REPORT ON LEGISLATION ADDRESSING CRIMINAL DISCOVERY REFORM IN NEW YORK: Criminal Procedure Law Article 245

This report is respectfully submitted by the Mass Incarceration Task Force (the "Task Force"), the Criminal Courts Committee, and the Corrections and Community Reentry Committee of the New York City Bar Association (the "City Bar"). The City Bar is an organization of approximately 23,000 lawyers and law students dedicated to improving the administration of justice. The members of the groups that produced this report include current and former criminal defense attorneys, prosecutors, and other stakeholders who analyze the legal, social, and public policy aspects of criminal justice issues facing New Yorkers today.

I. THE PASSAGE OF CRIMINAL DISCOVERY REFORM: CPL 245

Prior to the passage of Criminal Procedure Law ("CPL") 245,[1] also known as Kalief's Law,[2] which details the procedures for the exchange of criminal discovery, New York provided the accused with less access to discovery than nearly any other state in the country.[3] CPL 245 replaced the prior iteration of the discovery law, CPL 240, nicknamed the "blindfold" law, which required that prosecutors turn over relevant discovery—including potentially exculpatory materials—to the

[1] CPL 245 was passed on April 1, 2019 and went into effect on January 1, 2020. It provided for greater transparency in discovery and set specific timeframes for the sharing of evidence between the prosecution and defense. It was subsequently amended in April 2020 and April 2022. *See* Discovery Reform in New York: Major Legislative Provisions, Data Collaborative for Justice of John Jay College and Center for Court Innovation, (updated May 2022), https://www.innovatingjustice.org/sites/default/files/media/document/2022/Discovery_NY_Revised_0622_2.pdf (All websites last accessed on March 27, 2025).

[2] This law was passed in the wake of the death of Kalief Browder, who took his own life after spending three years at Riker's Island pre-trial for allegedly stealing a backpack at the age of sixteen, spending two of the three years in solitary confinement. During his time on Riker's Island, Mr. Browder had no access to the government's evidence, and his family could not pay the $3,000 bail. *See* Jennifer Gonnerman, *Kalief Browder, 1993-2015*, The New Yorker (June 7, 2015), https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015; *see also Advocates Announce "Alliance to Protect Kalief's Law,"* Legal Aid Society (Jan. 13, 2025), https://legalaidnyc.org/news/advocates-announce-alliance-to-protect-kaliefs-law/.

[3] *See* Ashely Southall and Jan Ransom, *Once as Pro-Prosecution as Any Red State, New York Makes a Big Shift on Trials*, The New York Times (May 2, 2019), *https://www.nytimes.com/2019/05/02/nyregion/prosecutors-evidence-turned-over.html*; Joaquin Sapien, *Criminal Justice Legislation Will Force New York Prosecutors to Disclose More Evidence, Sooner*, ProPublica (Apr. 8, 2019), https://www.propublica.org/article/criminal-justice-legislation-will-force-new-york-prosecutors-to-disclose-more-evidence-sooner.

About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

defense only after the defense made a request. Worse still, after the defense made that request, the law included no meaningful time frames by which the prosecution had to provide the defense with discovery, instead only mandating that it be exchanged by the eve of trial, after the jury had been selected and before the defense made its opening argument. As nearly all criminal cases in New York are resolved through pleas and do not advance to trial,[4] an important practical effect of this regressive law was that prosecutors were not required to share discovery prior to making plea offers and individuals often took blind pleas without understanding what, if any, evidence the prosecutors had against them, including evidence that could demonstrate their innocence or other grounds for a dismissal or acquittal.

Recognizing the need for the full exchange of information to support the truth-seeking function of the judicial system, stakeholders in the criminal legal system have long advocated for discovery reform. After years of advocacy, on April 1, 2019, the New York legislature passed, and the governor signed into law, critically important criminal justice reform legislation, which included discovery and speedy trial reform. The new criminal discovery statute, CPL 245, which went into effect on January 1, 2020, for the first time required "automatic" discovery in criminal cases of certain categories of information without a request and within specified timeframes in advance of trial. Importantly, this legislation also amended the speedy trial statute to require compliance with the "automatic" discovery rules prior to a prosecutor's declaration of readiness for trial. Now, though, CPL 245—which brought New York in line with other states laws—is being threatened by major roll backs introduced as part of Governor Hochul's proposed FY 2026 budget. It is the City Bar's position that the proposed rollbacks should be rejected, and instead, the implementation of CPL 245 should be funded to the fullest extent possible to ensure continued transparency and justice.

