.
240.65 Automatic discovery; amendment of discovery orders.
240.70 Automatic discovery; non-testimonial evidence from the defendant.
240.75 Automatic discovery; orders regarding DNA comparisons.

§ 240.10 Automatic discovery; generally.

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

LBD05623-01-9

1. Mandatory open file discovery. (a) Upon commencement of a criminal action, and without a motion by the defense, the prosecution shall disclose to the defense, and permit the defense to discover, inspect, copy or photograph, and test all items and information in the possession, custody or control of the prosecution, or persons under the prosecution's direction or control, which relate to the subject matter of the case or are otherwise relevant, including but not limited to:

(i) All statements, written or recorded or summarized in any writing or recording, and the substance of all oral statements, made by the defendant or a co-defendant;

(ii) All statements, written or recorded or summarized in any writing or recording, and the substance of all oral statements, made by persons whom the prosecutor knows to have evidence or information that relate to the subject matter of the case or are otherwise relevant;

(iii) All photographs, tangible objects, video and audio recordings, and electronic recordings and data, including but not limited to cell phone triangulation data, pen registry and wire tapping data, that relate to the subject matter of the case or are otherwise relevant; with respect to tangible objects obtained from, or allegedly possessed by, the defendant or a co-defendant, the prosecution shall provide a summary indicating whether the object was physically or constructively possessed by the defendant, whether the object was recovered during a search or seizure by a public servant or an agent thereof, whether the prosecution intends to prove the object was recovered by a public servant or agent thereof after being abandoned by the defendant, whether the prosecution intends to prove the defendant's possession of the object by means of a statutory presumption of possession, and the location where the object was recovered;

(iv) Reports and records of physical or mental examinations of the defendant or the complaining witness or of scientific tests or experiments, including all data, calculations, or writings of any kind, including but not limited to, preliminary tests or screening results and bench notes;

(v) All exhibits and demonstrative evidence the prosecutor intends to introduce at a hearing or trial that relate to the subject matter of the case or are otherwise relevant;

(vi) The names, known aliases, addresses and birth dates of all persons, other than law enforcement personnel, whom the prosecutor knows to have evidence or information that relate to the subject matter of the case or are otherwise relevant, as well as a designation by the prosecutor as to which of those persons may be called as witnesses;

(vii) Any documentation and summary of prior complaints, indictments, convictions, dispositions, and findings of false testimony of all defendants and of any person the prosecutor has designated as a civilian witness who may be called at trial pursuant to subparagraph (vi) of this paragraph;

(viii) The name, rank, shield number and business address of all law enforcement personnel whom the prosecutor knows to have evidence or information that relate to the subject matter of the case or are otherwise relevant;

(ix) Any documentation and summary of impeachment material, including but not limited to: prior complaints, indictments, convictions, pending and closed investigation records, and instances where said person has been found incredible, of any person the prosecutor has designated as a law enforcement officer or agent thereof who participated in the inves-

tigation that relates to the subject matter of the case pursuant to subparagraph (vii) of this paragraph;

(x) All transcripts of the testimony of any person who has testified before any grand jury when the testimony relates to the subject matter of the case or is otherwise relevant;

(xi) A summary, pursuant to subdivision two of this section of all corporeal or non-corporeal or voice identification procedures, whether or not an identification was made, and all documents, photographs, and other materials relating thereto;

(xii) All facts, evidence, and information favorable to the defendant, including but not limited to information that tends to negate the defendant's guilt or that tends to mitigate the defendant's culpability as to a charged offense, or that tends to support a potential defense thereto, or that tends to support a motion to suppress evidence on constitutional or statutory grounds, or that would tend to reduce the punishment of the defendant, or that is relevant to a witness's credibility, without regard to the materiality of the information;

(xiii) A summary of all discussions, overt or tacit promises, rewards, inducements, or offers of leniency made to a potential prosecution witness, and copies of all documents and materials relevant to such promise, reward, inducement, or offer of leniency;

(xiv) A summary of all evidence or information that has been provided by a confidential informant or jailhouse informant and that relate to the subject matter of the case or are otherwise relevant;

