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:

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 Article 240 of the criminal procedure law is REPEALED.

§ 2. The criminal procedure law is amended by adding a new article 245 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

245.20 of this article not later than thirty calendar days after being served with the prosecution's certificate of compliance pursuant to subdivision one of section 245.50 of this article, except that 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 prosecution must be notified in writing that information has not been disclosed under a particular section.

§ 245.20 Automatic discovery.

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

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

(b) All transcripts of the testimony of a person who has testified before a grand jury, including but not limited to the defendant or a co-defendant. If in the exercise of reasonable diligence, and due to the limited availability of transcription resources, a transcript is unavailable for disclosure within the time period specified in subdivision one of section 245.10 of this article, such time period 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; except that such disclosure shall be made as soon as practicable and not later than thirty calendar days before the first scheduled trial date, unless an order is obtained pursuant to section 245.70 of this article. When the court is required to review grand jury transcripts, the prosecution shall disclose such transcripts to the court expeditiously upon receipt by the prosecutor, notwithstanding the otherwise-applicable time periods for disclosure in this article.

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

(d) The name and work affiliation of all law enforcement personnel whom the prosecutor knows to have evidence or information relevant to any offense charged or to any potential defense thereto, including a designation by the prosecutor as to which of those persons may be called as witnesses. Information under this subdivision relating to undercover personnel may be withheld, and redacted from discovery materials, without need for a motion pursuant to section 245.70 of this article; but the prosecution shall notify the defendant in writing that such information has not been disclosed, unless the court rules otherwise for good cause shown.

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

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

(f) Expert opinion evidence, including the name, business address, current curriculum vitae, a list of publications, and all proficiency tests and results administered or taken in the current employment or within the past ten years, whichever is longer, of each expert witness whom the prosecutor intends to call as a witness at trial or a pre-trial hearing, 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. This paragraph does not alter or in any way affect the procedures, obligations or rights set forth in section 250.10 of this title. If in the exercise of reasonable diligence this information is unavailable for disclosure within the time period specified in subdivision one of section 245.10 of this article, that period shall be stayed without need for a motion pursuant to subdivision two of section 245.70 of this article; except that the prosecution shall notify the defendant in writing that such information has not been disclosed, and such disclosure shall be made as soon as practicable and not later than sixty calendar days before the first scheduled trial date, unless an order is obtained pursuant to section 245.70 of this article. When the prosecution's expert witness is being called in response to disclosure of an expert witness by the defendant, the court shall alter a scheduled trial date, if necessary, to allow the prosecution thirty calendar days to make the disclosure and the defendant thirty calendar days to prepare and respond to the new materials.

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

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

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

(j) All reports, documents, records, data, calculations or writings, including but not limited to preliminary tests and screening results and bench notes and analyses performed or stored electronically, concerning physical or mental examinations, or scientific tests or experiments or comparisons, relating to the criminal action or proceeding which were made by or at the request or direction of a public servant engaged in law enforcement activity, or which were made by a person

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

(k) All evidence and information, including that which is known to police or other law enforcement agencies acting on the government's behalf in the case, that tends to: (i) negate the defendant's guilt as to a charged offense; (ii) reduce the degree of or mitigate the defendant's culpability as to a charged offense; (iii) support a potential defense to a charged offense; (iv) impeach the credibility of a testifying prosecution witness; (v) undermine evidence of the defendant's identity as a perpetrator of a charged offense; (vi) provide a basis for a motion to suppress evidence; or (vii) mitigate punishment. Information under this subdivision shall be disclosed whether or not such information is recorded in tangible form and irrespective of whether the prosecutor credits the information. The prosecutor shall disclose the information expeditiously upon its receipt and shall not delay disclosure if it is obtained earlier than the time period for disclosure in subdivision one of section 245.10 of this article.

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

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

(n) Whether a search warrant has been executed and all documents relating thereto, including but not limited to the warrant, the warrant application, 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.

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

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

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

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

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

(s) In any prosecution alleging a violation of the vehicle and traffic law, where the defendant is charged by indictment, superior court information, prosecutor's information, information, or simplified information, all records of calibration, certification, inspection, repair or maintenance of machines and instruments utilized to perform any scientific tests and experiments, including but not limited to any test of a person's breath, blood, urine or saliva, for the period of six months prior and six months after such test was conducted, including the records of gas chromatography related to the certification of all reference standards and the certification certificate, if any, held by the operator of the machine or instrument.