II. CPL 245'S SCOPE

The law includes three primary vehicles to give the accused access to evidence the prosecution may have against them. *First*, CPL 245.20 requires prosecutors to disclose "all items and information that relate to the subject matter of the case . . . including but not limited to" 21 categories of materials. These include, among other things, names, contact information, and statements of witnesses, including all law enforcement personnel involved; electronic recordings such as 911 calls; *Brady* disclosures; disclosure of any rewards, promises, or inducements to any prosecution witnesses; all search warrants and related materials; any electronically created or stored information; expert materials; and scientific, physical, and mental examinations and reports.[5] The law also requires the defense to disclose materials to the prosecution if they intend

[4] As of 2019, 96% of felony convictions and 99% of misdemeanor convictions in New York were the result of guilty pleas. *The New York State Trial Penalty: The Constitutional Right to Trial Under Attack*, Nat. Ass'n of Crim. Defense Lawyers (Mar. 26, 2021), https://www.nacdl.org/Document/NewYorkStateTrialPenaltyRighttoTrialUnderAttack; *see also* Ram Subramanian et al., *In the Shadows: A Review of the Research on Plea Bargaining*, Vera Inst. of Just. (Sept. 2020), https://www.vera.org/downloads/publications/in-the-shadows-plea-bargaining.pdf.

[5] *See* CPL 245.20(1).

to introduce them at trial, including expert opinion evidence, electronic recordings, photographs, and information regarding witnesses.[6]

Second, prosecutors are required to submit a certificate of compliance after they have completed their discovery obligations.[7] The certificate of compliance must certify that "after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery, the prosecutor has disclosed and made available all known material and information subject to discovery" and must "identify the items provided."[8] In certain circumstances, the prosecution may provide additional discovery later and file a supplemental certificate of compliance, but must explain the basis for the delayed disclosure.[9]

CPL 245.50 serves as the key enforcement mechanism because it ties the requirement to file a certificate of compliance to the prosecutor's obligation to represent that they are ready for trial pursuant to CPL 30.30, the speedy trial law, stating that "absent an individualized finding of special circumstances . . . by the court . . . the prosecution shall not be deemed ready for trial for purposes of section 30.30 . . . until it has filed a proper certificate" of compliance.[10] In other words, if the prosecution does not file a certificate certifying its compliance with CPL 245 before the statutory speedy trial deadline (six months for a felony, 90 days for most misdemeanors, and 30 days for a violation), then the case may be dismissed upon an appropriate defense motion.[11] Notably, statutory speedy trial requirements do not apply to homicide-related charges,[12] and therefore, even though certificates of compliance are required to be filed in homicide cases, the enforcement mechanism contained in CPL 245.50 does not constrain prosecutors in such cases.

Third, the law establishes a timeframe by which the prosecution must turn over all discoverable materials. Specifically, if the accused is incarcerated after arraignment, the prosecution has 20 days to comply with CPL 245.20(1); if the accused is at liberty after arraignment, the prosecution has 35 days to comply.[13] An additional 30-day period is permitted without motion if the materials are voluminous or not in the prosecution's actual possession, effectively extending these deadlines to 50 days and 65 days, respectively.[14] The defense similarly

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[6] *See* CPL 245.20(4).

[7] *See* CPL 245.50.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] Prosecutors have multiple avenues of recourse if they need more time to comply with the discovery laws or cannot obtain certain discovery. For example, there are exceptions to speedy trial requirements as delineated in CPL 30.30(4), including "exceptional circumstances" where the prosecution has exercised due diligence in obtaining discovery, but it is unavailable due to circumstances beyond its control. Similarly, prosecutors can ask the judge to make individualized findings of special circulstances pursuant to CPL 30.30(5) and CPL 245.50(3) and state ready for trial without certifying compliance. Additionally, the prosecution may request for more time and stop the speedy trial clock if discovery is voluminous or difficult to obtain. *See* CPL 245.10(1)(a)(iv), 245.70(2).

[12] *See* CPL 30.30(3)(a).

[13] *See* CPL 245.10(1).

