

1 PART LLL

2 Section 1. Article 240 of the criminal procedure law is REPEALED.
3 § 2. The criminal procedure law is amended by adding a new article 245
4 to read as follows:

5 ARTICLE 245
6 DISCOVERY

7 Section 245.10 Timing of discovery.

8 245.20 Automatic discovery.

9 245.25 Disclosure prior to certain guilty pleas.

10 245.30 Court orders for preservation, access or discovery.

11 245.35 Court ordered procedures to facilitate compliance.

12 245.40 Non-testimonial evidence from the defendant.

13 245.45 DNA comparison order.

14 245.50 Certificates of compliance; readiness for trial.

15 245.55 Flow of information.

16 245.60 Continuing duty to disclose.

17 245.65 Work product.

18 245.70 Protective orders.

19 245.75 Waiver of discovery by defendant.

20 245.80 Remedies or sanctions for non-compliance.

21 245.85 Admissibility of discovery.

22 § 245.10 Timing of discovery.

23 1. (a) The prosecution shall perform its initial discovery obligations
24 under subdivision one of section 245.20 of this article as soon as prac-
25 ticable but not later than fifteen calendar days after the defendant's
26 arraignment on an indictment, superior court information, prosecutor's
27 information, information, simplified information, misdemeanor complaint
28 or felony complaint. Portions of materials claimed to be non-discovera-
29 ble may be withheld pending a determination and ruling of the court
30 under section 245.70 of this article; but the defendant shall be noti-
31 fied in writing that information has not been disclosed under a partic-
32 ular subdivision of such section, and the discoverable portions of such
33 materials shall be disclosed to the extent practicable. When the
34 discoverable materials are exceptionally voluminous or, despite dili-
35 gent, good faith efforts, are otherwise not in the actual possession of
36 the prosecution, the time period in this paragraph may be stayed by up
37 to an additional thirty calendar days without need for a motion pursuant
38 to subdivision two of section 245.70 of this article.

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

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

51 2. Defendant's performance of obligations. The defendant shall perform
52 his or her discovery obligations under subdivision four of section
53 245.20 of this article not later than thirty calendar days after being
54 served with the prosecution's certificate of compliance pursuant to
55 subdivision one of section 245.50 of this article, except that portions

1 of materials claimed to be non-discoverable may be withheld pending a
2 determination and ruling of the court under section 245.70 of this arti-
3 cle; but the prosecution must be notified in writing that information
4 has not been disclosed under a particular section.

5 § 245.20 Automatic discovery.

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

12 (a) All written or recorded statements, and the substance of all oral
13 statements, made by the defendant or a co-defendant to a public servant
14 engaged in law enforcement activity or to a person then acting under his
15 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, including but not limited to the defendant or a
18 co-defendant. If in the exercise of reasonable diligence, and due to the
19 limited availability of transcription resources, a transcript is
20 unavailable for disclosure within the time period specified in subdivi-
21 sion one of section 245.10 of this article, such time period may be
22 stayed by up to an additional thirty calendar days without need for a
23 motion pursuant to subdivision two of section 245.70 of this article;
24 except that such disclosure shall be made as soon as practicable and not
25 later than thirty calendar days before the first scheduled trial date,
26 unless an order is obtained pursuant to section 245.70 of this article.
27 When the court is required to review grand jury transcripts, the prose-
28 cution shall disclose such transcripts to the court expeditiously upon
29 receipt by the prosecutor, notwithstanding the otherwise-applicable time
30 periods for disclosure in this article.

31 (c) The names and adequate contact information for all persons other
32 than law enforcement personnel whom the prosecutor knows to have
33 evidence or information relevant to any offense charged or to any poten-
34 tial defense thereto, including a designation by the prosecutor as to
35 which of those persons may be called as witnesses. Nothing in this para-
36 graph shall require the disclosure of physical addresses; provided,
37 however, upon a motion and good cause shown the court may direct the
38 disclosure of a physical address. Information under this subdivision
39 relating to a confidential informant may be withheld, and redacted from
40 discovery materials, without need for a motion pursuant to section
41 245.70 of this article; but the prosecution shall notify the defendant
42 in writing that such information has not been disclosed, unless the
43 court rules otherwise for good cause shown.

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

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

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

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

28 (g) 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.

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

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

49 (j) All reports, documents, records, data, calculations or writings,
50 including but not limited to preliminary tests and screening results
51 and bench notes and analyses performed or stored electronically,
52 concerning physical or mental examinations, or scientific tests or
53 experiments or comparisons, relating to the criminal action or proceed-
54 ing which were made by or at the request or direction of a public serv-
55 ant engaged in law enforcement activity, or which were made by a person
56 whom the prosecutor intends to call as a witness at trial or a pre-trial

1 hearing, or which the prosecution intends to introduce at trial or a
2 pre-trial hearing. Information under this paragraph also includes, but
3 is not limited to, laboratory information management system records
4 relating to such materials, any preliminary or final findings of non-
5 conformance with accreditation, industry or governmental standards or
6 laboratory protocols, and any conflicting analyses or results by labora-
7 tory personnel regardless of the laboratory's final analysis or results.
8 If the prosecution submitted one or more items for testing to, or
9 received results from, a forensic science laboratory or similar entity
10 not under the prosecution's direction or control, the court on motion of
11 a party shall issue subpoenas or orders to such laboratory or entity to
12 cause materials under this paragraph to be made available for disclo-
13 sure.

