

Discovery Amendment

1 AN ACT to amend the criminal procedure law, in relation to criminal discovery.

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3 The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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5 Section 1. Section 245.10 of the criminal procedure law, as added by section 2 of part LLL of
6 chapter 59 of the laws of 2019, is amended to read as follows:

7 § 245.10 Timing of Discovery.

8 1. (a) Initial Discovery. Subject to subparagraph (iv) of this paragraph, the prosecution shall
9 perform its initial discovery obligations under subdivision one of section 245.20 of this article as
10 soon as practicable but not later than the time periods specified in subparagraphs (i) and (ii) of this
11 paragraph, as applicable. Portions of materials claimed to be non-discoverable may be withheld
12 pending a determination and ruling of the court under section 245.70 of this article; but the
13 defendant shall be notified in writing that information has not been disclosed under a particular
14 subdivision of such section, and the discoverable portions of such materials shall be disclosed to
15 the extent practicable. When the discoverable materials, including video footage from body-worn
16 cameras, surveillance cameras, or dashboard cameras, are ~~[exceptionally]~~ voluminous,
17 burdensome or, despite diligent, good faith efforts, are otherwise not in the actual possession of
18 the prosecution, the time period in this paragraph may be stayed by up to an additional thirty
19 calendar days without need for a motion pursuant to subdivision two of section 245.70 of this
20 article.

21 (i) When a defendant is in custody during the pendency of the criminal case, the prosecution
22 shall perform its initial discovery obligations within twenty calendar days after the defendant's
23 arraignment on an indictment, superior court information, prosecutor's information, information,
24 simplified information, misdemeanor complaint or felony complaint.

25 (ii) When the defendant is not in custody during the pendency of the criminal case, the
26 prosecution shall perform its initial discovery obligations within thirty-five calendar days after the
27 defendant's arraignment on an indictment, superior court information, prosecutor's information,
28 information, simplified information, misdemeanor complaint or felony complaint.

29 (iii) Notwithstanding the timelines contained in the opening paragraph of this paragraph, the
30 prosecutor's discovery obligation under subdivision one of section 245.20 of this article shall be
31 performed as soon as practicable, but not later than fifteen days before the trial of a simplified

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

7 (iv) (A) Portions of materials claimed to be non-discoverable may be withheld pending a
8 determination and ruling of the court under section 245.70 of this article; but the defendant shall
9 be notified in writing that information has not been disclosed under a particular subdivision of
10 such section, and the discoverable portions of such materials shall be disclosed to the extent
11 practicable. Information related to or evidencing the identity of a 911 caller, ~~[the victim or witness
12 of an offense defined under article one hundred thirty or sections 230.34 and 230.34 a, of the penal
13 law, or any other victim or witness of a crime where the defendant has substantiated affiliation
14 with a criminal enterprise as defined in subdivision three of section 460.10 of the penal law]~~ the
15 identity of an individual reporting a crime or information related to a crime or police matter in-
16 person or otherwise, or any victim or witness to any offense may be withheld, provided, however,
17 the defendant may move the court for early disclosure of the withheld information pursuant to
18 subsection six of section 245.20 and subparagraph (d) of subsection one of section 245.20 of this
19 article.

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

26 (b) Supplemental Discovery: The prosecution shall perform its supplemental discovery
27 obligations under subdivision three of section 245.20 of this article as soon as practicable but not
28 later than ~~[fifteen]~~ thirty calendar days prior to the first scheduled trial date.

29 (c) The prosecution shall disclose statements of the defendant as described in paragraph (a) of
30 subdivision one of section 245.20 of this article to any defendant who has been arraigned in a local
31 criminal court upon a currently undisposed of felony complaint charging an offense which is a

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1 subject of a prospective or pending grand jury proceeding, no later than forty-eight hours before
2 the time scheduled for the defendant to testify at a grand jury proceeding pursuant to subdivision
3 five of section 190.50 of this part.

4 (d) Sensitive Discovery. Notwithstanding any other provision of law, the prosecution shall
5 perform its sensitive discovery obligations of any information that tends to disclose the identity of
6 a victim or witness and that has been redacted pursuant to subdivision six of section 245.20, within

7 (i) fifteen calendar days prior to the start of the trial in misdemeanor cases and thirty calendar
8 days prior to the first scheduled trial date after both certificates of compliance have been filed or

9 (ii) at a time specified pursuant to a judicial protective order.

10 2. Defendant's performance of obligations. The defendant shall perform his or her discovery
11 obligations under subdivision four of section 245.20 of this article not later than thirty calendar
12 days after being served with the prosecution's certificate of compliance pursuant to subdivision
13 one of section 245.50 of this article, except that portions of materials claimed to be non-
14 discoverable may be withheld pending a determination and ruling of the court under section 245.70
15 of this article; but the prosecution must be notified in writing that information has not been
16 disclosed under a particular section.

17 3. Nothing in this section requires the provision of discovery beyond what is provided by the Office
18 of Court Administration for the adjudication of Criminal Court Summons in the Summons
19 Appearance Part within the City of New York.

20 § 2. Section 245.20 of the criminal procedure law, as added by section 2 of part LLL of chapter 59
21 of the laws of 2019, is amended to read as follows:

22 § 245.20 Automatic discovery.

23 1. Initial discovery for the defendant. The prosecution shall disclose to the defendant, and permit
24 the defendant to discover, inspect, copy, photograph and test, all items and information that ~~is~~
25 are ~~related~~ relevant and material to the subject matter of the case and are in the possession,
26 custody or control of the prosecution or persons under the prosecution's direction or control;
27 including but not limited to:

28 (a) All written or recorded statements, and the substance of all oral statements, made by the
29 defendant or a co-defendant to a public servant engaged in law enforcement activity or to a person
30 then acting under his or her direction or in cooperation with him or her.

