

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

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

10 § 5. Section 245.75 of the criminal procedure law, as added by section  
11 2 of part LLL of chapter 59 of the laws of 2019, is amended to read as  
12 follows:

13 § 245.75 Waiver of discovery by defendant.

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

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

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

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

41 2. Other guilty pleas. Upon an indictment, superior court information,  
42 prosecutor's information, information, simplified information, or misde-  
43 meanor complaint, where the prosecution has made a guilty plea offer  
44 requiring a plea to a crime, the prosecutor must disclose to the  
45 defense, and permit the defense to discover, inspect, copy, photograph  
46 and test, all items and information that would be discoverable prior to  
47 trial under subdivision one of section 245.20 of this article and are  
48 within the possession, custody or control of the prosecution. The prose-  
49 cution shall disclose the discoverable items and information not less  
50 than seven calendar days prior to the expiration date of any guilty plea  
51 offer by the prosecution or any deadline imposed by the court for  
52 acceptance of the guilty plea offer. If the prosecution does not comply  
53 with the requirements of this subdivision, then, on a defendant's motion  
54 alleging a violation of this subdivision, the court must consider the  
55 impact of any violation on the defendant's decision to accept or reject  
56 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.

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