
Discovery Reform in New York

Major Legislative Provisions

Revised After May 2025 Amendments

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July 2025

DATA COLLABORATIVE FOR JUSTICE

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Discovery Reform in New York: Major Legislative Provisions

OVERVIEW

On April 1, 2019, New York State passed sweeping criminal justice reform legislation, including discovery reform, requiring prosecutors to disclose their evidence to the defense earlier in case proceedings. The discovery reforms went into effect January 1, 2020, but were amended in April 2020, with an effective date 30 days later. In April 2022, New York added further amendments to the discovery statute in the state budget.

This document, originally published in 2019 and updated respectively in 2020 and 2022, was updated once more to incorporate changes included in the 2025 state budget, effective August 8, 2025.

The 2019 discovery reform repealed and replaced New York State’s discovery law, dubbed the “blindfold” law, with a new statute, [Article 245 of the Criminal Procedure Law](#).¹ The law now requires significantly greater openness and establishes specific deadlines for the sharing of evidence between the prosecution and defense during the pretrial period. With the enactment of the new discovery statute, New York joined 46 other states that had adopted comparable “open discovery” laws.²

The 2020 amendments relaxed some of the timeframes created in the initial version, making distinctions between defendants who are incarcerated before trial and those who are not and elongating timelines for defendants who are not incarcerated. The amendments also created specific exceptions for the disclosure of identifying information of certain victims and witnesses. In essence, while keeping much of the initial reform intact, the first round of amendments sought to limit how and when cases may be dismissed as a result of a discovery violation.

Most recently, the 2025 amendments similarly preserve much of the original reforms passed in 2019, ensuring that the tenets of due process are met within criminal cases, where liberty, safety, and lives are at stake. The intent of the recent changes is to address practical realities and limitations of complying with the discovery statute, reduce inefficiencies, and further encourage timely disclosures, responses, and disputes between prosecutors and defense attorneys.

The impact of discovery reform, regardless of amendments, rests on how well it is implemented and enforced. The years since its initial passing have demonstrated that successful implementation relies on systems and actors who are well trained and resourced to perform the day-to-day tasks required of the discovery statute, in pursuit of fairness and due

¹ The original publication and first update were published, respectively, in May 2019 and May 2020 under the auspices of the Center for Justice Innovation. In response to subsequent rounds of legislative amendments, the publication was updated again in 2022 and 2025 and reissued by the Data Collaborative for Justice. All versions were authored by Krystal Rodriguez.

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process for everyone impacted by the criminal legal system. It is yet to be determined whether in the discovery reform era, case processing times can be decreased, resulting in shorter jail stays for people held in pretrial detention. However, with data through 2024, we have learned it has [impacted case outcomes](#), increasing the number of dismissals among misdemeanors in New York City, but largely having no detectable impact on dismissals for indicted felonies in New York City or for any types of cases in upstate New York, with a few county-specific exceptions.³ We have also learned that prosecutors (especially in New York City and the downstate suburbs) are generally not turning over discovery within the 50- and 65-day timelines established in the statute.⁴ However, it remains to be seen whether changes to the discovery laws over the last six years have an impact on the use of jail or prison or time in pretrial detention. As always, it is critical that future research continue to answer these questions about whether the reform is meeting these objectives across New York State.

This report provides a legal summary of discovery reform’s *current provisions*, noting changes brought about by the 2020, 2022, or 2025 amendments, where applicable.

AUTOMATIC DISCOVERY AND THE PRESUMPTION OF OPENNESS

Discovery reform requires “automatic” discovery, eliminating the need for defense attorneys to make written “demands” to obtain and review evidence, at least initially. Specifically, the prosecution must allow the defendant to “discover, inspect, copy, photograph and test” all materials relating to the subject matter of the case, whenever the prosecutor or someone under the prosecutor’s direction is in possession, custody, or control of such items. The statute also creates a “presumption of openness,” directing judges to favor disclosing information when applying the statute to specific rulings in pending cases.

In the recent 2025 amendments, the text, “related to the subject matter of the case,” was added throughout the statute, presumably to clarify the types of items to be disclosed. Specifically, among other provisions, this text was added to provisions covering defendant and co-defendant statements obtained through law enforcement or law enforcement activities; witness statements offered to the grand jury; law enforcements reports, notes, or witness statements; and evidence that is exculpatory, undermines other evidence, impeaches the credibility of a prosecution witness, or mitigates the defendant’s guilt or sentence.

