

NEW YORK STATE BAR ASSOCIATION

CRIMINAL JUSTICE SECTION

Summary of Amendments to New York Discovery in Criminal Practice

State Education, Labor, Housing and Family Assistance Budget

(A3006c, S3006c, Part LL)

1. 2025. C.56 May 9, 2025

The amendments to New York's Discovery Laws (Criminal Procedure Law Article 245) as set forth in Part LL of the budget include the following:

- 1) Grand Jury practice: An exception to the "forty-eight hours" rule requiring disclosure of all statements by the defendant prior to defendant's scheduled testimony before the grand jury, reduces the time period to twenty-four hours "if no grand jury is open and available to hear cases" in the forty-eight-hour time frame. This amendment presumably applies to counties that do not have regularly convened grand juries.
- 2) Automatic Discovery: The opening qualifying language in 245.20(1) has been deleted and, instead, the same qualifying language ("relate to the subject matter of the case") or new qualifying language ("relate to the subject matter of the charges against the defendant or co-defendant in the instant case, or a defense thereto" or "in connection with the instant case, etc.") is now within paragraphs (a) through (u). A new paragraph (v) was added for items or material not found with (a) through (u) with the qualifying language "relevant to the subject matter of the case." Notably paragraph (e) and (k) still contain "relate to the subject matter of the case" indicating a legislative intent to keep the disclosure requirements of these paragraphs the same.
- 3) Subpoenas: Part of the language in Section 245.20 (2) has been reworded but essentially remains the same which relieves the prosecutor of any requirement to obtain material or information if the defense is able to obtain such material by use of a subpoena duces tecum.
- 4) Redactions of witness information: Section 245.20 (6) is amended to permit either the prosecution or defense to redact "without the need to move for a protective order" social security numbers, tax numbers, physical addresses or other forms of contact information as long as at least one form of adequate contact information is being provided. If items or material do not fall within the purview of paragraphs (a) through (u), the prosecution may redact the

information. Furthermore, the “party making redactions” shall provide the underlying reason for the redactions.

- 5) Certificates of Compliance: Section 245.50 (1) is amended to provide that a Certificate of Compliance can be filed by the prosecution even if certain materials or information were not obtained as long as the prosecution exercised “due diligence” and acted in good faith. Due diligence is now defined in Section 245.50 (5).
- 6) Challenges to Certificates of Compliance: Section 245.50 (4) (c) now requires defense motions challenging the prosecutor’s Certificate of Compliance to be filed within thirty-five days of service and filing of the subject Certificate of Compliance, but only if the prosecutor has previously filed an indictment or information. The amendment also recognizes and provides an exception when the defense could not have known of the belated discovery. Furthermore, extensions can be granted for good cause. However, time beyond the thirty-five days is excludable from speedy trial calculations unless the prosecutor acted in bad faith or caused the need for the extension by failing to confer with defense counsel.
- 7) Assessing due diligence: A new subdivision “5” of Section 245.50 sets forth a list of factors for courts to evaluate in determining “due diligence.” The factors to be considered by the courts include:
 - a. Efforts made by the prosecutor to comply,
 - b. The volume of discovery,
 - c. The complexity of the case,
 - d. Whether prosecutor knew the belatedly disclosed or allegedly missing material existed,
 - e. The explanation for any alleged discovery lapse,
 - f. The prosecutor’s response when apprised of any allegedly missing discovery,
 - g. Whether the belated discovery was substantively duplicative, insignificant, or easily remedied;
 - h. Whether the omission was corrected,
 - i. Whether the prosecution self-reported the error and took prompt remedial action without court intervention, and
 - j. Whether the prosecution’s delayed disclosure was prejudicial to the defense or otherwise impeded the defense’s ability to effectively investigate the case or prepare for trial.
- 8) A new subdivision (8) was added to Section 245.70 to reflect existing case law that motions for protective orders and motions to modify the time periods are to be deemed pre-trial motions under Criminal Procedure Law Section 30.30 (4) as long as they are filed in good faith.

- 9) A new section, 245.90, was added to confirm that the federal and state constitutions remain and that there was no intent to abridge any constitutional protections.
- 10) Additionally, amendments to Criminal Procedure Law Section 30.30 (5) reflect the amendments to Article 245 and contain the same language found in Section 245.50 (5).
- 11) The amendments take effect ninety days after adoption.