(xv) Information regarding whether a search warrant has been executed and all documents and electronic recordings or records relating thereto, including but not limited to the warrant, the warrant application, all supporting affidavits, a police inventory of all property seized under the warrant, and a transcript of all testimony or other oral communications offered in support of the warrant application;

(xvi) Information regarding whether there has been any electronic surveillance, including but not limited to wire tapping or video surveillance, of a residence or business or telephone or computer or other electronic or digital device or social media accounts of the defendant, or of conversations to which the defendant or a co-defendant was a party, and all recordings, transcripts, documents, warrants and warrant application materials relating thereto;

(xvii) Intended expert opinion evidence, including the name, business address, current curriculum vitae, and a list of publications of each intended expert witness, and all reports prepared by the expert that pertain to the case, or if no report is prepared, a written statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and any instances where the expert has been found incredible or to have been in perjury; if such intended expert opinion evidence is not furnished within fifteen days of the expert witness's completion of the report, the expert witness may, upon application by the defendant, be barred from testifying at trial;

(xviii) A list of all misconduct and criminal acts of the defendant not charged in the indictment, superior court information, prosecutor's information, information, or simplified information charging a misdemeanor, which the prosecution intends to use at trial for purposes of impeaching the credibility of the defendant or as substantive proof of any material issue in the case; and

(xix) All department of criminal justice services criminal history record checks for all witnesses who the prosecution intends to call, all defendants, and all co-defendants.

(b) Nothing in this subdivision shall be interpreted to limit the scope of the prosecution's discovery obligations. In all questions arising regarding the scope of the prosecution's obligation to disclose to the defense and to permit the defense to discover, inspect, copy or photograph all items and information in the possession, custody or control of the prosecution, or persons under the prosecution's direction or control, which relate to the subject matter of the case or are otherwise relevant, there shall be a presumption in favor of disclosure.

2. Identification procedure summaries. Summaries disclosed pursuant to subparagraph (xi) of paragraph (a) of subdivision one of this section shall include:

(a) The date, time, location, type, and result of each procedure;

(b) The names of all persons present at each procedure if known to law enforcement;

(c) The name and address of each eyewitness at each procedure;

(d) The number and source of all photographs or lineup participants used in each procedure;

(e) A copy of all photographs, photographic arrays, and photographs taken of all lineups viewed by an eyewitness;

(f) The descriptions of suspects entered into an electronic or computer photographic identification system, and a saved collection of the photographic images generated by each description and viewed by each eyewitness;

(g) Whether the procedure was simultaneous or sequential;

(h) All statements made in the presence of or by each eyewitness;

(i) Whether the eyewitness selected a different person as the perpetrator or indicated a belief that he or she could not identify the perpetrator;

(j) Whether before the procedure the eyewitness was instructed that the perpetrator might or might not be present; and

(k) Whether the administrator of each procedure knew which person was the suspect, and whether, before the procedure, the eyewitness was instructed that the administrator did not know which person was the suspect.

3. Disclosure prior to guilty plea deadline. (a) Upon a felony complaint, where the prosecutor has made a pre-indictment guilty plea offer, the prosecutor must disclose to the defense, and permit the defense to discover, inspect, copy or photograph, and test all items and information that would be discoverable under subdivision one of this section that are in the possession, custody or control of the prosecution. Such disclosure must be completed within a reasonable time, but not less than three 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. A defendant may waive his or her rights under this subdivision; except that a guilty plea offer may not be conditioned on such waiver.

(b) Upon an indictment, superior court information, prosecutor's information, simplified information charging a misdemeanor, information, or misdemeanor complaint, the prosecution must comply with all disclosure required by subdivision one of this section and file a certificate of compliance pursuant to section 240.45 of this article at least seven 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 this subdivision, the offer shall be deemed available to the defendant until seven days after the prosecution has filed a certificate of compliance. A defendant may waive his or her

rights under this subdivision; except that a guilty plea offer may not be conditioned on such waiver.

