

15

PART HHH

16 Section 1. Paragraph (a) of subdivision 1 of section 245.10 of the
17 criminal procedure law, as added by section 2 of part LLL of chapter 59
18 of the laws of 2019, is amended to read as follows:

19 (a) ~~[The]~~ Subject to subparagraph (iv) of this paragraph, the prose-
20 cution shall perform its initial discovery obligations under subdivision
21 one of section 245.20 of this article as soon as practicable but not
22 later than ~~[fifteen calendar days after the defendant's arraignment on~~
23 ~~an indictment, superior court information, prosecutor's information,~~
24 ~~information, simplified information, misdemeanor complaint or felony~~
25 ~~complaint]~~ the time periods specified in subparagraphs (i) and (ii) of
26 this paragraph, as applicable. Portions of materials claimed to be non-
27 discoverable may be withheld pending a determination and ruling of the
28 court under section 245.70 of this article; but the defendant shall be
29 notified in writing that information has not been disclosed under a
30 particular subdivision of such section, and the discoverable portions of
31 such materials shall be disclosed to the extent practicable. When the
32 discoverable materials, including video footage from body-worn cameras,
33 surveillance cameras, or dashboard cameras, are exceptionally voluminous
34 or, despite diligent, good faith efforts, are otherwise not in the actu-
35 al possession of the prosecution, the time period in this paragraph may
36 be stayed by up to an additional thirty calendar days without need for a
37 motion pursuant to subdivision two of section 245.70 of this article.

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

44 (ii) When the defendant is not in custody during the pendency of the
45 criminal case, the prosecution shall perform its initial discovery obli-
46 gations within thirty-five calendar days after the defendant's arraign-
47 ment on an indictment, superior court information, prosecutor's informa-
48 tion, information, simplified information, misdemeanor complaint or
49 felony complaint.

50 (iii) Notwithstanding the timelines contained in the opening paragraph
51 of this paragraph, the prosecutor's discovery obligation under subdivi-
52 sion one of section 245.20 of this article shall be performed as soon as
53 practicable, but not later than fifteen days before the trial of a
54 simplified information charging a traffic infraction under the vehicle

1 and traffic law, or by an information charging one or more petty
 2 offenses as defined by the municipal code of a village, town, city, or
 3 county, that do not carry a statutorily authorized sentence of imprison-
 4 ment, and where the defendant stands charged before the court with no
 5 crime or offense, provided however that nothing in this subparagraph
 6 shall prevent a defendant from filing a motion for disclosure of such
 7 items and information under subdivision one of such section 245.20 of
 8 this article at an earlier date.

9 (iv)(A) Portions of materials claimed to be non-discoverable may be
 10 withheld pending a determination and ruling of the court under section
 11 245.70 of this article; but the defendant shall be notified in writing
 12 that information has not been disclosed under a particular subdivision
 13 of such section, and the discoverable portions of such materials shall
 14 be disclosed to the extent practicable. Information related to or
 15 evidencing the identity of a 911 caller, the victim or witness of an
 16 offense defined under article one hundred thirty or sections 230.34 and
 17 230.34-a of the penal law, or any other victim or witness of a crime
 18 where the defendant has substantiated affiliation with a criminal enter-
 19 prise as defined in subdivision three of section 460.10 of the penal law
 20 may be withheld, provided, however, the defendant may move the court for
 21 disclosure.

22 (B) When the discoverable materials are exceptionally voluminous or,
 23 despite diligent, good faith efforts, are otherwise not in the actual
 24 possession of the prosecution, the time period in this paragraph may be
 25 extended pursuant to a motion pursuant to subdivision two of section
 26 245.70 of this article. For purposes of this article, voluminous mate-
 27 rials may include, but are not limited to, video footage from body worn
 28 cameras, surveillance cameras or dashboard cameras.

