

STATE OF NEW YORK

1320

2023-2024 Regular Sessions

IN ASSEMBLY

January 17, 2023

Introduced by M. of A. JOYNER -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act and the judiciary law, in relation to the discovery provisions applicable to juvenile delinquency proceedings in family court; and to repeal certain provisions of the family court act relating thereto

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

Section 1. Sections 331.1, 331.2, 331.3, 331.4, 331.5, 331.6 and 331.7 of the family court act are REPEALED.

§ 2. The family court act is amended by adding thirteen new sections 331.1, 331.2, 331.3, 331.4, 331.5, 331.6, 331.7, 331.8, 331.9, 331.10, 331.11, 331.12 and 331.13 to read as follows:

§ 331.1. Initial appearance. 1. Disclosure. At the respondent's initial appearance, as defined in section 320.1 of this article, if the court directs detention pursuant to subdivision three of section 320.5 of this article, the presentment agency shall forthwith disclose to the respondent, and permit the respondent to discover, inspect, copy, photograph and test, all items and information set forth in paragraphs (a) through (u) of subdivision one of section 331.3 of this part that are within the presentment agency's possession at the time of the initial appearance. If the court does not direct detention, the presentment agency shall disclose to the respondent:

(a) any police or other law enforcement agency reports and written witness statements relating to the juvenile delinquency proceeding against the respondent that are within the presentment agency's possession at that time;

(b) electronic recordings relating to the juvenile delinquency proceeding against the respondent that are within the presentment agency's possession at that time, in accordance with paragraph (g) of subdivision one of section 331.3 of this part; and

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

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1 (c) exculpatory information known to the presentment agency at that
2 time.

3 (d) where the charges were removed from a youth part pursuant to arti-
4 cle seven hundred twenty-five of the criminal procedure law and the
5 attorney for the child did not represent the respondent in the youth
6 part, all discovery material previously provided pursuant to article two
7 hundred forty-five of the criminal procedure law.

8 2. Copy of records. If in the exercise of reasonable diligence and due
9 to the limited availability of resources for downloading or copying
10 recordings, a copy of an electronic recording discoverable under this
11 section is unavailable at the initial appearance, a copy shall be made
12 and disclosed to the respondent as soon as practicable but not later
13 than five calendar days after the initial appearance, provided, however,
14 that if the respondent is in detention, a copy shall be made not later
15 than three days after the initial appearance. Portions of materials
16 under this section claimed to be non-discoverable may be withheld pend-
17 ing a prompt request by the presentment agency for a determination and
18 ruling of the court under section 331.11 of this part; but the discover-
19 able portions of such materials shall be disclosed to the extent practi-
20 cable.

21 § 331.2. Timing of discovery after the initial appearance. 1.
22 Presentment agency's performance of obligations. (a) The presentment
23 agency shall perform its initial discovery obligations under subdivision
24 one of section 331.3 of this part as soon as practicable but not later
25 than fifteen calendar days after the respondent's initial appearance or,
26 if the respondent is in detention, not later than three days prior to
27 the first scheduled fact-finding hearing date, or seven days after the
28 initial appearance, whichever is earlier. Portions of materials claimed
29 to be non-discoverable may be withheld pending a determination and
30 ruling of the court under section 331.11 of this part; but the respond-
31 ent shall be notified in writing that information has not been disclosed
32 under a particular subdivision of this section, and the discoverable
33 portions of such materials shall be disclosed to the extent practicable.
34 When the discoverable materials are exceptionally voluminous, the time
35 periods in this paragraph may be stayed by up to an additional ten
36 calendar days or, if the respondent is in detention, up to an additional
37 period of three days without need for a motion pursuant to subdivision
38 two of section 331.11 of this part.

39 (b) The presentment agency shall perform its supplemental discovery
40 obligations under subdivision three of section 331.3 of this part as
41 soon as practicable but not later than fifteen calendar days prior to
42 the first scheduled fact-finding hearing date, unless the respondent is
43 in detention, in which case the presentment agency shall fulfill its
44 supplemental discovery obligations not later than three days prior to
45 the first scheduled fact-finding hearing date.

46 2. Respondent's performance of obligations. The respondent shall
47 perform his or her discovery obligations under subdivision four of
48 section 331.3 of this part not later than twenty-five calendar days
49 after being served with the presentment agency's certificate of compli-
50 ance pursuant to subdivision two of section 331.6 of this part or not
51 later than three days prior to the first scheduled fact-finding hearing
52 date, whichever is earlier. Portions of materials claimed to be non-dis-
53 coverable may be withheld pending a determination and ruling of the
54 court under section 331.11 of this part; but the presentment agency
55 shall be notified in writing that information has not been disclosed
56 under a particular section.

1 3. Timing adjustment. The time periods in this section may be adjusted
2 by the court upon a finding of good cause based upon the needs of the
3 case, the detention status of the respondent and the need for a fair and
4 expeditious resolution of the proceeding.

