

STATE OF NEW YORK

5885

2023-2024 Regular Sessions

IN SENATE

March 21, 2023

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

AN ACT to amend the criminal procedure law, in relation to the discovery
of material, non-material and impeachment information and the required
time frame for such discovery

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

1 Section 1. Paragraph (j) of subdivision 4 of section 30.30 of the
2 criminal procedure law, as amended by section 1 of part KKK of chapter
3 59 of the laws of 2019, is amended to read as follows:

4 (j) the period during which a family offense is before a family court
5 until such time as an accusatory instrument or indictment is filed
6 against the defendant alleging a crime constituting a family offense, as
7 such term is defined in section 530.11 of this chapter;

8 (k) the period during which the prosecution performs its discovery
9 obligations under paragraphs (a), (b) and (c) of subdivision one of
10 section 245.10 of this article provided that the certificates of compli-
11 ance for each disclosure are filed within the period outlined in the
12 respective subdivisions; provided, however, that delay in compliance
13 beyond the mandated periods may be excludable as an exceptional circum-
14 stance under paragraph (g) of this subdivision.

15 § 2. The section heading and subdivision 1 of section 245.10 of the
16 criminal procedure law, as added by section 2 of part LLL of chapter 59
17 of the laws of 2019, paragraph (a) of subdivision 1 as amended by
18 section 1 of part HHH of chapter 56 of the laws of 2020 and subparagraph
19 (iii) of paragraph (a) as amended by section 5 of subpart D of part UU
20 of chapter 56 of the laws of 2022, are amended to read as follows:

21 Timing of discovery and certain pre-trial motion procedure.

22 1. (a) [~~Subject to subparagraph (iv) of this paragraph, the prose-~~
23 ~~cution shall perform its initial discovery obligations under subdivision~~
24 ~~one of section 245.20 of this article as soon as practicable but not~~

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

LBD08106-01-3

1 ~~later than the time periods specified in subparagraphs (i) and (ii) of~~
2 ~~this paragraph, as applicable. Portions of materials claimed to be non-~~
3 ~~discoverable may be withheld pending a determination and ruling of the~~
4 ~~court under section 245.70 of this article, but the defendant shall be~~
5 ~~notified in writing that information has not been disclosed under a~~
6 ~~particular subdivision of such section, and the discoverable portions of~~
7 ~~such materials shall be disclosed to the extent practicable. When the~~
8 ~~discoverable materials, including video footage from body worn cameras,~~
9 ~~surveillance cameras, or dashboard cameras, are exceptionally voluminous~~
10 ~~or, despite diligent, good faith efforts, are otherwise not in the actu-~~
11 ~~al possession of the prosecution, the time period in this paragraph may~~
12 ~~be stayed by up to an additional thirty calendar days without need for a~~
13 ~~motion pursuant to subdivision two of section 245.70 of this article.~~

14 ~~(i) When a defendant is in custody during the pendency of the criminal~~
15 ~~case, the prosecution shall perform its initial discovery obligations~~
16 ~~within twenty calendar days after the defendant's arraignment on an~~
17 ~~indictment, superior court information, prosecutor's information, infor-~~
18 ~~mation, simplified information, misdemeanor complaint or felony~~
19 ~~complaint.~~

20 ~~(ii) When the defendant is not in custody during the pendency of the~~
21 ~~criminal case, the prosecution shall perform its initial discovery obli-~~
22 ~~gations within thirty five calendar days after the defendant's arraign-~~
23 ~~ment on an indictment, superior court information, prosecutor's informa-~~
24 ~~tion, information, simplified information, misdemeanor complaint or~~
25 ~~felony complaint.~~

26 (iii)] The prosecution shall perform its initial discovery obligations
27 under paragraph (a) of subdivision one of section 245.20 of this article
28 as soon as practicable but not later than thirty days after the defend-
29 ant's arraignment on an indictment, superior court information,
30 prosecutor's information, information, simplified information, misdemea-
31 nor complaint or felony complaint. When the prosecution has provided
32 the discovery required by paragraph (a) of subdivision one of section
33 245.20 of this article, it shall serve upon the defendant and file with
34 the court a certificate of compliance pursuant to subdivision one of
35 section 245.50 of this article.