4. Reciprocal discovery. The defendant shall, subject to constitutional limitations and within ninety days of when the prosecution files its certificate of compliance pursuant to section 240.45 of this article, disclose to the prosecution, and permit the prosecution to discover, inspect, copy, photograph, or test:

(a) Intended expert opinion evidence, including the name, business address, current curriculum vitae, and a list of publications of each intended expert witness, and all reports prepared by the expert that pertain to the case, or if no report is prepared, a written statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion;

(b) All photographs, tangible objects, video and audio recordings, electronic recordings and data, reports of physical or mental examinations of any person or of scientific tests or experiments, and exhibits that the defendant intends to introduce at trial in his or her case in chief; and

(c) All statements, written or recorded or summarized in any writing or recording made by a witness who the defendant intends to call at trial, other than statements made by the defendant, except that disclosure under this subdivision is not required until the close of the prosecution's case in chief.

5. Redactions permitted. Either party is permitted to redact social security numbers and tax numbers from disclosures.

§ 240.15 Automatic discovery; sanctions.

Section 240.10 of this article shall have the force and effect of a court order, and failure to provide discovery pursuant to such section may result in application of any sanctions permitted for noncompliance with a court order under section 240.30 of this article. However, if in the judgment of either party good cause exists for declining to make any of the disclosures set forth in section 240.10 of this article, it may move for a protective order pursuant to section 240.60 of this article and production of the item shall be stayed pending a ruling by the court. The opposing party shall be notified in writing what specific information or material has not been disclosed and the grounds for the protective order sought or the reason that the information or material cannot immediately be disclosed.

§ 240.20 Automatic discovery; depositions.

1. Obtaining depositions. At any time after the commencement of a criminal action, upon service of a subpoena, the defendant may obtain the deposition of any person on oral examination, where such person's testimony is material to the case or relevant to the preparation of a defense. A person's statements in a deposition may be used in subsequent proceedings in the same manner as other out-of-court statements.

2. Location of deposition. Deposition of a witness shall be taken in the county where the witness lives, or in such other location as is agreed upon by the parties, or at a location designated by the court. The deposition of any person confined in prison shall be taken where such person is confined, unless otherwise ordered by the court.

3. Experts. The defendant may discover by deposition the facts and opinions to which an expert is expected to testify. Unless manifest injustice would result, the court shall require that the party seeking discovery from an expert pay the expert a reasonable hourly fee for the time such expert is deposed.

4. Failure of witness to comply. The court may preclude the testimony of any witness who fails to comply with a properly served deposition subpoena from testifying at hearing and/or trial.

§ 240.25 Automatic discovery; notice and preservation of evidence.

1. Notice. Upon receipt of information that any item described in subparagraphs (i) through (xix) of paragraph (a) of subdivision one of section 240.10 of this article exists, except that it is not within the possession, custody or control of the prosecution, or persons under its direction and control, the prosecution shall expeditiously notify the defendant of the existence of the item and all information known to the prosecutor concerning the item's location and the identity of any persons possessing it.

2. Preservation order. At any time, a party may move for an order to any individual, agency or other entity in possession, custody or control of items that relate to the subject matter of the case or are otherwise relevant, including but not limited to requiring that such items be preserved for a specified period of time. In addition, the defendant may move for an order to any individual, agency or other entity in possession, custody or control of a crime scene 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 that crime scene, and that the condition of the crime scene remain unchanged in the interim. The court shall hear and rule upon motions made pursuant to this subdivision 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 said evidence is preserved by a specified alternative means.

3. Material held by other governmental personnel. Upon request of the defendant, the prosecutor shall use due diligence and make good faith efforts to make available for disclosure to the defendant materials that would be discoverable under subparagraphs (i) through (xix) of paragraph (a) of subdivision one of section 240.10 of this article but that are in possession, custody, or control of other governmental personnel. Where the prosecutor's efforts are unsuccessful, the court upon motion of the defendant shall issue suitable subpoenas or orders to cause such materials to be made available for disclosure to the defendant.

4. Material witnesses and physical evidence. When police officers or other law enforcement personnel participate in the investigation of an apparent criminal incident, and provided that it is practicable under the circumstances, they shall request and memorialize contact information for all persons of whom they are aware with material evidence or information that relate to the subject matter of the case or are otherwise relevant, and shall gather or memorialize apparently material physical evidence of which they are aware.