The 2025 amendments also added a catchall provision to the automatic discovery list to include “any other material and information relevant to the subject matter of the charges against the defendant.”

By contrast, the pre-2019 discovery statute (C.P.L. Article 240) required prosecutors to fulfill discovery obligations only after the defense attorney had made a demand in writing. In addition, it did not establish early timeframes for when demanded materials should be turned over to the defense. For instance, regarding witnesses’ written statements, recordings, criminal records, and pending criminal actions, the pre-reform statute did not require prosecutors to turn over information until the commencement of trial, limiting a defendant’s opportunity to properly investigate and respond to such information.

DISCOVERY REQUIREMENTS FOR THE PROSECUTION

Discoverable Materials

The reform statute enumerates 21 different kinds of materials that prosecutors must turn over to the defense.⁵ Several of the items were not previously listed in the old discovery law. Most notably, the prosecution is now required to turn over the following:

- **Names and adequate contact information** for *any* person who has relevant information regarding the case, with the exception of confidential informants. The 2020 amendments additionally specify that *identifying information* of 911 callers, victims, and witnesses of sex offenses and sex trafficking offenses, victims and witnesses of defendants involved in criminal enterprises (pursuant to Penal Law 460.10), as well as confidential informants, may be withheld initially, with notice to the defendant (unless the court rules otherwise). However, if the prosecution seeks the testimony of the witness, they must disclose their name and identifying information 15 days before the trial or hearing, or as soon as practicable. The defendant can also make a motion for more timely disclosure.
- **Name and work affiliation of all police and other law enforcement personnel** who have evidence or relevant information regarding the case.
- **Statements by any person with relevant information**, regardless of whether the person will be called as a witness at trial and including witnesses to be called in any pretrial hearing.
- **Electronic recordings, including 911 calls**, regardless of whether the prosecutor intends to use them at trial, with a limitation if the electronic recording exceeds 10 hours.⁶ However, the statute does allow for 911 calls to be disclosed as transcripts (as opposed to recordings), pursuant to a protective order.
- **“Brady” disclosures**,⁷ which include information that exculpates the defendant, mitigates the defendant’s culpability, supports a defense, impeaches a prosecution witness, or raises questions as to the identification of the defendant as a perpetrator. (“Brady” information must be shared expeditiously upon receipt, if obtained sooner than the timeline requirement referenced below.)
- **Rewards, promises, or inducements** offered to any prosecution witnesses. (The 2025 amendments modified this provision adding “in connection with the instant case.”)
- **Search warrants and all related materials**, including the warrant application, supporting affidavit, a police inventory of all property seized, and a transcript of all testimony or other oral communications. (The 2025 amendments modified this provision adding materials should be “in connection with the instant case.”)

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- **Electronically created or stored information** if obtained from the defendant or a source other than the defendant, but which is related to the subject matter of the, “charges against the defendant in the instant case.” (This language was included in the 2025 amendments.)
- **A list of expert witnesses’ proficiency tests and results** must be turned over along with their name, business address, curriculum vitae, and list of publications.
- **Tangible objects** obtained from or allegedly possessed by the defendant or a co-defendant, in connection with the instant case.
- **Scientific tests, physical and mental examinations and reports** that are requested by law enforcement, or prepared by a witness, or to be introduced at trial or a hearing must be disclosed. However, these items are not required to be turned over until such tests, examinations or reports are completed.

Discovery Timeframes

Per the 2020 amendments, the timeframe for disclosure generally requires the prosecution to turn over all “discoverable” materials as soon as practicable, but ***no later than 20 days after arraignment*** if the defendant is held in pretrial detention or ***no later than 35 days*** if the defendant is out of custody. An additional 30 days is permitted if the materials are voluminous or, if after making earnest efforts, the materials are not in the prosecution’s actual possession, and the prosecutor is not reasonably able to obtain the materials (namely, body-worn, surveillance and dashboard camera footage).