36 (b) Once the prosecution has filed its certificate of compliance
37 concerning the disclosure required by paragraph (a) of subdivision one
38 of section 245.20 of this article, the defense must file its pre-trial
39 motions within forty-five days of that filing. The prosecution shall
40 begin performance of their disclosure of discovery obligations under
41 paragraph (b) of subdivision one of section 245.20 of this article after
42 completion of their discovery, must file their response to the omnibus
43 motion within 30 days of its receipt and must complete their disclosure
44 of discovery obligations under paragraph (b) of subdivision one of
45 section 245.20 of this article no later than the date of the filing of
46 their omnibus motion response. Once the prosecution has provided the
47 discovery required by paragraph (b) of subdivision one of section 245.20
48 of this article, it shall serve upon the defendant and file with the
49 court a certificate of compliance pursuant to subdivision one of section
50 245.50 of this article. Upon its filing, the prosecution may file a
51 certificate of readiness or announce readiness for trial.

52 (c) The prosecution shall perform its discovery obligations under
53 paragraph (c) of subdivision one of section 245.20 of this article no
54 later than fifteen days after decision on the defendant's pre-trial
55 motions.

1 ~~(d)~~ Notwithstanding the previous provisions of this section, the
2 prosecutor's obligations shall not apply to a simplified information
3 charging a traffic infraction under the vehicle and traffic law, or to
4 an information charging one or more petty offenses as defined by the
5 municipal code of a village, town, city, or county, that do not carry a
6 statutorily authorized sentence of imprisonment, and where the defendant
7 stands charged before the court with no crime or offense, provided
8 however that nothing in this subparagraph shall prevent a defendant from
9 filing a motion for disclosure of such items and information under
10 subdivision one of section 245.20 of this article. The court shall, at
11 the first appearance, advise the defendant of their right to file a
12 motion for discovery.

13 ~~(iv)(A)~~ ~~(e)(i)~~ Portions of materials that must be disclosed under
14 paragraphs (a), (b), and (c) of subdivision one of section 245.20 of
15 this article claimed to be non-discoverable may be withheld pending a
16 determination and ruling of the court under section 245.70 of this arti-
17 cle; but the defendant shall be notified in writing that information has
18 not been disclosed under a particular subdivision of such section, and
19 the discoverable portions of such materials shall be disclosed to the
20 extent practicable. Information related to or evidencing the identity of
21 a 911 caller, the victim or witness of an offense defined under article
22 one hundred thirty or sections 230.34 and 230.34-a of the penal law, or
23 any other victim or witness of a crime where the defendant has substan-
24 tiated affiliation with a criminal enterprise as defined in subdivision
25 three of section 460.10 of the penal law may be withheld, provided,
26 however, the defendant may move the court for disclosure.

27 ~~(B)~~ ~~(ii)~~ When the discoverable materials are exceptionally volumi-
28 nous or, despite diligent, good faith efforts, are otherwise not in the
29 actual possession of the prosecution, the time period in this paragraph
30 may be extended pursuant to a motion pursuant to subdivision two of
31 section 245.70 of this article. For purposes of this article, voluminous
32 materials may include, but are not limited to, video footage from body
33 worn cameras, surveillance cameras or dashboard cameras.

