



DISCOVERY REFORMS AND THE CRIMINAL JUSTICE SYSTEM

Bottom Line: The New York State Legislature’s revisions of the state’s evidentiary discovery laws in 2019 addressed unfair practices that had kept those charged with crimes unaware of the evidence against them. We firmly agree with the intent of these reforms, and with most of the new statutory language. However, these changes have significant unintended consequences that undermine public safety by causing thousands of cases to be dismissed on legal technicalities, for reasons that have nothing to do with fairness, justice, or the intent of the discovery reforms. There is no time to waste. During this year’s legislative session, the Governor and lawmakers must amend the discovery statute in a way that continues to fully safeguard the rights of people accused of crimes, while protecting victims and the community from the unintended consequences of discovery reform.

BACKGROUND

In criminal court, discovery is the process by which the prosecution provides its evidence to a person accused of a crime. Attorneys for the accused can review evidence prior to trial to prepare for a defense or to negotiate a plea deal. In 2019, New York passed a new discovery statute, Criminal Procedure Law Article 245, to help ensure prosecutors provide defense attorneys with sufficient evidence in time for defendants to make informed decisions. Under 245, prosecutors are now obligated to collect all material that “relates to” a case, regardless of its relevance, within New York’s uniquely short 20 or 35-day timeframes, and then to certify that they have turned over the entirety of evidence by filing a Certificate of Compliance (COC). The requirements of the new disclosure laws, on top of this contracted timeframe, have effectively thrown a wrench in New York’s criminal justice system.¹

KEY FINDINGS

Dismissals in criminal cases have significantly increased since discovery law changes. Judges are dismissing cases solely because assistant district attorneys cannot provide every last piece of information—no matter how meaningful or relevant—in the time frames required by the law. In Manhattan, roughly 1,800 misdemeanor cases were dismissed in 2021 purely on discovery grounds, most of which had nothing to do with the office’s ability to prove these cases or disclose meaningful and relevant information to the defense.

Discovery requirements are onerous and inflexible and are overwhelming the criminal justice system. The breadth and scope of discoverable material under New York’s discovery statute is unparalleled nationwide, and includes information that “relates to” an incident regardless of its utility, relevance, or admissibility. As a result, prosecutors are making repetitive, and often futile, efforts to chase down records—the vast majority with no

¹ For more details, see Manhattan Institute Report, [“Destroyed by Discovery: How New York State’s Discovery Law Destabilizes the Criminal Justice System”](#).

evidentiary value—in tens of thousands of cases. This has transformed our work from a justice-seeking to a paper-chasing practice, with little to no impact on justice or fairness.

Despite the 2022 amendments, dismissals are occurring due to technical issues. The Legislature amended the discovery law in 2022 so that courts could dismiss for discovery non-compliance only if “after considering all other remedies, dismissal is appropriate and proportionate to the prejudice suffered” by the defendant. Unfortunately, this amendment has not achieved the Legislature’s intended result, for purely technical reasons. This is because when the discovery law was amended, the speedy trial statute was not similarly added with the same language, meaning that judges still dismiss cases based solely on speedy trial laws, without regard for the newly-inserted prejudice standard. A simple technical edit would address this issue.

Despite the 2022 amendments, defendants still withhold raising discovery issues for tactical reasons, undermining the intent of the discovery reforms. The Legislature amended the discovery law in 2022 to require defendants to raise issues with the discovery provided by prosecutors “as soon as practicable.” This was intended to prevent the common practice of defendants “lying in wait” when they find discovery issues, waiting until the speedy trial time has elapsed and then filing a speedy trial motion based solely on discovery issues that had been identified much earlier. The 2022 amendment required defendants to challenge discovery issues “as soon as practicable,” but this provision has proven too vague to be enforceable by judges. The result is a perversion of the intent of discovery reforms, as defendants are incentivized to not raise discovery issues until it is too late for them to be addressed.

RECOMMENDATIONS

The Governor and Lawmakers should amend the relevant statutes to ensure fairness for both the accused and victims of crime, including:

1. *Requiring prejudice before dismissing a case for discovery noncompliance.* In order to achieve the desired outcome of avoiding discovery dismissals, the legislature should apply the same amendment that it made to the discovery law last year (CPL § 245.80) to the speedy trial statute CPL § 30.30(5).
2. *Requiring the defense attorney to challenge discovery violations within a timely manner.* There are no consequences to the defense if they do not raise timely challenges. We recommend that the Legislature require the defense to challenge the prosecutor’s disclosure certification within 35 days. Untimely challenges shall be deemed waived, unless the court extends that time period for good cause.
3. *Imposing a “substantial compliance” requirement.* Under this standard, prosecutors would be able to file a COC once they have turned over a) all materials required by prosecution to present their case at trial, b) exculpatory and impeachment information to satisfy their state and federal constitutional obligations, and c) all other materials in the prosecutor’s actual possession. This standard would still ensure that people accused of crimes receive the information they need to make informed decisions, in a fair and timely manner, about whether to plead guilty or proceed to trial, to conduct their own investigations as necessary, and to defend about the charges if the case goes to trial, while reducing the need for prosecutors to endlessly chase records with no evidentiary value.