5. Electronic recordings of interviews at police stations or other detention facilities. No oral, written, or sign language statement of a suspect made during an interview at a police station or other detention facility shall be admissible as substantive evidence against that person in any criminal proceeding unless an electronic recording is made of all interviews of the suspect. Each recording must be of the complete interview, must include both audio and visual recording, and must be focused upon both the questioner, interpreter, if present, and the suspect throughout. Any photograph, video, or object shown to the defendant during the interview must be preserved for inspection.

6. Certain recordings. The prosecutor shall expeditiously take steps to discover, preserve, and disclose all video, audio, or electronic recordings made in connection with the investigation of an apparent criminal incident, including but not limited to 911 telephone calls, law enforcement radio transmissions, and video recordings made by law enforcement, including body camera footage.

§ 240.30 Automatic discovery; remedies or sanctions for noncompliance.

1. Available remedies or sanctions. For failure to comply with any discovery obligation issued or imposed pursuant to this article, the court shall make a further order for discovery, grant a continuance, order that a hearing be reopened, order that a witness be called or recalled, instruct the jury that it may draw an adverse inference regarding the noncompliance, preclude or strike a witness's testimony or a portion of a witness's testimony, admit or exclude evidence, order a mistrial, order the dismissal of all or some of the charges, or make such other order as it deems just under the circumstances; except that any sanction against the defendant shall comport with the defendant's constitutional right to present a defense, confront witnesses, and present evidence relevant to his or her defense, and the sanction of precluding a defense witness from testifying shall be permissible only upon a finding that the defendant's failure to comply with the discovery order was willful and motivated by a desire to obtain a tactical advantage.

2. Need for remedy or sanction; lost or destroyed material. When material or information is discoverable under this article, but it cannot be disclosed because it has been lost or destroyed, the evidence shall be deemed presumptively favorable to the defendant. The court shall impose an appropriate remedy or sanction whenever the party entitled to disclosure shows that the lost or destroyed material may have contained some information relevant to a contested issue.

3. Need for remedy or sanction; belated disclosure. When material or information is discoverable under this article, but it is disclosed belatedly, the defendant shall be entitled to an adjournment of up to thirty days, or for a reasonable period, whichever is longer. When there has been belated disclosure, the court shall impose an appropriate remedy or sanction whenever the party entitled to disclosure shows that it was prejudiced.

§ 240.35 Automatic discovery; 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 obtain the substantial equivalent by other means, order the prosecution, or any individual, agency or other entity subject to the jurisdiction of the court, to make available for disclosure to the defendant any material or information which potentially relates to the subject matter of the case or is otherwise relevant. An application under this section must be on notice to any person or entity affected by the order. The court may, upon request of any person or entity affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The court may permit a party seeking or opposing a discretionary order of discovery under this section, or another affected person or entity, to submit papers or testify ex parte or in camera. Any such papers and a transcript of such testimony shall be sealed and shall constitute a part of the record on appeal.

§ 240.40 Automatic discovery; 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 that crime scene or those 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 that location is preserved by a specified alternative means.

§ 240.45 Automatic discovery; certificate of compliance.

When a party has provided all discovery required by this section or by court order, it shall file with the court a certificate of compliance. The certificate shall state that, to the best of its knowledge and after reasonable inquiry, due diligence, and good faith effort, the party has disclosed and made available all items subject to discovery, and shall identify each item provided. The prosecution shall not be deemed ready for trial for purposes of section 30.30 of this chapter until it has filed a certificate pursuant to this section. If further discovery is subsequently provided, a supplemental certificate shall be filed with the court identifying the additional items provided explaining why the newly provided discovery was not provided prior to the original certificate of compliance.

§ 240.50 Automatic discovery; continuing duty.

If either the prosecution or the defense subsequently learns of additional material that it would have been under a duty to disclose or produce pursuant to any provisions of this article at the time of a previous discovery obligation or order, it shall expeditiously notify the other party and shall disclose the material in the same manner as required for initial discovery under this article, but no later than the next scheduled court appearance.

§ 240.55 Automatic discovery; work product.

This section does not authorize discovery by a party of those portions of records, reports, correspondence, memoranda, or internal documents of the adverse party that are only the legal research, opinions, theories, or conclusions of the adverse party or its attorney or the attorney's agents, or of statements of a defendant, written or recorded or summarized in any writing or recording, made to the attorney for the defendant or the attorney's agents.

§ 240.60 Automatic discovery; protective orders.