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

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

46 § 3. Subdivisions 1, 2, 4 and 5 of section 245.20 of the criminal
47 procedure law, as added by section 2 of part LLL of chapter 59 of the
48 laws of 2019 and paragraphs (c), (f), (g) and (j) of subdivision 1 as
49 amended by section 2 of part HHH of chapter 56 of the laws of 2020, are
50 amended to read as follows:

51 1. Initial discovery for the defendant. The prosecution shall disclose
52 to the defendant, and permit the defendant to discover, inspect, copy,
53 photograph and test, all items and information in the following catego-
54 ries of information that relate to the subject matter of the case and
55 are in the possession, custody or control of the prosecution or persons

1 under the prosecution's direction or control, including but not limited
2 to:

3 (a) Material information:

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

8 [~~(b)~~] (ii) All transcripts of the testimony of a person who has testi-
9 fied before a grand jury, including but not limited to the defendant or
10 a co-defendant. If in the exercise of reasonable diligence, and due to
11 the limited availability of transcription resources, a transcript is
12 unavailable for disclosure within the time period specified in subdivi-
13 sion one of section 245.10 of this article, such time period may be
14 stayed by up to an additional thirty calendar days without need for a
15 motion pursuant to subdivision two of section 245.70 of this article;
16 except that such disclosure shall be made as soon as practicable and not
17 later than [~~thirty calendar days before the first scheduled trial date~~]
18 the end of the time period under paragraph (c) of subdivision one of
19 section 245.10 of this article, unless an order is obtained pursuant to
20 section 245.70 of this article. When the court is required to review
21 grand jury transcripts, the prosecution shall disclose such transcripts
22 to the court expeditiously upon receipt by the prosecutor, notwithstand-
23 ing the otherwise-applicable time periods for disclosure in this arti-
24 cle.

25 [~~(c) The names and adequate contact information for all persons other~~
26 ~~than law enforcement personnel whom the prosecutor knows to have~~
27 ~~evidence or information relevant to any offense charged or to any poten-~~
28 ~~tial defense thereto, including a designation by the prosecutor as to~~
29 ~~which of those persons may be called as witnesses. Nothing in this para-~~
30 ~~graph shall require the disclosure of physical addresses, provided,~~
31 ~~however, upon a motion and good cause shown the court may direct the~~
32 ~~disclosure of a physical address. Information under this subdivision~~
33 ~~relating to the identity of a 911 caller, the victim or witness of an~~
34 ~~offense defined under article one hundred thirty or section 230.34 or~~
35 ~~230.34-a of the penal law, any other victim or witness of a crime where~~
36 ~~the defendant has substantiated affiliation with a criminal enterprise~~
37 ~~as defined in subdivision three of section 460.10 of the penal law, or a~~
38 ~~confidential informant may be withheld, and redacted from discovery~~
39 ~~materials, without need for a motion pursuant to section 245.70 of this~~
40 ~~article, but the prosecution shall notify the defendant in writing that~~
41 ~~such information has not been disclosed, unless the court rules other-~~
42 ~~wise for good cause shown.~~

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

53 (e)] (iii) All statements, written or recorded or summarized in any
54 writing or recording, made by persons who have evidence or information
55 relevant to any offense charged or to any potential defense thereto,
56 including all police reports, notes of police and other investigators,

1 and law enforcement agency reports. This provision also includes state-
2 ments, written or recorded or summarized in any writing or recording, by
3 persons to be called as witnesses at pre-trial hearings.

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

27 ~~[(g)] (iv) Intention to introduce expert opinion evidence.~~

28 ~~[(v) All tapes or other electronic recordings, including all electronic
29 recordings of 911 telephone calls made or received in connection with
30 the alleged criminal incident, and a designation by the prosecutor as to
31 which of the recordings under this paragraph the prosecution intends to
32 introduce at trial or a pre-trial hearing. If the discoverable materials
33 under this paragraph exceed ten hours in total length, the prosecution
34 may disclose only the recordings that it intends to introduce at trial
35 or a pre-trial hearing[, along with a list of the source and approximate
36 quantity of other recordings and their general subject matter if known,
37 and the defendant shall have the right upon request to obtain recordings
38 not previously disclosed. The prosecution shall disclose the requested
39 materials as soon as practicable and not less than fifteen calendar days
40 after the defendant's request, unless an order is obtained pursuant to
41 section 245.70 of this article. The prosecution may withhold the names
42 and identifying information of any person who contacted 911 without the
43 need for a protective order pursuant to section 245.70 of this article,
44 provided, however, the defendant may move the court for disclosure. If
45 the prosecution intends to call such person as a witness at a trial or
46 hearing, the prosecution must disclose the name and contact information
47 of such witness no later than fifteen days before such trial or hearing,
48 or as soon as practicable].~~