14 (k) All evidence and information, including that which is known to
15 police or other law enforcement agencies acting on the government's
16 behalf in the case, that tends to: (i) negate the defendant's guilt as
17 to a charged offense; (ii) reduce the degree of or mitigate the defend-
18 ant's culpability as to a charged offense; (iii) support a potential
19 defense to a charged offense; (iv) impeach the credibility of a testi-
20 fying prosecution witness; (v) undermine evidence of the defendant's
21 identity as a perpetrator of a charged offense; (vi) provide a basis for
22 a motion to suppress evidence; or (vii) mitigate punishment. Informa-
23 tion under this subdivision shall be disclosed whether or not such
24 information is recorded in tangible form and irrespective of whether the
25 prosecutor credits the information. The prosecutor shall disclose the
26 information expeditiously upon its receipt and shall not delay disclo-
27 sure if it is obtained earlier than the time period for disclosure in
28 subdivision one of section 245.10 of this article.

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

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

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

51 (o) All tangible property that relates to the subject matter of the
52 case, along with a designation of which items the prosecution intends to
53 introduce in its case-in-chief at trial or a pre-trial hearing. If in
54 the exercise of reasonable diligence the prosecutor has not formed an
55 intention within the time period specified in subdivision one of section
56 245.10 of this article that an item under this subdivision will be

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

7 (p) A complete record of judgments of conviction for all defendants
8 and all persons designated as potential prosecution witnesses pursuant
9 to paragraph (c) of this subdivision, other than those witnesses who are
10 experts.

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

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

16 (s) In any prosecution alleging a violation of the vehicle and traffic
17 law, where the defendant is charged by indictment, superior court infor-
18 mation, prosecutor's information, information, or simplified informa-
19 tion, all records of calibration, certification, inspection, repair or
20 maintenance of machines and instruments utilized to perform any scien-
21 tific tests and experiments, including but not limited to any test of a
22 person's breath, blood, urine or saliva, for the period of six months
23 prior and six months after such test was conducted, including the
24 records of gas chromatography related to the certification of all refer-
25 ence standards and the certification certificate, if any, held by the
26 operator of the machine or instrument. The time period required by
27 subdivision one of section 245.10 of this article shall not apply to the
28 disclosure of records created six months after a test was conducted, but
29 such disclosure shall be made as soon as practicable and in any event,
30 the earlier of fifteen days following receipt, or fifteen days before
31 the first scheduled trial date.

32 (t) In any prosecution alleging a violation of section 156.05 or
33 156.10 of the penal law, the time, place and manner such violation
34 occurred.

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

40 (ii) If the electronically created or stored information originates
41 from a device, account, or other electronically stored source that the
42 prosecution believes the defendant owned, maintained, or had lawful
43 access to and is within the possession, custody or control of the prose-
44 cution or persons under the prosecution's direction or control, the
45 prosecution shall provide a complete copy of the electronically created
46 or stored information from the device or account or other source.

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

55 (iv) This paragraph shall not be construed to alter or in any way
56 affect the right to be free from unreasonable searches and seizures or

1 such other rights a suspect or defendant may derive from the state
2 constitution or the United States constitution. If in the exercise of
3 reasonable diligence the information under this paragraph is not avail-
4 able for disclosure within the time period required by subdivision one
5 of section 245.10 of this article, that period shall be stayed without
6 need for a motion pursuant to subdivision two of section 245.70 of this
7 article, except that the prosecution shall notify the defendant in writ-
8 ing that such information has not been disclosed, and such disclosure
9 shall be made as soon as practicable and not later than forty-five
10 calendar days before the first scheduled trial date, unless an order is
11 obtained pursuant to section 245.70 of this article.

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

29 3. Supplemental discovery for the defendant. The prosecution shall
30 disclose to the defendant a list of all misconduct and criminal acts of
31 the defendant not charged in the indictment, superior court information,
32 prosecutor's information, information, or simplified information, which
33 the prosecution intends to use at trial for purposes of (a) impeaching
34 the credibility of the defendant, or (b) as substantive proof of any
35 material issue in the case. In addition the prosecution shall designate
36 whether it intends to use each listed act for impeachment and/or as
37 substantive proof.

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

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

54 (c) If in the exercise of reasonable diligence the reciprocally
55 discoverable information under paragraph (f) or (o) of subdivision one
56 of this section is unavailable for disclosure within the time period

1 specified in subdivision two of section 245.10 of this article, such
2 time period shall be stayed without need for a motion pursuant to subdivi-
3 vision two of section 245.70 of this article; but the disclosure shall
4 be made as soon as practicable and subject to the continuing duty to
5 disclose in section 245.60 of this article.

