

COUNTY OF MADISON, STATE OF NEW YORK

**STANDING AFFIRMATION OF
DUE DILIGENCE UNDER C.P.L.
ARTICLE 245**

I, Robert A. Mascari, Esq., an attorney duly admitted to practice in the Courts of the State of New York, pursuant to Rule 2106 of the C.P.L.R., do hereby subscribe and affirm the following to be true under the penalties of perjury, except as to those matters alleged on information and belief, and as to such matters, I believe them to be true:

1. That I am the Chief Assistant District Attorney in and for the County of Madison and in such capacity I am providing this affirmation to demonstrate the “due diligence” performed by the Madison County District Attorney’s Office in seeking to comply with C.P.L. Article 245.
2. The People are aware of their obligations as to discovery under C.P.L. Article 245 and have endeavored to ensure that as of January 1, 2020, both the District Attorney’s Office and all law enforcement agencies who have a presence in Madison County are in compliance with the discovery statute.
3. Pursuant to the discovery statute, the Madison County District Attorney has the obligation to perform “due diligence” in obtaining all the mandated discovery on each and every case that we are prosecuting. This obligation is spelled out in Criminal Procedure Law § 245.20(2) which provides that the District Attorney’s Office “shall make a diligent, good faith effort to ascertain the existence of material or information discoverable and to cause such material or information to be made available for discovery where it exists but is not within the prosecutor’s possession, custody or control”.
4. In furtherance of this “due diligence” obligation, Criminal Procedure Law § 245.20(2) goes on to provide that “all items and information related to the prosecution of a charge in the possession of any New York state or local police or law enforcement agency shall be deemed to be in the possession of the prosecution”.
5. The ability and authority to request all materials in law enforcement’s possession is first to be found in Criminal Procedure Law § 245.55(1) which provides “that the district attorney and the assistant responsible for the case shall endeavor to ensure that a flow of information is maintained between the police and other investigative personnel and his or her office sufficient to place within his or her possession or control all material and information pertinent to the defendant and the offense or offenses charged”.

6. The unequivocal direct authority to request and receive from law enforcement agencies all such materials is found in Criminal Procedure Law § 245.55(2) which provides that “upon request by the prosecution, each New York state and local law enforcement agency shall make available to the prosecution a complete copy of its complete records and files related to the investigation of the case or the prosecution of the defendant for compliance with this article”.
7. The discovery statute makes clear that the request to produce all materials in law enforcement’s possession is recognized in Criminal Procedure Law § 245.60 to be a “continuing duty to disclose” thus making the previously cited provisions an on-going obligation both as to past, present, and future materials.
8. Consistent with the discovery statute, the Brady Order now routinely served on the People by the Court, and long-standing office policy, the People recognize their on-going obligation to supply discovery to defense counsel.
9. It should also be noted even prior to the enactment of C.P.L. Article 245, the Madison County District Attorney’s Office has had an “open file policy” that not changed with the advent of the discovery statute. It continues to be our policy, subject to appropriate protective orders and other statutory exceptions, to provide any and all existing discoverable materials in our actual or constructive possession to the defense and to provide such additional materials as subsequently become available to the defense without delay. This “open file” policy is considered by the District Attorney’s Office to be an on-going office policy and an obligation consistent with our ethical duty to be fair in seeking justice in each case that is prosecuted.
10. On behalf of the Madison County District Attorney’s Office, I have caused the performance of our “due diligence” obligation in eight distinct ways on at least thirty-six separate occasions:
 - a. By being an active member and participant in the District Attorneys Association of New York’s efforts – through both the Best Practices Committee and the Ethics Committee – to analyze and devised procedures to comply with the law;
 - b. By actively engaging with the New York Prosecutor’s Training Institute to help develop the Prosecutors Case Management System (PCMS) and the Digital Evidence Management System (DEMS) to work towards full compliance with the law;
 - c. Providing training to prosecutors and staff statewide and within Madison County as to the new discovery statute and the use of PCMS/DEMS to comply;
 - d. By taking part in regional meetings and discussions with other District Attorney’s Offices to analyze and devised procedures to comply with the law;
 - e. By developing Madison County specific procedures to comply with the obligations of the discovery statute;

- f. By appearing, lecturing, and discussing the new discovery statute at monthly meetings of Madison County law enforcement (colloquially referred to as the “Chiefs Meeting”);
- g. By holding trainings and discussing our obligations with all staff – both attorney and non-attorney – of the Madison County District Attorney’s Office;
- h. By individually meeting, discussing, training, and developing compliance strategies with the following agencies:
 - i. Madison County Emergency Management (911 Center);
 - ii. Canastota Police Department;
 - iii. Cazenovia Police Department;
 - iv. Chittenango Police Department;
 - v. Colgate Campus Security;
 - vi. Hamilton Police Department;
 - vii. Madison County Sheriff’s Office;
 - viii. NYS Department of Environmental Conservation;
 - ix. New York State Police – Troop D;
 - x. New York State Police – Troop T;
 - xi. New York State Park Police;
 - xii. Oneida City Police Department;
 - xiii. Oneida Nation Police Department;
 - xiv. SUNY Morrisville Police Department.

