§ 245.10 Timing of discovery.

1. (a) Subject to subparagraph (iv) of this paragraph, the prosecution shall perform its initial discovery obligations under subdivision one of section 245.20 of this article as soon as practicable but not later than the time periods specified in subparagraphs (i) and (ii) of this paragraph, as applicable. Portions of materials claimed to be non-discoverable may be withheld pending a determination and ruling of the court under section 245.70 of this article; but the defendant shall be notified in writing that information has not been disclosed under a particular subdivision of such section, and the discoverable portions of such materials shall be disclosed to the extent practicable. When the discoverable materials, including video footage from body-worn cameras, surveillance cameras, or dashboard cameras, are exceptionally voluminous or, despite diligent, good faith efforts, are otherwise not in the actual possession of the prosecution, the time period in this paragraph may be stayed by up to an additional thirty calendar days without need for a motion pursuant to subdivision two of section 245.70 of this article.

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

(ii) When the defendant is not in custody during the pendency of the criminal case, the prosecution shall perform its initial discovery obligations within thirty-five calendar days after the defendant's arraignment on an indictment, superior court information, prosecutor's information, information, simplified information, misdemeanor complaint or felony complaint.

(iii) Notwithstanding the previous provisions of this section, the prosecutor's obligations shall not apply to a simplified information charging a traffic infraction under the vehicle and traffic law, or to an information charging one or more petty offenses as defined by the municipal code of a village, town, city, or county, that do not carry a statutorily authorized sentence of imprisonment, and where the defendant

stands charged before the court with no crime or offense, provided however that nothing in this subparagraph shall prevent a defendant from filing a motion for disclosure of such items and information under subdivision one of section 245.20 of this article. The court shall, at the first appearance, advise the defendant of their right to file a motion for discovery.

(iv)(A) Portions of materials claimed to be non-discoverable may be withheld pending a determination and ruling of the court under section 245.70 of this article; but the defendant shall be notified in writing that information has not been disclosed under a particular subdivision of such section, and the discoverable portions of such materials shall be disclosed to the extent practicable. Information related to or evidencing the identity of a 911 caller, the victim or witness of an offense defined under article one hundred thirty or sections 230.34 and 230.34-a of the penal law, or any other victim or witness of a crime where the defendant has substantiated affiliation with a criminal enterprise as defined in subdivision three of section 460.10 of the penal law may be withheld, provided, however, the defendant may move the court for disclosure.

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

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

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

subdivision five of section 190.50 of this part. Provided, however, that if no grand jury is open and available to hear cases in the time frame necessary to allow the prosecution to provide a forty-eight hour notice, such statement shall be provided no later than twenty-four hours prior to the scheduled time for the defendant to testify before the grand jury pursuant to subdivision five of section 190.50 of this part.

2. Defendant's performance of obligations. The defendant shall perform his or her discovery obligations under subdivision four of section 245.20 of this article not later than thirty calendar days after being served with the prosecution's certificate of compliance pursuant to subdivision one of section 245.50 of this article, except that portions of materials claimed to be non-discoverable may be withheld pending a determination and ruling of the court under section 245.70 of this article; but the prosecution must be notified in writing that information has not been disclosed under a particular section.