[14] *Id.*

has 30 days to comply with its obligations under CPL 245.20(4).[15] Importantly, these deadlines are not what trigger dismissal in the event of the prosecutor's non-compliance; as noted above, the prosecution has six months to file a certificate of compliance for a felony, and 60-90 days for a misdemeanor. Indeed, in practice, defense practitioners report that prosecutors rarely comply with the timeframes delineated in CPL 245.10(1) and that sanctions are almost never imposed for this failure. Thus, the certificate of compliance is the primary enforcement mechanism for prosecutors' obligations under the law.

In December 2023, the Court of Appeals clarified that CPL 245 does not demand a "perfect prosecutor" or apply a rule of "strict liability" to a prosecutor's compliance with CPL 245. Instead, the law requires that the prosecution make diligent efforts to obtain the relevant discovery before filing a timely certificate of compliance.[16] Since then, trial courts have engaged in a thoughtful analysis of the prosecutor's efforts to learn of and obtain discovery before deciding whether a certificate of compliance is invalid.[17] If a certificate of compliance is not deemed invalid, a prosecutor will not be charged with the delay in obtaining that evidence. In other words, the case will not be dismissed if the prosecutor is found to have been diligent prior to filing their certificate of compliance.

III. THE IMPACT OF CPL 245

While resources for the effective implementation of CPL 245 have been slow to be allocated and are still lacking, CPL 245's primary impact to date has been to permit all parties to access the full range of available information in advance of adjudicating guilt. On the one hand, this has meant that certain types of cases that prosecutors' offices have traditionally deprioritized are more frequently being dismissed rather than resolved through early guilty pleas, because the accused need not accept blind pleas that could saddle them with a criminal record. On the other hand, the prosecution of serious felonies has not been stymied by CPL 245.[18]

Indeed, any argument suggesting that CPL 245 has caused a substantial increase in the dismissal rate for felonies is a red herring. *First*, and importantly, crime is down across New York. As the New York State Division of Criminal Justice Services Commissioner Rossana Rosado reported, "[t]hrough the first nine months of 2023, reported crime throughout most of New York

[15] *See* CPL 245.10(2). The law also puts in place a separate time limit that applies whenever prosecutors make plea offers in felony cases: the prosecution is required to provide all discovery otherwise available under CPL 245.20(1) within a certain number of days prior to the expiration of the plea offer. *See* CPL 245.25.

[16] *See People v. Bay*, 41 N.Y.3d 200, 212 (2023) (noting "speedy trial dismissals based on disclosure violations are not inevitable," so long as the prosecution exercises due diligence).

[17] *See id*.

[18] The Hon. Joseph Zayas, New York's Chief Administrative Judge, testified to this effect during the recent public protection budget hearing. He reported that "[t]here has been an increase in dismissals on speedy trial grounds in New York City for misdemeanors and non-indicted felony cases," but emphasized that "[w]e do not see that trend" where a "failure to comply with discovery rules were at least in part the reason for the dismissal" happening in indicted felonies—our more serious cases are not getting—it's more negligible in terms of the difference." *See, e.g.*, Joint Legislative Hearing on 2025 Executive Budget Proposal: Public Protection (Feb. 13, 2025), https://www.youtube.com/watch?v=hMPLGFzGT5A at 37:08.

State returned to pre-pandemic levels as seen in 2017 and 2018."[19] *Second*, homicide cases are exempt from the speedy trial rules that can prompt dismissals in misdemeanor and other felony cases.[20] *Third*, data reported by the New York State Office of Court Administration ("OCA") shows that indicted felonies are not resulting in speedy trial dismissals at appreciably higher rates since the passage of CPL 245.

Early data assessing CPL 245's impact suggests that placing the accused on more equal discovery footing with the prosecution has altered at least some historical patterns of case resolution. Overall, some 42,212 cases were dismissed statewide because prosecutors missed their speedy trial deadlines in 2023; by contrast, in 2019, only 12,398 cases were dismissed on this basis statewide.[21] The vast majority of these dismissals, however, took place in local criminal courts where misdemeanors and unindicted felonies are prosecuted and not in superior courts. Importantly, in superior courts (where felonies are adjudicated) these dismissals pursuant to CPL 30.30—not all of which are necessarily due to the failure to file a timely and complete certificate of compliance[22]—have minimally increased since before the passage of CPL 245. Indeed, in 2024, only 0.37% of cases disposed in superior court were 30.30 dismissals, while in 2019, only 0.12% of superior court dispositions were 30.30 dismissals statewide.[23]

