

COUNTY OF MADISON, STATE OF NEW YORK

**AFFIRMATION REGARDING CASES ARRESTED AND ARRAIGNED PRIOR
TO JANUARY 1, 2020; RE-AFFIRMATION OF READINESS FOR TRIAL**

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 it is the position of the Madison County District Attorney's Office that C.P.L. Article 245 is not by its terms retroactive and thus has no applicability to cases arrested and arraigned prior to January 1, 2020, the effective date of Article 245.
2. That since fifteen calendar days have already elapsed for pre-January 1, 2020 arrests and arraignment, it would be impossible to comply with C.P.L. § 245.50(1) deadline for the provision of "automatic discovery" and for this reason alone any argument that the new discovery law is retroactive would fly in the face of at least the following three fundamental rules of statutory construction:
 - a. Plain Meaning: "Where the language of a statute is clear and unambiguous, courts must give effect to its plain meaning." *People v. Garson*, 6 N.Y.3d 604 (2006); *People v. Bloomfield*, 6 N.Y.3d 165 (2006); see also *People v. Grajales*, 8 N.Y. 3d 861 (2007) (despite "sound policy reasons" supporting expansive interpretation of statute, Court was "unwilling to read the statute more expansively than the legislature has written it");
 - b. Absurd or Unworkable Results: Courts ordinarily apply the plain meaning of the words of a statute, but will not blindly apply the words of a statute to arrive at an unreasonable or absurd result. *People v. Garson*, 6 N.Y.3d 604 (2006); *People v. Santi*, 3 N.Y.3d 234, 244 (2004); *People v. Leon*, 10 N.Y.3d 122 (2008) (declining to give interpretation to statute that would lead to "unworkable results")
 - c. Nullifying Portion of Statute: *People v. Jeanty*, 94 N.Y.2d 507 (2000) (statute should not be interpreted to nullify a portion of its mandate).
3. While the People do not concede that any discovery provided to the defense from January 1, 2020 on would fall under C.P.L. Article 245, it is the position of the Madison County District Attorney's Office that they will use the new statutory discovery scheme in providing any additional materials or information in order to err on the side of caution.
4. While not conceding their applicability to cases arrested and arraigned prior to January 1, 2020, the People recognize the following principles of C.P.L. Article 245 that arguably apply to cases that were arrested and arraigned prior to January 1, 2020 and for which a plea was not entered prior to January 1, 2020 :

- a. That C.P.L. § 245.60 imposes on the Madison County District Attorney's Office a "continuing duty to disclose" in that if "the prosecution subsequently learns of additional material or information which it would have been under a duty to disclose pursuant to any provisions of this article had it known of it at the time of a previous discovery obligation or discovery order, it shall expeditiously notify the other party and disclose the additional material and information as required for initial discovery under this article";
 - b. That C.P.L. § 245.60 "also requires expeditious disclosure by the prosecution of material or information that became relevant to the case or discoverable based on reciprocal discovery received from the defendant pursuant to subdivision four of section 245.20 of this article";
 - c. That C.P.L. § 245.10(1) makes clear that "if additional discovery is subsequently provided prior to trial pursuant to section 245.60 of this article, a supplemental certificate shall be served upon the defendant and filed with the court identifying the additional material and information provided";
 - d. That C.P.L. § 245.50(1), in relevant part, further provides that "no adverse consequence to the prosecution or the prosecutor shall result from the filing of a certificate of compliance in good faith".
5. It should also be noted that 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 has 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.
6. That all files arrested and arraigned prior to January 1, 2020 have been reviewed by the assigned prosecutor to determine if there is any "additional material or information which it would have been under a duty to disclose pursuant to any provisions of this article" under C.P.L. § 245.60. If any such "material or information" is found, the People will as a matter of caution and discretion comply with C.P.L. § 245.10(1) on that particular case and following the language of the statute which states that "a supplemental certificate shall be served upon the defendant and filed with the court identifying the additional material and information provided".
7. That as to any cases arrested and arraigned prior to January 1, 2020 for which a supplemental certificate has not been prepared, served, and filed after a review of the same by the assigned prosecutor, I hereby certify as that the prosecution has provided the discovery required by C.P.L. § 245.20(1) except for any items or information that are the subject of an order pursuant to section 245.70 of this article.
8. That after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery, the prosecution has disclosed and made available all known material and information subject to discovery and has fulfilled its duties under C.P.L. § 245.20(2).

9. That as to all cases arrested and arraigned prior to January 1, 2020 that are pending in local court, pursuant to C.P.L. § 30.30(5-a), the People hereby certify that all counts charged in the local court criminal court accusatory instrument(s) herein meet the requirements of C.P.L. §§ 100.15 and 100.40 and that those counts not meeting said requirements have been dismissed.

THE PEOPLE RE-AFFIRM THEIR READINESS FOR TRIAL.

Dated: January 1, 2020

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*

TO: Presiding Justice/Judge

Court Clerk

Attorney for Defendant