In effect, the maximum timeframe is 50 or 65 days, even after a 30-day extension, with a few exceptions for specific kinds of discovery.⁸

The original reforms created a different timeline for vehicle and traffic offenses charged on a simplified traffic information and municipal code offenses that do not authorize a jail sentence.⁹ For those matters, discovery was to be turned over *15 days before trial* or *as soon as practicable*. However, the 2022 State budget eliminated automatic discovery for simplified traffic information and municipal code offenses, and expressly absolves the prosecution of any discovery obligation with respect to these matters.¹⁰ Instead, it places the burden on the defendant to file a motion for disclosure to obtain the discovery listed in CPL 245.20.

Regarding the remaining prescribed deadlines, the prosecutor is still obligated to make a good faith effort to (1) find out whether the requested materials exist; and (2) to obtain all discoverable materials listed in the statute, where they do exist, including items that may not yet be in the prosecution’s custody, possession or control. If materials are exceptionally voluminous and despite diligent efforts are not in the prosecution’s possession, a motion can be made before the court to obtain additional time to turn over such materials (e.g. body worn camera, surveillance camera, and dashboard camera footage).

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Additional Timeline Requirements

The two critical pretrial activities of grand jury proceedings and plea offers are subject to special timeline requirements.

Grand Jury Proceedings. The period after criminal court arraignment (the first appearance before the court) but preceding indictment by a grand jury is often the most pivotal point in felony cases, where the defendant and the defense attorney were previously required to make decisions regarding whether to plead guilty or testify in the grand jury with little to no information. Discovery reform seeks to mitigate the number of unknowns. When the defendant wishes to exercise the right to testify, the prosecution must provide to the defense any statements made to law enforcement by the defendant or a co-defendant. Generally, these statements must be shared 48 hours prior to the defendant's scheduled grand jury testimony, regardless of the above-noted 20 or 35-day general deadline (i.e., earlier than 20 or 35 days if the grand jury hears the case earlier). However, the 2025 amendments allow the prosecution to turn over such statements 24 hours in advance of the defendant's grand jury testimony, if the 48-hour deadline would occur at a time when a grand jury is not open and available (presumably weekends and holidays).

Plea Offers. Defendants are no longer required to consider a plea offer without knowledge of the evidence against them. *If the prosecution makes an offer during the pre-indictment phase of a felony case, prosecutors are required to turn over discoverable materials at least three calendar days prior to the expiration of the offer. During other stages, discoverable materials must be shared seven calendar days prior to the expiration of any plea offer.* The right to discovery before pleading guilty can be waived by the defendant, but the prosecution cannot make such a waiver a condition of the plea (with the exception of replacers pursuant to Penal Law 440.10).¹¹

Further, the 2020 amendments to Article 245 state that the court must inquire and the defense counsel must advise the defendant of their right to obtain and waive discovery. These provisions put an end to the pressure defendants sometimes face of either accepting a plea offer without full knowledge of the evidence or risking the prosecutor's retraction of the offer before discovery is complete.

For the prosecution's failure to provide discoverable materials during plea bargaining, the court must, at a minimum, preclude the use of the non-disclosed materials at trial if:

1. The defendant alleges a violation of the discovery law, AND
2. The court finds that the prosecution's failure to disclose impacted the defendant's decision to refuse the plea, AND
3. The prosecution refuses to reinstate the plea.

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Coordination with Law Enforcement

For purposes of the statute, any materials that are in the possession of law enforcement are deemed to be in the possession of the prosecutor; any delays in transmitting evidence from law enforcement to local prosecutors' offices are not valid excuses for failing to turn over information to the defense. (Again, there are time allowances for exceptionally voluminous materials.)