11. After performing the “due diligence” described above, a standing request (a copy of the form of which is attached to and made a part hereof) to each agency requesting all materials in their possession as provided in C.P.L. 245.55(2) and describing the means by which all discovery materials are to be provided. Among the items pointed out were the following:

- a. The initial submission of paperwork should be done by a PDF which includes the arrest report and the Discovery Submission Form (a copy of which is attached to and made a part hereof) to discovery@madisoncounty.ny.gov;

- b. That based on this initial submission, an email link will be sent to the agency's designated person by which all other discovery materials – PDF, JPEGS, audio, and videos can be uploaded directly in the District Attorney's Office file;
- c. That through the use of the Discovery Submission Form, the agency will advise the Madison County District Attorney's Office as to whether or not all automatic discovery and/or supplemental discovery is complete.

12. Policies and procedures were established within the Madison County District Attorney's Office for the processing of submitted paperwork which includes, but are not limited to:

- a. The on-going monitoring of discovery@madisoncounty.ny.gov for the submission of discovery materials;
- b. The opening of new files in PCM and the sending of an email link to the agency by which all materials can be uploaded directly into the DEMS section of our PCMS file;
- c. The production of all materials called for under the discovery statute and their placement in the DEMS section of our PCMS file;
- d. The auditing of each file to ensure that all required materials have been provided and procedures by which a follow-up is done if an agency still has not completed their submission of discovery materials.

13. Due to the nature, volume, and storage limitations for certain types of discovery, special situations and solutions were also anticipated and addressed for calibration records, body worn cameras, dashboard cameras, stationhouse cameras, other audio/video, and 911 calls by which the same are made available for inspection and copying the defense counsel;

- a. Disclosure of calibration records has been done by posting the same on the District Attorney's website which makes them available to be reviewed and downloaded by the defense. The records are received by an on-going submission from the law enforcement agencies using the Calibration Records Submission Form, a copy of which is attached to and made a part hereof;
- b. Notice is provided to the defense as to the availability of body worn cameras, dashboard cameras, stationhouse cameras, other audio/video, and 911 calls. Contact information for the inspection and copying of body worn cameras, dashboard cameras, stationhouse cameras, other audio/video, and 911 calls is provided both in materials sent to the defense and on the District Attorney's website. A copy of the notice provided to the defense, as well as the contact information that is provided by way of an Audio-Video Disclosure Document, are attached to and made a part hereof;

14. The calibration records and audio-video disclosures are reviewed on an on-going basis to make sure that the information so provided and disclosed is current and up-to-date.
15. It is only after being sure that all submissions are up-to-date and when the agency signifies on the "Discovery Submission Form" (a copy of which is attached to and made a part hereof) that they have provided all "automatic discovery" on a case that an email link is provided to the defense by which the materials can be downloaded and a Certificate of Compliance is prepared.
16. Similarly, as supplemental discovery is received, the "Discovery Submission Form" is reviewed to see if the discovery is complete. In any event, as any supplemental discovery is received, the same is turned over to the defense by way of an email link by which the materials can be downloaded. At that time, a Supplemental Certificate of Compliance is prepared and follow-up is done to see if any discovery materials are still to be provided.
17. To the best of our abilities, the Madison County District Attorney's Office has endeavored to exercise "due diligence" in performing our discovery obligations. It is a system with safeguards and cross-checks designed to ensure full compliance with the discovery statute. When a Certificate of Compliance, which includes a Compliance Report attached thereto, and/or an announcement of readiness for trial is served and filed, it is being done on the basis of the "due diligence" set out herein and is being done in good faith.
18. This affirmation is being signed by the affirmand below and the original is being kept at the Madison County District Attorney's Office. For purpose of any case, a printed out and/or emailed copy of the scanned original is hereby deemed a duplicate original.