5 § 331.3. Automatic discovery. 1. Initial discovery for the respondent.
6 The presentment agency shall disclose to the respondent, and permit the
7 respondent to discover, inspect, copy, photograph and test, all items
8 and information that relate to the subject matter of the case and are in
9 the possession, custody or control of the presentment agency or persons
10 under the presentment agency's direction or control, including but not
11 limited to:

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

16 (b) All transcripts of the testimony of a person who has testified
17 before a grand jury in a related criminal proceeding, including but not
18 limited to the respondent or a co-respondent. The presentment agency
19 shall request that the prosecutor of the matter before the grand jury
20 provide a transcript of the testimony and, upon receipt of the request,
21 the prosecutor shall promptly apply to the appropriate criminal court,
22 with written notice to the presentment agency and the respondent, for a
23 written order pursuant to section three hundred twenty-five of the judi-
24 ciary law releasing a transcript to the presentment agency; provided,
25 however, that the transcripts of the grand jury proceedings in a case
26 removed from the youth part pursuant to article seven hundred twenty-
27 five of the criminal procedure law shall be annexed to the petition or
28 transferred to the family court in accordance with subdivision seven of
29 section 311.1 of this article. If in the exercise of reasonable dili-
30 gence, and due to the limited availability of transcription resources, a
31 transcript is unavailable for disclosure within the time period speci-
32 fied in subdivision one of section 331.2 of this part, such time period
33 may be stayed by up to an additional fifteen calendar days or, if the
34 respondent is in detention, an additional period of three days, without
35 need for a motion pursuant to subdivision two of section 331.11 of this
36 part; provided, however, that such disclosure shall be made as soon as
37 practicable and not later than fifteen calendar days prior to the first
38 scheduled fact-finding hearing date, unless the respondent is in
39 detention, in which case such disclosure shall be made not later than
40 three days prior to the first scheduled fact-finding hearing date,
41 unless an order is obtained pursuant to section 331.11 of this part.
42 When the court is required to review grand jury transcripts, the
43 presentment agency shall disclose such transcripts to the court expe-
44 ditiously upon receipt by such agency, notwithstanding the otherwise
45 applicable time periods for disclosure in this part.

46 (c) The names of, and adequate alternative contact information for,
47 all persons other than law enforcement personnel whom the presentment
48 agency knows to have evidence or information relevant to any act of
49 juvenile delinquency charged or to any potential defense thereto,
50 including a designation by the presentment agency as to which of those
51 persons may be called as witnesses. Nothing in this paragraph shall
52 require the disclosure of physical addresses; provided, however, upon a
53 motion and good cause shown the court may direct the disclosure of a
54 physical residence. Information under this subdivision relating to a
55 confidential informant may be withheld, and redacted from discovery
56 materials, without need for a motion pursuant to section 331.11 of this

1 part; but the presentment agency shall notify the respondent in writing
2 that such information has not been disclosed, unless the court rules
3 otherwise for good cause shown.

4 (d) The name and work affiliation of all law enforcement personnel
5 whom the presentment agency knows to have evidence or information rele-
6 vant to any offense charged or to any potential defense thereto, includ-
7 ing a designation by the presentment agency as to which of those persons
8 may be called as witnesses. Information under this subdivision relating
9 to undercover personnel may be withheld, and redacted from discovery
10 materials, without need for a motion pursuant to section 331.11 of this
11 part; but the presentment agency shall notify the respondent in writing
12 that such information has not been disclosed, unless the court rules
13 otherwise for good cause shown.

14 (e) All statements, written or recorded or summarized in any writing
15 or recording, made by persons who have evidence or information relevant
16 to any offense charged or to any potential defense thereto, including
17 all police reports, notes of police and other investigators, and law
18 enforcement agency reports. This provision also includes statements,
19 written or recorded or summarized in any writing or recording, by
20 persons to be called as witnesses at pre-fact-finding hearings.

21 (f) Expert opinion evidence, including the name, business address,
22 current curriculum vitae, a list of publications, and all proficiency
23 tests and results administered or taken in the current employment or
24 within the past ten years, whichever is longer, of each expert witness
25 whom the presentment agency intends to call as a witness at the fact-
26 finding hearing or at a pre-trial motion hearing, and all reports
27 prepared by the expert that pertain to the case, or if no report is
28 prepared, a written statement of the facts and opinions to which the
29 expert is expected to testify and a summary of the grounds for each
30 opinion. If in the exercise of reasonable diligence this information is
31 unavailable for disclosure within the time period specified in subdivi-
32 sion one of section 331.2 of this part, that period shall be stayed
33 without need for a motion pursuant to subdivision two of section 331.11
34 of this part; except that the presentment agency shall notify the
35 respondent in writing that such information has not been disclosed, and
36 such disclosure shall be made as soon as practicable and not later than
37 fifteen calendar days prior to the first scheduled fact-finding hearing
38 date, or, if the respondent is in detention, not later than three days
39 prior to the first scheduled fact-finding hearing date, unless an order
40 is obtained pursuant to section 331.11 of this part. When the present-
41 ment agency's expert witness is being called in response to disclosure
42 of an expert witness by the respondent, the court shall alter a sched-
43 uled fact-finding hearing date, if necessary, to allow the presentment
44 agency fifteen calendar days to make the disclosure and the respondent
45 fifteen calendar days to prepare and respond to the new materials,
46 unless the respondent is in detention, in which case the court may alter
47 the scheduled fact-finding hearing date, if necessary, to allow the
48 presentment agency an additional three days to make the disclosure and
49 the respondent three days to prepare and respond to the new materials.