Moreover, prosecutors must ensure a regular “flow of information” between law enforcement and the prosecuting agency, particularly regarding information that is exculpatory or otherwise favorable to the defense (“Brady” material). Whenever an electronic recording (e.g., 911 call, police radio transmittals, body camera recordings) is created relating to an investigation or prosecution, the arresting officer or lead detective must make copies of such recordings and notify the prosecution of its existence in writing, upon the filing of an accusatory instrument (i.e., a charging document presented at the initial criminal court or lower court arraignment.) Upon learning of recordings, the prosecution must ensure that they are preserved. Further, when the defense makes a timely request for a specific 911 call, the prosecution must take reasonable steps to ensure that it is preserved. If law enforcement does not make a recording available, the defendant can move for and the court must order a remedy or sanction. *Finally, state and local law enforcement must make all relevant records and files available to the prosecution.*

DISCRETIONARY DISCOVERY: ADDITIONAL DISCOVERY BY ORDER OF THE COURT

When the defendant is seeking information or materials not already listed in Article 245, and the information constitutes material evidence (i.e., relates to the subject matter of the case), the court can order the prosecution or any other individual or entity who possesses it to turn over such information in response to the defendant’s motion. The defendant’s request must be reasonable, and the defendant must show that they are unable to obtain equivalent information without “undue hardship.”

Pursuant to the 2025 amendments, for items not included in the statute as “automatic” discoverable items, the prosecution is not required to obtain them via a judge-ordered subpoena if the defense is also able to obtain the discovery through the same means. The prosecution or other relevant individual in opposition to the disclosure can request to testify or submit papers “in camera” (in judge’s chambers, outside of public view) or ex parte (without the presence of opposing counsel) prior to any judicial order for discretionary discovery but must show “good cause” for the non-disclosure.

PROCEDURES FOR LIMITING DISCLOSURE: PROTECTIVE ORDERS

Parties may at times have valid reasons for withholding information, generally related to the safety of witnesses which could be at risk if their names, contact information, or involvement in a case were revealed. While the pre-reform statute allowed for protective orders, the new statute makes more detailed allowances.

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When the prosecution or defense does not wish to disclose specific material or evidence, they must establish good cause for the non-disclosure; notify the opposing party in writing that information is being withheld; and apply for a protective order.

The 2025 amendments further diminish the need for protective orders, by allowing additional redactions to social security numbers, addresses and contact information, without requiring a protective order. However, the prosecution must still provide alternative contact information for witnesses.

Where a party requests a protective order to withhold any disclosures, the court may then order that the discovery or inspection of specific material or information be “denied, restricted, conditioned, or deferred.” Alternatively, a court may order that the material be limited to defense counsel’s viewing and cannot be shared with the defendant; or the court may limit access to the material, ordering that it can only be viewed at a specific location, (e.g., the prosecutor’s office or police station).

- **Hearing Requirement:** When a party seeks a protective order and the other opposes it, the court must conduct a hearing within three business days of the initial request. A decision to disclose or limit disclosure must be made by the court expeditiously.
- **Presence of the Defendant at the Hearing:** The court may conduct the hearing outside the presence of the defendant when the defendant is charged with a violent felony offense (pursuant to Penal Law 70.02) or a Class A felony (except for drug offenses) if the prosecutor requests it and shows good cause for excluding the defendant from the hearing.
- **Good Cause:** When establishing the need for a protective order, the party moving for it must show that there is a “good cause” exception. Good cause can arise under specific circumstances, mostly relating to the safety of and risk to a witness and the preservation of a defendant’s constitutional rights. Where good cause is established, the time periods for turning over discovery can be modified.
- **Appellate Review:** If a court grants or denies a protective order specifically pertaining to the disclosure of the name, address, contact information and statements of a witness, the party who received the adverse decision may appeal to the intermediate appellate court. The party seeking appellate review must file an order to show cause within two days of the adverse ruling.
- **Sanctions:** Any party that violates a protective order by sharing protected information can be charged with criminal contempt.

The 2025 amendments added a provision indicating that motions made in good faith regarding protective orders will be considered pretrial motions—meaning that the period of motion practice will be excluded from the speedy trial calculation (i.e. the time will *not* count against the prosecution). *(Please see the Certificate of Compliance section below for more discussion regarding the speedy trial statute.)*

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SUPPLEMENTAL DISCOVERY: “UNCHARGED MISCONDUCT AND CRIMINAL ACTS”

If the prosecution intends to introduce evidence of “uncharged misconduct and criminal acts” at trial, which have not been included in the indictment or information (i.e., a “Molineux” application), the prosecution must provide notice as soon as practicable and no later than 15 days prior to the *first scheduled trial date*. The prosecutor must also provide a list to the defendant of what acts they intend to present and whether the prosecution will be using evidence of these acts to challenge the credibility (impeachment) of the defendant or as substantive proof at trial.