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2 ~~[(b) All transcripts of the testimony of a person who has testified before a grand jury, including~~
3 ~~but not limited to the defendant or a co-defendant. If in the exercise of reasonable diligence, and~~
4 ~~due to the limited availability of transcription resources, a transcript is unavailable for disclosure~~
5 ~~within the time period specified in subdivision one of section 245.10 of this article, such time~~
6 ~~period may be stayed by up to an additional thirty calendar days without need for a motion~~
7 ~~pursuant to subdivision two of section 245.70 of this article; except that such disclosure shall be~~
8 ~~made as soon as practicable and not later than thirty calendar days before the first scheduled trial~~
9 ~~date, unless an order is obtained pursuant to section 245.70 of this article. When the court is~~
10 ~~required to review grand jury transcripts, the prosecution shall disclose such transcripts to the~~
11 ~~court expeditiously upon receipt by the prosecutor, notwithstanding the otherwise applicable~~
12 ~~time periods for disclosure in this article.]~~

13 ~~[(c) The names and adequate contact information for all persons other than law enforcement~~
14 ~~personnel whom the prosecutor knows to have evidence or information relevant to any offense~~
15 ~~charged or to any potential defense thereto, including a designation by the prosecutor as to which~~
16 ~~of those persons may be called as witnesses. Nothing in this paragraph shall require the disclosure~~
17 ~~of physical addresses; provided, however, upon a motion and good cause shown the court may~~
18 ~~direct the disclosure of a physical address. Information under this subdivision relating to the~~
19 ~~identity of a 911 caller, the victim or witness of an offense defined under article one hundred~~
20 ~~thirty or section 230.34 or 230.34 a of the penal law, any other victim or witness of a crime where~~
21 ~~the defendant has substantiated affiliation with a criminal enterprise as defined in subdivision~~
22 ~~three of section 460.10 of the penal law, or a confidential informant may be withheld, and~~
23 ~~redacted from discovery materials, without need for a motion pursuant to section 245.70 of this~~
24 ~~article; but the prosecution shall notify the defendant in writing that such information has not~~
25 ~~been disclosed, unless the court rules otherwise for good cause shown.]~~

26 ~~[(d)]~~ (b) The name and work affiliation of all law enforcement personnel whom the prosecutor
27 knows to have direct knowledge of evidence or information relevant and material to any offense
28 charged or to any potential defense thereto, including a designation by the prosecutor as to which
29 of those persons may be called as witnesses. Information under this subdivision relating to
30 undercover personnel may be withheld, and redacted from discovery materials, without need for
31 a motion pursuant to section 245.70 of this article; but the prosecution shall notify the defendant

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1 in writing that such information has not been disclosed, unless the court rules otherwise for good
2 cause shown.

3 (~~f~~e~~c~~) All statements, written or recorded or summarized in any writing or recording, made by
4 persons known to the prosecutor, who have evidence or information relevant and material to any
5 offense charged or to any potential defense thereto including all police reports, notes of police
6 and other investigators, and law enforcement agency reports. ~~{This provision also includes~~
7 ~~statements, written or recorded or summarized in any writing or recording, by persons to be called~~
8 ~~as witnesses at pre-trial hearings.}~~

9 (~~g~~d) All tapes or other electronic recordings, including all electronic recordings of 911
10 telephone calls made or received in connection with the alleged criminal incident, and a
11 designation by the prosecutor as to which of the recordings under this paragraph the prosecution
12 intends to introduce at trial or a pre-trial hearing. If the discoverable materials under this
13 paragraph exceed ten hours in total length, the prosecution may disclose only the recordings that
14 it intends to introduce at trial or a pre-trial hearing, along with a list of the source and approximate
15 quantity of other recordings and their general subject matter if known, and the defendant shall
16 have the right upon request to obtain recordings not previously disclosed. The prosecution shall
17 disclose the requested materials as soon as practicable and not less than fifteen calendar days
18 after the defendant's request, unless an order is obtained pursuant to section 245.70 of this article.
19 The prosecution may withhold the names ~~and~~, personal identifying information or any other
20 sensitive information of any person who contacted law enforcement with the intent to report an
21 offense, or any person who provided the reporter with information related to said offense ~~[911]~~
22 without the need for a protective order pursuant to section 245.70 of this article, provided,
23 however, the defendant may move the court for disclosure provided that the defendant
24 demonstrates, by clear and convincing evidence, an articulable, substantial hardship or prejudice
25 to a relevant defense, which would be cured only by the disclosure of witness's personal
26 identifying information or any other sensitive information, earlier than the above prescribed
27 statutory time frames. If the prosecution intends to call such person as a witness at a trial or
28 hearing, the prosecution must disclose the name and contact information of such witness no later
29 than fifteen days before such trial or hearing, or as soon as practicable or prescribed by the Court.

30 (~~h~~e) All photographs and drawings made or completed by a public servant engaged in law
31 enforcement activity, or which were made by a person whom the prosecutor intends to call as a

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1 witness at trial or a pre-trial hearing, or which relate to the subject matter of the case.

2 (~~(j)~~f) All photographs, photocopies and reproductions made by or at the direction of law
3 enforcement personnel of any property prior to its release pursuant to section 450.10 of the penal
4 law.