Dated: December 27, 2019



Robert A. Mascari, Esq.
Chief Assistant District Attorney
Madison County District Attorney's Office

MADISON COUNTY
DISTRICT ATTORNEY'S OFFICE



Chief Assistant District Attorney
Robert A. Mascari

Assistant District Attorneys

Elizabeth S. Healy
Scott T. Bielicki
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Victim Advocates
Ross Whitford
Kendra L. Green

HON. WILLIAM G. GABOR
DISTRICT ATTORNEY

Veterans Memorial Building Telephone: 315-366-2236
Wampsville, New York 13163 Facsimile: 315-366-2503

TO: [SENT TO ALL MADISON COUNTY LAW ENFORCEMENT AGENCIES]

DATE: DECEMBER 20, 2019

RE: NOTICE OF ON-GOING AND CONTINUOUS REQUEST FOR THE PRODUCTION OF DISCOVERY MATERIALS UNDER CRIMINAL PROCEDURE LAW ARTICLE 245

As you know, the State of New York has enacted sweeping changes to the existing discovery laws that are to become effective January 1, 2020 as Article 245 of the Criminal Procedure Law. These changes repeal existing law and put in place completely new rules as to the nature and timing of discovery provided to the defense. It is a sad reality that the new laws carry with them significant and potentially devastating additional burdens on that will impact both the District Attorney's Office and your agency. It is a reality beyond our ability to control and is the reason for the issuance of this letter to your agency and all agencies that serve the citizens of Madison County. This letter should not be taken as a lack of faith or trust in your agency. Our relationship has been and will continue to be one marked by professionalism, friendship, and trust. However, the terms and obligations of the new law compel the issuance of this letter as part of the Madison County District Attorney's obligation to do "due diligence". "Due diligence" includes this letter that will help ensure that a case that your agency worked very hard on will not be dismissed. Therefore:

UNDER THE AUTHORITY OF ARTICLE 245 OF THE CRIMINAL PROCEDURE LAW, PLEASE ACCEPT THIS LETTER AS THE MADISON COUNTY DISTRICT ATTORNEY'S OFFICE ON-GOING AND CONTINUOUS REQUEST FOR THE PRODUCTION OF ALL MATERIALS IN YOUR FILES FOR EACH AND EVERY CASE SENT TO US BY YOUR AGENCY FOR PROSECUTION. THIS REQUEST IS EFFECTIVE AS OF JANUARY 1, 2020 AND APPLIES

TO ALL CASES ARRAIGNED ON OR AFTER THAT DATE EVEN IF THE CRIME AND/OR ARREST TOOK PLACE IN 2019. THIS REQUEST LETTER CAN ONLY BE CHANGED OR WITHDRAWN IN WRITING BY THE MADISON COUNTY DISTRICT ATTORNEY'S OFFICE.

STATUTORY BACKGROUND/AUTHORITY FOR THE DEMAND/REQUEST

Criminal Procedure Law § 245.10(a) provides that the “automatic discovery” set forth under Criminal Procedure Law § 245.20(1) is to be provided “as soon as practicable but not later than **fifteen (15) calendar days after the defendant's arraignment** on an indictment, superior court information, prosecutor's information, information, simplified information, misdemeanor complaint or felony complaint”.

The Madison County District Attorney has the obligation to perform “due diligence” in obtaining all the mandated discovery held by your agency on each case you forward to us for prosecution. Criminal Procedure Law § 245.20(2) provides that the District Attorney's Office “shall make a diligent, good faith effort to ascertain the existence of material or information discoverable and to cause such material or information to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control”. Criminal Procedure Law § 245.20(2) goes on to provide that “all items and information related to the prosecution of a charge in the possession of any New York state or local police or law enforcement agency shall be deemed to be in the possession of the prosecution”.

The ability and authority to request all materials in your possession is first to be found in Criminal Procedure Law § 245.55(1) which provides “that the district attorney and the assistant responsible for the case shall endeavor to ensure that a flow of information is maintained between the police and other investigative personnel and his or her office sufficient to place within his or her possession or control all material and information pertinent to the defendant and the offense or offenses charged”.

The unequivocal direct authority to request and receive from your agency all such materials is found in Criminal Procedure Law § 245.55(2) which provides that **“upon request by the prosecution, each New York state and local law enforcement agency shall make available to the prosecution a complete copy of its complete records and files related to the investigation of the case or the prosecution of the defendant for compliance with this article”.**

Finally, this request to produce to our office all materials in your possession is recognized by Criminal Procedure Law § 245.60 to be a “continuing duty to disclose” thus making the previously cited provisions an on-going obligation both as to past, present, and future materials.

For your reference, a copy of Article 245 – Discovery as enacted and effective as of January 1, 2020 – accompanies this letter.

MATERIALS TO BE PROVIDED

Criminal Procedure Law § 245.20(1), entitled “Automatic Discovery”, sets out the initial discovery which must be provided to the defendant within fifteen (15) calendar days of arraignment. **Please note that this list is not exhaustive. In fact, the statute makes clear that it is an illustrative list by specifically using the term “including but not limited to”.** Also, keep in mind that it is an on-going obligation. As we know, an investigation is often ongoing even after an arrest occurs. Therefore, this obligation also applies to all materials subsequent received and/or created by your agency after the initial “automatic discovery” is provided to our office.