50 (g) All tapes or other electronic recordings, including all electronic
51 recordings of 911 telephone calls made or received in connection with
52 the alleged incident of juvenile delinquency, and a designation by the
53 presentment agency as to which of the recordings under this paragraph
54 the presentment agency intends to introduce at fact-finding hearing or a
55 pre-trial motion hearing. If the discoverable materials under this para-
56 graph exceed ten hours in total length, the presentment agency may

1 disclose only the recordings that it intends to introduce at fact-finding
2 hearing or a pre-fact-finding hearing, along with a list of the
3 source and approximate quantity of other recordings and their general
4 subject matter if known, and the respondent shall have the right upon
5 request to obtain recordings not previously disclosed. The presentment
6 agency shall disclose the requested materials as soon as practicable and
7 not less than fifteen calendar days after the respondent's request, or,
8 if the respondent is in detention, not less than three days after the
9 respondent's request, unless an order is obtained pursuant to section
10 331.11 of this part.

11 (h) All photographs and drawings made or completed by a public servant
12 engaged in law enforcement activity, or which were made by a person whom
13 the presentment agency intends to call as a witness at fact-finding or a
14 pre-trial motion hearing or which relate to the subject matter of the
15 proceeding.

16 (i) All photographs, photocopies and reproductions made by or at the
17 direction of law enforcement personnel of any property prior to its
18 release.

19 (j) All reports, documents, records, data, calculations or writings,
20 including but not limited to preliminary tests and screening results and
21 bench notes and analyses performed or stored electronically, concerning
22 physical or mental examinations, or scientific tests or experiments or
23 comparisons, relating to the juvenile delinquency proceeding which were
24 made by or at the request or direction of a public servant engaged in
25 law enforcement activity, or which were made by a person whom the
26 presentment agency intends to call as a witness at fact-finding or a
27 pre-trial motion hearing, or which the presentment agency intends to
28 introduce at fact-finding or a pre-trial motion hearing. Information
29 under this paragraph also includes, but is not limited to, laboratory
30 information management system records relating to such materials, any
31 preliminary or final findings of non-conformance with accreditation,
32 industry or governmental standards or laboratory protocols, and any
33 conflicting analyses or results by laboratory personnel regardless of
34 the laboratory's final analysis or results. If the presentment agency
35 submitted one or more items for testing to, or received results from, a
36 forensic science laboratory or similar entity not under the presentment
37 agency's direction or control, the court on motion of a party shall
38 issue subpoenas or orders to such laboratory or entity to cause materi-
39 als under this paragraph to be made available for disclosure.

40 (k) All evidence and information, including that which is known to
41 police or other law enforcement agencies acting on the government's
42 behalf in the case, that tends to: (i) negate the respondent's guilt as
43 to a charged act of juvenile delinquency; (ii) reduce the degree of or
44 mitigate the respondent's culpability as to a charged act of juvenile
45 delinquency; (iii) support a potential defense to a charged act of juve-
46 nile delinquency; (iv) impeach the credibility of a testifying present-
47 ment agency witness; (v) undermine evidence of the respondent's identity
48 as a perpetrator of a charged act of juvenile delinquency; (vi) provide
49 a basis for a motion to suppress evidence; or (vii) mitigate the
50 restrictiveness of the disposition. Information under this subdivision
51 shall be disclosed whether or not such information is recorded in tangi-
52 ble form and irrespective of whether the presentment agency credits the
53 information. The presentment agency shall disclose the information expe-
54 ditiously upon its receipt and shall not delay disclosure if it is
55 obtained earlier than the time period for disclosure in subdivision one
56 of section 331.2 of this part.

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

5 (m) A list of all tangible objects obtained from, or allegedly
6 possessed by, the respondent or a co-respondent. The list shall include
7 a designation by the presentment agency as to which objects were phys-
8 ically or constructively possessed by the respondent and were recovered
9 during a search or seizure by a public servant or an agent thereof, and
10 which tangible objects were recovered by a public servant or an agent
11 thereof after allegedly being abandoned by the respondent. If the
12 presentment agency intends to prove the respondent's possession of any
13 tangible objects by means of a statutory presumption of possession, it
14 shall designate such intention as to each such object. If reasonably
15 practicable, the presentment agency shall also designate the location
16 from which each tangible object was recovered. There is also a right to
17 inspect, copy, photograph and test the listed tangible objects.

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

23 (o) All tangible property that relates to the subject matter of the
24 case, along with a designation of which items the presentment agency
25 intends to introduce in its case-in-chief at fact-finding hearing or at
26 a pre-trial motion hearing. If in the exercise of reasonable diligence
27 the presentment agency has not formed an intention within the time peri-
28 od specified in subdivision one of section 331.2 of this part that an
29 item under this paragraph will be introduced at fact-finding hearing or
30 at a pre-trial motion hearing, the presentment agency shall notify the
31 respondent in writing, and the time period in which to designate items
32 as exhibits shall be stayed without need for a motion pursuant to subdivi-
33 sion two of section 331.11 of this part; but the disclosure shall be
34 made as soon as practicable, but not later than fifteen calendar days
35 prior to the first scheduled fact-finding hearing date, unless the
36 respondent is in detention, in which case such disclosure shall be made
37 no later than three days prior to the first scheduled fact-finding hear-
38 ing date. All property under this paragraph is subject to the continuing
39 duty to disclose pursuant to section 331.9 of this part.

40 (p) The results of complete checks of juvenile delinquency fingerprint
41 records or criminal history records, as applicable, as well as any
42 history of juvenile delinquency adjudications known to the presentment
43 agency and not sealed, for all respondents and all persons designated as
44 potential presentment agency witnesses pursuant to paragraph (c) of this
45 subdivision, other than those witnesses who are experts.

