

Discovery Reform in New York Summary of Major Legislative Provisions

Effective January 1, 2020, New York State is replacing its discovery law, dubbed the “blindfold” law, with a new statute requiring the sharing of evidence by default between the prosecution and defense on an accelerated timeline. The reform may shrink case processing times, resulting in shorter jail stays for defendants held in pretrial detention. By facilitating the defendant’s ability to prepare a defense, the changes may also result in fewer prison or jail sentences. This summary explains the major components of discovery reform.

The Prosecution Must Disclose Evidence on a Strict Timeline

- **Open File Discovery:** The current law requires defense attorneys to make written motions to obtain the prosecutor’s evidence during the pretrial period. By contrast, the new law requires the “automatic” discovery of all relevant materials that the prosecution has in its possession. The new law also directs judges to apply a “presumption of openness,” favoring disclosure when interpreting the law in specific cases.
- **Strict Timeline:** The current statute does not require discovery to be complete until pretrial hearings or trial. Discovery reform, on the other hand, requires the prosecution to turn over all “discoverable” materials as soon as practicable, but no later than 15 days after arraignment. An additional 30 days is permitted if the materials are voluminous or the prosecutor is not reasonably able to obtain them. In effect, the maximum timeframe for most discovery information (with a limited number of specific exceptions) is 45 days after the initial arraignment.
- **Discoverable Materials:** The new statute enumerates 21 types of materials that prosecutors must turn over; several of these were not listed in the old statute. Notably, the prosecution will now be required to disclose: names and contact information for any person with relevant information (including law enforcement); statements by witnesses; electronic recordings (including 911 calls); and “Brady” disclosures, which entail information that favors the defendant.
- **Grand Jury Proceedings:** When the defendant wishes to testify in the grand jury, the prosecution must provide to the defense any statements made to law enforcement by the defendant or a co-defendant 48 hours prior to the defendant’s scheduled grand jury testimony.
- **Plea Offers:** Defendants will no longer be required to consider a plea offer without knowing the evidence against them. If the prosecution makes a plea offer during the pre-indictment phase of a felony (before grand jury proceedings), the prosecution must turn over discovery materials at least three days

prior to the expiration of the offer. During other stages, discovery must be shared seven days prior to the expiration of any plea offer.

Information Possessed by Law Enforcement Must be Turned Over

- **Law Enforcement, an Extension of the Prosecution:** Discovery reform defines any materials possessed by law enforcement as, in effect, possessed by the prosecutor. Thus, delays in conveying evidence from law enforcement to the prosecutor are not valid excuses for providing late discovery to the defense.
- **Prosecutors' Responsibilities to Obtain Discovery from Law Enforcement:** Prosecutors must ensure a regular "flow of information" between law enforcement and the prosecuting agency. For example, when the defense requests a specific 911 call, the prosecution must ensure that law enforcement preserves it.
- **Law Enforcement Responsibilities:** State and local law enforcement must make all relevant records and files available to the prosecution. Whenever a 911 call, police radio transmission, body camera video, or audio recording is created, the arresting officer or lead detective must make copies and notify the prosecution of their existence, in writing, once a criminal case is filed. If law enforcement does not make a recording available to the defense as required by the statute, the defendant can move for, and the court must order, a remedy or sanction.

The Prosecution Must Submit a Certificate of Compliance

The prosecution must submit a formal "certificate of compliance" after complying with the above discovery requirements. The certificate must state that the prosecutor exercised due diligence and turned over all known discoverable materials. The certificate must also list all materials that have been turned over. The prosecution cannot be deemed ready for trial without filing a certificate of compliance. If the prosecution later learns

of new evidence, a supplemental certificate of compliance must be filed once this evidence is turned over.

The Defense Must Provide "Reciprocal" Discovery to the Prosecution

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, including expert opinion, tapes and electronic recordings, scientific reports (e.g., generated from physical or mental health examinations), and names and contact information of individuals the defense intends to call to testify at trial.

Parties May Seek Protective Orders Allowing Some Information to be Withheld

Parties may at times have valid reasons for withholding information, generally related to the safety of witnesses or the preservation of a defendant's constitutional rights. When a party does not wish to disclose specific evidence, that party must establish a "good cause" for the non-disclosure, notify the opposing party in writing, and apply for a protective order. When the parties cannot reach agreement about a protective order, a hearing must be held within three business days, and the court must then rule expeditiously.

Remedies or Sanctions Must be Imposed for Certain Noncompliance

The court must impose a remedy or sanction: (1) when information or materials are turned over late if the delayed delivery prejudiced (i.e., materially affected) the party receiving the information; and (2) when the materials have been lost or destroyed if the materials contained information pertinent to a contested issue. Remedies or sanctions can include: a new order for discovery; instructing to the jury to make an adverse inference against the noncompliant side; striking a witness's testimony; ordering a mistrial; dismissing the case; or ordering any other sanction that the court deems just in the circumstances and consistent with the defendant's constitutional rights.