CERTIFICATES OF COMPLIANCE

The Criminal Procedure Law’s speedy trial statute requires the prosecution to be ready for trial within specific timeframes, which vary depending on the charge level: six months for a felony, 90 days for a Class A misdemeanor, 60 days for Class B misdemeanors, and 30 days for a violation. These speedy trial timelines do not apply to murder, reckless homicide, and certain manslaughter charges.¹²

The prosecution cannot be deemed ready for trial, orally or in writing, without having fulfilled their discovery obligations and filed a “certificate of compliance.” In other words, time continues to accumulate against the prosecution before a certificate of compliance and statement of readiness is filed. The clear intent of the legislature is to prevent the prosecution from submitting statements of readiness, orally or in writing, while discovery remains knowingly incomplete.

The required “certificate of compliance” can only be served after complying with the aforementioned “automatic” discovery requirements. The 2025 amendments re-emphasize that prosecutors are required to act in good faith and with due diligence to meet their discovery obligations. The certificate must also state that prosecutors exercised due diligence and made reasonable inquiry into the existence of relevant materials, and has turned over all known discoverable materials, with the exception of evidence that has been lost or destroyed (subject to a sanction pursuant to Criminal Procedure Law 245.80(1)(b)) and materials withheld pursuant to a protective order. The certificate must also list all materials that have been turned over.

Added in the 2025 amendments, when filing a certificate of compliance, prosecutors are required to notify the other parties of any items they are aware of but unable to obtain, and, thus, unable to disclose. Further, certificates submitted in good faith that are reasonable under the circumstances will not result in an adverse consequence for the prosecution. However, the court may grant a remedy or sanction for a valid discovery violation. (Remedies and sanctions are discussed further below.)

A **supplemental certificate of compliance** must be filed if prosecutors later share additional discovery, pursuant to a continued duty to disclose newly learned information and *after* an initial certificate of compliance has already been served. This *supplemental* certificate of compliance must be filed before trial and should identify the additional information and list the materials provided.

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The April 2022 amendments reinforced that in submitting a supplemental certificate of compliance, the party must provide a detailed basis for the delayed disclosure. However, the 2022 and 2025 amendments also reiterate that a supplemental certificate of compliance, filed in “good faith and after exercising due diligence,” will not impact the validity of the first certificate of compliance.

The 2022 amendments further placed an obligation on the party awaiting discovery to inform the court and the other party what may be missing if they are aware of discovery that may not have been turned over. Any challenges to the validity or completeness of a certificate must be made in a written motion. The 2025 amendments provide additional guidelines for challenges to the prosecution’s certificate of compliance. Where the prosecution has served a certificate of compliance on the defense, defense attorneys must submit any challenge to the certificate in a written motion within 35 days, raising any objections they have to the certificate. Where the defense is filing a motion challenging a certificate of compliance, they must also affirm that they made good faith efforts to discuss the missing discovery with the prosecution, and they were unable to agree to a reasonable accommodation.

The 35-day deadline for challenges to the certificate of compliance can be extended for “good cause,” but such an extension request must occur before the deadline has expired. Any additional time for making the challenge in a written motion will, generally, not count against the prosecution (i.e. the speedy trial “clock” is stopped), *unless* the court finds the prosecution unreasonably delayed in conferring with defense and did not act in good faith.

Later challenges to a certificate of compliance can be raised but require a change of circumstances, such as the belated disclosure of discoverable materials, or if, even with due diligence, there is no way the moving party would have been aware of the missing discovery items to bring the challenge earlier.

ASSESSING DUE DILIGENCE

- One significant addition to the statute (C.P.L. 245.50(5)) included in the 2025 amendments was more specific guidance to courts on how to assess the due diligence required to meet discovery obligations. The court must examine the “totality of efforts” and consider the following factors (quoted verbatim in italics below):
 - *the efforts made by the prosecutor to comply with the requirements of [the law];*
 - *the volume of discovery provided and the volume of discovery outstanding;*
 - *the complexity of the case;*
 - *whether the prosecutor knew that the belatedly disclosed or allegedly missing material existed;*
 - *the explanation for any alleged discovery lapse;*
 - *the prosecutor's response when apprised of any allegedly missing discovery;*
 - *whether the belated discovery was substantively duplicative, insignificant, or easily remedied;*