6 5. Stay of automatic discovery; remedies and sanctions. Section 245.10
7 and subdivisions one, two, three and four of this section shall have
8 the force and effect of a court order, and failure to provide discovery
9 pursuant to such section or subdivision may result in application of any
10 remedies or sanctions permitted for non-compliance with a court order
11 under section 245.80 of this article. However, if in the judgment of
12 either party good cause exists for declining to make any of the disclo-
13 sures set forth above, such party may move for a protective order pursu-
14 ant to section 245.70 of this article and production of the item shall
15 be stayed pending a ruling by the court. The opposing party shall be
16 notified in writing that information has not been disclosed under a
17 particular section. When some parts of material or information are
18 discoverable but in the judgment of a party good cause exists for
19 declining to disclose other parts, the discoverable parts shall be
20 disclosed and the disclosing party shall give notice in writing that
21 non-discoverable parts have been withheld.

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

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

27 § 245.25 Disclosure prior to certain guilty pleas.

28 1. Pre-indictment guilty pleas. Upon a felony complaint, where the
29 prosecution has made a pre-indictment guilty plea offer requiring a plea
30 to a crime, the prosecutor must disclose to the defense, and permit the
31 defense to discover, inspect, copy, photograph and test, all items and
32 information that would be discoverable prior to trial under subdivision
33 one of section 245.20 of this article and are in the possession, custody
34 or control of the prosecution. The prosecution shall disclose the
35 discoverable items and information not less than three calendar days
36 prior to the expiration date of any guilty plea offer by the prosecution
37 or any deadline imposed by the court for acceptance of the guilty plea
38 offer. If the prosecution does not comply with the requirements of this
39 subdivision, then, on a defendant's motion alleging a violation of this
40 subdivision, the court must consider the impact of any violation on the
41 defendant's decision to accept or reject a plea offer. If the court
42 finds that such violation materially affected the defendant's decision,
43 and if the prosecution declines to reinstate the lapsed or withdrawn
44 plea offer, the court - as a presumptive minimum sanction - must
45 preclude the admission at trial of any evidence not disclosed as
46 required under this subdivision. The court may take other appropriate
47 action as necessary to address the non-compliance. The rights under this
48 subdivision do not apply to items or information that are the subject of
49 a protective order under section 245.70 of this article; but if such
50 information tends to be exculpatory, the court shall reconsider the
51 protective order. A defendant may waive his or her rights under this
52 subdivision; but a guilty plea offer may not be conditioned on such
53 waiver.

54 2. Other guilty pleas. Upon an indictment, superior court information,
55 prosecutor's information, information, simplified information, or
56 misdemeanor complaint, where the prosecution has made a guilty plea

1 offer requiring a plea to a crime, the prosecutor must disclose to the
2 defense, and permit the defense to discover, inspect, copy, photograph
3 and test, all items and information that would be discoverable prior to
4 trial under subdivision one of section 245.20 of this article and are
5 within the possession, custody or control of the prosecution. The prose-
6 cution shall disclose the discoverable items and information not less
7 than seven calendar days prior to the expiration date of any guilty plea
8 offer by the prosecution or any deadline imposed by the court for
9 acceptance of the guilty plea offer. If the prosecution does not comply
10 with the requirements of this subdivision, then, on a defendant's motion
11 alleging a violation of this subdivision, the court must consider the
12 impact of any violation on the defendant's decision to accept or reject
13 a plea offer. If the court finds that such violation materially affected
14 the defendant's decision, and if the prosecution declines to reinstate
15 the lapsed or withdrawn plea offer, the court - as a presumptive minimum
16 sanction - must preclude the admission at trial of any evidence not
17 disclosed as required under this subdivision. The court may take other
18 appropriate action as necessary to address the non-compliance. The
19 rights under this subdivision do not apply to items or information that
20 are the subject of a protective order under section 245.70 of this arti-
21 cle; but if such information tends to be exculpatory, the court shall
22 reconsider the protective order. A defendant may waive his or her
23 rights under this subdivision; but a guilty plea offer may not be condi-
24 tioned on such waiver.

25 § 245.30 Court orders for preservation, access or discovery.

26 1. Order to preserve evidence. At any time, a party may move for a
27 court order to any individual, agency or other entity in possession,
28 custody or control of items which relate to the subject matter of the
29 case or are otherwise relevant, requiring that such items be preserved
30 for a specified period of time. The court shall hear and rule upon such
31 motions expeditiously. The court may modify or vacate such an order
32 upon a showing that preservation of particular evidence will create
33 significant hardship to such individual, agency or entity, on condition
34 that the probative value of that evidence is preserved by a specified
35 alternative means.