5 (~~(j)~~g) All ~~[reports, documents, records, data, calculations or writings, including but not limited~~
6 ~~to preliminary tests and screening results and bench notes and analyses performed or stored~~
7 ~~electronically, concerning physical or mental examinations, or scientific tests or experiments or~~
8 ~~comparisons, relating to the criminal action or proceeding which were made by or at the request~~
9 ~~or direction of a public servant engaged in law enforcement activity, or which were made by a~~
10 ~~person whom the prosecutor intends to call as a witness at trial or a pre-trial hearing, or which~~
11 ~~the prosecution intends to introduce at trial or a pre-trial hearing. Information under this~~
12 ~~paragraph also includes, but is not limited to, laboratory information management system records~~
13 ~~relating to such materials, any preliminary or final findings of non-conformance with~~
14 ~~accreditation, industry or governmental standards or laboratory protocols, and any conflicting~~
15 ~~analyses or results by laboratory personnel regardless of the laboratory's final analysis or results.~~
16 ~~If the prosecution submitted one or more items for testing to, or received results from, a forensic~~
17 ~~science laboratory or similar entity not under the prosecution's direction or control, the court on~~
18 ~~motion of a party shall issue subpoenas or orders to such laboratory or entity to cause materials~~
19 ~~under this paragraph to be made available for disclosure. The prosecution shall not be required~~
20 ~~to provide information related to the results of physical or mental examinations, or scientific tests~~
21 ~~or experiments or comparisons, unless and until such examinations, tests, experiments, or~~
22 ~~comparisons have been completed]~~ conclusions from preliminary tests and screening results shall
23 be disclosed during initial discovery.

24 (~~(k)~~h) All evidence and information, including that which is known to police or other law
25 enforcement agencies acting on the government's behalf in the case, that tends to: (i) negate the
26 defendant's guilt as to a charged offense; (ii) reduce the degree of or mitigate the defendant's
27 culpability as to a charged offense; (iii) support a potential defense to a charged offense; (iv)
28 impeach the credibility of a testifying prosecution witness; (v) undermine evidence of the
29 defendant's identity as a perpetrator of a charged offense; (vi) provide a basis for a motion to
30 suppress evidence; or (vii) mitigate punishment. Information under this subdivision shall be
31 disclosed whether or not such information is recorded in tangible form and irrespective of

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1 whether the prosecutor credits the information, provided, however, that the prosecutor need only
2 provide a summary of substantiated disciplinary matters for police personnel who possess
3 relevant and material information related to the case. The prosecutor shall disclose the
4 information expeditiously upon its receipt and shall not delay disclosure if it is obtained earlier
5 than the time period for disclosure in subdivision one of section 245.10 of this article.

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

9 (I) A list of all tangible objects obtained from, or allegedly possessed by, the defendant or
10 a co-defendant. The list shall include a designation by the prosecutor as to which objects were
11 physically or constructively possessed by the defendant and were recovered during a search or
12 seizure by a public servant or an agent thereof, and which tangible objects were recovered by a
13 public servant or an agent thereof after allegedly being abandoned by the defendant. If the
14 prosecution intends to prove the defendant's possession of any tangible objects by means of a
15 statutory presumption of possession, it shall designate such intention as to each such object. If
16 reasonably practicable, the prosecution shall also designate the location from which each tangible
17 object was recovered. There is also a right to inspect, copy, photograph and test the listed tangible
18 objects.

19 (J) Whether a search warrant has been executed and ~~[all documents relating thereto,~~
20 ~~including but not limited to]~~ a copy of the warrant, the warrant application, supporting affidavits,
21 and a police inventory of all property seized under the warrant, ~~[and a transcript of all testimony~~
22 ~~or other oral communications offered in support of the warrant application.]~~

23 (K) All tangible property that relates to the subject matter of the case, along with a
24 designation of which items the prosecution intends to introduce in its case-in-chief at trial or a
25 pre-trial hearing. If in the exercise of reasonable diligence the prosecutor has not formed an
26 intention within the time period specified in subdivision one of section 245.10 of this article that
27 an item under this subdivision will be introduced at trial or a pre-trial hearing, the prosecution
28 shall notify the defendant in writing, and the time period in which to designate items as exhibits
29 shall be stayed without need for a motion pursuant to subdivision two of section 245.70 of this
30 article; but the disclosure shall be made as soon as practicable and subject to the continuing duty
31 to disclose in section 245.60 of this article.

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~~1 [(p) A complete record of judgments of conviction for all defendants and all persons
2 designated as potential prosecution witnesses pursuant to paragraph (c) of this subdivision, other
3 than those witnesses who are experts.]~~

~~4 [(q) When it is known to the prosecution, the existence of any pending criminal action against
5 all persons designated as potential prosecution witnesses pursuant to paragraph (c) of this
6 subdivision.]~~

7 [(r)m] The approximate date, time and place of the offense or offenses charged and of the
8 defendant's seizure and arrest.

~~9 [(s) In any prosecution alleging a violation of the vehicle and traffic law, where the defendant
10 is charged by indictment, superior court information, prosecutor's information, information, or
11 simplified information, all records of calibration, certification, inspection, repair or maintenance
12 of machines and instruments utilized to perform any scientific tests and experiments, including
13 but not limited to any test of a person's breath, blood, urine or saliva, for the period of six months
14 prior and six months after such test was conducted, including the records of gas chromatography
15 related to the certification of all reference standards and the certification certificate, if any, held
16 by the operator of the machine or instrument. The time period required by subdivision one of
17 section 245.10 of this article shall not apply to the disclosure of records created six months after
18 a test was conducted, but such disclosure shall be made as soon as practicable and in any event,
19 the earlier of fifteen days following receipt, or fifteen days before the first scheduled trial date.]~~

20 [(t)n] In any prosecution alleging a violation of section 156.05 or 156.10 of the penal law, the
21 time, place and manner such violation occurred.