29 § 2. Paragraphs (c), (f), (g) and (j) of subdivision 1 of section
 30 245.20 of the criminal procedure law, as added by section 2 of part LLL
 31 of chapter 59 of the laws of 2019, are amended to read as follows:

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

50 (f) Expert opinion evidence, including the name, business address,
 51 current curriculum vitae, a list of publications, and [~~all~~] a list of
 52 proficiency tests and results administered or taken within the past ten
 53 years of each expert witness whom the prosecutor intends to call as a
 54 witness at trial or a pre-trial hearing, and all reports prepared by the
 55 expert that pertain to the case, or if no report is prepared, a written
 56 statement of the facts and opinions to which the expert is expected to

1 testify and a summary of the grounds for each opinion. This paragraph
2 does not alter or in any way affect the procedures, obligations or
3 rights set forth in section 250.10 of this title. If in the exercise of
4 reasonable diligence this information is unavailable for disclosure
5 within the time period specified in subdivision one of section 245.10 of
6 this article, that period shall be stayed without need for a motion
7 pursuant to subdivision two of section 245.70 of this article; except
8 that the prosecution shall notify the defendant in writing that such
9 information has not been disclosed, and such disclosure shall be made as
10 soon as practicable and not later than sixty calendar days before the
11 first scheduled trial date, unless an order is obtained pursuant to
12 section 245.70 of this article. When the prosecution's expert witness is
13 being called in response to disclosure of an expert witness by the
14 defendant, the court shall alter a scheduled trial date, if necessary,
15 to allow the prosecution thirty calendar days to make the disclosure and
16 the defendant thirty calendar days to prepare and respond to the new
17 materials.

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

39 (j) All reports, documents, records, data, calculations or writings,
40 including but not limited to preliminary tests and screening results and
41 bench notes and analyses performed or stored electronically, concerning
42 physical or mental examinations, or scientific tests or experiments or
43 comparisons, relating to the criminal action or proceeding which were
44 made by or at the request or direction of a public servant engaged in
45 law enforcement activity, or which were made by a person whom the prose-
46 cutor intends to call as a witness at trial or a pre-trial hearing, or
47 which the prosecution intends to introduce at trial or a pre-trial hear-
48 ing. Information under this paragraph also includes, but is not limited
49 to, laboratory information management system records relating to such
50 materials, any preliminary or final findings of non-conformance with
51 accreditation, industry or governmental standards or laboratory proto-
52 cols, and any conflicting analyses or results by laboratory personnel
53 regardless of the laboratory's final analysis or results. If the prose-
54 cution submitted one or more items for testing to, or received results
55 from, a forensic science laboratory or similar entity not under the
56 prosecution's direction or control, the court on motion of a party shall

1 issue subpoenas or orders to such laboratory or entity to cause materi-
2 als under this paragraph to be made available for disclosure. The prose-
3 cution shall not be required to provide information related to the
4 results of physical or mental examinations, or scientific tests or
5 experiments or comparisons, unless and until such examinations, tests,
6 experiments, or comparisons have been completed.

7 § 3. Subdivisions 1 and 3 of section 245.70 of the criminal procedure
8 law, as added by section 2 of part LLL of chapter 59 of the laws of
9 2019, are amended to read as follows:

10 1. Any discovery subject to protective order. Upon a showing of good
11 cause by either party, the court may at any time order that discovery or
12 inspection of any kind of material or information under this article be
13 denied, restricted, conditioned or deferred, or make such other order as
14 is appropriate, including, for 911 calls, allowing the disclosure of a
15 transcript of an audio recording in lieu of the recording. The court may
16 impose as a condition on discovery to a defendant that the material or
17 information to be discovered be available only to counsel for the
18 defendant; or, alternatively, that counsel for the defendant, and
19 persons employed by the attorney or appointed by the court to assist in
20 the preparation of a defendant's case, may not disclose physical copies
21 of the discoverable documents to a defendant or to anyone else, provided
22 that the prosecution affords the defendant access to inspect redacted
23 copies of the discoverable documents at a supervised location that
24 provides regular and reasonable hours for such access, such as a
25 prosecutor's office, police station, facility of detention, or court.
26 Should the court impose as a condition that some material or information
27 be available only to counsel for the defendant, the court shall inform
28 the defendant on the record that his or her attorney is not permitted by
29 law to disclose such material or information to the defendant. The court
30 may permit a party seeking or opposing a protective order under this
31 section, or another affected person, to submit papers or testify on the
32 record ex parte or in camera. Any such papers and a transcript of such
33 testimony may be sealed and shall constitute a part of the record on
34 appeal. This section does not alter the allocation of the burden of
35 proof with regard to matters at issue, including privilege.