36 2. Order to grant access to premises. Without prejudice to its ability
37 to issue a subpoena pursuant to this chapter and after an accusatory
38 instrument has been filed, the defendant may move, upon notice to the
39 prosecution and any impacted individual, agency, or entity, for a court
40 order to access a crime scene or other premises relevant to the subject
41 matter of the case, requiring that counsel for the defendant be granted
42 reasonable access to inspect, photograph, or measure such crime scene or
43 premises, and that the condition of the crime scene or premises remain
44 unchanged in the interim. The court shall consider defendant's expressed
45 need for access to the premises including the risk that defendant will
46 be deprived of evidence or information relevant to the case, the posi-
47 tion of any individual or entity with possessory or ownership rights to
48 the premises, the nature of the privacy interest and any perceived or
49 actual hardship of the individual or entity with possessory or ownership
50 rights, and the position of the prosecution with respect to any applica-
51 tion for access to the premises. The court may deny access to the prem-
52 ises when the probative value of access to such location has been or
53 will be preserved by specified alternative means. If the court grants
54 access to the premises, the individual or entity with ownership or
55 possessory rights to the premises may request law enforcement presence

1 at the premises while defense counsel or a representative thereof is
2 present.

3 3. Discretionary discovery by order of the court. The court in its
4 discretion may, upon a showing by the defendant that the request is
5 reasonable and that the defendant is unable without undue hardship to
6 obtain the substantial equivalent by other means, order the prosecution,
7 or any individual, agency or other entity subject to the jurisdiction of
8 the court, to make available for disclosure to the defendant any materi-
9 al or information which relates to the subject matter of the case and is
10 reasonably likely to be material. A motion under this subdivision must
11 be on notice to any person or entity affected by the order. The court
12 may, on its own, upon request of any person or entity affected by the
13 order, modify or vacate the order if compliance would be unreasonable or
14 will create significant hardship. For good cause shown, the court may
15 permit a party seeking or opposing a discretionary order of discovery
16 under this subdivision, or another affected person or entity, to submit
17 papers or testify on the record ex parte or in camera. For good cause
18 shown, any such papers and a transcript of such testimony may be sealed
19 and shall constitute a part of the record on appeal.

20 § 245.35 Court ordered procedures to facilitate compliance.

21 To facilitate compliance with this article, and to reduce or stream-
22 line litigation of any disputes about discovery, the court in its
23 discretion may issue an order:

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

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

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

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

41 § 245.40 Non-testimonial evidence from the defendant.

42 1. Availability. After the filing of an accusatory instrument, and
43 subject to constitutional limitations, the court may, upon motion of
44 the prosecution showing probable cause to believe the defendant has
45 committed the crime, a clear indication that relevant material evidence
46 will be found, and that the method used to secure such evidence is safe
47 and reliable, require a defendant to provide non-testimonial evidence,
48 including to:

49 (a) Appear in a lineup;

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

51 (c) Be fingerprinted;

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

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

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

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

3 2. Limitations. This section shall not be construed to alter or in any
4 way affect the issuance of a similar court order, as may be authorized
5 by law, before the filing of an accusatory instrument, consistent with
6 such rights as the defendant may derive from the state constitution or
7 the United States constitution. This section shall not be construed to
8 alter or in any way affect the administration of a chemical test where
9 otherwise authorized. An order pursuant to this section may be denied,
10 limited or conditioned as provided in section 245.70 of this article.
11 § 245.45 DNA comparison order.

12 Where property in the prosecution's possession, custody, or control
13 consists of a deoxyribonucleic acid ("DNA") profile obtained from
14 probative biological material gathered in connection with the investi-
15 gation of the crime, or the defendant, or the prosecution of the defend-
16 ant, and the defendant establishes (a) that such profile complies with
17 federal bureau of investigation or state requirements, whichever are
18 applicable and as such requirements are applied to law enforcement agen-
19 cies seeking a keyboard search or similar comparison, and (b) that the
20 data meets state DNA index system or national DNA index system criteria
21 as such criteria are applied to law enforcement agencies seeking such a
22 keyboard search or similar comparison, the court may, upon motion of a
23 defendant against whom an indictment, superior court information,
24 prosecutor's information, information, or simplified information is
25 pending, order an entity that has access to the combined DNA index
26 system or its successor system to compare such DNA profile against DNA
27 databanks by keyboard searches, or a similar method that does not
28 involve uploading, upon notice to both parties and the entity required
29 to perform the search, upon a showing by the defendant that such a
30 comparison is material to the presentation of his or her defense and
31 that the request is reasonable. For purposes of this section, a
32 "keyboard search" shall mean a search of a DNA profile against the
33 databank in which the profile that is searched is not uploaded to or
34 maintained in the databank.

35 § 245.50 Certificates of compliance; readiness for trial.