49 ~~[(h)] (vi) All photographs and drawings made or completed by a public
50 servant engaged in law enforcement activity, or which were made by a
51 person whom the prosecutor intends to call as a witness at trial or a
52 pre-trial hearing[, or] which [~~relate to the subject matter of~~] are
53 relevant to the charges against the defendant in the case.~~

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

1 ~~(j)~~ (viii) All reports, documents, records, data, calculations or
2 writings, including but not limited to preliminary tests and screening
3 results and bench notes and analyses performed or stored electronically,
4 concerning physical or mental examinations, or scientific tests or
5 experiments or comparisons, relating to the criminal action or proceed-
6 ing which were made by or at the request or direction of a public serv-
7 ant engaged in law enforcement activity, or which were made by a person
8 whom the prosecutor intends to call as a witness at trial or a pre-trial
9 hearing, or which the prosecution intends to introduce at trial or a
10 pre-trial hearing. Information under this paragraph also includes, but
11 is not limited to, laboratory information management system records
12 relating to such materials, any preliminary or final findings of non-
13 conformance with accreditation, industry or governmental standards or
14 laboratory protocols, and any conflicting analyses or results by labora-
15 tory personnel regardless of the laboratory's final analysis or results.
16 If the prosecution submitted one or more items for testing to, or
17 received results from, a forensic science laboratory or similar entity
18 not under the prosecution's direction or control, the court on motion of
19 a party shall issue subpoenas or orders to such laboratory or entity to
20 cause materials under this paragraph to be made available for disclo-
21 sure. The prosecution shall not be required to provide information
22 related to the results of physical or mental examinations, or scientific
23 tests or experiments or comparisons, unless and until such examinations,
24 tests, experiments, or comparisons have been completed.

25 ~~(k)~~ (ix) All evidence and information, including that which is known
26 to police or other law enforcement agencies acting on the government's
27 behalf in the case, that tends to: ~~(i)~~ (A) negate the defendant's
28 guilt as to a charged offense; ~~(ii)~~ (B) reduce the degree of or miti-
29 gate the defendant's culpability as to a charged offense; ~~(iii)~~ (C)
30 support a potential defense to a charged offense; ~~(iv) impeach the~~
31 ~~credibility of a testifying prosecution witness;~~ (D) undermine
32 evidence of the defendant's identity as a perpetrator of a charged
33 offense; ~~(vi)~~ (E) provide a basis for a motion to suppress evidence;
34 or ~~(vii)~~ (F) mitigate punishment. Information under this subdivision
35 shall be disclosed whether or not such information is recorded in tangi-
36 ble form and irrespective of whether the prosecutor credits the informa-
37 tion. The prosecutor shall disclose the information expeditiously upon
38 its receipt and shall not delay disclosure if it is obtained earlier
39 than the time period for disclosure in subdivision one of section 245.10
40 of this article.

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

45 ~~(m)~~ (x) A list of all tangible objects obtained from, or allegedly
46 possessed by, the defendant or a co-defendant. The list shall include a
47 designation by the prosecutor as to which objects were physically or
48 constructively possessed by the defendant and were recovered during a
49 search or seizure by a public servant or an agent thereof, and which
50 tangible objects were recovered by a public servant or an agent thereof
51 after allegedly being abandoned by the defendant. If the prosecution
52 intends to prove the defendant's possession of any tangible objects by
53 means of a statutory presumption of possession, it shall designate such
54 intention as to each such object. If reasonably practicable, the prose-
55 cution shall also designate the location from which each tangible object

1 was recovered. There is also a right to inspect, copy, photograph and
2 test the listed tangible objects.