Low-level charges, however, have seen higher 30.30 dismissal rates since 2019. In 2024, dismissals of cases in local criminal court—where misdemeanors and other low-level charges are typically filed—was approximately 17% in 2024, while in 2019, only 3.05% of cases in local criminal courts were dismissed pursuant to CPL 30.30.[24] Similarly, the statewide dismissal rate for

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[19] Testimony of Commissioner Rossana Rosado, N.Y. State Div. of Crim. Just. Servs., Joint Legislative Hearing on NY 2024-25 Executive Budget: Public Protection (Jan. 25, 2024), https://nyassembly.gov/write/upload/publichearing/001401/004868.pdf.

[20] *See* CPL 30.30(3)(a).

[21] *See* Office of Court Administration, *Discovery Reform: Court Activity Dashboard* at 4 (last visited April 2, 2024) (page 4 of 6 of dashboard, titled "Speedy Trial Dismissals by District & Year"), https://app.powerbigov.us/view?r=eyJrIjoiMTMyN2RmMWYtZGJmYi00M2M0LThjNmMtNjE0NDQ4ZTIxZjgwIiwidCI6IjM0NTZmZTkyLWNiZDEtNDA2ZC1iNWEzLTUzNjRiZWMwYTgzMyJ9 (hereinafter "OCA Discovery Dashboard"). The vast majority of these dismissals during both years occurred within New York City. *Id.*

[22] The data underlying 30.30 dismissals does not delineate between 30.30 dismissals on the basis of an improper or untimely certificate of compliance and some other grounds for dismissal for failure to comply with speedy trial obligations.

[23] This is measured by dispositions in the state's superior criminal courts (i.e., Supreme Court and County Court), where all indicted felonies are adjudicated. *See* CPL 10.10(2), 10.20(1)(a). In 2019, .12% of superior court dispositions resulted in a 30.30 dismissal; in 2020, .1% of superior court dispositions resulted in a 30.30 dismissal; in 2021, .23% of superior court dispositions resulted in a 30.30 dismissal; in 2022, .57% of superior court dispositions resulted in a 30.30 dismissal; and in 2023, .3% of superior court dispositions resulted in a 30.30 dismissal. *See* OCA Discovery Dashboard at 5. Note that prior to 2022, the data does not include information for some Superior Courts in the 3rd, 4th, 5th, 6th, 7th, and 8th Judicial Districts, and courts' data entry of 30.30 information may vary, according to the OCA Discovery Dashboard.

[24] OCA Discovery Dashboard at page 5 (filtering for Court Type of "Local Criminal"). These changes have largely occurred in New York City, and are less prevalent elsewhere in New York State. OCA Discovery Dashboard at page 5 (filtering for Court Type of "Local Criminal" and excluding the five New York City counties) (demonstrating an increase from 1.14% of speedy trial dismissals in 2019 to 2.88% in 2024 for "local criminal" cases outside of New York City). Practitioners report that this increase may be attributable to over policing of minor crimes in New York City as compared to many upstate counties.

charges other than felonies has increased from 43% in 2019 to 53% in 2024, while the proportion of such low-level cases resolved through guilty pleas has seen a corresponding reduction from 53% in 2019 to 41% in 2024.[25] In such cases, which have traditionally been afforded lower priority by District Attorneys' offices, prosecutors would previously offer pleas to encourage early resolution prior to reviewing evidence or producing discovery to the defense. Before CPL 245, those charged with misdemeanors were more likely to have had to choose between a potentially burdensome and time-consuming legal battle during which they would not gain access to discovery until the eleventh hour, or a blind plea to a misdemeanor, non-criminal violation, or adjournment in contemplation of dismissal ("ACD") at an early stage of the case and without an understanding of the prosecutor's evidence. Data suggests that, since the enactment of CPL 245, the accused have been more reluctant to accept pleas before the discovery exchange deadlines and are now waiting to receive and review the discovery underlying their charges prior to making the decision to plead to or fight the charges. This has, unsurprisingly, shifted case resolution timelines, and seems to demonstrate that CPL 245 is having the desired effect: the accused are now able to make informed decisions and no longer have to accept blind pleas without knowing what evidence there may (or may not) be against them.