36 1. By the prosecution. When the prosecution has provided the discovery
37 required by subdivision one of section 245.20 of this article, except
38 for any items or information that are the subject of an order pursuant
39 to section 245.70 of this article, it shall serve upon the defendant and
40 file with the court a certificate of compliance. The certificate of
41 compliance shall state that, after exercising due diligence and making
42 reasonable inquiries to ascertain the existence of material and infor-
43 mation subject to discovery, the prosecutor has disclosed and made
44 available all known material and information subject to discovery. It
45 shall also identify the items provided. If additional discovery is
46 subsequently provided prior to trial pursuant to section 245.60 of this
47 article, a supplemental certificate shall be served upon the defendant
48 and filed with the court identifying the additional material and infor-
49 mation provided. No adverse consequence to the prosecution or the prose-
50 cutor shall result from the filing of a certificate of compliance in
51 good faith; but the court may grant a remedy or sanction for a discov-
52 ery violation as provided in section 245.80 of this article.

53 2. By the defendant. When the defendant has provided all discovery
54 required by subdivision four of section 245.20 of this article, except
55 for any items or information that are the subject of an order pursuant
56 to section 245.70 of this article, counsel for the defendant shall serve

1 upon the prosecution and file with the court a certificate of compli-
2 ance. The certificate shall state that, after exercising due diligence
3 and making reasonable inquiries to ascertain the existence of material
4 and information subject to discovery, counsel for the defendant has
5 disclosed and made available all known material and information subject
6 to discovery. It shall also identify the items provided. If additional
7 discovery is subsequently provided prior to trial pursuant to section
8 245.60 of this article, a supplemental certificate shall be served upon
9 the prosecution and filed with the court identifying the additional
10 material and information provided. No adverse consequence to the
11 defendant or counsel for the defendant shall result from the filing of a
12 certificate of compliance in good faith; but the court may grant a reme-
13 dy or sanction for a discovery violation as provided in section 245.80
14 of this article.

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

21 § 245.55 Flow of information.

22 1. Sufficient communication for compliance. The district attorney and
23 the assistant responsible for the case, or, if the matter is not being
24 prosecuted by the district attorney, the prosecuting agency and its
25 assigned representative, shall endeavor to ensure that a flow of infor-
26 mation is maintained between the police and other investigative person-
27 nel and his or her office sufficient to place within his or her
28 possession or control all material and information pertinent to the
29 defendant and the offense or offenses charged, including, but not limit-
30 ed to, any evidence or information discoverable under paragraph (k) of
31 subdivision one of section 245.20 of this article.

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

39 3. 911 telephone call and police radio transmission electronic
40 recordings, police worn body camera recordings and other police
41 recordings. (a) Whenever an electronic recording of a 911 telephone
42 call or a police radio transmission or video or audio footage from a
43 police body-worn camera or other police recording was made or received
44 in connection with the investigation of an apparent criminal incident,
45 the arresting officer or lead detective shall expeditiously notify the
46 prosecution in writing upon the filing of an accusatory instrument of
47 the existence of all such known recordings. The prosecution shall expe-
48 ditiously take whatever reasonable steps are necessary to ensure that
49 all known electronic recordings of 911 telephone calls, police radio
50 transmissions and video and audio footage and other police recordings
51 made or available in connection with the case are preserved. Upon the
52 defendant's timely request and designation of a specific electronic
53 recording of a 911 telephone call, the prosecution shall also expe-
54 ditiously take whatever reasonable steps are necessary to ensure that it
55 is preserved.

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

8 § 245.60 Continuing duty to disclose.

9 If either the prosecution or the defendant subsequently learns of
10 additional material or information which it would have been under a duty
11 to disclose pursuant to any provisions of this article had it known of
12 it at the time of a previous discovery obligation or discovery order, it
13 shall expeditiously notify the other party and disclose the additional
14 material and information as required for initial discovery under this
15 article. This section also requires expeditious disclosure by the prose-
16 cution of material or information that became relevant to the case or
17 discoverable based on reciprocal discovery received from the defendant
18 pursuant to subdivision four of section 245.20 of this article.

19 § 245.65 Work product.

20 This article does not authorize discovery by a party of those portions
21 of records, reports, correspondence, memoranda, or internal documents of
22 the adverse party which are only the legal research, opinions, theories
23 or conclusions of the adverse party or its attorney or the attorney's
24 agents, or of statements of a defendant, written or recorded or summa-
25 ri- zed in any writing or recording, made to the attorney for the defend-
26 ant or the attorney's agents.

27 § 245.70 Protective orders.

28 1. Any discovery subject to protective order. Upon a showing of good
29 cause by either party, the court may at any time order that discovery or
30 inspection of any kind of material or information under this article be
31 denied, restricted, conditioned or deferred, or make such other order as
32 is appropriate. The court may impose as a condition on discovery to a
33 defendant that the material or information to be discovered be available
34 only to counsel for the defendant; or, alternatively, that counsel for
35 the defendant, and persons employed by the attorney or appointed by the
36 court to assist in the preparation of a defendant's case, may not
37 disclose physical copies of the discoverable documents to a defendant or
38 to anyone else, provided that the prosecution affords the defendant
39 access to inspect redacted copies of the discoverable documents at a
40 supervised location that provides regular and reasonable hours for such
41 access, such as a prosecutor's office, police station, facility of
42 detention, or court. Should the court impose as a condition that some
43 material or information be available only to counsel for the defendant,
44 the court shall inform the defendant on the record that his or her
45 attorney is not permitted by law to disclose such material or informa-
46 tion to the defendant. The court may permit a party seeking or oppos-
47 ing a protective order under this section, or another affected person,
48 to submit papers or testify on the record ex parte or in camera. Any
49 such papers and a transcript of such testimony may be sealed and shall
50 constitute a part of the record on appeal. This section does not alter
51 the allocation of the burden of proof with regard to matters at issue,
52 including privilege.