22 2. Duties of the prosecution. The prosecutor shall make a diligent, good faith effort to ascertain
23 the existence of material or information discoverable under subdivision one of this section and to
24 cause such material or information to be made available for discovery where it exists but is not
25 within the prosecutor's possession, custody or control; provided that the prosecutor shall not be
26 required to obtain by subpoena duces tecum material or information which the defendant may
27 thereby obtain. For purposes of subdivision one of this section, all items and information related
28 to the prosecution of a charge in the possession of any New York state or local police or law
29 enforcement agency shall be deemed to be in the possession of the prosecution. The prosecution
30 shall also identify any laboratory having contact with evidence related to the prosecution of a
31 charge. This subdivision shall not require the prosecutor to ascertain the existence of witnesses

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1 not known to the police or another law enforcement agency, or the written or recorded statements
2 thereof, under paragraph (c) or (e) of subdivision one of this section.

3 3. Supplementary Discovery for the Defendant. ~~[If in the exercise of reasonable diligence, and
4 due to the limited availability of transcription resources, a transcript is unavailable for disclosure
5 within the time period specified in subdivision one of section 245.10 of this article, such time
6 period may be stayed by up to an additional thirty calendar days without need for a motion
7 pursuant to subdivision two of section 245.70 of this article; except that such disclosure shall be
8 made as soon as practicable and not later than thirty calendar days before the first scheduled trial
9 date, unless an order is obtained pursuant to section 245.70 of this article.]~~ The prosecution shall

10 disclose to the defendant, or permit the defendant to discover, inspect, copy, photograph and test,
11 items and information that are relevant and material to the subject matter of the case and are in
12 the possession, custody or control of the prosecution including, but not limited to:

13 (a) All transcripts of the testimony of a person who has testified before a grand jury, including
14 but not limited to the defendant or a co-defendant. When the court is required to review grand
15 jury transcripts, the prosecution shall disclose such transcripts to the court expeditiously upon
16 receipt of the transcripts by the prosecutor, notwithstanding the otherwise-applicable time periods
17 for disclosure in this article.

18 (b) All statements, written, recorded or summarized in any writing or recording, made by
19 persons who have evidence or information relevant and material to any offense charged or to any
20 potential defense thereto, and who will be called as a witness by the prosecution. This provision
21 also includes statements, written or recorded, or summarized in any writing or recording, by
22 persons to be called as witnesses by the prosecution at pre-trial hearings.

23 (c) Expert opinion evidence, including the name, business address, current curriculum vitae,
24 a list of publications, and a list of proficiency tests and results administered or taken within the
25 past ten years of each expert witness whom the prosecutor intends to call as a witness at trial or
26 a pre-trial hearing, and all reports actually prepared by the expert that pertain to the case, or if no
27 report is prepared, a written statement of the facts and opinions to which the expert is expected
28 to testify and a summary of the grounds for each opinion. A summary of all proficiency tests and
29 results, administered or taken within the past three years of each expert witness whom the
30 prosecutor intends to call as a witness at trial or at pre-trial hearing shall be disclosed thirty days
31 prior to that trial or hearing. This paragraph does not alter or in any way affect the procedures,

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1 obligations or rights set forth in section 250.10 of this title. All updated laboratory reports must
2 be completed and served at least thirty days before the start of trial. When the prosecution's expert
3 witness is being called in response to disclosure of an expert witness by the defendant, the court
4 shall alter a scheduled trial date, if necessary, to allow the prosecution thirty calendar days to
5 make the disclosure and the defendant thirty calendar days to prepare and respond to the new
6 materials.

7 (d) A complete record of judgments of conviction for all defendants and all persons the
8 prosecution intends to call as a witness at any hearing or trial, other than those witnesses who are
9 experts.

10 (e) When it is known to the prosecution, the existence of any pending criminal action against
11 all persons the prosecution intends to call as a witness at any hearing or trial

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

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

26 (ii) If the electronically created or stored information originates from a device, account, or
27 other electronically stored source that the prosecution believes the defendant owned, maintained,
28 or had lawful access to and is within the possession, custody or control of the prosecution or
29 persons under the prosecution's direction or control, the prosecution shall provide a complete
30 copy of the electronically created or stored information from the device or account or other
31 source.

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1 (iii) If possession of such electronically created or stored information would be a crime under
2 New York state or federal law, the prosecution shall make those portions of the electronically
3 created or stored information that are not criminal to possess available as specified under this
4 paragraph and shall afford counsel for the defendant access to inspect contraband portions at a
5 supervised location that provides regular and reasonable hours for such access, such as a
6 prosecutor's office, police station, or court.

7 (iv) This paragraph shall not be construed to alter or in any way affect the right to be free from
8 unreasonable searches and seizures or such other rights a suspect or defendant may derive from
9 the state constitution or the United States constitution. If in the exercise of reasonable diligence
10 the information under this paragraph is not available for disclosure within the time period required
11 by subdivision one of section 245.10 of this article, that period shall be stayed without need for a
12 motion pursuant to subdivision two of section 245.70 of this article, except that the prosecution
13 shall notify the defendant in writing that such information has not been disclosed, and such
14 disclosure shall be made as soon as practicable and not later than forty-five calendar days before
15 the first scheduled trial date, unless an order is obtained pursuant to section 245.70 of this article.

16 (h) The prosecution shall disclose to the defendant a list of all misconduct and criminal acts of
17 the defendant not charged in the indictment, superior court information, prosecutor's information,
18 or information, or simplified information which the prosecution intends to use at trial for purposes
19 of (a) impeaching the credibility of a defendant, or (b) as substantive proof of any material issue
20 in the case. The prosecution shall designate whether it intends to use each listed act for
21 impeachment and/or substantive proof.