1. Standard. Upon a showing of good cause by clear and convincing evidence that disclosure would negatively affect the safety or security of a known person or entity and that any limitation of disclosure is necessary to protect a known person or entity, the court may at any time order that the discovery, disclosure, or inspection be denied, restricted, or deferred, or make such other order as is appropriate, upon written motion of the party seeking the protective order. The court may, for good cause shown, grant discovery to a defendant on the condition that the material to be discovered be available only to counsel for the defendant. This provision does not alter the allocation of the burden of proof with regard to the matter at issue, including privilege.

2. Hearing. Upon a request for such an order, the court shall conduct a hearing, either ex parte with just a prosecutor or defense counsel or in the presence of both the prosecutor and defense counsel, within three

business days to determine whether good cause has been shown. If thereafter the court enters an order granting relief, the material submitted in camera must be sealed, along with the minutes to the proceeding and written motions, and shall be preserved in the records of the court to be made available to the appellate court in the event of an appeal.

§ 240.65 Automatic discovery; amendment of discovery orders.

Upon motion of either party made subsequent to an order of the court pursuant to this section, the court may alter or amend the previous order or orders as the interests of justice may require. The court may, for good cause shown, affirm a prior order granting discovery to a defendant upon the additional condition that the material to be discovered be available only to counsel for the defendant.

§ 240.70 Automatic discovery; non-testimonial evidence from the defendant.

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

1. Appear in a lineup;

2. Speak for identification by a witness or potential witness;

3. Be fingerprinted;

4. Pose for photographs not involving reenactment of an event;

5. Permit the taking of samples of the defendant's blood, hair, or other materials of the defendant's body that involves no unreasonable intrusion thereof;

6. Provide specimens of the defendant's handwriting; or

7. Submit to a reasonable physical or medical inspection of the defendant's body.

§ 240.75 Automatic discovery; orders regarding DNA comparisons.

Where property in the prosecution's possession, custody, or control that consists of a deoxyribonucleic acid ("DNA") profile obtained from probative biological material gathered in connection with the investigation or prosecution of the defendant and the defendant establishes that such profile complies with federal bureau of investigation or state requirements, whichever are applicable and as such requirements are applied to law enforcement agencies seeking a keyboard search or similar comparison, and that the data meets state DNA index system or national DNA index system criteria as such criteria are applied to law enforcement agencies seeking such a keyboard search or similar comparison, the court may order an entity that has access to the combined DNA index system or its successor system to compare such DNA profile against DNA databanks by keyboard searches, or a similar method that does not involve uploading, upon notice to both parties and the entity required to perform the search, upon a showing by the defendant that such a comparison is material to the presentation of his or her defense and that the request is reasonable. For purposes of this paragraph, a "keyboard search" shall mean a search of a DNA profile against the databank in which the profile that is searched is not uploaded to or maintained in the databank.

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

9. (a) Prior to the commencement of the hearing conducted pursuant to subdivision five of this section, the district attorney shall, subject

to a protective order, comply with the provisions of [~~subdivision one of section 240.45~~] article two hundred forty of this chapter as they concern any witness whom the district attorney intends to call at the hearing and the child witness.

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

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

5. Court ordered bill of particulars. Where a prosecutor has timely served a written refusal pursuant to subdivision four of this section and upon motion, made in writing, of a defendant, who has made a request for a bill of particulars and whose request has not been complied with in whole or in part, the court must, to the extent a protective order is not warranted, order the prosecutor to comply with the request if it is satisfied that the items of factual information requested are authorized to be included in a bill of particulars, and that such information is necessary to enable the defendant adequately to prepare or conduct his defense and, if the request was untimely, a finding of good cause for the delay. Where a prosecutor has not timely served a written refusal pursuant to subdivision four of this section the court must, unless it is satisfied that the people have shown good cause why such an order should not be issued, issue an order requiring the prosecutor to comply or providing for any other [~~order~~] remedy or sanction authorized by [~~subdivision one of~~] section [~~240.70~~] 240.30 of this part.