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- *whether the omission was corrected;*
- *whether the prosecution self-reported the error and took prompt remedial action without court intervention;*
- *and whether the prosecution's delayed disclosure of discovery was prejudicial to the defense or otherwise impeded the defense's ability to effectively investigate the case or prepare for trial.*

The 2025 amendments emphasized that the court should consider all above factors when determining whether a certificate of compliance was valid. The statute further indicates that a certificate of compliance cannot be invalidated unless it is demonstrated that the prosecutor did not act in good faith and with due diligence. If the certificate is invalidated, then the people are deemed not actually ready for trial and the speedy trial “clock” was not effectively stopped. Even where a certificate is valid, if a discovery violation has occurred, the court should consider the appropriate remedy based on available sanctions listed in the statute. *(Please see the Remedies and Sanctions section below for more discussion on this topic.)*

In sum, for purposes of a speedy trial dismissal, courts can only invalidate a certificate of compliance pursuant to the above multi-factor analysis, listed in C.P.L. 245.50, to consider the totality of efforts and whether the prosecutors showed a lack of good faith and due diligence.

RECIPROCAL DISCOVERY: THE DEFENDANT'S OBLIGATIONS

The defense must provide “reciprocal” discovery within 30 days after the prosecution has served a certificate of compliance. The reciprocal discovery obligation relates to evidence the defense intends to offer at trial, specifically the following:

- **Expert opinion evidence.**
- **Tapes and electronic recordings.**
- **Any drawings and photographs** prepared by law enforcement or another person.
- **Scientific reports and data**, prepared based on a physical or mental examination or any other scientific test
- **Rewards, promises and inducements** offered to a witness for testimony.
- **Tangible property.**
- **Names, addresses and birth dates** of individuals (other than the defendant) the defense intends to call for testimony at trial. Note, however, that if the defendant chooses to present a witness to challenge the credibility of a prosecution witness (for purposes of impeachment), this information need not be turned over until *after* the prosecution witness testifies.

The defense’s obligation to provide reciprocal discovery is subject to constitutional limitations. After reasonable diligence, if the defense is unable to provide expert opinion evidence and tangible

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property is unavailable for disclosure, the timeframe of 30 days after the prosecution’s filing of a certificate of compliance can be stayed without the need for a motion. The defense must then make the disclosure as soon as possible.

REMEDIES AND SANCTIONS

The discovery reform statute provides sanctions that already existed in the pre-reform statute but also offers additional guidance for when and how they should be applied. The court must impose a remedy or sanction: (1) when information or materials are turned over late *if* the party receiving the materials can show that it was prejudiced (i.e. the party was materially affected by the late disclosure); and (2) when the materials have been lost or destroyed *if* the party entitled to the materials can show that the materials contained information regarding a contested issue.

When materials have been turned over late, even without any showing of prejudice, the court must grant reasonable time to the party receiving the materials to prepare and respond to the new information. If the materials are lost or destroyed, the sanction should be proportionate to the potential ways that the material could have helped the party entitled to disclosure. Note that a finding regarding either party’s good faith efforts or due diligence is not required for a remedy or sanction to be imposed. That is because the imposition of a remedy or sanction could be an appropriate response to missing discovery even after a party has done everything in its power to make a disclosure but is unable to do so.

The statute also makes clear that any sanction imposed on the defendant cannot impede the defendant’s constitutional right to present a defense.

If the prosecution fails to disclose a statement made by a prosecution’s witness, that alone will not permit the court to order a new pretrial hearing, or set aside a conviction, or reverse, modify, or vacate a conviction. The defendant must show that there was a reasonable possibility that the non-disclosure “materially contributed” to the result of the trial or proceeding. The defendant’s right to re-open a pretrial hearing when the statement is discovered prior to the end of trial remains intact.

The court has the discretion to fashion a remedy or sanction that is just given the circumstances. Pursuant to the April 2022 amendments, remedies must be proportionate to the harm caused to the party awaiting the discovery in the proceedings.