46 (q) When it is known to the presentment agency, the existence of any
47 pending criminal action against all persons designated as potential
48 presentment agency witnesses pursuant to paragraph (c) of this subdivi-
49 sion.

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

52 (s) In any juvenile delinquency proceeding alleging a violation of the
53 vehicle and traffic law, all records of calibration, certification,
54 inspection, repair or maintenance of machines and instruments utilized
55 to perform any scientific tests and experiments, including but not
56 limited to any test of a person's breath, blood, urine or saliva, for

1 the period of six months prior and six months after such test was
2 conducted, including the records of gas chromatography related to the
3 certification of all reference standards and the certification certifi-
4 cate, if any, held by the operator of the machine or instrument.

5 (t) Any presentment agency alleging a violation of section 156.05 or
6 156.10 of the penal law, the time, place and manner such violation
7 occurred.

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

13 (ii) If the electronically created or stored information originates
14 from a device, account, or other electronically stored source that the
15 presentment agency believes the respondent owned, maintained, or had
16 lawful access to and is within the possession, custody or control of the
17 presentment agency or persons under the presentment agency's direction
18 or control, the presentment agency shall provide a complete copy of the
19 electronically created or stored information from the device or account
20 or other source, and a designation by the presentment agency as to which
21 portions it intends to introduce.

22 (iii) If possession of such electronically created or stored informa-
23 tion would be a crime if committed by an adult under New York state or
24 federal law, the presentment agency shall make those portions of the
25 electronically created or stored information that are not criminal to
26 possess available as specified under this paragraph and shall afford
27 counsel for the respondent access to inspect contraband portions at a
28 supervised location that provides regular and reasonable hours for such
29 access, such as a presentment agency's office, police station, or court.

30 (iv) This paragraph shall not be construed to alter or in any way
31 affect the right to be free from unreasonable searches and seizures or
32 such other rights a suspect or respondent may derive from the state
33 constitution or the United States constitution. If in the exercise of
34 reasonable diligence the information under this paragraph is not avail-
35 able for disclosure within the time period required by subdivision one
36 of section 331.2 of this part, that period shall be stayed without need
37 for a motion pursuant to subdivision two of section 331.11 of this part,
38 except that the presentment agency shall notify the respondent in writ-
39 ing that such information has not been disclosed, and such disclosure
40 shall be made as soon as practicable and not later than fifteen calendar
41 days prior to the first scheduled fact-finding hearing date or, if the
42 respondent is in detention, such disclosure shall be made no later than
43 three days prior to the first scheduled fact-finding hearing date,
44 unless an order is obtained pursuant to section 331.11 of this part.

45 2. Duties of the presentment agency. The presentment agency shall make
46 a diligent, good faith effort to ascertain the existence of material or
47 information discoverable under subdivision one of this section and to
48 cause such material or information to be made available for discovery
49 where it exists but is not within the presentment agency's possession,
50 custody or control; provided that the presentment agency shall not be
51 required to obtain by subpoena duces tecum material or information which
52 the respondent may thereby obtain. For purposes of subdivision one of
53 this section, all items and information related to the presentment agen-
54 cy of a charge in the possession of any New York state or local police
55 or law enforcement agency, and any information in the possession of a
56 laboratory having contact with evidence related to the presentment agen-

cy of a charge, shall be deemed to be in the possession of the presentment agency. This subdivision shall not require the presentment agency 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 respondent. The presentment agency shall disclose to the respondent a list of all misconduct and acts of juvenile delinquency of the respondent not charged in the petition, which the presentment agency intends to use at fact-finding hearing for purposes of (a) impeaching the credibility of the respondent, or (b) as substantive proof of any material issue in the proceeding. In addition, the presentment agency shall designate whether it intends to use each listed act for impeachment and/or as substantive proof.

4. Reciprocal discovery for the presentment agency. (a) The respondent shall, subject to constitutional limitations, disclose to the presentment agency, and permit the presentment agency to discover, inspect, copy or photograph, any material and relevant evidence within the respondent's or counsel for the respondent's possession or control that is discoverable under paragraphs (f), (g), (h), (j), (l) and (o) of subdivision one of this section, which the respondent intends to introduce at fact-finding or a pre-trial motion 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 respondent whom the respondent intends to call as witnesses at fact-finding hearing or at a pre-trial motion 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 respondent intends to call as a witness for the sole purpose of impeaching a presentment agency witness is not required until after the presentment agency witness has testified at fact-finding hearing.

(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 331.2 of this part, such time period shall be stayed without need for a motion pursuant to subdivision two of section 331.11 of this part; but the disclosure shall be made as soon as practicable, provided, however, that if the respondent is in detention, such disclosure shall be made no later than three days prior to the first scheduled fact-finding hearing date. All reciprocally discoverable information under this subdivision is subject to the continuing duty to disclose pursuant to section 331.9 of this part.

5. Stay of automatic discovery; remedies and sanctions. Sections 331.1 and 331.2 of this part 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 331.12 of this part. 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 331.11 of this part 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

1 parts shall be disclosed and the disclosing party shall give notice in
2 writing that non-discoverable parts have been withheld.

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

5 7. Presumption of openness. There shall be a presumption in favor of
6 disclosure when interpreting sections 331.1, 331.2 and 331.4 of this
7 part and subdivision one of this section.

