

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 Article 240 of the criminal procedure law is REPEALED.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:

ARTICLE 245

DISCOVERY

Section 245.05 First court appearance.

245.10 Timing of discovery.

245.20 Automatic discovery.

245.25 Disclosure prior to certain guilty pleas.

245.30 Court orders for preservation, access or discovery.

245.35 Court ordered procedures to facilitate compliance.

245.40 Non-testimonial evidence from the defendant.

245.45 DNA comparison order.

245.50 Certificates of compliance; readiness for trial.

245.55 Flow of information.

245.60 Continuing duty to disclose.

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

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245.65 Work product.

245.70 Protective orders.

245.75 Waiver of discovery by defendant.

245.80 Remedies or sanctions for non-compliance.

245.85 Admissibility of discovery.

245.90 Depositions.

§ 245.05 First court appearance.

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

§ 245.10 Timing of discovery.

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

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

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

2. Defendant's performance of obligations. The defendant shall perform 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 subdi-
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 subdi-

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

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

§ 245.30 Court orders for preservation, access or discovery.

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

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

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

4. Procedure. A motion under this section must be on notice to any individual, agency or entity affected by the order. The court may, upon request of any individual, agency or entity affected by the order, modify 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.

Where property in the prosecution's possession, custody, or control consists of a deoxyribonucleic acid ("DNA") profile obtained from probative biological material gathered in connection with the investigation of the crime, or the defendant, or the prosecution of the defendant, and the defendant establishes (a) 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 (b) 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, upon motion of a defendant against whom an indictment, superior court information, prosecutor's information, information, or simplified information is pending, 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 section, 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.

§ 245.50 Certificates of compliance; readiness for trial.

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

2. By the defendant. When the defendant has provided all discovery required by subdivision four of section 245.20 of this article, except for any items or information that are the subject of an order pursuant to section 245.70 of this article, counsel for the defendant shall serve upon the prosecution and file with the court a certificate of compliance. The certificate shall state that, after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery, counsel for the defendant has disclosed and made available all known material and information subject to discovery. It shall also identify the items provided. If additional discovery is subsequently provided prior to trial pursuant to section 245.60 of this article, a supplemental certificate shall be served upon the prosecution and filed with the court identifying the additional material and information provided. No adverse consequence to the 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 rized in any writing or recording, made to the attorney for the defend-
14 ant or the attorney's agents.

15 § 245.70 Protective orders.

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

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

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

46 4. Showing of good cause. Good cause under this section may include:
47 constitutional rights or limitations; danger to the integrity of phys-
48 ical evidence; a substantial risk of physical harm, intimidation,
49 economic reprisal, bribery or 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 unsucces-
20 fully sought, or unsuccessfully opposed the granting of, a protective
21 order under this section relating to the name, address, contact informa-
22 tion or statements of a person may obtain expedited review of that
23 ruling by an individual justice of the intermediate appellate court to
24 which an appeal from a judgment of conviction in the case would be
25 taken.

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

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

4. The showing required to sustain any subpoena under this section is that the testimony or evidence sought is reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome.

§ 4. 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~~] six of this section, the district attorney shall, subject to a protective order, comply with the provisions of subdivision one of section [~~240.45~~] 245.20 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~~] four of section [~~240.45~~] 245.20 of this chapter as they concern all the witnesses the defendant intends to call at such hearing.

§ 5. 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 authorized by [~~subdivision one of section 240.70~~] section 245.80 of this part.

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

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

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

1. Except as otherwise expressly provided by law, whether the defendant is represented by counsel or elects to proceed pro se, all pre-trial motions shall be served or filed within forty-five days after arraignment and before commencement of trial, or within such additional time as the court may fix upon application of the defendant made prior to entry of judgment. In an action in which either (a) material or information 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.