22 (i) A Transcript of all testimony or other oral communications offered in support of the warrant
23 application.

24 4. Reciprocal discovery for the prosecution. (a) The defendant shall, subject to constitutional
25 limitations, disclose to the prosecution, and permit the prosecution to discover, inspect, copy or
26 photograph, any material and relevant evidence within the defendant's or counsel for the
27 defendant's possession or control that is discoverable under paragraphs (f), (g), (h), (j), (l) and (o)
28 of subdivision one of this section, which the defendant intends to introduce at trial or a pre-trial
29 hearing, and the names, addresses, birth dates, and all statements, written or recorded or
30 summarized in any writing or recording, of those persons other than the defendant whom the
31 defendant intends to call as witnesses at trial or a pre-trial hearing.

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

5 (c) If in the exercise of reasonable diligence the reciprocally discoverable information under
6 paragraph (f) or (o) of subdivision one of this section is unavailable for disclosure within the time
7 period specified in subdivision two of section 245.10 of this article, such time period shall be
8 stayed without need for a motion pursuant to subdivision two of section 245.70 of this article; but
9 the disclosure shall be made as soon as practicable and subject to the continuing duty to disclose
10 in section 245.60 of this article.

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

22 6. Sensitive discovery. [R]edactions permitted. Either party may redact social security numbers
23 and tax numbers from disclosures under this article. Either party may also redact personal
24 identifying information or any other sensitive information, without need for a protective order
25 under section 240.75 of this article, that tends to identify a victim or witness subject to statutory
26 timeframes for disclosure under this article. By motion of the defendant, a judge may order the
27 disclosure of the information earlier than the above statutory time frames, provided that the
28 defendant demonstrates, by clear and convincing evidence, an articulable, substantial hardship or
29 prejudice to a relevant defense, which would be cured only by the disclosure of a witness' personal
30 identifying information or any other sensitive information earlier than the prescribed statutory time
31 frames.

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

3 § 3. Section 245.25 of the criminal procedure law, as added by section 2 of part LLL of chapter 59
4 of the laws of 2019, is amended to read as follows:

5 § 245.25 Disclosure prior to certain guilty pleas.

6 1. Pre-indictment guilty pleas. Upon a felony complaint, where the prosecution has made a pre-
7 indictment guilty plea offer requiring a plea to a crime, the prosecutor must disclose to the defense,
8 and permit the defense to discover, inspect, copy, photograph and test, all ~~items and information~~
9 ~~that would be under subdivision one of section 245.20 of this article and~~ physical evidence and
10 the following paperwork or the equivalent of said paperwork depending on the law enforcement
11 agency: (1) paperwork generated at the time of arrest, (2) detectives and police officer notes and
12 reports, (3) material and relevant video or still photographic evidence, (4) material and relevant
13 911 recordings and (5) any and all information which tends to negate or mitigate guilt, that are in
14 the possession, custody or control of the prosecution, subject to subdivision six and subparagraph
15 (d) of subdivision one and of section 245.20 of this article. The prosecution shall disclose the
16 discoverable items and information not less than three calendar days prior to the expiration date of
17 any guilty plea offer by the prosecution or any deadline imposed by the court for acceptance of the
18 guilty plea offer. If the prosecution does not comply with the requirements of this subdivision,
19 then, on a defendant's motion alleging a violation of this subdivision, the court must consider the
20 impact of any violation on the defendant's decision to accept or reject a plea offer. If the court finds
21 that such violation materially affected the defendant's decision, and if the prosecution declines to
22 reinstate the lapsed or withdrawn plea offer, the court – ~~as a presumptive minimum sanction—~~
23 ~~must~~ may preclude the admission at trial of any evidence not disclosed as required under this
24 subdivision. ~~The~~ Additionally, the court may take other appropriate action as necessary to
25 address the non-compliance. The rights under this subdivision do not apply to items or information
26 that are the subject of a protective order under section 245.70 of this article; but if such information
27 tends to be exculpatory, the court shall reconsider the protective order. A defendant may waive his
28 or her rights under this subdivision; but a guilty plea offer may not be conditioned on such waiver.

29 2. Other guilty pleas. Upon an indictment, superior court information, prosecutor's information,
30 information, simplified information, or misdemeanor complaint, where the prosecution has made
31 a guilty plea offer requiring a plea to a crime, the prosecutor must disclose to the defense, and

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1 permit the defense to discover, inspect, copy, photograph and test, ~~[all items and information that~~
2 ~~would be under subdivision one of section 245.20 of this article and are within the]~~ all physical
3 evidence and the following paperwork or the equivalent of said paperwork depending on the law
4 enforcement agency: (1) paperwork generated at the time of arrest, (2) detectives and police officer
5 notes and reports, (3) material and relevant video or still photographic evidence, (4) material and
6 relevant 911 recordings and (5) any and all information which tends to negate or mitigate guilt,
7 that are within the possession, custody or control of the prosecution, subject to subdivision six and
8 subparagraph (d) of subdivision one of section 245.20 of this article. The prosecution shall disclose
9 the discoverable items and information not less than seven calendar days prior to the expiration
10 date of any guilty plea offer by the prosecution or any deadline imposed by the court for acceptance
11 of the guilty plea offer. If the prosecution does not comply with the requirements of this
12 subdivision, then, on a defendant's motion alleging a violation of this subdivision, the court must
13 consider the impact of any violation on the defendant's decision to accept or reject a plea offer. If
14 the court finds that such violation materially affected the defendant's decision, and if the
15 prosecution declines to reinstate the lapsed or withdrawn plea offer, the court ~~[-as a presumptive~~
16 ~~minimum sanction—must preclude the admission at trial of any evidence not disclosed as required~~
17 ~~under this subdivision.]~~ may preclude the admission at trial of any evidence not disclosed as
18 required under this subdivision. ~~[The]~~Additionally, the court may take other appropriate action as
19 necessary to address the non-compliance. The rights under this subdivision do not apply to items
20 or information that are the subject of a protective order under section 245.70 of this article; but if
21 such information tends to be exculpatory, the court shall reconsider the protective order. A
22 defendant may waive his or her rights under this subdivision; but a guilty plea offer may not be
23 conditioned on such waiver. Notwithstanding the timelines contained in the opening paragraph of
24 paragraph (a) of subdivision one of section 245.10 of this article, the prosecutor's discovery
25 obligation under subdivision one of section 245.20 of this article shall be performed as soon as
26 practicable, but not later than fifteen days before the trial of a simplified information charging a
27 traffic infraction under the vehicle and traffic law, or by an information charging one or more petty
28 offenses as defined by the municipal code of a village, town, city, or county, that do not carry a
29 statutorily authorized sentence of imprisonment, and where the defendant stands charged before
30 the court with no crime or offense, provided however that nothing in this subdivision shall prevent
31 a defendant from filing a motion for disclosure of such items and information under subdivision