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

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

(ii) If the electronically created or stored information originates from a device, account, or other electronically stored source that the prosecution believes the defendant owned, maintained, or had lawful access to and is within the possession, custody or control of the prosecution or persons under the prosecution's direction or control, the prosecution shall provide a complete copy of the electronically created or stored information from the device or account or other source, and a designation by the prosecutor as to which portions it intends to introduce.

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

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

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

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

3. Supplemental discovery for the defendant. The prosecution shall disclose to the defendant 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, which the prosecution intends to use at trial for purposes of (a) impeaching the credibility of the defendant, or (b) as substantive proof of any material issue in the case. In addition the prosecution shall designate whether it intends to use each listed act for impeachment and/or as substantive proof.

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

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

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

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

5. Stay of automatic discovery; remedies and sanctions. Sections 245.05 and 245.10 and subdivisions one, two, three and four of this section shall have the force and effect of a court order, and failure to provide discovery pursuant to such section or subdivision may result in application of any remedies or sanctions permitted for non-compliance with a court order under section 245.80 of this article. However, if in the judgment of either party good cause exists for declining to make any of the disclosures set forth above, such party may move for a protective order pursuant to section 245.70 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 that information has not been disclosed under a particular section. When some parts of material or information are discoverable but in the judgment of a party good cause exists for declining to disclose other parts, the discoverable parts shall be disclosed and the disclosing party shall give notice in writing that non-discoverable parts have been withheld.

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

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

§ 245.25 Disclosure prior to certain guilty pleas.

1. Pre-indictment guilty pleas. Upon a felony complaint, where the prosecution has made a pre-indictment guilty plea offer requiring a plea to a crime, the prosecutor must disclose to the defense, and permit the defense to discover, inspect, copy, photograph 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 in the possession, custody or control of the prosecution. The prosecution shall disclose the discoverable items and information not less than three 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 three 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.

2. Other guilty pleas. Upon an indictment, superior court information, prosecutor's information, information, simplified information, or misdemeanor complaint, where the prosecution has made a guilty plea offer requiring a plea to a crime, the prosecutor must disclose to the defense, and permit the defense to discover, inspect, copy, photograph 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

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

§ 245.35 Court ordered procedures to facilitate compliance.

To facilitate compliance with this article, and to reduce or streamline litigation of any disputes about discovery, the court in its discretion may issue an order:

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

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

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

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

§ 245.40 Non-testimonial evidence from the defendant.

1. Availability. 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 such evidence is safe and reliable, require a defendant to provide non-testimonial evidence, including to:

(a) Appear in a lineup;

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

(c) Be fingerprinted;

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

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

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

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

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

§ 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

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.

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

§ 245.55 Flow of information.

1. Sufficient communication for compliance. The district attorney and the assistant responsible for the case, or, if the matter is not being prosecuted by the district attorney, the prosecuting agency and its assigned representative, shall endeavor to ensure that a flow of information is maintained between the police and other investigative personnel and his or her office sufficient to place within his or her possession or control all material and information pertinent to the defendant and the offense or offenses charged, including, but not limited to, any evidence or information discoverable under paragraph (k) of subdivision one of section 245.20 of this article.

2. Provision of law enforcement agency files. Absent a court order or a requirement that defense counsel obtain a security clearance mandated by law or authorized government regulation, upon request by the prosecution, each New York state and local law enforcement agency shall make available to the prosecution a complete copy of its complete records and files related to the investigation of the case or the prosecution of the defendant for compliance with this article.

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

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

§ 245.60 Continuing duty to disclose.

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

shall expeditiously notify the other party and disclose the additional material and information as required for initial discovery under this article. This section also requires expeditious disclosure by the prosecution of material or information that became relevant to the case or discoverable based on reciprocal discovery received from the defendant pursuant to subdivision four of section 245.20 of this article.

§ 245.65 Work product.

This article does not authorize discovery by a party of those portions of records, reports, correspondence, memoranda, or internal documents of the adverse party which 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.

§ 245.70 Protective orders.