The list below should be reviewed to get an idea of the materials to be provided to the District Attorney’s Office while at the same time remembering that the obligation is to produce **all** materials – even if such materials do not appear in the list below, those materials are still a part of this request letter. Included within this obligation are the following examples which appear in the order that they should be assembled for the District Attorney’s Office. (The order is to ensure the most efficient review and processing of the materials. This order was chosen both for practical and technological reasons.):

1. **Arrest Report (DUE TO TECHNOLOGICAL REASONS, IT IS VERY IMPORTANT THAT THE ARREST REPORT IS FIRST TWO PAGES OF THE DISCOVERY MATERIALS SUBMITTED!)**
 - a. **If the charge is one for which an arrest report is not prepared, then submit the simplified information first or, if there is not a simplified information, the appearance ticket;**
2. **The Madison County DA Discovery Submission Form (Always right after the arrest report)**
3. Incident Report (To Include Names & Adequate Contact Information for All Persons

Other Than Law Enforcement Personnel as well as Name & Work Affiliation of all Law Enforcement Personnel)

4. Accusatory Instruments
5. Defendant Statement(s) (Written, Oral, Audio, Video)
 - a. Remember, there can be a Defendant statement that does not appear to be subject to CPL § 710.30. For eg., a witness who, not at the direction of law enforcement, speaks to the Defendant and hears incriminating admissions. We still need to know about such a statement. (The information will be analyzed by the DA's Office to determine if it falls within CPL § 710.30);
 - b. Separate from (5)(a) above are statements made to law enforcement or under law enforcement direction or request. **STATEMENTS – CPL § 710.30(1)(a):** All written or recorded statements, and the substance of all oral statements, made by the defendant or a co-defendant to a public servant engaged in law enforcement activity or to a person then acting under his or her direction or in cooperation with him or her (*includes controlled phone calls*).
6. Identification Procedure (Photo Array, Show-Up, Line-Up, Single Photo, ID from Surveillance/Security Footage, Other) conducted by law enforcement and even if not conducted by law enforcement. (The information will be analyzed by the DA's Office to determine if it falls within CPL § 710.30)
 - a. **IDENTIFICATION PROCEDURES – CPL § 710.30(1)(b):** All identification procedures used by law enforcement with a witness who has made an observation of the defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the case and who has previously identified the defendant as such.
7. Confidential Informant/Undercover Information/Statements (This will alert the DA's Office to appropriately redact and/or withhold. We still need to know because we must alert the defense that such information and/or statements exist.)
8. Victim Statement(s)
9. Witness Statements(s)
10. Separately identified and grouped together should be Victim and Witness Statements where there is a credible threat/fear of Witness Intimidation/Tampering of such a nature that a Protective Order should be sought. (This will alert the DA's Office to seek such a protective order and not disclose these statements to the defense without at least

redaction.)

11. Written Estimates of Value (Typically Larceny, Stolen Property, and Criminal Mischief Cases)
12. All Other Police Reports/710.30 (Includes, but not limited to, Fingerprint Examination Reports, Polygraph Reports, Etc.) (Includes Name & Work Affiliation of Law Enforcement Personnel Preparing the Report)
13. Scene Processing Reports (Forensic Investigation Unit reports, photo logs, evidence logs (including chain of custody documentation), diagrams, scene sketches, Total Station diagrams or their equivalent, etc.)
14. The approximate date, time and place of the offense or offenses charged, the defendant's seizure, and the defendant's arrest. (“Charge”, “seizure”, and “arrest” could all be the same answer or up to three different answers.)
15. DWI/DWAI Specific Information (Citations/accusatory instruments, BOP/710.30 reports, DRE reports, BAC test results)
16. All calibration records for all equipment used by your agency (Calibration records for all agency equipment are to be separately provided by the agency and maintained at the DA's Website)
17. Traffic Tickets & Supporting BOP/Depositions
18. Lead Log/Assignment Log (Including Results)
19. Scene Security Log (Who Entered/Left)
20. Search Warrants (Warrant, Application - Including Attachments - & Return)
21. Evidence Logs (All chain of custody materials)
22. Photo Logs
23. Photos (Including Photos Taken of Property Prior to Release under PL 450.10) - Submit in JPEG Format Only (No Print Outs – JPEGS ONLY PLEASE!)
24. All Other Audio/Videos from Law Enforcement (Booking Room, Dashboard Cams, Interview Rooms, Smart Phone, Body Cams, Victim/Witness Interviews, Etc.) (To be submitted in mp4 format);
25. All Other Audio/Videos from Non-Law Enforcement (Surveillance Videos, Security Cameras, Doorbell Cameras, Etc.) (To be submitted in mp4 format)
26. 911 Materials/Radio Transmissions (Calls & CAD Report)
27. Medical Records (Including any HIPPA release and/or Search Warrant/Subpoena used

to obtain the records)