36 3. Prompt hearing. Upon request for a protective order, unless the
37 defendant voluntarily consents to the people's request for a protective
38 order, the court shall conduct an appropriate hearing within three busi-
39 ness days to determine whether good cause has been shown and when prac-
40 ticable shall render a decision expeditiously. Any materials submitted
41 and a transcript of the proceeding may be sealed and shall constitute a
42 part of the record on appeal. When the defendant is charged with a
43 violent felony offense as defined in section 70.02 of the penal law, or
44 any class A felony other than those defined in article two hundred twen-
45 ty of the penal law, the court may, at the prosecutor's request, for
46 good cause shown, conduct such hearing in camera and outside the pres-
47 ence of the defendant, provided however that this shall not affect the
48 rights of the court to receive testimony or papers ex-parte or in camera
49 as provided in subdivision one of this section.

50 § 4. Section 216 of the judiciary law is amended by adding a new
51 subdivision 5 to read as follows:

52 5. The chief administrator of the courts, in conjunction with the
53 division of criminal justice services, shall collect data and report
54 annually regarding the impact of article two hundred forty-five of the
55 criminal procedure law. Such data and report shall contain information
56 regarding the implementation of article two hundred forty-five of the

criminal procedure law, including procedures used to implement the article, resources needed for implementation, information regarding cases where discovery obligations are not met, and information regarding case outcomes. The report shall be released publicly and published on the websites of the office of court administration and the division of criminal justice services. The first report shall be published eighteen months after the effective date of this section, and shall include data from the first twelve months following the enactment of this section. Reports for subsequent years shall published annually thereafter.

§ 5. Section 245.75 of the criminal procedure law, as added by section 2 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

§ 245.75 Waiver of discovery by defendant.

1. A defendant who does not seek discovery from the prosecution under this article shall so notify the prosecution and the court at the defendant's arraignment on an indictment, superior court information, prosecutor's information, information, or simplified information, or expeditiously thereafter but before receiving discovery from the prosecution pursuant to subdivision one of section 245.20 of this article, and the defendant need not provide discovery to the prosecution pursuant to subdivision four of section 245.20 and section 245.60 of this article. A waiver shall be in writing, signed for the individual case by the counsel for the defendant and filed with the court. The court shall inquire of the defendant on the record to ensure that the defendant understands his or her right to discovery and right to waive discovery.

Such a waiver does not alter or in any way affect the procedures, obligations or rights set forth in sections 250.10, 250.20 and 250.30 of this title, or otherwise established or required by law. The prosecution may not condition a guilty plea offer on the defense's execution of a waiver under this section. Counsel for the defendant may advise his or her client about the defendant's right to discovery and right to waive discovery; such advice shall not constitute a condition of a guilty plea.

2. Nothing in this section shall prevent the waiver of discovery from being a condition of the repleader, where the defendant's original conviction is vacated on agreement between the parties pursuant to section 440.10 of this part.

§ 6. Subdivision 2 of section 245.25 of the criminal procedure law, as added by section 2 of part LLL of chapter 59 of the laws of 2019, is amended and a new subdivision 3 is added to read as follows:

2. Other guilty pleas. Upon an indictment, superior court information, prosecutor's information, information, simplified information, or misdemeanor complaint, where the prosecution has made a guilty plea offer requiring a plea to a crime, the prosecutor must disclose to the defense, and permit the defense to discover, inspect, copy, photograph and test, all items and information that would be discoverable prior to trial under subdivision one of section 245.20 of this article and are within the possession, custody or control of the prosecution. The prosecution shall disclose the discoverable items and information not less than seven calendar days prior to the expiration date of any guilty plea offer by the prosecution or any deadline imposed by the court for acceptance of the guilty plea offer. If the prosecution does not comply with the requirements of this subdivision, then, on a defendant's motion alleging a violation of this subdivision, the court must consider the impact of any violation on the defendant's decision to accept or reject a plea offer. If the court finds that such violation materially affected