8 § 331.4. Disclosure prior to an admission by the respondent; waiver of
9 discovery by respondent. 1. Disclosure of crime. Where the presentment
10 agency has made an offer to accept an admission pursuant to section
11 321.3 of this article to an act that, if committed by an adult, would be
12 a crime, the presentment agency shall disclose to the respondent, and
13 permit the respondent to discover, inspect, copy, photograph and test,
14 all items and information that would be discoverable prior to the fact-
15 finding hearing under subdivision one of section 331.3 of this part and
16 are in the possession, custody or control of the presentment agency. The
17 presentment agency shall disclose the discoverable items and information
18 not less than three calendar days prior to the expiration date of the
19 offer by the presentment agency for the respondent to make an admission
20 or any deadline imposed by the court for acceptance of the offer of an
21 admission.

22 2. Timing of disclosure. If the presentment agency does not comply
23 with the requirements of this subdivision, then, notwithstanding any
24 other provision of law, such offer shall be deemed available to the
25 respondent until three calendar days after the presentment agency has
26 complied, absent extraordinary circumstances involving new adverse
27 information bearing on the respondent occurring or discovered in the
28 interim that, after appropriate notice and an opportunity for a hearing,
29 are shown by the presentment agency and found by the court. Where the
30 offer of an admission has lapsed or been withdrawn in light of non-com-
31 pliance by the presentment agency with this subdivision, the respondent
32 may make a motion alleging such non-compliance and the court shall
33 consider the impact of any non-compliance on the respondent's decision
34 to accept or reject the offer of an admission. If the court finds that
35 the non-compliance materially affected the respondent's decision and if
36 the presentment agency declines to reinstate the lapsed or withdrawn
37 plea offer, the court, as a presumptive minimum sanction, shall preclude
38 the admission at trial of any evidence not disclosed as required under
39 this subdivision. The court may take other additional appropriate
40 action as necessary to address the non-compliance.

41 3. Exception. The rights under this subdivision do not apply to items
42 or information that are the subject of a protective order under section
43 331.11 of this part; but if such information tends to be exculpatory,
44 the court shall reconsider the protective order.

45 4. Waiver. A respondent may provide a voluntary, knowing and intelli-
46 gent waiver in the presence of his or her counsel of his or her rights
47 under this section; but an offer of an admission may not be conditioned
48 on such waiver.

49 § 331.5. Court orders for preservation, access or discovery. 1. Order
50 to preserve evidence. At any time, a party may move for a court order to
51 any individual, agency or other entity in possession, custody or control
52 of items which relate to the subject matter of the case or are otherwise
53 relevant, requiring that such items be preserved for a specified period
54 of time. The court shall hear and rule upon such motions expeditiously.
55 The court may modify or vacate such an order upon a showing that preser-
56 vation of particular evidence will create significant hardship to such

1 individual, agency or entity, on condition that the probative value of
2 that evidence is preserved by a specified alternative means.

3 2. Order to grant access to premises. At any time, the respondent may
4 move for a court order to any individual, agency or other entity in
5 possession, custody or control of a crime scene or other premises that
6 relates to the subject matter of the case or is otherwise relevant,
7 requiring that counsel for the respondent be granted prompt and reason-
8 able access to inspect, photograph or measure such crime scene or prem-
9 ises, and that the condition of the crime scene or premises remain
10 unchanged in the interim. The court shall consider the respondent's
11 expressed need for access to the premises including the risk that the
12 respondent will be deprived of evidence or information relevant to the
13 case, the position of any individual or entity with possessory or owner-
14 ship rights to the premises, the nature of the privacy interest and any
15 perceived or actual hardship of the individual or entity with possessory
16 or ownership rights, and the position of the presentment agency with
17 respect to any application for access to the premises. The court may
18 deny access to the premises when the probative value of access to such
19 location has been or will be preserved by specified alternative means.
20 If the court grants access to the premises, the individual or entity
21 with ownership or possessory rights to the premises may request law
22 enforcement presence at the premises while the respondent's counsel or a
23 representative thereof is present.

24 3. Discretionary discovery by order of the court. The court in its
25 discretion may, upon a showing by the respondent that the request is
26 reasonable and that the respondent is unable without undue hardship to
27 obtain the substantial equivalent by other means, order the presentment
28 agency, or any individual, agency or other entity subject to the juris-
29 isdiction of the court, to make available for disclosure to the respondent
30 any material or information which potentially relates to the subject
31 matter of the case and is reasonably likely to be material.

32 4. Procedure. A motion under this section shall be on notice to any
33 individual, agency or entity affected by the order. A motion may be made
34 orally on the record so long as such notice is provided. The court may,
35 on its own or upon request of any individual, agency or entity affected
36 by the order, modify or vacate the order if compliance would be unrea-
37 sonable or will create significant hardship to such individual, agency
38 or entity. For good cause shown, the court may permit a party seeking or
39 opposing a discretionary order of discovery under this subdivision, or
40 another affected individual, agency or entity, to submit papers or, for
41 good cause shown, testify on the record ex parte or in camera. For good
42 cause shown, any such papers and a transcript of such testimony may be
43 sealed and shall constitute a part of the record on appeal.