Though misdemeanor and violation case dismissals have somewhat increased, these dismissals reflect a prosecutorial approach that has remained consistent over time for lower-priority cases.[26] Prior to enactment of CPL 245, district attorneys' offices could avoid the need to direct significant resources to many of these misdemeanors or violations by resolving such cases through early guilty pleas. Under the new regime, district attorneys' offices have not increased resources for these traditionally low-priority cases, instead choosing to maintain their prior strategy of dedicating resources to felony cases and certain types of misdemeanors. So, where a plea may previously have quickly resolved a low-level case, these cases are now remaining active longer, during which time—if prosecutors choose not to devote resources to handling these cases and fulfill their discovery obligations—their speedy trial deadlines may lapse and result in dismissal. As a result, speedy trial dismissal rates have increased for deprioritized low-level cases, such as misdemeanors, but have not increased for felony cases, which remain a prosecutorial priority. And, in any event, crime rates are down across the state, so the increase in misdemeanor dismissals does not seem to be linked to an increased safety risk.[27]

[25] *See* OCA Discovery Dashboard at page 3 (filtering for all Case Types other than "Felony").

[26] *See, e.g.*, Charles Lane, *Queens DA blames civil rights reforms for more than a quarter of cases being dismissed*, The Gothamist (Mar. 2, 2025) (reporting that Queens District Attorney Melinda Katz stated that the percentage number of cases that were dismissed because prosecutors missed discovery deadlines "includes low-level misdemeanors that her office didn't prioritize").

[27] *See* Rosado, *supra* note 19.

IV. PROPOSED ROLLBACKS TO CPL 245 SHOULD BE REJECTED

CPL 245 should be preserved in its current form, and Governor Hochul's proposals should be rejected as a complete gutting of the law and a big step backward for transparency and justice in New York.

On January 31, 2025, Governor Hochul proposed revisions to CPL 245, which she has described as "streamlining"[28] the law to address prosecutors' concerns. In reality, the revisions amount to a wholesale rollback of key provisions of CPL section 245, without which, discovery reform's intent—to provide protections for the accused, reduce New York's high rate of wrongful convictions, and provide an enforcement mechanism for prosecutors who flout their discovery obligations—cannot be accomplished. While the proposed rollbacks include many regressive changes, we highlight below four proposed revisions that demonstrate how Governor Hochul's proposal would completely undo the progress made through CPL 245's passage.

First, the proposed revisions permit prosecutors to certify compliance with the discovery statute and state "ready for trial"—which stops the speedy trial clock—as soon as they have disclosed all documents in their "actual possession."[29] The proposal simultaneously changes the language in CPL 245.20(2) to define items in the possession of the police to be in the "constructive" possession of prosecutors. This change would create a new distinction between materials in the "actual" possession of prosecutors, which under the proposed revisions would need to be disclosed before certifying compliance with the discovery statute, and those in the prosecutors' "constructive" possession, which would not need to be disclosed to the defense before certifying "ready for trial." But as any practitioner knows, the vast majority of discovery that is related to a criminal proceeding is not in the *actual* possession of the prosecutor, particularly in the early stages of a case. Instead, according to the lines drawn by the Governor's proposal, most evidence would be categorized as only being within the *constructive* possession of the prosecutors, as it lies in the *actual* possession of the police or other witnesses. Were CPL 245 to be revised in keeping with this proposal, a prosecutor would be able to certify that they had fully complied with the discovery law within days of an arraignment, before disclosing witness statements or body camera footage, which are typically in the possession of third parties.[30] Prosecutors would then have no speedy trial incentive to timely gather additional discovery outside their direct possession to share with the defense. This is a significant departure from the current law, which binds both the prosecution and law enforcement, acknowledging that the vast majority of evidence exists in the hands of the police. This revision also provides perverse incentives for the police to withhold

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[28] Press Release, *Governor Hochul Announces Proposals to Combat Crime and Strengthen Criminal Justice System*, Governor Kathy Hochul (Jan. 14, 2025), https://www.governor.ny.gov/news/governor-hochul-announces-proposals-combat-crime-and-strengthen-criminal-justice-system.

[29] Discovery Executive Budget Legislation at 25–26, https://www.documentcloud.org/documents/25505710-discovery-executive-budget-legislation/?q=actual+possession&mode=document#document/p3.