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

1 3. Prompt hearing. Upon request for a protective order, unless the
2 defendant voluntarily consents to the people's request for a protective
3 order, the court shall conduct an appropriate hearing within three busi-
4 ness days to determine whether good cause has been shown and when prac-
5 ticable shall render a decision expeditiously. Any materials submitted
6 and a transcript of the proceeding may be sealed and shall constitute a
7 part of the record on appeal.

8 4. Showing of good cause. In determining good cause under this
9 section the court may consider: constitutional rights or limitations;
10 danger to the integrity of physical evidence or the safety of a witness;
11 risk of intimidation, economic reprisal, bribery, harassment or unjusti-
12 fied annoyance or embarrassment to any person, and the nature, severity
13 and likelihood of that risk; a risk of an adverse effect upon the legit-
14 imate needs of law enforcement, including the protection of the confi-
15 dentiality of informants, and the nature, severity and likelihood of
16 that risk; the nature and circumstances of the factual allegations in
17 the case; whether the defendant has a history of witness intimidation or
18 tampering and the nature of that history; the nature of the stated
19 reasons in support of a protective order; the nature of the witness
20 identifying information that is sought to be addressed by a protective
21 order, including the option of employing adequate alternative contact
22 information; danger to any person stemming from factors such as a
23 defendant's substantiated affiliation with a criminal enterprise as
24 defined in subdivision three of section 460.10 of the penal law; and
25 other similar factors found to outweigh the usefulness of the discovery.

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

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

51 (b) Such review shall be sought within two business days of the
52 adverse or partially adverse ruling, by order to show cause filed with
53 the intermediate appellate court. The order to show cause shall in addi-
54 tion be timely served on the lower court and on the opposing party, and
55 shall be accompanied by a sworn affirmation stating in good faith (i)
56 that the ruling affects substantial interests, and (ii) that diligent

1 efforts to reach an accommodation of the underlying discovery dispute
2 with opposing counsel failed or that no accommodation was feasible;
3 except that service on the opposing party, and a statement regarding
4 efforts to reach an accommodation, are unnecessary where the opposing
5 party was not made aware of the application for a protective order and
6 good cause is shown for omitting service of the order to show cause on
7 the opposing party. The lower court's order subject to review shall be
8 stayed until the appellate justice renders a determination.

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

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

24 § 245.75 Waiver of discovery by defendant.

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

40 § 245.80 Remedies or sanctions for non-compliance.

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

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

55 2. Available remedies or sanctions. For failure to comply with any
56 discovery order imposed or issued pursuant to this article, the court

1 may make a further order for discovery, grant a continuance, order that
2 a hearing be reopened, order that a witness be called or recalled,
3 instruct the jury that it may draw an adverse inference regarding the
4 non-compliance, preclude or strike a witness's testimony or a portion of
5 a witness's testimony, admit or exclude evidence, order a mistrial,
6 order the dismissal of all or some of the charges, or make such other
7 order as it deems just under the circumstances; except that any sanction
8 against the defendant shall comport with the defendant's constitutional
9 right to present a defense, and precluding a defense witness from
10 testifying shall be permissible only upon a finding that the defendant's
11 failure to comply with the discovery obligation or order was willful
12 and motivated by a desire to obtain a tactical advantage.

13 3. Consequences of non-disclosure of statement of testifying prose-
14 cution witness. The failure of the prosecutor or any agent of the prose-
15 ctor to disclose any written or recorded statement made by a prose-
16 cution witness which relates to the subject matter of the witness's
17 testimony shall not constitute grounds for any court to order a new
18 pre-trial hearing or set aside a conviction, or reverse, modify or
19 vacate a judgment of conviction, in the absence of a showing by the
20 defendant that there is a reasonable possibility that the non-disclosure
21 materially contributed to the result of the trial or other proceeding;
22 provided, however, that nothing in this section shall affect or limit
23 any right the defendant may have to a reopened pre-trial hearing when
24 such statements were disclosed before the close of evidence at trial.
25 § 245.85 Admissibility of discovery.

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

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

32 3. An attorney for a defendant in a criminal action or proceeding, as
33 an officer of a criminal court, may issue a subpoena of such court,
34 subscribed by himself, for the attendance in such court of any witness
35 whom the defendant is entitled to call in such action or proceeding. An
36 attorney for a defendant may not issue a subpoena duces tecum of the
37 court directed to any department, bureau or agency of the state or of a
38 political subdivision thereof, or to any officer or representative ther-
39 eof, unless the subpoena is indorsed by the court and provides at least
40 three days for the production of the requested materials. In the case of
41 an emergency, the court may by order dispense with the three-day
42 production period. [~~Such a subpoena duces tecum may be issued in behalf~~
43 of a defendant upon order of a court pursuant to the rules applicable to
44 civil cases as provided in section twenty three hundred seven of the
45 civil practice law and rules.]