44 § 331.6. Court ordered procedures to facilitate compliance; certif-
45 icates of compliance. 1. Discretion of courts. To facilitate compliance
46 with this part, and to reduce or streamline litigation of any disputes
47 about discovery, the court in its discretion may issue an order:

48 (a) requiring that the presentment agency and counsel for the respond-
49 ent diligently confer to attempt to reach an accommodation as to any
50 dispute concerning discovery prior to seeking a ruling from the court;

51 (b) requiring a discovery compliance conference at a specified time
52 prior to the fact-finding hearing between the presentment agency, coun-
53 sel for all respondents, and the court or its staff;

54 (c) requiring the presentment agency to file a certificate of compli-
55 ance that states that the presentment agency and/or an appropriate named
56 agent has made reasonable inquiries of all police officers and other

1 persons who have participated in investigating or evaluating the case
2 about the existence of any favorable evidence or information within
3 paragraph (k) of subdivision one of section 331.3 of this part, includ-
4 ing such evidence or information that was not reduced to writing or
5 otherwise memorialized or preserved as evidence, and has disclosed any
6 such information to the respondent; and/or

7 (d) requiring other measures or proceedings designed to carry into
8 effect the goals of this part.

9 2. Certificates of compliance. (a) When the presentment agency has
10 provided the discovery required by subdivision one of section 331.3 of
11 this part, except for any items or information that are the subject of
12 an order pursuant to section 331.11 of this part, it shall serve upon
13 the respondent and file with the court a certificate of compliance. The
14 certificate of compliance shall state that, after exercising due dili-
15 gence and making reasonable inquiries to ascertain the existence of
16 material and information subject to discovery, the presentment agency
17 has disclosed and made available all known material and information
18 subject to discovery. It shall also identify the items provided. If
19 additional discovery is subsequently provided prior to the fact-finding
20 hearing pursuant to section 331.9 of this part, a supplemental certif-
21 icate shall be served upon the respondent and filed with the court iden-
22 tifying the additional material and information provided. No adverse
23 consequence to the presentment agency or the prosecutor shall result
24 from the filing of a certificate of compliance in good faith; but the
25 court may grant a remedy or sanction for a discovery violation as
26 provided in section 331.12 of this part.

27 (b) When the respondent has provided all discovery required by subdi-
28 vision four of section 331.3 of this part, except for any items or
29 information that are the subject of an order pursuant to section 331.11
30 of this part, counsel for the respondent shall serve upon the present-
31 ment agency and file with the court a certificate of compliance. The
32 certificate shall state that, after exercising due diligence and making
33 reasonable inquiries to ascertain the existence of material and informa-
34 tion subject to discovery, counsel for the respondent has disclosed and
35 made available all known material and information subject to discovery.
36 It shall also identify the items provided. If additional discovery is
37 subsequently provided prior to trial pursuant to section 331.9 of this
38 part, a supplemental certificate shall be served upon the presentment
39 agency and filed with the court identifying the additional material and
40 information provided. No adverse consequence to the respondent or coun-
41 sel for the respondent shall result from the filing of a certificate of
42 compliance in good faith; but the court may grant a remedy or sanction
43 for a discovery violation as provided in section 331.12 of this part.

44 § 331.7. Non-testimonial evidence from the respondent; DNA comparison
45 order. 1. Availability. After the filing of the petition, and subject
46 to constitutional limitations, the court may, upon motion of the
47 presentment agency showing probable cause to believe the respondent has
48 committed the act that if committed by an adult would constitute a
49 crime, a clear indication that relevant material evidence will be found,
50 and that the method used to secure such evidence is safe and reliable,
51 require a respondent to provide non-testimonial evidence, including to:

52 (a) appear in a lineup;

53 (b) speak for identification by a witness or potential witness;

54 (c) be fingerprinted if authorized in accordance with section 306.1 of
55 this article;

1 (d) pose for photographs not involving reenactment of an event,
2 provided respondent is subject to photographing pursuant to section
3 306.1 of this article;

4 (e) permit the taking of samples of the respondent's blood, hair, and
5 other materials of the respondent's body that involves no unreasonable
6 intrusion thereof or a risk of serious physical injury thereto;

7 (f) provide specimens of the respondent's handwriting; and

8 (g) submit to a reasonable physical or medical inspection of the
9 respondent's body.

10 2. Limitations. This section shall not be construed to alter or in any
11 way affect the issuance of a similar court order, as may be authorized
12 by law, before the filing of the petition, consistent with such rights
13 as the respondent may derive from this article, the state constitution
14 or the United States constitution. This section shall not be construed
15 to alter or in any way affect the administration of a chemical test
16 where otherwise authorized. An order pursuant to this section may be
17 denied, limited or conditioned as provided in section 331.11 of this
18 part.

19 3. DNA comparison order. Where property in the presentment agency's
20 possession, custody, or control consists of a DNA profile obtained from
21 probative biological material gathered in connection with the investi-
22 gation of the crime, and the respondent establishes: (a) that such
23 profile complies with federal bureau of investigation or state require-
24 ments, whichever are applicable and as such requirements are applied to
25 law enforcement agencies seeking a keyboard search or similar compar-
26 ison, and (b) that the data meets state DNA index system or national DNA
27 index system criteria as such criteria are applied to law enforcement
28 agencies seeking such a keyboard search or similar comparison, the court
29 may, upon motion of a respondent against whom a petition is pending,
30 order an entity that has access to the combined DNA index system or its
31 successor system to compare such DNA profile against DNA databanks by
32 keyboard searches, or a similar method that does not involve uploading,
33 upon notice to both parties and the entity required to perform the
34 search, upon a showing by the respondent that such a comparison is mate-
35 rial to the presentation of his or her defense and that the request is
36 reasonable. For purposes of this section, a "keyboard search" shall mean
37 a search of a DNA profile against the databank in which the profile that
38 is searched is not uploaded to or maintained in the databank. Nothing in
39 this section authorizes the taking of a DNA profile from the respondent,
40 whether taken from their person or otherwise, unless specifically
41 authorized by law.