[30] State Senator Zellnor Myrie has proposed another bill that would assist prosecutor in gathering information and could serve as a failsafe against this particular rollback. Senate Bill S613 would "grant district attorneys' offices direct access to law enforcement records and databases related to the subject matter of criminal cases. https://www.nysenate.gov/legislation/bills/2025/S613.

evidence from the prosecution because prosecutors are not accountable for disclosing materials not in their actual possession.

Second, Governor Hochul's proposal would change the standard for disclosure from any evidence "related to" the case, to evidence that is "relevant to the subject matter of the charges against the defendant in the instant case."[31] While this change may appear minor on its face, the consequences of this language shift are severe. This revision to the disclosure standard would significantly narrow the standard for discovery from an objective determination of whether the material is related to the case to an admissibility standard of "relevance." What is more, the law would leave the determination of what is "relevant to … the charges" to the prosecutor—who may not be considering whether material could be relevant to the defense's strategy, only their own theory of prosecution. This would not only shrink the body of evidence that is required to be turned over, it would lead to a significant increase in litigation over what is considered "relevant," further burdening the courts. This relevance standard was considered and roundly rejected by legislators in implementing the original discovery reforms in 2019.

One of the justifications for rollbacks has been the increase in dismissals of cases for failure to obtain inconsequential discovery—items prosecutors might deem not "relevant." This revision appears to be aimed at preventing those dismissals. However, in practice, a prosecutor cannot claim that evidence is not relevant without first obtaining the evidence and reviewing it. If they were to do so, potentially critical evidence could be ignored by prosecutors and withheld from the defense. In fact, if prosecutors were to make judgments as to the relevance of evidence without reviewing it, they might violate their constitutional obligation to learn of favorable information to the defense.[32] This could lead to an increase in wrongful convictions in addition to increasing litigation.

Third, the proposed changes would essentially do away with the discovery statute's only enforcement mechanism. As explained above, CPL 245.50 provides that the prosecution may not state that they are ready for trial pursuant to CPL 30.30 until they have filed a proper certificate of compliance, which the prosecution must file within a certain period of time—90 days for a misdemeanor and six months for a felony. This is the law's only real enforcement mechanism hook to ensure timely disclosure. Governor Hochul's proposal does away with this time limitation and enforcement mechanism. To succeed on a challenge to a certificate of compliance and seek dismissal, the proposal would require that the "defense shows that it was prejudiced as a result of the people's non-disclosure or belated disclosure . . . and no other remedy . . . sufficiently cures the prejudice."

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[31] Discovery Executive Budget Legislation at 21–25, https://www.documentcloud.org/documents/25505710-discovery-executive-budget-legislation/?q=actual+possession&mode=document#document/p3.

[32] While the constitutional rule does not require disclosure of all potentially favorable information to the defense, prosecutors must still evaluate all potentially favorable information. They are "assigned the consequent responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of 'reasonable probability' is reached." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). To do this, they must of course first obtain that information. *Id.* ("This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police."). Prosecutors cannot simply assume that evidence is "irrelevant," sight unseen.

The proposal also adds a requirement of irremediable prejudice to CPL 30.30(5). According to that revision, even if the court finds that the prosecutor failed to exercise diligence or act in good faith in carrying out its discovery obligations, the prosecutor's statement of readiness would not be deemed illusory unless the defense demonstrated prejudice resulting from the belated or non-disclosure *and* no other remedy could cure that prejudice. Indeed, the law would permit prosecutors to serve "belated or missing disclosures" as a cure for an improper certificate of compliance.[33]

The addition of incurable prejudice as a necessary finding for the imposition of any consequences for failure to provide discovery prior to stating ready for trial eviscerates the critical link between discovery and speedy trial. Practitioners have experienced firsthand that an incurable prejudice standard is an ineffective enforcement mechanism for discovery compliance. Prior to the passage of discovery reforms, requiring an incurable prejudice had been the only standard that governed "sanctions" for discovery non-compliance for decades. In case after case, courts would simply grant a continuance when discovery was belatedly disclosed to "cure" any prejudice to the defense. This system worsened notorious delays in New York Criminal Courts and did nothing to incentivize prompt and meaningful compliance by prosecutors. This also represents an entirely novel addition to the speedy trial laws; it has never been the standard that the defense must prove prejudice to avail themselves of the protections of the speedy trial law. This revision would not only roll back the advances accomplished through the passage of CPL 245, but it would upend the question at the heart of speedy trial litigation: whether the prosecutor has done all that is required to bring a case to trial.