46 4. The showing required to sustain any subpoena under this section is
47 that the testimony or evidence sought is reasonably likely to be rele-
48 vant and material to the proceedings, and the subpoena is not overbroad
49 or unreasonably burdensome.

50 § 4. Subdivision 9 of section 65.20 of the criminal procedure law, as
51 added by chapter 505 of the laws of 1985 and as renumbered by chapter
52 548 of the laws of 2007, is amended to read as follows:

53 9. (a) Prior to the commencement of the hearing conducted pursuant to
54 subdivision [~~five~~] six of this section, the district attorney shall,
55 subject to a protective order, comply with the provisions of subdivision
56 one of section [~~240-45~~] 245.20 of this chapter as they concern any

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1 witness whom the district attorney intends to call at the hearing and
2 the child witness.

3 (b) Before a defendant calls a witness at such hearing, he or she
4 must, subject to a protective order, comply with the provisions of
5 subdivision ~~[two]~~ four of section ~~[240-45]~~ 245.20 of this chapter as
6 they concern all the witnesses the defendant intends to call at such
7 hearing.

8 § 5. Subdivision 5 of section 200.95 of the criminal procedure law, as
9 added by chapter 558 of the laws of 1982, is amended to read as follows:

10 5. Court ordered bill of particulars. Where a prosecutor has timely
11 served a written refusal pursuant to subdivision four of this section
12 and upon motion, made in writing, of a defendant, who has made a request
13 for a bill of particulars and whose request has not been complied with
14 in whole or in part, the court must, to the extent a protective order is
15 not warranted, order the prosecutor to comply with the request if it is
16 satisfied that the items of factual information requested are authorized
17 to be included in a bill of particulars, and that such information is
18 necessary to enable the defendant adequately to prepare or conduct his
19 defense and, if the request was untimely, a finding of good cause for
20 the delay. Where a prosecutor has not timely served a written refusal
21 pursuant to subdivision four of this section the court must, unless it
22 is satisfied that the people have shown good cause why such an order
23 should not be issued, issue an order requiring the prosecutor to comply
24 or providing for any other order authorized by ~~[subdivision one of~~
25 section 240.70] section 245.80 of this part.

26 § 6. Paragraph (c) of subdivision 1 of section 255.10 of the criminal
27 procedure law, as added by chapter 763 of the laws of 1974, is amended
28 to read as follows:

29 (c) granting discovery pursuant to article ~~[240]~~ 245; or

30 § 7. Subdivision 1 of section 255.20 of the criminal procedure law, as
31 amended by chapter 369 of the laws of 1982, is amended to read as
32 follows:

33 1. Except as otherwise expressly provided by law, whether the defend-
34 ant is represented by counsel or elects to proceed pro se, all pre-trial
35 motions shall be served or filed within forty-five days after arraign-
36 ment and before commencement of trial, or within such additional time as
37 the court may fix upon application of the defendant made prior to entry
38 of judgment. In an action in which either (a) material or information
39 has been disclosed pursuant to paragraph (m) or (n) of subdivision one
40 of section 245.20 of this title, (b) an eavesdropping warrant and appli-
41 cation have been furnished pursuant to section 700.70 of this chapter,
42 or (c) a notice of intention to introduce evidence has been served
43 pursuant to section 710.30 of this chapter, such period shall be
44 extended until forty-five days after the last date of such service. If
45 the defendant is not represented by counsel and has requested an
46 adjournment to obtain counsel or to have counsel assigned, such forty-
47 five day period shall commence on the date counsel initially appears on
48 defendant's behalf.

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

51 § 340.30 Pre-trial discovery and notices of defenses.

52 The provisions of article two hundred ~~[forty]~~ forty-five of this part,
53 concerning pre-trial discovery by a defendant under indictment in a
54 superior court, and article two hundred fifty of this part, concerning
55 pre-trial notice to the people by a defendant under indictment in a
56 superior court who intends to advance a trial defense of mental disease

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1 or defect or of alibi, apply to a prosecution of an information in a
2 local criminal court.

3 § 9. Subdivision 14 of section 400.27 of the criminal procedure law,
4 as added by chapter 1 of the laws of 1995, is amended to read as
5 follows:

6 14. (a) At a reasonable time prior to the sentencing proceeding or a
7 mental retardation hearing:

8 (i) the prosecutor shall, unless previously disclosed and subject to a
9 protective order, make available to the defendant the statements and
10 information specified in subdivision one of section ~~[240.45]~~ 245.20 of
11 this part and make available for inspection, photographing, copying or
12 testing the property specified in subdivision one of section ~~[240.20]~~
13 245.20; and

14 (ii) the defendant shall, unless previously disclosed and subject to a
15 protective order, make available to the prosecution the statements and
16 information specified in subdivision ~~[two]~~ four of section ~~[240.45]~~
17 245.20 and make available for inspection, photographing, copying or
18 testing, subject to constitutional limitations, the reports, documents
19 and other property specified ~~[in subdivision one of section 240.30]~~ in
20 section 245.20 of this part.