42 § 331.8. Flow of information. 1. Sufficient communication for compli-
43 ance. The presentment agency shall endeavor to ensure that a flow of
44 information is maintained with the police and other investigative
45 personnel and sufficient to place within the presentment agency's
46 possession or control all material and information pertinent to the
47 respondent and the offense or offenses charged, including, but not
48 limited to, any evidence or information discoverable under paragraph (k)
49 of subdivision one of section 331.3 of this part.

50 2. Provision of law enforcement agency files. Absent a court order or
51 a requirement that the respondent's counsel obtain a security clearance
52 mandated by law or authorized government regulation, upon request by the
53 presentment agency, each New York state and local law enforcement agency
54 shall make available to the presentment agency a complete copy of its
55 complete records and files related to the investigation of the case or
56 related to the presentment agency regarding compliance with this part.

1 3. 911 telephone call and police radio transmission electronic
2 recordings, police-worn body camera recordings and other police
3 recordings. (a) Whenever an electronic recording of a 911 telephone call
4 or a police radio transmission or video or audio footage from a police-
5 worn body camera or other police recording was made or received in
6 connection with the investigation of an apparent criminal incident, the
7 arresting officer or lead detective shall expeditiously notify the
8 presentment agency in writing upon the filing of the petition of the
9 existence of all such known recordings. The presentment agency shall
10 expeditiously take whatever reasonable steps are necessary to ensure
11 that all known electronic recordings of 911 telephone calls, police
12 radio transmissions and video and audio footage and other police
13 recordings made or available in connection with the case are preserved.
14 Upon the respondent's timely request and designation of a specific elec-
15 tronic recording of a 911 telephone call, the presentment agency shall
16 also expeditiously take whatever reasonable steps are necessary to
17 ensure that it is preserved.

18 (b) If the presentment agency fails to disclose such an electronic
19 recording to the respondent pursuant to paragraph (e), (g) or (k) of
20 subdivision one of section 331.3 of this part due to a failure to comply
21 with this obligation by police officers or other law enforcement or
22 prosecution personnel, the court upon motion of the respondent shall
23 impose an appropriate remedy or sanction pursuant to section 331.12 of
24 this part.

25 § 331.9. Continuing duty to disclose. If either the presentment agency
26 or the respondent subsequently learns of additional material or informa-
27 tion which it would have been under a duty to disclose pursuant to any
28 provisions of this part had it known of it at the time of a previous
29 discovery obligation or discovery order, it shall expeditiously notify
30 the other party and disclose the additional material and information as
31 required for automatic discovery under this part. This section also
32 requires expeditious disclosure by the presentment agency of material or
33 information that became relevant to the case or discoverable based on
34 reciprocal discovery received from the respondent pursuant to subdivi-
35 sion four of section 331.3 of this part.

36 § 331.10. Work product. This part does not authorize discovery by a
37 party of those portions of records, reports, correspondence, memoranda,
38 or internal documents of the adverse party which are only the legal
39 research, opinions, theories or conclusions of the adverse party or its
40 attorney or the attorney's agents, or of statements of a respondent,
41 written or recorded or summarized in any writing or recording, made to
42 the attorney for the respondent or the attorney's agents.

43 § 331.11. Protective orders. 1. Any discovery subject to protective
44 order. Upon a showing of good cause by either party, the court may at
45 any time order that discovery or inspection of any kind of material or
46 information under this part be denied, restricted, conditioned or
47 deferred, or make such other order as is appropriate. The court may
48 impose as a condition on discovery to a respondent that the material or
49 information to be discovered be available only to counsel for the
50 respondent; or, alternatively, that counsel for the respondent, and
51 persons employed by the attorney or appointed by the court to assist in
52 the preparation of a respondent's case, may not disclose physical copies
53 of the discoverable documents to a respondent or to anyone else,
54 provided that the presentment agency affords the respondent access to
55 inspect redacted copies of the discoverable documents at a supervised
56 location that provides regular and reasonable hours for such access,

1 such as a presentment agency's office, police station, facility of
2 detention, or court. Should the court impose as a condition that some
3 material or information be available only to counsel for the respondent,
4 the court shall inform the respondent on the record that his or her
5 attorney is not permitted by law to disclose such material or informa-
6 tion to the respondent. The court may permit a party seeking or opposing
7 a protective order under this section, or another affected person, to
8 submit papers or testify on the record ex parte or in camera. Any such
9 papers and a transcript of such testimony may be sealed and shall
10 constitute a part of the record on appeal. This section does not alter
11 the allocation of the burden of proof with regard to matters at issue,
12 including privilege.

13 2. Modification of time periods for discovery. Upon motion of a party
14 in an individual case, the court may alter the time periods for discov-
15 ery imposed by this part upon a showing of good cause.