Similarly, the addition of language granting prosecutors the ability to "cure" invalid certificates of compliance by filing supplemental certificates, with no time limitations or restrictions, would remove any incentive prosecutors have under the current discovery statute to exercise due diligence or file good faith certificates of compliance. Under Hochul's proposal, prosecutors could knowingly file an insufficient certificate of compliance, wait to see if the defense brings a challenge and then supplement their certificate of compliance without consequence. If enacted, this proposal would lead to significant delay. Prosecutors would once again be permitted to provide discovery at their own pace up until the commencement of a trial without consequence. This will place those accused of crimes back into the perilous position of choosing between a blind plea or years of waiting for a trial in the dark.

Finally, the proposed changes set a deadline for defense counsel to object to an improper certificate of compliance within 35 days of the filing of the certificate of compliance, or else their challenges are waived. This change is problematic for a number of reasons. It shifts the burden to the defense to accurately guess whether discoverable material exists and has yet to be disclosed. More importantly, adding a strict deadline of just over a month—when the existing law already requires the defense to raise challenges "as soon as practicable"—ignores the realities of state criminal practice, where public defenders—who represent the majority of people prosecuted in New York—often carry heavy caseloads and have more limited resources than prosecutors. A requirement that these already overburdened lawyers, representing indigent New Yorkers, review all of the discovery disclosed, identify what may be outstanding, and file a motion within 35 days

[33] Discovery Executive Budget Legislation at 31, https://www.documentcloud.org/documents/25505710-discovery-executive-budget-legislation/?q=actual+possession&mode=document#document/p3.

on every case no matter how complex the case or voluminous the disclosure is unrealistic and unreasonable.

Governor Hochul has claimed that these rollbacks are in response to prosecutors' claims that cases are being dismissed on "minor technicalities."[34] However, Governor Hochul and supporters of the rollbacks have only pointed to vague and unsubstantiated figures, referring to "thousands" of dismissals with no supporting facts. In fact, to the contrary, analyses of written decisions dismissing cases based on prosecutors' failure to comply with discovery obligations reveal that "judges are dismissing cases because prosecutors regularly fail to meet basic evidentiary obligations, sometimes ignoring discovery requests for months or choosing to withhold evidence. These cases are not dismissed due to trivial errors or defense tactics."[35] Moreover, as the prosecutors themselves admit, some of these dismissals are due to their offices deprioritizing certain low-level misdemeanors—not serious felonies being dismissed due to a technical discovery deficiency.[36]

V. CPL 245 SHOULD BE MAINTAINED AND PROPERLY FUNDED

The changes brought about through CPL 245 were long overdue. The statute's enactment reflected an understanding that the prior system failed to provide the accused with adequate constitutional and statutory protections. It also represented broad agreement within the state that the truth-seeking functions of discovery could not be met without reforms to the existing criminal discovery system, and its passage signaled New York's commitment to providing those protections to the accused. To the extent CPL 245 has had downstream effects on case resolution timelines like those described above, it would be premature to revise or roll back the statute before it has been fully resourced in a way that would allow prosecutorial and defense organizations to adapt to the law's strengthened discovery requirements.

To the extent CPL 245 has any shortcomings, we believe them to be rooted in a lack of funding. The statute requires the exchange of larger, more complete volumes of discovery, but state prosecutors' offices and defense counsel, including public defenders' offices and solo practitioners, initially lacked the funding necessary to update their discovery technology, expand their staff, and build out the systems necessary to implement the reformed discovery requirements. And when CPL 245 was passed, it did not include funding for its implementation. This mismatch between

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[34] Press Release, *Fighting Recidivism: District Attorneys Endorse Governor Hochul's Plan to Streamline Discovery Laws to Protect Victims, Hold Perpetrators Accountable and Safeguard the Right to a Fair and Speedy Trial*, Governor Kathy Hoch (Jan. 31, 2025), https://www.governor.ny.gov/news/fighting-recidivism-district-attorneys-endorse-governor-hochuls-plan-streamline-discovery-laws; *see, e.g.*, Charles Lane, *Queens DA blames civil rights reforms for more than a quarter of cases being dismissed*, The Gothamist (Mar. 2, 2025), https://gothamist.com/news/queens-da-blames-civil-rights-reforms-for-more-than-a-quarter-of-cases-being-dismissed.