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1 one of such section 245.20 of this article at an earlier date.

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

5 § 4. Section 245.30 of the criminal procedure law, is amended to read as follows:

6 § 245.30 Court orders for preservation, access or discovery.

7 1. Order to preserve evidence. At any time, a party may move for a court order to any individual,
8 agency or other entity in possession, custody or control of items which relate to the subject matter
9 of the case or are otherwise relevant, requiring that such items be preserved for a specified period
10 of time. The court shall hear and rule upon such motions expeditiously. The court may modify or
11 vacate such an order upon a showing that preservation of particular evidence will create
12 ~~significant~~ an undue hardship to such individual, agency or entity, on condition that the probative
13 value of that evidence is preserved by a specified alternative means.

14 2. Order to grant access to premises. Without prejudice to its ability to issue a subpoena pursuant
15 to this chapter and after an accusatory instrument has been filed, the defendant may move upon
16 notice to the prosecution and any impacted individual, agency, or entity, for a court order to access
17 a crime scene or other premises relevant to the subject matter of the case, requiring that counsel
18 for the defendant be granted reasonable access to inspect, photograph, or measure such crime scene
19 or premises, and that the condition of the crime scene or premises remain unchanged in the interim,
20 provided that the defendant demonstrates, by clear and convincing evidence, an articulable,
21 substantial hardship or prejudice to a relevant defense which would be cured by access to said
22 premises, and no less intrusive means are available. The court shall consider defendant's expressed
23 need for access to the premises including the risk that defendant will be deprived of evidence or
24 information relevant to the case, the position of any individual or entity with possessory or
25 ownership rights to the premises, the nature of the privacy interest and any perceived or actual
26 hardship of the individual or entity with possessory or ownership rights, and the position of the
27 prosecution with respect to any application for access to the premises. The court may deny access
28 to the premises when the probative value of access to such location has been or will be preserved
29 by specified alternative means. If the court grants access to the premises, the individual or entity
30 with ownership or possessory rights to the premises may request law enforcement presence at the
31 premises while defense counsel or a representative thereof is present.

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

15 § 5. Section 245.50 of the criminal procedure law, as added by section 2 of part LLL of chapter 59
16 of the laws of 2019, is amended to read as follows:

17 § 245.50 Certificates of compliance; readiness for trial.

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1 1. By the prosecution. When the prosecution has ~~provided~~ substantially complied with discovery
2 as required by subdivision one of section 245.10 of this article, except for discovery that is lost or
3 destroyed as provided by paragraph (b) of subdivision one of section 245.80 of this article and
4 except for any items or information that are the subject of an order pursuant to section 245.70 of
5 this article, it shall serve upon the defendant and file with the court a certificate of compliance.
6 The certificate of compliance shall state that, after exercising due diligence and making reasonable
7 inquiries to ascertain the existence of material and information subject to discovery, the prosecutor
8 has disclosed and made available all known material and information subject to discovery. It shall
9 also identify the items provided. If additional discovery is subsequently provided prior to trial
10 pursuant to section 245.60 of this article, a supplemental certificate shall be served upon the
11 defendant and filed with the court identifying the additional material and information provided.
12 No adverse consequence to the prosecution or the prosecutor shall result from the filing of a
13 certificate of compliance in good faith and reasonable under the circumstances; but the court may
14 grant a remedy or sanction for a discovery violation as provided in section 245.80 of this article.
15 When determining whether the prosecution has substantially complied with discovery, the court
16 shall determine whether the defendant has been substantially prejudiced by the failure of disclosure
17 outside the timeframes provided in section 245.10 of this article.
18 2. By the defendant. When the defendant has provided all discovery required by subdivision four
19 of section 245.20 of this article, except for any items or information that are the subject of an order
20 pursuant to section 245.70 of this article, counsel for the defendant shall serve upon the prosecution
21 and file with the court a certificate of compliance. The certificate shall state that, after exercising
22 due diligence and making reasonable inquiries to ascertain the existence of material and
23 information subject to discovery, counsel for the defendant has disclosed and made available all
24 known material and information subject to discovery. It shall also identify the items provided. If
25 additional discovery is subsequently provided prior to trial pursuant to section 245.60 of this
26 article, a supplemental certificate shall be served upon the prosecution and filed with the court
27 identifying the additional material and information provided. No adverse consequence to the
28 defendant or counsel for the defendant shall result from the filing of a certificate of compliance in
29 good faith; but the court may grant a remedy or sanction for a discovery violation as provided in
30 section 245.80 of this article.