3 [~~(n)~~] (xi) Whether a search warrant has been executed and all docu-
4 ments relating thereto, including but not limited to the warrant, the
5 warrant application, supporting affidavits, a police inventory of all
6 property seized under the warrant, and a transcript of all testimony or
7 other oral communications offered in support of the warrant application.

8 [~~(o)~~] (xii) All tangible property that [~~relates to the subject matter~~
9 ~~of the case, along with a designation of which items~~] the prosecution
10 intends to introduce in its case-in-chief at trial or a pre-trial hear-
11 ing. If in the exercise of reasonable diligence the prosecutor has not
12 formed an intention within the time period specified in subdivision one
13 of section 245.10 of this article that an item under this subdivision
14 will be introduced at trial or a pre-trial hearing, the prosecution
15 shall notify the defendant in writing, and the time period in which to
16 designate items as exhibits shall be stayed without need for a motion
17 pursuant to subdivision two of section 245.70 of this article; but the
18 disclosure shall be made as soon as practicable and subject to the
19 continuing duty to disclose in section 245.60 of this article.

20 [~~(p)~~] ~~A complete record of judgments of conviction for all defendants~~
21 ~~and all persons designated as potential prosecution witnesses pursuant~~
22 ~~to paragraph (c) of this subdivision, other than those witnesses who are~~
23 ~~experts.~~

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

27 [~~(r)~~] (xiii) The approximate date, time and place of the offense or
28 offenses charged and of the defendant's seizure and arrest.

29 [~~(s)~~] ~~In any prosecution alleging a violation of the vehicle and traf-~~
30 ~~fic law, where the defendant is charged by indictment, superior court~~
31 ~~information, prosecutor's information, information, or simplified infor-~~
32 ~~mation, all records of calibration, certification, inspection, repair or~~
33 ~~maintenance of machines and instruments utilized to perform any scien-~~
34 ~~tific tests and experiments, including but not limited to any test of a~~
35 ~~person's breath, blood, urine or saliva, for the period of six months~~
36 ~~prior and six months after such test was conducted, including the~~
37 ~~records of gas chromatography related to the certification of all refer-~~
38 ~~ence standards and the certification certificate, if any, held by the~~
39 ~~operator of the machine or instrument. The time period required by~~
40 ~~subdivision one of section 245.10 of this article shall not apply to the~~
41 ~~disclosure of records created six months after a test was conducted, but~~
42 ~~such disclosure shall be made as soon as practicable and in any event,~~
43 ~~the earlier of fifteen days following receipt, or fifteen days before~~
44 ~~the first scheduled trial date.~~

45 [~~(t)~~] (xiv) In any prosecution alleging a violation of section 156.05
46 or 156.10 of the penal law, the time, place and manner such violation
47 occurred.

48 [~~(u)~~-(i)] (xv)(A) A copy of all electronically created or stored
49 information seized or obtained by or on behalf of law enforcement from:
50 [~~(A)~~] (1) the defendant as described in clause (B) of this subparagraph
51 [~~(ii) of this paragraph~~]; or [~~(B)~~] (2) a source other than the defendant
52 which [~~relates to the subject matter of~~] is relevant to the charges
53 against the defendant in the case.

54 [~~(ii)~~] (B) If the electronically created or stored information origi-
55 nates from a device, account, or other electronically stored source that
56 the prosecution believes the defendant owned, maintained, or had lawful

1 access to and is within the possession, custody or control of the prose-
2 cution or persons under the prosecution's direction or control, the
3 prosecution shall provide a complete copy of the electronically created
4 or stored information from the device or account or other source.