21 (b) Where a party refuses to make disclosure pursuant to this section,
22 the provisions of section ~~[240.35, subdivision one of section 240.40 and~~
23 ~~section 240.50]~~ 245.70, 245.75 and/or 245.80 of this part shall apply.

24 (c) If, after complying with the provisions of this section or an
25 order pursuant thereto, a party finds either before or during a sentenc-
26 ing proceeding or mental retardation hearing, additional material
27 subject to discovery or covered by court order, the party shall promptly
28 make disclosure or apply for a protective order.

29 (d) If the court finds that a party has failed to comply with any of
30 the provisions of this section, the court may ~~[enter]~~ employ any of the
31 ~~[orders]~~ remedies or sanctions specified in subdivision one of section
32 ~~[240.70]~~ 245.80 of this part.

33 § 10. The opening paragraph of paragraph (b) of subdivision 1 of
34 section 440.30 of the criminal procedure law, as added by chapter 19 of
35 the laws of 2012, is amended to read as follows:

36 In conjunction with the filing or consideration of a motion to vacate
37 a judgment pursuant to section 440.10 of this article by a defendant
38 convicted after a trial, in cases where the court has ordered an eviden-
39 tiary hearing upon such motion, the court may order that the people
40 produce or make available for inspection property ~~[, as defined in subdi-~~
41 ~~vision three of section 240.10 of this part,]~~ in its possession, custo-
42 dy, or control that was secured in connection with the investigation or
43 prosecution of the defendant upon credible allegations by the defendant
44 and a finding by the court that such property, if obtained, would be
45 probative to the determination of defendant's actual innocence, and that
46 the request is reasonable. The court shall deny or limit such a request
47 upon a finding that such a request, if granted, would threaten the
48 integrity or chain of custody of property or the integrity of the proc-
49 esses or functions of a laboratory conducting DNA testing, pose a risk
50 of harm, intimidation, embarrassment, reprisal, or other substantially
51 negative consequences to any person, undermine the proper functions of
52 law enforcement including the confidentiality of informants, or on the
53 basis of any other factor identified by the court in the interests of
54 justice or public safety. The court shall further ensure that any prop-
55 erty produced pursuant to this paragraph is subject to a protective

1 order, where appropriate. The court shall deny any request made pursuant
2 to this paragraph where:

3 § 11. Subdivision 10 of section 450.10 of the penal law, as added by
4 chapter 795 of the laws of 1984, is amended to read as follows:

5 10. Where there has been a failure to comply with the provisions of
6 this section, and where the district attorney does not demonstrate to
7 the satisfaction of the court that such failure has not caused the
8 defendant prejudice, the court shall instruct the jury that it may
9 consider such failure in determining the weight to be given such
10 evidence and may also impose any other sanction set forth in subdivision
11 one of section [~~240.70~~] 245.80 of the criminal procedure law; provided,
12 however, that unless the defendant has convinced the court that such
13 failure has caused him undue prejudice, the court shall not preclude the
14 district attorney from introducing into evidence the property, photo-
15 graphs, photocopies, or other reproductions of the property or, where
16 appropriate, testimony concerning its value and condition, where such
17 evidence is otherwise properly authenticated and admissible under the
18 rules of evidence. Failure to comply with any one or more of the
19 provisions of this section shall not for that reason alone be grounds
20 for dismissal of the accusatory instrument.

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

23 § 460.80 Court ordered disclosure.

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

37 § 13. Subdivision 5 of section 480.10 of the penal law, as added by
38 chapter 655 of the laws of 1990, is amended to read as follows:

39 5. In addition to information required to be disclosed pursuant to
40 article two hundred [~~forty~~] forty-five of the criminal procedure law,
41 when forfeiture is sought pursuant to this article, and following the
42 defendant's arraignment on the special forfeiture information, the court
43 shall order discovery of any information not otherwise disclosed which
44 is material and reasonably necessary for preparation by the defendant
45 with respect to a forfeiture proceeding brought pursuant to this arti-
46 cle. Such material shall include those portions of the grand jury
47 minutes and such other information which pertain solely to the special
48 forfeiture information and shall not include information which pertains
49 to the criminal charges. Upon application of the prosecutor, the court
50 may issue a protective order pursuant to section [~~240.40~~] 245.70 of the
51 criminal procedure law with respect to any information required to be
52 disclosed pursuant to this subdivision.

53 § 14. This act shall take effect January 1, 2020; provided, however,
54 the amendments to section 65.20 of the criminal procedure law made by
55 section four of this act shall not affect the repeal of such section and
56 shall be deemed repealed therewith.