31

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1 3. Trial readiness. Notwithstanding the provisions of any other law, absent an individualized
2 finding of special circumstances in the instant case by the court before which the charge is pending,
3 the prosecution shall not be deemed ready for trial for purposes of section 30.30 of this chapter
4 until it has filed a proper certificate pursuant to subdivision one of this section. A court may deem
5 the prosecution ready for trial pursuant to section 30.30 of this chapter where information that
6 might be considered discoverable under this article cannot be disclosed because it has been lost,
7 destroyed, or otherwise unavailable as provided by paragraph (b) of subdivision one of section
8 245.80 of this article, despite diligent and good faith efforts, reasonable under the circumstances.
9 Provided, however, that the court may grant a remedy or sanction for a discovery violation as
10 provided by section 245.80 of this article. The prosecution may be considered ready if it has filed
11 a certificate of compliance and the court determines that the prosecution has substantially complied
12 with its discovery obligations.

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

14 § 6. Section 245.55 of the criminal procedure law, as added by section 2 of part LLL of chapter 59
15 of the laws of 2019, is amended to read as follows:

16 § 245.55 Flow of information.

17 1. Sufficient communication for compliance. The district attorney and the assistant responsible for
18 the case, or, if the matter is not being prosecuted by the district attorney, the prosecuting agency
19 and its assigned representative, shall endeavor to ensure that a flow of information is maintained
20 between the police and other investigative personnel and his or her office sufficient to place within
21 his or her possession or control all material and information pertinent to the defendant and the
22 offense or offenses charged, including, but not limited to, any evidence or information
23 discoverable under paragraph (k) of subdivision one of section 245.20 of this article.

24 2. Provision of law enforcement agency files. Absent a court order or a requirement that defense
25 counsel obtain a security clearance mandated by law or authorized government regulation, upon
26 request by the prosecution, each New York state and local law enforcement agency shall make
27 available to the prosecution a complete copy of its complete records and files related to the
28 investigation of the case or the prosecution of the defendant for compliance with this article.

29 3. 911 telephone call and police radio transmission electronic recordings, police worn body camera
30 recordings and other police recordings. (a) Whenever an electronic recording of a 911 telephone
31 call or a police radio transmission or video or audio footage from a police body-worn camera or

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1 other police recording was made or received in connection with the investigation of an apparent
2 criminal incident, the arresting officer or lead detective shall expeditiously notify the prosecution
3 ~~[in writing]~~ upon the filing of an accusatory instrument of the existence of all such known
4 recordings. The prosecution shall expeditiously take whatever reasonable steps are necessary to
5 ensure that all known electronic recordings of 911 telephone calls, police radio transmissions and
6 video and audio footage and other police recordings made or available in connection with the case
7 are preserved. Upon the defendant's timely request and designation of a specific electronic
8 recording of a 911 telephone call, the prosecution shall also expeditiously take whatever
9 reasonable steps are necessary to ensure that it is preserved.

10 (b) If the prosecution fails to disclose such an electronic recording to the defendant pursuant to
11 paragraph (e), (g) or (k) of subdivision one of section 245.20 of this article due to a failure to
12 comply with this obligation by police officers or other law enforcement or prosecution personnel,
13 the court upon motion of the defendant shall impose an appropriate remedy or sanction pursuant
14 to section 245.80 of this article, unless said failure of disclosure was due to the lack of knowledge
15 of the existence of said materials.

16 § 7. Section 245.70 of the criminal procedure law, as added by section 2 of part LLL of chapter 59
17 of the laws of 2019, is amended to read as follows:

18 § 245.70 Protective orders.

19 1. Any discovery subject to protective order. Upon a showing of good cause by either party, the
20 court may at any time order that discovery or inspection of any kind of material or information
21 under this article be denied, restricted, conditioned or deferred, or make such other order as is
22 appropriate [;]. ~~[including, for 911 calls, allowing the disclosure of a transcript of an audio~~
23 ~~recording in lieu of the recording. The court may impose as a condition on discovery to a defendant~~
24 ~~that the material or information to be discovered be available only to counsel for the defendant; or,~~
25 ~~alternatively, that counsel for the defendant, and persons employed by the attorney or appointed~~
26 ~~by the court to assist in the preparation of a defendant's case, may not disclose physical copies of~~
27 ~~the discoverable documents to a defendant or to anyone else, provided that the prosecution affords~~
28 ~~the defendant access to inspect redacted copies of the discoverable documents at a supervised~~
29 ~~location that provides regular and reasonable hours for such access, such as a prosecutor's office,~~
30 ~~police station, facility of detention, or court. Should the court impose as a condition that some~~
31 ~~material or information be available only to counsel for the defendant, the court shall inform the~~

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1 ~~defendant on the record that his or her attorney is not permitted by law to disclose such material~~
2 ~~or information to the defendant.]~~ The court may permit a party seeking or opposing a protective
3 order under this section, or another affected person, to submit papers or testify on the record ex
4 parte or in camera. Any such papers and a transcript of such testimony may be sealed and shall
5 constitute a part of the record on appeal. This section does not alter the allocation of the burden of
6 proof with regard to matters at issue, including privilege.