5 [~~(iii)~~] (C) If possession of such electronically created or stored
6 information would be a crime under New York state or federal law, the
7 prosecution shall make those portions of the electronically created or
8 stored information that are not criminal to possess available as speci-
9 fied under this paragraph and shall afford counsel for the defendant
10 access to inspect contraband portions at a supervised location that
11 provides regular and reasonable hours for such access, such as a
12 prosecutor's office, police station, or court. Any delay in counsel for
13 the defendant's access to contraband portions of such materials caused
14 by counsel for such defendant shall be excludable from chargeable time
15 as defined in subdivision four of section 30.30 of this chapter.

16 [~~(iv)~~] (D) This paragraph shall not be construed to alter or in any
17 way affect the right to be free from unreasonable searches and seizures
18 or such other rights a suspect or defendant may derive from the state
19 constitution or the United States constitution. If in the exercise of
20 reasonable diligence the information under this paragraph is not avail-
21 able for disclosure within the time period required by subdivision one
22 of section 245.10 of this article, that period shall be stayed without
23 need for a motion pursuant to subdivision two of section 245.70 of this
24 article, except that the prosecution shall notify the defendant in writ-
25 ing that such information has not been disclosed, and such disclosure
26 shall be made as soon as practicable and not later than [~~forty-five~~
27 ~~calendar days before the first scheduled trial date~~] the end of the time
28 period under paragraph (c) of subdivision one of section 245.10 of this
29 article, unless an order is obtained pursuant to section 245.70 of this
30 article.

31 (b) Non-material information:

32 (i) The names and adequate contact information for all persons other
33 than law enforcement personnel whom the prosecutor knows to have
34 evidence or information relevant to any offense charged or to any poten-
35 tial defense thereto, including a designation by the prosecutor as to
36 which of such persons may be called as witnesses. Nothing in this para-
37 graph shall require the disclosure of physical addresses; provided,
38 however, upon a motion and good cause shown the court may direct the
39 disclosure of a physical address. Information under this subdivision
40 relating to the identity of a 911 caller, the victim or witness of an
41 offense defined under article one hundred thirty or section 230.34 or
42 230.34-a of the penal law, any other victim or witness of a crime where
43 the defendant has substantiated affiliation with a criminal enterprise
44 as defined in subdivision three of section 460.10 of the penal law, or a
45 confidential informant may be withheld, and redacted from discovery
46 materials, without need for a motion pursuant to section 245.70 of this
47 article; provided that the prosecution shall notify the defendant in
48 writing that such information has not been disclosed, unless the court
49 rules otherwise for good cause shown.

50 (ii) The name and work affiliation of all law enforcement personnel
51 whom the prosecutor knows to have evidence or information relevant to
52 any offense charged or to any potential defense thereto, including a
53 designation by the prosecutor as to which of such persons may be called
54 as witnesses. Information under this subdivision relating to undercover
55 personnel may be withheld, and redacted from discovery materials, with-
56 out need for a motion pursuant to section 245.70 of this article;

1 provided that the prosecution shall notify the defendant in writing that
2 such information has not been disclosed, unless the court rules other-
3 wise for good cause shown.

4 (iii) A list of the source and approximate quantity of other
5 recordings, and their general subject matter if known. The defendant
6 shall have the right upon request to obtain recordings not previously
7 disclosed. The prosecution shall disclose the requested materials as
8 soon as practicable and not less than fifteen calendar days after the
9 defendant's request, unless an order is obtained pursuant to section
10 245.70 of this article. The prosecution may withhold the names and
11 identifying information of any person who contacted 911 without the need
12 for a protective order pursuant to section 245.70 of this article,
13 provided, however, that the defendant may move the court for disclosure.
14 If the prosecution intends to call such person as a witness at a trial
15 or hearing, the prosecution shall disclose the name and contact informa-
16 tion of such witness no later than fifteen days before such trial or
17 hearing, or as soon as practicable.

18 (iv) Any photographs and drawings made or completed by a public serv-
19 ant engaged in law enforcement activity, or which were made by a person
20 whom the prosecutor intends to call as a witness at trial or a pre-trial
21 hearing that are relevant to the subject matter of the case and were not
22 turned over pursuant to paragraph (a) of this subdivision.