28. Business/Government Records (DSS Calculations, Employment Records for UIB, DMV Abstracts, SORA Records, Orders of Protection, Certificates of Conviction, etc.)
29. Firearm Operability Report
30. Fingerprint Examination Report
31. Cell Phone/Computer (CCU) Examination Report (Including Contents Extracted as Part of Examination)
32. Lab Transmittals (Items Taken into Evidence & Submitted for Testing)
33. Lab Reports (Including all lab Rosario material)
34. Autopsy Report (Including all Medical Examiner Rosario material)
35. All Other Expert Opinion Reports (Psychiatric, Medical, Scientific, Etc. tests, experiments, or comparisons – includes fingerprint comparisons, polygraphs, DRE materials, FST field notes)
36. All Rosario Materials (notes, scribbles, anything you wrote down and no matter where you wrote it down – take a photo if necessary of the note)
37. All Brady/Giglio Materials (All evidence and information, including that which is known to police or other law enforcement agencies acting on the government's behalf in the case, that tends to: (i) negate the defendant's guilt as to a charged offense; (ii) reduce the degree of or mitigate the defendant's culpability as to a charged offense; (iii) support a potential defense to a charged offense; (iv) impeach the credibility of a testifying prosecution witness; (v) undermine evidence of the defendant's identity as a perpetrator of a charged offense; (vi) provide a basis for a motion to suppress evidence; or (vii) mitigate punishment. Information under this subdivision shall be disclosed whether or not such information is recorded in tangible form and irrespective of whether the prosecutor credits the information.)
38. Sketches, scene diagrams, etc.
39. All promises, rewards, or inducements offered to Defendant, Victim, and/or Witness (To be documented in an official investigative report)
- 40. Any other items of any kind presently in law enforcement's possession and relating to the arrested case (stuff not in this illustrative list that we didn't think to ask for)**

That as to the items of “automatic discovery” found under Criminal Procedure Law § 245.20(1), the District Attorney’s Office has decided not to prepare checklists for your use since we believe that might be overly burdensome. Please note that any checklist your agency uses in the gathering and production of the needed information should be turned over to the District Attorney’s Office.

Your attention is also called to Criminal Procedure Law § 245.10(b) and the “supplemental discovery” set forth under Criminal Procedure Law § 245.20(3). These materials are to be provided “as soon as practicable but not later than fifteen (15) calendar days prior to the first scheduled trial date”. However, we need them as soon as they exist and turning them over to us should be done immediately.

With each submission of discovery materials, whether automatic or supplemental, the Discovery Submission form should be included. This will ensure that the District Attorney’s Office knows if the discovery is complete or is incomplete.

SPECIAL SITUATIONS/POINTS OF EMPHASIS

Brady/Giglio Materials

The District Attorney’s Office recognizes the potential land mines posed by this obligation. As set out above, it is an all-encompassing obligation. We expect your agency’s compliance with this obligation to be of two separate types:

- Brady/Giglio information that should be known and disclosed by the lead on the case. Examples of this type of Brady/Giglio would include a misidentification (or failure to identify) the defendant or a change in a witness’ deposition. These are examples only to illustrate the type of information that should be known to the lead investigator;
- Information that by its nature has to come from the command level of your agency. This type of information also happens to be the most problematic since it can touch on issues of integrity, credibility, and truthfulness that on its face is not directly related to the case since it involves an incident from the past.

Of particular concern is the statutory language found in CPL § 245.20(1)(k) (and see item # 37 above) which specifically states that “information under this subdivision shall be disclosed

whether or not such information is recorded in tangible form and irrespective of whether the prosecutor credits the information". In other words, we need this information even if the material/information/allegation was not credited by your agency when made and/or after investigation. It simply does not matter and must be disclosed to us. This obligation includes any such information concerning your personnel, the victim, and/or a witness. This obligation applies to information relating not just to the arrested case, but also from any other source or case.

Having described the obligation and provided a copy of CPL Article 245 (attached), our trust is in you to comply with this difficult and too often unfair requirement in that on its face the statute calls for the production of unfounded allegations as well credible ones. We recognize the possible reach of Civil Rights Law § 50-a, but believe that C.P.L. Article 245 trumps it. We encourage you to meet with your agency's legal counsel and any counsel for your PBA to devise a written policy that we can present to a Court in the event that something is not turned over. Our office will gladly assert that the information was withheld pursuant to a written policy. What we cannot defend is a policy that is not written and seems arbitrary or selective in its application.

If you are aware of material that you do not believe can be turned over due to Civil Rights Law § 50-a or any other court case, statute, rule, or regulation or that you feel cannot be turned over due to your agencies labor agreement with your personnel, you must identify immediately the fact that there exists such material that you are withholding for one of these reasons so that the defense can be notified and the issue can be put before a Court for its determination as to whether or not this material should be turned over.