7 2. Modification of time periods for discovery. Upon motion of a party in an individual case, the
8 court may ~~[alter]~~ extend the time periods for discovery imposed by this article. ~~[upon a showing~~
9 ~~of good cause].~~

10 3. Prompt hearing. Upon request for a protective order, unless the defendant voluntarily consents
11 to the people's request for a protective order, the court shall conduct an appropriate hearing within
12 three business days to determine whether good cause has been shown and when practicable shall
13 render a decision expeditiously. Any materials submitted and a transcript of the proceeding may
14 be sealed and shall constitute a part of the record on appeal. When the defendant is charged with a
15 violent felony offense as defined in section 70.02 of the penal law, or an attempt of said crime, or
16 any penal law 130.00 offense, or any penal law offense where an order of protection was issued,
17 or any class A felony other than those defined in article two hundred twenty of the penal law, the
18 court may, at the prosecutor's request, for good cause shown, conduct such hearing in camera and
19 outside the presence of the defendant, provided however that this shall not affect the rights of the
20 court to receive testimony or papers ex-parte or in camera as provided in subdivision one of this
21 section.

22 4. Showing of good cause. In determining good cause under this section the court may consider:
23 constitutional rights or limitations; danger to the integrity of physical evidence or the safety of a
24 witness; the severity of the crime charged; the possible penal sentence the accused faces if
25 convicted; the age of the victim or witness if under 21 or over the age of 65; risk of intimidation,
26 economic reprisal, bribery, harassment or unjustified annoyance or embarrassment to any person,
27 and the nature, severity and likelihood of that risk; a risk of an adverse effect upon the legitimate
28 needs of law enforcement, including the protection of the confidentiality of informants, and the
29 nature, severity and likelihood of that risk; the nature and circumstances of the factual allegations
30 in the case; whether the defendant has a history of witness intimidation or tampering and the nature
31 of that history; whether the defendant has a history of violence; the nature of the stated reasons in

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1 support of a protective order; the nature of the witness identifying information that is sought to be
2 addressed by a protective order, including the option of employing adequate alternative contact
3 information; danger to any person stemming from factors such as a defendant's substantiated
4 affiliation with a criminal enterprise as defined in subdivision three of section 460.10 of the penal
5 law; and other similar factors found to outweigh the usefulness of the discovery.

6 5. Successor counsel or pro se defendant. In cases in which the attorney-client relationship is
7 terminated prior to trial for any reason, any material or information disclosed subject to a condition
8 that it be available only to counsel for the defendant, or limited in dissemination by protective
9 order or otherwise, shall be provided only to successor counsel for the defendant under the same
10 condition or conditions or be returned to the prosecution, unless the court rules otherwise for good
11 cause shown or the prosecutor gives written consent. Any work product derived from such material
12 or information shall not be provided to the defendant, unless the court rules otherwise or the
13 prosecutor gives written consent. If the defendant is acting as his or her own attorney, the court
14 may regulate the time, place and manner of access to any discoverable material or information;
15 and it may as appropriate appoint persons to assist the defendant in the investigation or preparation
16 of the case. Upon motion or application of a defendant acting as his or her own attorney, the court
17 may at any time modify or vacate any condition or restriction relating to access to discoverable
18 material or information, for good cause shown.

19 6. Expedited review of adverse ruling. (a) A party that has unsuccessfully sought, or unsuccessfully
20 opposed the granting of, a protective order under this section relating to the name, address, contact
21 information, personal identifying information or any other sensitive information of any person, or
22 statements of a person may obtain expedited review of that ruling by an individual justice of the
23 intermediate appellate court to which an appeal from a judgment of conviction in the case would
24 be taken.

25 (b) Such review shall be sought within two business days of the adverse or partially adverse
26 ruling, by order to show cause filed with the intermediate appellate court. The order to show cause
27 shall in addition be timely served on the lower court and on the opposing party, and shall be
28 accompanied by a sworn affirmation stating in good faith (i) that the ruling affects substantial
29 interests, and (ii) that diligent efforts to reach an accommodation of the underlying discovery
30 dispute with opposing counsel failed or that no accommodation was feasible; except that service
31 on the opposing party, and a statement regarding efforts to reach an accommodation, are

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1 unnecessary where the opposing party was not made aware of the application for a protective order
2 and good cause is shown for omitting service of the order to show cause on the opposing party.
3 The lower court's order subject to review shall be stayed until the appellate justice renders a
4 determination.

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

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

16 § 8. Paragraph (b) of subdivision 1 of section 245.80 of the criminal procedure law, as added
17 by section 2 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

18 (b) When material or information is discoverable under this article but cannot be disclosed
19 because it has been lost, ~~or~~ destroyed, or is otherwise unavailable, not due to a lack of due
20 diligence by the disclosing party, the court shall impose an appropriate remedy or sanction if the
21 party entitled to disclosure shows that the lost, ~~or~~ destroyed, or otherwise unavailable material
22 ~~[may have]~~ likely contained some information material and relevant to a contested issue. The
23 appropriate remedy or sanction is that which is proportionate to the potential ways in which the
24 lost, ~~or~~ destroyed, or otherwise unavailable material could have reasonably ~~[could have been~~
25 ~~helpful to the party entitled to disclosure]~~ affected the outcome of the proceeding. Material or
26 information is “otherwise unavailable” when it is not in the actual possession of the prosecutor
27 despite diligent and good faith efforts to obtain said information, reasonable under the
28 circumstances.

29 § 9. Section 245.85 of the criminal procedure law, as added by section 2 of part LLL of chapter 59
30 of the laws of 2019, is amended to read as follows:

31 § 245.85 Admissibility of discovery.

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1 1. Admissibility of Witness Lists. The fact that a party has indicated during the discovery process
2 an intention to offer specified evidence or to call a specified witness is not admissible in evidence
3 or grounds for adverse comment at a hearing or a trial.

4 2. Admissibility of Nondisclosed Discovery. The fact that the prosecution did not provide
5 discoverable evidence within the timeframes provided in section 245.10 of this article, does not
6 preclude its admissibility if the court finds its eventual disclosure was not unduly prejudicial to the
7 defendant.

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