23 (v) A copy of all electronically created or stored information seized
24 or obtained by or on behalf of law enforcement from: (A) the defendant
25 as described in subparagraph (ii) of this paragraph; or (B) a source
26 other than the defendant which is relevant to the subject matter of the
27 case and not turned over pursuant to paragraph (a) of this subdivision.

28 (vi) All tangible property that relates to the subject matter of the
29 case that was not turned over pursuant to paragraph (a) of this subdivi-
30 sion. If in the exercise of reasonable diligence the prosecutor has not
31 formed an intention within the time periods specified in subdivision one
32 of section 245.10 of this article that an item under this subdivision
33 will be introduced at trial or a pre-trial hearing, the prosecution
34 shall notify the defendant in writing, and the time period in which to
35 designate items as exhibits shall be stayed without need for a motion
36 pursuant to subdivision two of section 245.70 of this article; but the
37 disclosure shall be made as soon as practicable and subject to the
38 continuing duty to disclose in section 245.60 of this article.

39 (c) Impeachment material:

40 (i) Name, business address, current curriculum vitae, a list of publi-
41 cations, and a list of proficiency tests and results administered or
42 taken within the past ten years of each expert witness whom the prosecu-
43 tor intends to call as a witness at trial or a pre-trial hearing, and
44 all reports prepared by the expert that pertain to the case, or if no
45 report is prepared, a written statement of the facts and opinions to
46 which the expert is expected to testify and a summary of the grounds for
47 each opinion. This paragraph does not alter or in any way affect the
48 procedures, obligations or rights set forth in section 250.10 of this
49 title. If in the exercise of reasonable diligence this information is
50 unavailable for disclosure within the time period specified in subdivi-
51 sion one of section 245.10 of this article, that period shall be stayed
52 without need for a motion pursuant to subdivision two of section 245.70
53 of this article; except that the prosecution shall notify the defendant
54 in writing that such information has not been disclosed, and such
55 disclosure shall be made as soon as practicable and not later than sixty
56 calendar days before the first scheduled trial date, unless an order is

1 obtained pursuant to section 245.70 of this article. When the prose-
2 cution's expert witness is being called in response to disclosure of an
3 expert witness by the defendant, the court shall alter a scheduled trial
4 date, if necessary, to allow the prosecution thirty calendar days to
5 make the disclosure and the defendant thirty calendar days to prepare
6 and respond to the new materials.

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

11 (iii) A complete record of judgments of conviction for all defendants
12 and all persons designated as potential prosecution witnesses pursuant
13 to this paragraph, other than those witnesses who are experts.

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

17 (v) 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. The time period required by
28 subdivision one of section 245.10 of this article shall not apply to the
29 disclosure of records created six months after a test was conducted, but
30 such disclosure shall be made as soon as practicable and in any event,
31 the earlier of fifteen days following receipt, or fifteen days before
32 the first scheduled trial date.

33 2. Duties of the prosecution. The prosecutor shall make a diligent,
34 good faith effort to ascertain the existence of material or information
35 discoverable under subdivision one of this section and to cause such
36 material or information to be made available for discovery where it
37 exists but is not within the prosecutor's possession, custody or
38 control; provided that the prosecutor shall not be required to obtain by
39 subpoena duces tecum material or information which the defendant may
40 thereby obtain. For purposes of subdivision one of this section, all
41 items and information related to the prosecution of a charge in the
42 possession of any New York state or local police or law enforcement
43 agency shall be deemed to be in the possession of the prosecution. The
44 prosecution shall also identify any laboratory having contact with
45 evidence related to the prosecution of a charge. This subdivision shall
46 not require the prosecutor to ascertain the existence of witnesses not
47 known to the police or another law enforcement agency, or the written or
48 recorded statements thereof, under subparagraph (iii) of paragraph [(e)]
49 (a) or [(e)] subparagraph (i) of paragraph (b) of subdivision one of
50 this section.

