



WHY COMMON SENSE CHANGES TO NEW YORK'S DISCOVERY LAWS ARE NEEDED

Bottom Line: In 2019, the New York State Legislature reformed the discovery laws to require earlier, and much more extensive disclosure of the prosecution's evidence, called discovery, to defendants in criminal cases. Prior to these reforms, critical evidence was sometimes not disclosed until the eve of trial, and some accused people faced pressure to plead guilty without knowing the strength of the state's case against them. While some reforms to the discovery laws made the justice system fairer, there were unintended consequences. Since the reforms passed in 2019, the volume of material that prosecutors must locate and turn over at the earliest stage of a case – under penalty of dismissal – has undermined public safety. Thousands of cases are now dismissed annually, for reasons that have nothing to do with fairness or justice. During this legislative session, the Governor and lawmakers can make common sense adjustments to the statute to protect victims of crime, while safeguarding the rights of the accused and maintaining New York's status as the state with the *most open and transparent discovery laws in the nation*.

INTRODUCTION

In criminal court, discovery is the process by which the prosecution provides its evidence to the defendant. Defense attorneys review evidence prior to trial to prepare for a defense or to negotiate a plea deal. In 2019, New York reformed its discovery laws creating Criminal Procedure Law Article 245, to help ensure prosecutors provide defense attorneys with sufficient evidence in time for defendants to make informed decisions. Under Article 245, prosecutors are now obligated to collect all material that “relates to” a case, regardless of its relevance, within New York's uniquely short timeframes, and then to certify that they have turned over the entirety of evidence by filing a Certificate of Compliance (COC). The strict requirements of the new disclosure laws, on top of this extremely tight 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 prosecutors cannot provide every last piece of discoverable material--no matter how meaningless or irrelevant--in the time frames required by the law. In 2023 the overall NYC case dismissal rate was 62%, compared to 42% in 2019 pre-reform. During that period, there has been a 48% increase in the case dismissal rate and 20,538 more cases dismissed citywide in 2023 compared to 2019. Each of these cases represents a victim of a crime who does not see justice in their case.

Discovery requirements are onerous, inflexible, and are overwhelming the criminal justice system. The breadth and scope of discoverable material under New York's new discovery statute is unparalleled nationwide, and

¹ For more details, see Manhattan Institute Report, “Destroyed by Discovery: How New York State's Discovery Law Destabilizes the Criminal Justice System

includes any material that merely “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 evidentiary value – in tens of thousands of cases. This has transformed our work from a justice-seeking to a paper-chasing practice, with negative impacts on justice and fairness.

Despite 2022 amendments, dismissals are still frequently 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, simply because the speedy trial statute was not similarly amended with the same language. This means 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 and ensure that the legislature’s intent is realized. Importantly, unlike under the prior discovery laws, prosecutors will still need to provide discovery prior to stopping the speedy trial clock and a judge will still have the authority to dismiss cases for failure to do so.

Despite 2022 amendments, defendants still delay raising discovery issues for tactical reasons, undermining the intent of the discovery reforms. The 2022 discovery amendments included the requirement that defendants raise issues with the discovery provided by prosecutors “as soon as practicable” with no remedy or sanction should they fail to do so. 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 before filing a speedy trial motion based solely on discovery issues that had been identified much earlier. However, 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 wait to raise discovery issues as a tactic to have their case dismissed, not to seek the evidence they need to make informed decisions on a timely basis.

RECOMMENDATIONS

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

1. *Requiring proof of prejudice before dismissing a case for discovery noncompliance.* In order to avoid unintended discovery dismissals, the legislature should apply the same amendment that it made to the discovery law (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 wait to file discovery challenges until after the speedy trial clock has run. 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. *Specify what materials must be turned over for initial COC.* Under this standard, prosecutors would be able to file a COC once they have turned over all materials relevant to the subject matter of the charges against the defendant in the instant case in the prosecutor’s actual possession after exercising good faith and due diligence to collect materials. This standard would still require prosecutors to aggressively gather evidence, ensuring that people accused of crimes receive the information they need to make informed decisions, in a fair and timely manner. Defendants will still have ample opportunity to decide whether to plead guilty or proceed to trial, to conduct their own investigations as necessary, and to mount a defense if the case goes to trial, while reducing the need for prosecutors to endlessly chase records with no evidentiary value.