Delineated Remedies and Sanctions

In response to a failure to meet discovery obligations, the court can use one of the following remedies and sanctions:

- Issue an additional order for discovery (e.g., where the additional order specifies exactly what must be disclosed and gives a timeframe for complying).
- Grant a continuance (e.g., to provide more time to the party receiving late discovery to review the information).

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- Order that a hearing is re-opened or a witness re-called.
- Instruct the jury to make an adverse inference against the noncompliant party in the case.
- Preclude or strike a witness's testimony.
- Admit or exclude other evidence (i.e., with the effect of compensating the party that did not receive discovery in compliance with the statute).
- Order a mistrial.
- Order dismissal of all or some of the charges.

After all other remedies have been considered, the court can dismiss the case if appropriate and proportionate to the prejudice and harm caused. It is important to note that the provenance of a dismissal pursuant C.P.L. 245.80 is distinct and separate from a speedy trial dismissal. The latter is derived from the prosecution's inability to serve a *timely* certificate of compliance or serving one that does not meet discovery obligations due to a failure to perform due diligence, act in good faith, and only *after* the court has considered the "totality of efforts," as described above, pursuant to C.P.L. 245.50(5). However, a dismissal is also available as sanction, pursuant to 245.80, if the item that was not turned over is so prejudicial and so harmful that a dismissal would be an appropriate and proportionate response to the harm caused.

Appealing a Dismissal

Generally, the prosecution can appeal a judge's dismissal decision for limited reasons, specifically enumerated in the law.¹³ The 2022 amendments added one more permissible reason: the prosecution can appeal a judge's decision to dismiss a case or specific charge if the dismissal was based on a discovery violation. Further, during the appellate process, if a bail-eligible offense remains among the surviving charges, the judge may continue to set bail.

ENSURING COMPLIANCE WITH DISCOVERY REFORMS

Limiting Litigation

To ensure compliance and limit litigation over discovery disputes, the court may:

- Order that the parties discuss a disclosure issue to reach an agreement regarding the requested discovery.
- Require a discovery compliance conference.
- Require the prosecution to file an additional certificate of compliance with specific reference to any exculpatory or otherwise favorable information that has been provided to the defense.

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- Order any other measure required to ensure that the goals of discovery reform are met. As stated above, challenges to a certificate of completion, however, must be addressed in a motion.

Data Reporting Requirements

The 2020 bail and discovery reform amendments included reporting requirements for the Office of Court Administration (OCA) and the Division of Criminal Justice Services (DCJS). Both agencies must collect and publish specific data on their respective websites.

OCA is required to collect and report information regarding the implementation of the discovery reforms, including:

- The procedures used to implement the reforms.
- The resources needed for implementation.
- Information on cases where discovery obligations were not met.
- Case outcomes.

OCA must post the report on its website and make publicly available annually. To this end, OCA has created a public [discovery reform dashboard](#).¹⁴

OTHER NOTABLE DISCOVERY LAW PROVISIONS

Continued Duty to Disclose

While discovery reform seeks to limit the amount of time it takes to complete discovery, it also maintains the continued duty to disclose. This duty requires that both parties turn over information that they later learn exists and that would have been discoverable initially.

Order to Preserve Evidence

Any party can file a motion with the court requesting an order mandating that an individual, entity or agency in possession of items required to be disclosed under C.P.L. 245.20(1) preserve them for a specific amount of time. (Initially, this was written much more broadly to include “relevant” items; however, the 2025 amendments limited the order to preserve evidence to items already listed in the statute.) The court must respond expeditiously and may later modify or vacate the order if the preservation of the evidence causes significant hardship to the entity, agency or individual.

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Order for Access to Premises

The defendant may request a court order permitting access to a crime scene or other premises related to the case. The court can also order that the premises remain unchanged. In considering whether to grant such a motion, the court must consider several factors:

1. Need for access, including the risk that the defendant will be deprived of useful evidence.
2. The position of the individual or entity who owns or possesses the premises.
3. The privacy interest and perceived hardship to the individual or entity allowing access.
4. The position of the prosecution regarding the request for access.

The court may deny access if the probative value can be obtained through other means. Further, if the court grants access, the individual or entity who possesses or owns the property may request the presence of law enforcement.