51 4. Reciprocal discovery for the prosecution. (a) The defendant shall,
52 subject to constitutional limitations, disclose to the prosecution, and
53 permit the prosecution to discover, inspect, copy or photograph, any
54 material and relevant evidence within the defendant's or counsel for the
55 defendant's possession or control that is discoverable under [~~paragraphs~~
56 ~~(f), (g), (h), (j), (l) and (o)] subparagraphs (iv), (v), (vi), (viii)~~

1 or (xii) of paragraph (a), subparagraphs (iii), (iv), or (vi) of para-
2 graph (b), or subparagraphs (i) or (ii) of paragraph (c) of subdivision
3 one of this section, which the defendant intends to introduce at trial
4 or a pre-trial hearing, and the names, addresses, birth dates, and all
5 statements, written or recorded or summarized in any writing or record-
6 ing, of those persons other than the defendant whom the defendant
7 intends to call as witnesses at trial or a pre-trial hearing.

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

13 (c) If in the exercise of reasonable diligence the reciprocally
14 discoverable information under subparagraphs (iv) or (xii) paragraph
15 [~~(f) or (e)~~] (a), subparagraph (vi) of paragraph (b), or subparagraph
16 (i) of paragraph (c) of subdivision one of this section is unavailable
17 for disclosure within the time period specified in subdivision two of
18 section 245.10 of this article, such time period shall be stayed without
19 need for a motion pursuant to subdivision two of section 245.70 of this
20 article; but the disclosure shall be made as soon as practicable and
21 subject to the continuing duty to disclose in section 245.60 of this
22 article.

23 5. Stay of automatic discovery; remedies and sanctions. Section 245.10
24 and [~~subdivisions~~] paragraphs (a), (b) and (c) of subdivision one[~~, two,~~
25 ~~three~~] and subdivision four of this section shall have the force and
26 effect of a court order, and failure to provide discovery pursuant to
27 such section or subdivision may result in application of any remedies or
28 sanctions permitted for non-compliance with a court order under section
29 245.80 of this article. However, if in the judgment of either party good
30 cause exists for declining to make any of the disclosures set forth
31 above, such party may move for a protective order pursuant to section
32 245.70 of this article and production of the item shall be stayed pend-
33 ing a ruling by the court. The opposing party shall be notified in writ-
34 ing that information has not been disclosed under a particular section.
35 When some parts of material or information are discoverable but in the
36 judgment of a party good cause exists for declining to disclose other
37 parts, the discoverable parts shall be disclosed and the disclosing
38 party shall give notice in writing that non-discoverable parts have been
39 withheld.

40 § 4. Subdivision 1 of section 255.20 of the criminal procedure law, as
41 amended by section 7 of part LLL of chapter 59 of the laws of 2019, is
42 amended to read as follows:

43 1. Except as otherwise expressly provided by law, whether the defend-
44 ant is represented by counsel or elects to proceed pro se, all pre-trial
45 motions shall be served or filed within [~~forty-five days after arraign-~~
46 ~~ment~~] the time periods as defined by section 245.10 of this title and
47 before commencement of trial, or within such additional time as the
48 court may fix upon application of the defendant made prior to entry of
49 judgment. [~~In an action in which either (a) material or information has~~
50 ~~been disclosed pursuant to paragraph (m) or (n) of subdivision one of~~
51 ~~section 245.20 of this title, (b) an eavesdropping warrant and applica-~~
52 ~~tion have been furnished pursuant to section 700.70 of this chapter, or~~
53 ~~(c) a notice of intention to introduce evidence has been served pursuant~~
54 ~~to section 710.30 of this chapter, such period shall be extended until~~
55 ~~forty-five days after the last date of such service. If the defendant is~~
56 ~~not represented by counsel and has requested an adjournment to obtain~~

1 ~~counsel or to have counsel assigned, such forty five day period shall~~
2 ~~commence on the date counsel initially appears on defendant's behalf.]~~
3 § 5. This act shall take effect on the sixtieth day after it shall
4 have become a law.