911 Calls, Body Worn Cameras, Other Police Audio/Video

Criminal Procedure Law § 245.55(3)(a) provides that "whenever an electronic recording of a 911 telephone call or a police radio transmission or video or audio footage from a police body-worn camera or other police recording was made or received in connection with the investigation of an apparent criminal incident, the arresting officer or lead detective shall expeditiously notify the prosecution in writing (an email is acceptable) upon the filing of an accusatory instrument of the existence of all such known recordings.

This notification allows the District Attorney's Office to comply with Criminal Procedure Law § 245.55(3)(a) which provides that the "prosecution shall expeditiously take whatever reasonable steps are necessary to ensure that all known electronic recordings of 911 telephone calls, police radio transmissions and video and audio footage and other police recordings made or which are available in connection with the case are preserved.

Please note that the District Attorney's Office has sent out an **Audio-Video Survey** to learn whether or not your agency employs body worn cameras, dashboard cameras (or their equivalent), and stationhouse security cameras. If not already done, this form should be returned to us as soon as possible and no later than December 31, 2019 so that appropriate notices can be given to the defense as to the means by which these items can be inspected.

Calibration Records

CPL § 245.20(1)(s) (and see item # 37 above) which specifically states:

In any prosecution alleging a violation of the vehicle and traffic law, where the defendant is charged by indictment, superior court information, prosecutor's information, information, or simplified information, all records of calibration, certification, inspection, repair or maintenance of machines and instruments utilized to perform any scientific tests and experiments, including but not limited to any test of a person's breath, blood, urine or saliva, for the period of six months prior and six months after such test was conducted, including the records of gas chromatography related to the certification of all reference standards and the certification certificate, if any, held by the operator of the machine or instrument. The time period required by subdivision one of section 245.10 of this article shall not apply to the disclosure of records created six months after a test was conducted, but such disclosure shall be made as soon as practicable and in any event, the earlier of fifteen days following receipt, or fifteen days before the first scheduled trial date.

It is impractical to produce those records every time a traffic ticket or other accusatory instrument is issued. Therefore, by this letter a continuous and ongoing request is made that this documentation for your whole agency be turned over to the District Attorney's Office as it is created. We will keep this as a record unique to your agency and make it available on our website to comply with this provision of the discovery law. It is imperative that we timely receive all updates to your records – including both calibration and repairs – so that we can stay in continuous compliance with our discovery obligations for these items.

Delays, Stays, & Withheld Discovery

Under Criminal Procedure Law Article 245, certain **automatic stays and court ordered stays** are available which extend the time limits within which to provide discovery. While the District Attorney's Office will notify your agency of any dates or deadlines by which discovery covered by a stay must be provided, your agency will need to work diligently and in good faith to comply with said dates or deadlines and to notify the District Attorney's Office as soon as practical of any anticipated problems with compliance.

Under Criminal Procedure Law § 245.10(1)(a), when the discoverable materials are **exceptionally voluminous** or, despite diligent, good faith efforts, are otherwise not in the actual possession of the prosecution, a stay of an additional thirty (30) calendar days is available. However, your agency must let the District Attorney's Office know when "the discovery materials are exceptionally voluminous" and/or unavailable so that appropriate notices can be given and steps taken to ensure compliance. Please be aware that the law does not define "exceptionally voluminous" so there is no guarantee that a court will agree with our characterization of the materials as fitting within this statutory exception. However, we cannot litigate this issue unless you let us know your belief that this exception applies to the case.

Under Criminal Procedure Law Article 245, certain information regarding **confidential informants and undercover law enforcement personnel** may be withheld and redacted from discovery materials, but the existence of such information must be disclosed to the defense. Your agency has to identify and provide to the District Attorney's Office all confidential informant and undercover information so that the proper redaction and notification can be made of the existence of such information to the defense.

Under Criminal Procedure Law § 245.20(5), where "good cause" exists, **protective orders** can be sought to withhold discovery from the defense. Your agency must let the District Attorney's Office know that "good cause" (such as witness intimidation) exists so that an appropriate protective order can be sought from the court.

CONCLUSION

Please refer any questions or issues to the undersigned. Also, please note that the area of discovery compliance is being overseen by Chief Assistant District Attorney Robert A. Mascari. He can be reached at **315-399-6453** or at **robert.mascari@madisoncounty.ny.gov**. If he is not available, you should contact

any other available prosecutor. If none are available, our Investigator or Administrative Assistants will do their best to assist you. If necessary, a prosecutor will follow up with you on any questions or concerns that you have.

As mentioned, the new discovery laws do not change the relationship between your agency and the DA's Office and the professionalism, trust, and respect between us will not change. As Ben Franklin once famously said, "We must all hang together, or, most assuredly, we shall all hang separately." We will work together to comply, we will over time mutually arrive at the best procedures to comply, and we will do so in a way to improve the investigation and prosecution of our cases in Madison County.

