§ 245.50 Certificates of compliance; readiness for trial.

1. By the prosecution. When the prosecution has, pursuant to this section, exercised due diligence and acted in good faith in making reasonable inquiries and efforts to obtain and provide the discovery required by subdivision one of section 245.20 of this article, except for discovery that is lost or destroyed as provided by paragraph (b) of subdivision one of section 245.80 of this article and except for any material or information that is the subject of an order pursuant to section 245.70 of this article, it shall serve upon the defendant and file with the court a certificate of compliance. The certificate of compliance shall state that, after exercising due diligence and making reasonable inquiries and efforts to ascertain the existence of, obtain, and disclose material and information subject to discovery, the prosecution has disclosed and made available all known material and information it has obtained subject to discovery. It shall also identify the items provided. The prosecution shall also identify the items that the prosecution is required to disclose and of which the prosecution is aware, but has been unable to obtain despite the exercise of due diligence as evaluated under this section. If the prosecution provides additional discovery prior to trial pursuant to section 245.60 of this article, a supplemental certificate shall be served upon the defendant and filed with the court identifying the additional material and information provided. No adverse consequence to the prosecution or the prosecutor shall result from the filing of a certificate of compliance in good faith and reasonable under the circumstances; but the court may grant a remedy or sanction for a discovery violation as provided in section 245.80 of this article. The filing of a supplemental certificate of compliance shall not impact the validity of the original certificate of compliance if filed in good faith and after exercising due diligence as assessed under this section.

1-a. Any supplemental certificate of compliance shall detail the basis for the delayed disclosure so that the court may determine whether the delayed disclosure impacts the propriety of the certificate of compliance. The filing of a supplemental certificate of compliance shall not impact the validity of the original certificate of compliance if

filed in good faith and after exercising due diligence pursuant to section 245.20 of this article, or if the additional discovery did not exist at the time of the filing of the original certificate of compliance.

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

3. Trial readiness. Notwithstanding the provisions of any other law, absent an individualized finding of special circumstances in the instant case by the court before which the charge is pending, the prosecution shall not be deemed ready for trial for purposes of section 30.30 of this chapter until it has filed a valid certificate pursuant to subdivision one of this section. A court may deem the prosecution ready for trial pursuant to section 30.30 of this chapter where information that might be considered discoverable under this article cannot be disclosed because it has been lost, destroyed, or otherwise unavailable as provided by paragraph (b) of subdivision one of section 245.80 of this article, despite diligent and good faith efforts, reasonable under the circumstances. Provided, however, that the court may grant a remedy or sanction for a discovery violation as provided by section 245.80 of

this article.

4. Challenges. (a) Challenges to, or questions related to a certificate of compliance shall be addressed by motion.

(b) To the extent that the party is aware of a potential defect or deficiency related to a certificate of compliance or supplemental certificate of compliance, the party entitled to disclosure shall notify or alert the opposing party in accordance with the procedure set forth in this subdivision.

(c) Challenges to the validity of a certificate of compliance or supplemental certificates of compliance served on the defense and filed with the court pursuant to subdivision one of this section shall be addressed by motion within thirty-five days of the service of the certificate provided that the prosecution has filed an indictment or information prior to filing the certificate of compliance. Nothing in this section shall be construed to waive a party's right to file a motion pursuant to section 30.30 of this chapter on grounds unrelated to the validity of a certificate of compliance. Provided, however, that any challenges to a certificate of compliance or supplemental certificate of compliance shall be accompanied by an affirmation by the moving party that, after the filing of the opposing party's certificate of compliance, such moving party timely conferred in good faith or timely made good faith efforts to confer with the opposing party regarding the specific and particularized matters forming the basis for such challenge, that efforts to obtain the missing discovery from the opposing party or otherwise resolve the issues raised were unsuccessful, and that no accommodation could be reached. For the purposes of this subdivision, the parties may confer informally, including but not limited to communication by email, telephone, or any other reasonable means.

(i) Upon request, the court may extend the time period to challenge a certificate of compliance or supplemental certificate of compliance beyond the thirty-five days for good cause shown. A request for extension shall be made before the expiration of the thirty-five days. Unless the court finds that the prosecutor unreasonably delayed in responding to the defense's good faith efforts to confer or that the prosecutor did not file the certificate of compliance in good faith, any

such extension shall be excluded from a speedy trial calculation pursuant to paragraph (b) of subdivision four of section 30.30 of this chapter.

(ii) Notwithstanding the provisions of this subdivision, a party may challenge the validity of the certificate of compliance after the expiration of the thirty-five day period where the grounds for such challenge are based upon a material change in circumstances, including but not limited to the belated disclosure of discoverable material pursuant to section 245.20 of this article, or, where the party entitled to disclosure could not, with due diligence, have known of the specific and particularized matters forming the basis of the challenge prior to the expiration of such period.

(iii) Nothing in this subdivision shall limit the court's authority to facilitate compliance pursuant to section 245.35 of this article. Any extension of time granted pursuant to section 245.35 shall be excluded from a speedy trial calculation pursuant to paragraph (b) of subdivision four of section 30.30 of this chapter.

5. Assessing due diligence. In assessing a party's due diligence, the court shall look at the totality of the party's efforts to comply with the provisions of this article, rather than assess the party's efforts item by item.

(a) Relevant factors for assessing the prosecutor's due diligence include, but are not limited to: the efforts made by the prosecutor to comply with the requirements of this article; the volume of discovery provided and the volume of discovery outstanding; the complexity of the case; whether the prosecutor knew that the belatedly disclosed or allegedly missing material existed; the explanation for any alleged discovery lapse; the prosecutor's response when apprised of any allegedly missing discovery; whether the belated discovery was substantively duplicative, insignificant, or easily remedied; whether the omission was corrected; whether the prosecution self-reported the error and took prompt remedial action without court intervention; and whether the prosecution's delayed disclosure of discovery was prejudicial to the defense or otherwise impeded the defense's ability to effectively investigate the case or prepare for trial.

(b) The court's determination shall be based on consideration of all

factors listed in paragraph (a) of this subdivision and no one factor shall be determinative. The court shall explain the basis for its determination on the record or in writing.

(c) A finding of a valid certificate under this section shall constitute a valid certificate pursuant to subdivision five of section 30.30 of this chapter. Upon a finding of a valid certificate, the court shall, if warranted, fashion an appropriate and proportional remedy for any discovery violation resulting from the belated disclosure pursuant to subdivision two of section 245.80 of this article.

6. Determinations by the court. Notwithstanding any other section of law to the contrary, a court shall not invalidate a certificate of compliance where the party has exercised due diligence and acted in good faith in making reasonable inquiries and efforts to obtain and provide the material required to be disclosed pursuant to section 245.20 of this article.