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

22 4. Showing of good cause. In determining good cause under this section
23 the court may consider: constitutional rights or limitations; danger to
24 the integrity of physical evidence or the safety of a witness; risk of
25 intimidation, economic reprisal, bribery, harassment or unjustified
26 annoyance or embarrassment to any person, and the nature, severity and
27 likelihood of that risk; a risk of an adverse effect upon the legitimate
28 needs of law enforcement, including the protection of the confidentiali-
29 ty of informants, and the nature, severity and likelihood of that risk;
30 the nature and circumstances of the factual allegations in the case;
31 whether the respondent has a history of witness intimidation or tamper-
32 ing and the nature of that history; the nature of the stated reasons in
33 support of a protective order; the nature of the witness identifying
34 information that is sought to be addressed by a protective order,
35 including the option of employing adequate alternative contact informa-
36 tion; danger to any person stemming from factors such as a respondent's
37 substantiated affiliation with a criminal enterprise as defined in
38 subdivision three of section 460.10 of the penal law; and other similar
39 factors found to outweigh the usefulness of the discovery.

40 5. Successor counsel. In cases in which the attorney-client relation-
41 ship is terminated prior to trial for any reason, any material or infor-
42 mation disclosed subject to a condition that it be available only to
43 counsel for the respondent, or limited in dissemination by protective
44 order or otherwise, shall be provided only to successor counsel for the
45 respondent under the same condition or conditions or be returned to the
46 presentment agency, unless the court rules otherwise for good cause
47 shown or the presentment agency gives written consent. Any work product
48 derived from such material or information shall not be provided to the
49 respondent, unless the court rules otherwise or the presentment agency
50 gives written consent; provided, however, any such work product may be
51 provided to the successor counsel.

52 6. Compliance with protective order. Any protective order issued under
53 this part is a mandate of the court for purposes of the offense of crim-
54 inal contempt in subdivision three of section 215.50 of the penal law.

55 § 331.12. Remedies or sanctions for non-compliance. 1. Need for remedy
56 or sanction. (a) When material or information is discoverable under this

1 part but is disclosed belatedly, the court shall impose an appropriate
2 remedy or sanction if the party entitled to disclosure shows that it was
3 prejudiced. Regardless of a showing of prejudice the party entitled to
4 disclosure shall be given reasonable time to prepare and respond to the
5 new material.

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

14 2. Available remedies or sanctions. For failure to comply with any
15 discovery order imposed or issued pursuant to this part, the court may
16 make a further order for discovery, grant a continuance, order that a
17 hearing be reopened, order that a witness be called or recalled, draw an
18 adverse inference regarding the non-compliance, preclude or strike a
19 witness's testimony or a portion of a witness's testimony, admit or
20 exclude evidence, order a mistrial, order the dismissal of all or some
21 of the charges, or make such other order as it deems just under the
22 circumstances; except that any sanction against the respondent shall
23 comport with the respondent's constitutional right to present a defense,
24 and precluding a witness from testifying on behalf of the respondent
25 shall be permissible only upon a finding that the respondent's failure
26 to comply with the discovery obligation or order was willful and moti-
27 vated by a desire to obtain a tactical advantage.

28 3. Consequences of non-disclosure of statement of witness testifying
29 for the presentment agency. The failure of the presentment agency to
30 disclose any written or recorded statement made by a witness testifying
31 on the agency's behalf, which relates to the subject matter of the
32 witness's testimony, shall not constitute grounds for any court to order
33 a new pre-trial hearing or set aside an adjudication, or reverse, modify
34 or vacate an adjudication, in the absence of a showing by the respondent
35 that there is a reasonable possibility that the non-disclosure mate-
36 rially contributed to the result of the trial or other proceeding;
37 provided, however, that nothing in this section shall affect or limit
38 any right the respondent may have to a reopened pre-trial hearing when
39 such statements were disclosed before the close of evidence at the fact-
40 finding hearing.

41 § 331.13. Admissibility of discovery. The fact that a party has indi-
42 cated during the discovery process an intention to offer specified
43 evidence or to call a specified witness is not admissible in evidence or
44 grounds for adverse comment at a pre-trial or fact-finding hearing.

45 § 3. Subdivision 2 of section 325 of the judiciary law, as added by
46 chapter 920 of the laws of 1982, is amended to read as follows:

47 2. Where an application follows a demand to produce any transcript of
48 testimony at a grand jury proceeding pursuant to paragraph (b) of subdivi-
49 sion [~~two~~] one of section [~~331.2 or paragraph (a) of subdivision one~~
50 ~~of section 331.4~~] 331.3 of the family court act the presentment agency
51 and respondent shall be given notice of such application and an opportu-
52 nity to be heard.

53 § 4. Subdivision 5 of section 330.1 of the family court act, as added
54 by chapter 398 of the laws of 1983, is amended to read as follows:

55 5. Court ordered bill of particulars. Where a presentment agency has
56 timely served a written refusal pursuant to subdivision four of this

1 section and upon motion, made in writing, of a respondent, who has made
2 a request for a bill of particulars and whose request has not been
3 complied with in whole or in part, the court must, to the extent a
4 protective order is not warranted, order the presentment agency to
5 comply with the request if it is satisfied that the items of factual
6 information requested are authorized to be included in a bill of partic-
7 ulars, and that such information is necessary to enable the respondent
8 adequately to prepare or conduct his defense and, if the request was
9 untimely, a finding of good cause for the delay. Where a presentment
10 agency has not timely served a written refusal pursuant to subdivision
11 four of this section the court must, unless it is satisfied that the
12 presentment agency has shown good cause why such an order should not be
13 issued, issue an order requiring the presentment agency to comply or
14 providing for any other order authorized by subdivision one of section
15 ~~[331.6]~~ 331.12 of this part.

16 § 5. This act shall take effect January 1, 2024.