Sincerely yours,

**MADISON COUNTY DISTRICT ATTORNEY'S OFFICE
HON. WILLIAM G. GABOR**

**By: Robert A. Mascari
Chief Assistant District Attorney**



MADISON COUNTY DISTRICT ATTORNEY'S OFFICE
DISCOVERY SUBMISSION FORM FOR C.P.L. ARTICLE 245 COMPLIANCE

CASE NAME: _____

AGENCY: _____

AGENCY CASE #: _____

CASE CONTACT: _____

(Lead on Case) _____

Phone: _____

Email: _____

DISCOVERY CONTACT: _____

(If Different Then _____

Case Contact) _____

Phone: _____

Email: _____

PLEASE CHECK ONE:

- With this submission, C.P.L. § 245.20(1)'s initial discovery obligation to turn over "all items and information that relate to the subject matter of the case and are in the possession, custody or control" of this agency **have been compiled** with and these materials have submitted to the District Attorney's Office.
- With this submission, C.P.L. § 245.20(1)'s initial discovery obligation to turn over "all items and information that relate to the subject matter of the case and are in the possession, custody or control" of this agency **have not yet been completely compiled** with and these materials will be submitted to the District Attorney's Office as soon as possible and in compliance with the statute.
- With this submission, all discovery materials under C.P.L. Article 245 – including both all automatic and supplemental discovery – "that relate to the subject matter of the case and are in the possession, custody or control" of this agency **have been compiled** and these materials have submitted to the District Attorney's Office.
- With this submission, all discovery materials under C.P.L. Article 245 – including both all automatic and supplemental discovery – "that relate to the subject matter of the case and are in the possession, custody or control" of this agency **have not yet been completely compiled** and these materials will be submitted to the District Attorney's Office as soon as possible and in compliance with the statute.

PLEASE NOTE that under C.P.L. § 245.20(1), the list of materials to be turned over for discovery is phrased as "including but not limited to" and all discovery materials **must be turned over within fifteen (15) days of arraignment**. Please note that under C.P.L. § 245.55(2), that a standing on-going request has been made to your agency from the district attorney by which you are **required to turn over "a complete copy of its complete records and files related to the investigation of the case or the prosecution of the defendant"**.



MADISON COUNTY DISTRICT ATTORNEY'S OFFICE

CALIBRATION RECORDS SUBMISSION FORM FOR C.P.L. ARTICLE 245 COMPLIANCE

AGENCY: _____

**CALIBRATION
RECORDS FOR**

THE PERIOD:

_____, 20__ to _____, 20__

AGENCY CONTACT: _____

(If there are any questions
on the calibration records
submitted.)

Phone: _____

Email: _____

**PLEASE SUBMIT ALL CALIBRATION RECORDS BY A LABELED PDF SENT BY
EMAIL TO discovery@madisoncounty.ny.gov WITH THIS SUBMISSION FORM AS THE
FIRST PAGE OF THE PDF. THANK YOU!**

PLEASE CHECK ONE:

- With the present submission, the calibration records for the period specified above, that appear as a listed item of "automatic discovery" under C.P.L. § 245.20(1), are **complete** and have been submitted to the District Attorney's Office.
- With the present submission, the calibration records for the period specified above, that are a listed item of "automatic discovery" found under C.P.L. § 245.20(1) are **not complete** and further calibration records for the above listed dates will be submitted to the District Attorney's Office as soon as they are available.

PLEASE NOTE that under C.P.L. § 245.20(1), the list of materials to be turned over for discovery is phrased as "including but not limited to" and all discovery materials must be turned over within fifteen (15) days of arraignment. Please note that under C.P.L. § 245.55(2), that a standing on-going request has been made to your agency from the district attorney by which you are required to turn over "a complete copy of its complete records and files related to the investigation of the case or the prosecution of the defendant".

COUNTY OF MADISON

STATE OF NEW YORK

**PEOPLE'S STANDING AND ON-GOING C.P.L. § 245.20 NOTICE AS TO ALL TAPES OR
OTHER ELECTRONIC RECORDINGS (INCLUDING 911 RECORDINGS) AND
CALIBRATION RECORDS**

TO BE SERVED VIA EDISCOVERY IN EACH CASE -

**C.P.L. § 245.20(1)(g) NOTICE AS TO ALL TAPES OR OTHER ELECTRONIC RECORDINGS
(INCLUDING 911 RECORDINGS)**

PLEASE TAKE NOTICE of the following:

911 Calls & CAD Abstract

As to all **911 calls** associated with this incident made or received in connection with the alleged criminal incident, the system employed by the Madison County Emergency Management Center is not capable of automatically segregating by case (incident) the many calls that come in to the Center. The calls that are received on unrelated cases are sequentially recorded as received and are intermixed with the calls relating to this case. Often those unrelated call contain confidential or privileged information, such as a sexual assault victim's identity and address, on a completely unrelated case. While the calls on a particular incident can be relatively easily searched and listened to, the preparation of a digital file of only calls that came in on a particular case has to be done call by call and is a time consuming process.