CONCLUSION

In the years since 2020 when major criminal justice reforms took effect in New York State, they have been subject to sustained debate and interrogation. Much of the public conversation about discovery reform has focused on fairness, justice, and the legitimacy of the court process, as well as the burdens endured by district attorneys' offices in complying with the statute and the increase in dismissals attributed to the law's implementation.

Recent state budgets have provided essential funding to assist district attorneys' offices and defense agencies in meeting discovery requirements, and the latest 2025 amendments included changes to mitigate the pressures of the discovery timelines. Considering New York State's historical discovery practices, the presumption of openness and timeframes established through these reforms could ultimately have sizable positive effects on both case procedures and processing, as well as outcomes.

Sharing more information requires more effort. Statutory requirements for open discovery in criminal cases, as is required in civil cases and in other states, could reduce the fundamental distrust that pervades criminal proceedings. Fully implementing open discovery and providing the necessary infrastructure and processes to better facilitate timely disclosures could be an important step toward a more fair, transparent, and just criminal legal system.

Endnotes

¹ New York’s Criminal Procedure Law, Article 245, is publicly accessible via New York State’s Senate website: nysenate.gov/legislation/laws/CPL/A245.

² Lieberman, D & Kushner, I. (2019). [Take Off the Blindfold: Reform New York Discovery Law](#). New York, NY: New York Civil Liberties Union; Schwartzapfel, B. (August 7, 2017). [Defendants Kept in The Dark About Evidence, Until It’s Too Late](#). *New York Times*.

³ Stenkamp, A., Weill, J., and Rempel, M. (April 2025). [Discovery Reform in New York: What Can the Data Tell Us?](#) New York, NY: Data Collaborative for Justice.

⁴ IBID. The downstate suburbs include the counties of Nassau, Suffolk, Westchester, and Rockland.

⁵ The enumerated materials that fall under “initial” or “automatic” discovery can be found in C.P.L. § 245.20(1)(a)-(u).

⁶ When the electronic recording exceeds 10 hours, the prosecution may disclose only the recording that the prosecution intends to use at trial or at a pretrial hearing. However, the prosecution must still provide a list of the source and quantity of the excluded portion of recordings and their general subject matter, if known.

⁷ *Brady v. Maryland*, 373 U.S. 83 at 87 (1963), where the court held that “suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good or bad faith of the prosecution.”

⁸ There are several specific exceptions to the 50- or 65-day limit (combining the initial 20- and 35-day limit and 30-day extension allowance). For instance, expert evidence must be disclosed not later than 60 calendar days before the first scheduled trial date; as a practical matter, 60 days prior to most trials likely falls after the 50- or 60-day mark. In addition, any specific electronic material that the defense requests and that was not previously disclosed (e.g., by the 50- or 65-day mark) must be disclosed not less than 15 calendar days after the defendant’s request. Further, in any Vehicle and Traffic Law (VTL) offense (e.g., driving while intoxicated) where records of calibration, certification, repair, inspection maintenance were prepared six months after the administration of a test, disclosure must occur the earlier of 15 days following the prosecution’s receipt of such records or 15 days before the first scheduled trial date.

⁹ A simplified traffic information is a written accusation by a police officer, or other public servant authorized by law to issue such accusation, completed on a brief or simplified form prescribed by the commissioner of motor vehicles. It charges a person with one or more traffic infractions or misdemeanors relating to traffic. C.P.L. § 1.20.

¹⁰ C.P.L. § 245.10(1)(a)(iii).

ENDNOTES

¹¹ Criminal Procedure Law 440.10 allows for the withdrawal of a previous judgment for specific reasons, delineated in the statute. Repleaders allow a defendant to enter a new and different plea, as result of the withdrawal.

¹² C.P.L. § 30.30(1)(a-d). The specific homicide charges that are exempt from the speedy trial standards are Penal Law §§ 125.10 Criminally Negligent Homicide, 125.15 Manslaughter in the Second Degree, 125.20 Manslaughter in the First Degree, 125.25 Murder in the Second Degree, 125.26 Aggravated Murder, and 125.27 Murder in the First Degree.

¹³ C.P.L. § 450.20 provides the specific reasons for which the prosecution may appeal a case to a higher court.

¹⁴ New York State Unified Court System. [Discovery Reform Dashboard & Annual Reports](#).