[35] *See Judges' Unpublished Decisions Debunk the Myths About Discovery Reform*, scrutinize, https://www.scrutinize.org/decisions-discovery-reform. As scrutinize's report states, the vast majority of written judicial decisions are unpublished, meaning that it is impossible to review "a comprehensive sample of all discovery-related rulings." *Id.*

[36] Charles Lane, *Queens DA blames civil rights reforms for more than a quarter of cases being dismissed*, The Gothamist (Mar. 2, 2025), https://gothamist.com/news/queens-da-blames-civil-rights-reforms-for-more-than-a-quarter-of-cases-being-dismissed.

modernized statutory obligations and a lack of new resources to carry out those obligations resulted in a multi-year lag in upgrading the state's inadequate discovery systems so that practitioners could meet their discovery requirements. As a result, organizations struggled to update their systems to properly process, transmit, and review complex discovery. This funding gap did a temporary disservice to the ideals underlying the new statute, slowing the state's ability to reform its outdated systems and understaffed offices.

CPL 245 should be maintained in its current form and should be sufficiently funded to permit full implementation for both the defense and the prosecution. In the years since its enactment, some legislators and stakeholders have sought to amend the statute to remove key provisions, including the enforcement mechanism in CPL 245.50. But any rollback of the statute would not only be inappropriate given the shared interest among all stakeholders in the full exchange of information, but also would be premature when initial funding necessary to implement the law is only now being distributed and deployed to expand discovery infrastructure. In 2023, the New York State Legislature increased funding for both prosecutorial and defense organizations in the state.[37] This funding is beginning to be dispersed to the organizations that need it. Receipt of such funds should help relevant stakeholders build the technological and staffing systems necessary to properly implement CPL 245.

Ongoing and expanded funding for innovative discovery infrastructure and support services will be the key to ensuring the success of discovery reform in New York. For example, in its current form, the funding for the prosecutors' offices and public defense organizations fails to account for the impact of CPL 245 on solo practitioners and attorneys appointed pursuant to Article 18B to provide legal services in the criminal courts, who are also feeling the impact of larger and more complex discovery exchanges, but often lack access to the more robust infrastructures of the state's public defense organizations. Practitioners should be supported during the process of updating their systems to keep pace with evolving discovery requirements and technology. As another example, and as proposed in pending legislation, New York could implement technological updates to better allow for information sharing between the police department and prosecutors, which could ease the prosecutorial administrative burden of gathering evidence to share with the defense.[38] The fact that these systems are currently underdeveloped is no reason to revert to a constitutionally deficient environment in which the accused are forced to make life-altering decisions while lacking the information they need to be able to make those decisions.

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CPL 245 represents a substantial part of New York's commitment to a fair, robust criminal legal system. The City Bar strongly supports the criminal discovery reform enacted through CPL 245, which helps to ensure that the accused's constitutional right to a fair trial is fulfilled. We also urge the legislature to reject any proposed rollbacks to this important civil rights reform, particularly given the Governor's attempt to revise CPL 245 on a rushed timeline through the

[37] Press Release, *Governor Hochul Announces FY 2024 Budget Historic Investments and Initiatives to Drive Down Gun Violence, Improve the Criminal Justice System, and Create a Safer New York State*, Governor Kathy Hochul (May 3, 2023), https://www.governor.ny.gov/news/governor-hochul-announces-fy-2024-budget-historic-investments-and-initiatives-drive-down-gun.

[38] A825/S613 (Lasher/Myrie). https://www.nysenate.gov/legislation/bills/2025/S613.

state's budget process, which, given the April 1 budget deadline, provides little time for legislative discussion or meaningful hearings to explore the ramifications of the proposed changes. Instead, we encourage additional legislation to adequately fund the technological and staffing infrastructure that is necessary for the parties to effectively comply with their obligations under the law.

Mass Incarceration Task Force
Tess Cohen, Chair
Discovery Subcommittee
Molly K. Webster, Chair
Jessie-Lauren Pierce, Member

Corrections and Community Reentry Committee
Alexis Flyer and Stephanie A. Holmes, Co-Chairs

Criminal Courts Committee
Carola Beeney and Anna G. Cominsky, Co-Chairs

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