Therefore, to timely comply with the People's discovery obligation, any call to 911 from a victim or a non-law enforcement witness in this matter or any other call that is relevant to this case such that the People plan to use the same at trial have been extracted and turned over to the defense. Further, for this incident a CAD abstract that shows all calls/transmissions associated with this incident has been provided to the defense. As to any such additional calls are indicated on the CAD abstract, they are preserved for a period of **ninety (90) days** from the date of the call as per the Madison County Emergency Management protocol. Further, assuming the District Attorney's Office became aware of such other calls within the **ninety (90) day** preservation period, Emergency Management has been directed by the District Attorney's Office to preserve the same.

For ninety (90) days from the date of the initial call in this case, the same are available for inspection by the defense by contacting Frank McFall at the Madison County Emergency Management at 315-366-2789 to set up an appointment to listen to the same. After inspection, any further calls not previously provided to the defense will, **if requested by the defense**, be copied and provided to the defense.

Dash Cam Video, Body Cam Video, & Stationhouse Cameras

PLEASE TAKE NOTICE that law enforcement agencies in Madison County may or may not employ dash cam videos, body cam videos, and stationhouse cameras. Attached hereto is the **Audio/Video Disclosure Statement** for all agencies engaged in law enforcement in Madison County. It details whether such video devices are employed, the retention policy for those video devices, and a contact number for the defense to contact the appropriate agency to arrange for a date and time to inspect the same. After inspection, the same, **if requested by the defense**, will be copied and turned over to the defense.

C.P.L. § 245.20(1)(s) NOTICE AS TO CALIBRATION RECORDS

PLEASE TAKE NOTICE that the law enforcement agency records called for in this section are available for viewing, inspection, and copying by visiting the Madison County District Attorney's website and then clicking on the discovery section. These records are kept current and updated as received from law enforcement. The web address for the Madison County District Attorney's Office is: <https://www.madisoncounty.ny.gov/259/District-Attorney>

PLEASE TAKE FURTHER NOTICE that the time period required by subdivision one of section 245.10 of this article shall not apply to the disclosure of records created six months after a test was conducted, but such disclosure shall be made as soon as practicable and in any event, the earlier of fifteen days following receipt, or fifteen days before the first scheduled trial date.

Dated: January 1, 2020

Robert A. Mascari

Chief Assistant District Attorney
Madison County District Attorney's Office

*Printed Name Above is an Electronic Signature As
Per Article 3 of the New York State Technology Law*

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
CPL § 245.20(1)(g) - BODY WORN CAMERAS, DASH CAMS, STATIONHOUSE CAMERAS, OTHER, & 911 DISCLOCURE															
Current as of 01/01/2020															
5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
AGENCY	YES	NO	BODY WORN CAMERA RETENTION PERIOD	YES	NO	DASH BOARD CAMERA RETENTION PERIOD	YES	NO	STATIONHOUSE CAMERA RETENTION PERIOD	YES	NO	OTHER	AGENCY CONTACT	(CALL TO VIEW VIDEO)	CONTACT #
911 Center (Madison County)										X		911 Calls/Radio Transmissions	Frank McFall	315-366-2789	
Canastota Police Department	X			X		X			One Year (No Audio)	X		DVR Inoperable	Chief James Zophy	315-697-2240	
Cazenovia Police Department	X			X		One Year	X		One Year	X			Chief Michael A. Hayes	315-655-3276	
Chittenango Police Department	X		Six Months	X		Six Months	X		Six Months	X			April Stanistreet	315-687-3930	
Hamilton Police Department	X			X			X		90 Days	X			Matthew Janczuk	315-824-3311	
Madison County Sheriff's Office	X				X	2 Years (Min)	X		Interviews - Part of Case	X		Exterior - Not Operational Booking - Cannot Burn to Disk	Dep. Frank McCully	315-366-2205	
NYS Dept. of Environmental Conservation	X			X			X			X			Lt. Mark Colesante	315-567-1835	
New York State Park Police	X			X			X			X		Some state parks have cameras not maintained by NYS Park Police	Lt. Thomas McDonald	315-492-6422	
New York State Police - Troop D	X			X			X		30 Days	X		CALEO/covert systems part of case file	Sgt. Karl Greif	315-366-6010	
New York State Police - Troop T	X			X			X						Sgt. Michael Page	315-437-2831	
Oneida City Police Department	X			X			X		90 Days (Approx)	X			P.O. Daniel Slator or Lt. John Little	315-363-9111	
Oneida Nation Police Department	X			X		Not Operational	X		Not Operational	X			Victor N. Iverson	315-829-8069	
SUNY Morrisville Police Department	X		90 Days	X			X		15 Days				Chief Paul Field	315-684-6410	