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

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

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

4. Showing of good cause. Good cause under this section may include: constitutional rights or limitations; danger to the integrity of physical evidence; a substantial risk of physical harm, intimidation, economic reprisal, bribery or harassment to any person; a substantial risk of an adverse effect upon the legitimate needs of law enforcement, including the protection of the confidentiality of informants; danger to any person stemming from factors such as a defendant's substantiated affiliation with a gang engaged in criminal activity, prior history of interfering with witnesses, or threats or intimidating actions directed at potential witnesses; or other similar factors that also outweigh the usefulness of the discovery.

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

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

(b) Such review shall be sought within two business days of the adverse or partially adverse ruling, by order to show cause filed with the intermediate appellate court. The order to show cause shall in addition be timely served on the lower court and on the opposing party, and shall be accompanied by a sworn affirmation stating in good faith (i) that the ruling affects substantial interests, and (ii) that diligent efforts to reach an accommodation of the underlying discovery dispute with opposing counsel failed or that no accommodation was feasible; except that service on the opposing party, and a statement regarding efforts to reach an accommodation, are unnecessary where the opposing party was not made aware of the application for a protective order and good cause is shown for omitting service of the order to show cause on the opposing party. The lower court's order subject to review shall be stayed until the appellate justice renders a determination.

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

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

§ 245.75 Waiver of discovery by defendant.

A defendant who does not seek discovery from the prosecution under this article shall so notify the prosecution and the court at the defendant's arraignment on an indictment, superior court information, prosecutor's information, information, or simplified information, or expeditiously thereafter but before receiving discovery from the prosecution pursuant to subdivision one of section 245.20 of this article, and the defendant need not provide discovery to the prosecution pursuant to subdivision four of section 245.20 and section 245.60 of this article. A waiver shall be in writing, signed for the individual case by counsel for the defendant and filed with the court. Such a waiver does not alter or in any way affect the procedures, obligations or rights set forth in sections 250.10, 250.20 and 250.30 of this title, or otherwise established or required by law. The prosecution may not condition a guilty plea offer on the defense's execution of a waiver under this section.

§ 245.80 Remedies or sanctions for non-compliance.

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

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

2. Available remedies or sanctions. For failure to comply with any discovery order imposed or issued pursuant to this article, the court may 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 non-compliance, 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, and precluding a defense witness from testifying shall be permissible only upon a finding that the defendant's failure to comply with the discovery obligation or order was willful and motivated by a desire to obtain a tactical advantage.

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

§ 245.85 Admissibility of discovery.

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

§ 245.90 Depositions.

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

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

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

4. Counsel for all parties shall be permitted to be present at a deposition. The defendant and any co-defendant shall not be physically present at a deposition under this section except by agreement of the parties, or a court order granted on a showing of good cause by the defendant or any co-defendant. The party setting the deposition shall give reasonable notice of the deposition in writing to the witness to be deposed and to counsel for all parties and co-defendants. The attorneys for the defendant and any co-defendants shall seek to coordinate any depositions to avoid multiple depositions of a single witness; any party that asserts multiple depositions of a single witness are being scheduled for a prohibited purpose may seek a protective order pursuant to section 245.70 of this article.

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

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

3. An attorney for a defendant in a criminal action or proceeding, as an officer of a criminal court, may issue a subpoena of such court, subscribed by himself, for the attendance in such court of any witness whom the defendant is entitled to call in such action or proceeding. An attorney for a defendant may not issue a subpoena duces tecum of the court directed to any department, bureau or agency of the state or of a political subdivision thereof, or to any officer or representative thereof, 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

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

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

§ 340.30 Pre-trial discovery and notices of defenses.

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

§ 9. 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~~] 245.20 of this part and make available for inspection, photographing, copying or testing the property specified in subdivision one of section [~~240.20~~] 245.20; 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~~] 245.20 and make available for inspection, photographing, copying or testing, subject to constitutional limitations, the reports, documents and other property specified [~~in subdivision one of section 240.30~~] in section 245.20 of this part.

(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~~] 245.70, 245.75 and/or 245.80 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.

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

§ 10. 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,~~] 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 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:

§ 11. 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 set forth in subdivision one of section [~~240.70~~] 245.80 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.

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

§ 460.80 Court ordered disclosure.

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

§ 13. 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~~] forty-five 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~~] 245.70 of the criminal procedure law with respect to any information required to be disclosed pursuant to this subdivision.

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