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

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

(i) the prosecutor shall, unless previously disclosed and subject to a protective order, make available to the defendant the statements and information specified in [~~subdivision one of section 240.45~~] sections 240.10, 240.20 and 240.25 of this part and make available for inspection, photographing, copying or testing the property specified in [~~subdivision one of section 240.20~~] such sections; and

(ii) the defendant shall, unless previously disclosed and subject to a protective order, make available to the prosecution the statements and information specified in subdivision [~~two~~] four of section [~~240.45~~] 240.10 of this part and make available for inspection, photographing, copying or testing, subject to constitutional limitations, the reports, documents and other property specified in such subdivision [~~one of section 240.30~~].

(b) Where a party refuses to make disclosure pursuant to this section, the provisions of [~~section 240.35, subdivision one of section 240.40 and section 240.50~~] section 240.60 of this part shall apply.

(c) If, after complying with the provisions of this section or an order pursuant thereto, a party finds either before or during a sentencing proceeding or mental retardation hearing, additional material subject to discovery or covered by court order, the party shall promptly make disclosure or apply for a protective order pursuant to section 240.60 of this part.

(d) If the court finds that a party has failed to comply with any of the provisions of this section, the court may enter any of the [~~orders~~]

remedies or sanctions specified in [~~subdivision one of~~] section [~~240.70~~] 240.30 of this part.

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

In conjunction with the filing or consideration of a motion to vacate a judgment pursuant to section 440.10 of this article by a defendant convicted after a trial, in cases where the court has ordered an evidentiary hearing upon such motion, the court may order that the people produce or make available for inspection property, as defined [~~in subdivision three of section 240.10 of this part~~] as any existing tangible personal or real property, including, but not limited to, books, records, reports, memoranda, papers, photographs, tapes or other electronic recordings, articles of clothing, fingerprints, blood samples, fingernail scrapings or handwriting specimens, but excluding attorneys' work product, in its possession, custody, or control that was secured in connection with the investigation or prosecution of the defendant upon credible allegations by the defendant and a finding by the court that such property, if obtained, would be probative to the determination of the defendant's actual innocence, and that the request is reasonable. The court shall deny or limit such a request upon a finding that such a request, if granted, would threaten the integrity or chain of custody of property or the integrity of the processes or functions of a laboratory conducting DNA testing, pose a risk of harm, intimidation, embarrassment, reprisal, or other substantially negative consequences to any person, undermine the proper functions of law enforcement including the confidentiality of informants, or on the basis of any other factor identified by the court in the interests of justice or public safety. The court shall further ensure that any property produced pursuant to this paragraph is subject to a protective order, where appropriate. The court shall deny any request made pursuant to this paragraph where:

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

10. Where there has been a failure to comply with the provisions of this section, and where the district attorney does not demonstrate to the satisfaction of the court that such failure has not caused the defendant prejudice, the court shall instruct the jury that it may consider such failure in determining the weight to be given such evidence and may also impose any other [~~sanction~~] remedy or sanction set forth in [~~subdivision one of~~] section [~~240.70~~] 240.30 of the criminal procedure law; provided, however, that unless the defendant has convinced the court that such failure has caused him undue prejudice, the court shall not preclude the district attorney from introducing into evidence the property, photographs, photocopies, or other reproductions of the property or, where appropriate, testimony concerning its value and condition, where such evidence is otherwise properly authenticated and admissible under the rules of evidence. Failure to comply with any one or more of the provisions of this section shall not for that reason alone be grounds for dismissal of the accusatory instrument.

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

5. In addition to information required to be disclosed pursuant to article two hundred forty of the criminal procedure law, when forfeiture is sought pursuant to this article, and following the defendant's arraignment on the special forfeiture information, the court shall order discovery of any information not otherwise disclosed which is material

and reasonably necessary for preparation by the defendant with respect to a forfeiture proceeding brought pursuant to this article. Such material shall include those portions of the grand jury minutes and such other information which pertain solely to the special forfeiture information and shall not include information which pertains to the criminal charges. Upon application of the prosecutor, the court may issue a protective order pursuant to section [~~240.40~~] 240.60 of the criminal procedure law with respect to any information required to be disclosed pursuant to this subdivision.

§ 8. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all arraignments commencing on or after such effective date; provided, however, that the amendments to subdivision 9 of section 65.20 of the criminal procedure law made by section two of this act shall not affect the repeal of such section and shall be deemed repealed therewith.