

New York's Discovery Reform Law Summary of Major Legislative Provisions

On January 1, 2020, New York State replaced its discovery law—dubbed the “blindfold” law—with a new statute requiring the sharing of evidence between the prosecution and defense on an accelerated timeline. Three months later, however, the statute was amended, relaxing the timeline and limiting disclosure of certain witnesses’ identifying information. Even under the less stringent guidelines, the reform may shrink case processing times. Moreover, by facilitating the defendant’s ability to prepare a defense—potentially removing an incentive to accept an unfavorable plea deal—the reform may also result in fewer prison or jail sentences and, ultimately, more just outcomes. This summary explains the major components of discovery reform, incorporating the recent amendments.

The Prosecution Must Disclose Evidence on a Strict Timeline

- **Open File Discovery:** Prior to discovery reform, defense attorneys were required to write motions to obtain the prosecutor’s evidence before trial. By contrast, the reformed statute requires the “automatic” discovery of all relevant materials in the prosecutor’s possession. The law also directs judges to apply a “presumption of openness,” favoring disclosure when interpreting the law in specific cases.
- **Strict Timeline:** In the pre-reform era, the law did not require discovery to be complete until hearings or trial. The reform 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 35 days after arraignment if the defendant is out of custody. An additional 30 days is permitted

if the materials are “voluminous” or the prosecutor is not reasonably able to obtain them. The maximum timeframe is generally 50 to 65 days after the initial arraignment.

- **Discoverable Materials:** The reformed statute lists 21 types of materials that prosecutors must turn over; several of these were not listed in the pre-reform discovery law. Notably, the prosecution is required to disclose: names and contact information for anyone with relevant information (with some limitations); statements by witnesses; electronic recordings (including 911 calls); and “Brady” disclosures, which entails information that favors the defendant.
- **Grand Jury Proceedings:** When the defendant wishes to testify in the grand jury, the prosecution must provide 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:** 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 at least three days prior to the expiration of the offer. During other stages, discovery must be shared seven days before any plea offer expires.

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. Delays in conveying evidence from law enforcement to the prosecutor are not valid excuses for providing late discovery to the defense.
- **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, and/or body camera video or audio footage 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, so that prosecutors can turn it over 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 “certificate of compliance” after disclosing all required materials, excepting materials that need not be turned over because of a protective order, or that have been lost or destroyed (however, lost or destroyed materials may lead to a sanction from the court). The certificate must state that the prosecutor exercised due diligence and turned over all known and available discoverable materials, listing all disclosed materials. 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 have valid reasons for withholding information—generally related to witness safety or the preservation of a defendant’s constitutional rights. In such instances, that party must establish a “good cause” for the non-disclosure 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 rule expeditiously. The court may hold the hearing without the defendant present if the prosecution requests it and the defendant is charged with a Class A felony (except drug felonies) or a violent felony offense.

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, but only if the court determines the delay prejudiced (i.e., materially affected) the party receiving the information; and (2) when lost or destroyed materials contained information pertinent to a contested issue. Remedies or sanctions can include: a new order for discovery; instructing 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.