1 the defendant's decision, and if the prosecution declines to reinstate
2 the lapsed or withdrawn plea offer, the court - as a presumptive minimum
3 sanction - must preclude the admission at trial of any evidence not
4 disclosed as required under this subdivision. The court may take other
5 appropriate action as necessary to address the non-compliance. The
6 rights under this subdivision do not apply to items or information that
7 are the subject of a protective order under section 245.70 of this arti-
8 cle; but if such information tends to be exculpatory, the court shall
9 reconsider the protective order. A defendant may waive his or her rights
10 under this subdivision; but a guilty plea offer may not be conditioned
11 on such waiver. Notwithstanding the timelines contained in the opening
12 paragraph of paragraph (a) of subdivision one of section 245.10 of this
13 article, the prosecutor's discovery obligation under subdivision one of
14 section 245.20 of this article shall be performed as soon as practica-
15 ble, but not later than fifteen days before the trial of a simplified
16 information charging a traffic infraction under the vehicle and traffic
17 law, or by an information charging one or more petty offenses as defined
18 by the municipal code of a village, town, city, or county, that do not
19 carry a statutorily authorized sentence of imprisonment, and where the
20 defendant stands charged before the court with no crime or offense,
21 provided however that nothing in this subdivision shall prevent a
22 defendant from filing a motion for disclosure of such items and informa-
23 tion under subdivision one of such section 245.20 of this article at an
24 earlier date.

25 3. Repleader. Nothing in this section shall prevent the waiver of
26 discovery from being a condition of a repleader, where the defendant's
27 original conviction is vacated on agreement between the parties pursuant
28 to section 440.10 of this part.

29 § 7. Section 245.50 of the criminal procedure law, as added by section
30 2 of part LLL of chapter 59 of the laws of 2019, is amended to read as
31 follows:

32 § 245.50 Certificates of compliance; readiness for trial.

33 1. By the prosecution. When the prosecution has provided the discovery
34 required by subdivision one of section 245.20 of this article, except
35 for discovery that is lost or destroyed as provided by paragraph (b) of
36 subdivision one of section 245.80 of this article and except for any
37 items or information that are the subject of an order pursuant to
38 section 245.70 of this article, it shall serve upon the defendant and
39 file with the court a certificate of compliance. The certificate of
40 compliance shall state that, after exercising due diligence and making
41 reasonable inquiries to ascertain the existence of material and informa-
42 tion subject to discovery, the prosecutor has disclosed and made avail-
43 able all known material and information subject to discovery. It shall
44 also identify the items provided. If additional discovery is subsequent-
45 ly provided prior to trial pursuant to section 245.60 of this article, a
46 supplemental certificate shall be served upon the defendant and filed
47 with the court identifying the additional material and information
48 provided. No adverse consequence to the prosecution or the prosecutor
49 shall result from the filing of a certificate of compliance in good
50 faith and reasonable under the circumstances; but the court may grant a
51 remedy or sanction for a discovery violation as provided in section
52 245.80 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 defend-
11 ant 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~~] special circumstances
17 in the instant case by the court before which the charge is pending, the
18 prosecution shall not be deemed ready for trial for purposes of section
19 30.30 of this chapter until it has filed a proper certificate pursuant
20 to subdivision one of this section. A court may deem the prosecution
21 ready for trial pursuant to section 30.30 of this chapter where informa-
22 tion that might be considered discoverable under this article cannot be
23 disclosed because it has been lost, destroyed, or otherwise unavailable
24 as provided by paragraph (b) of subdivision one of section 245.80 of
25 this article, despite diligent and good faith efforts, reasonable under
26 the circumstances. Provided, however, that the court may grant a remedy
27 or sanction for a discovery violation as provided by section 245.80 of
28 this article.

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

31 § 8. This act shall take effect on the thirtieth day after it shall
32 have become a law.
