

# Criminal Justice Reform: Discovery, Speedy Trial, and Marijuana

# Discovery

CPL Article 245

# What is Discovery?

- ▶ Discovery is the process by which the parties exchange information concerning their case that is required by law to be disclosed
- ▶ This process is governed by the new CPL Article 245

# Discovery – Generally

- ▶ Discovery is now **automatic**
  - ▶ Defendant does not need to make any Motion or Demand
- ▶ The Court has a greater role in overseeing the process than under previous law
- ▶ Prosecution must provide full discovery shortly after arraignment and often prior to plea negotiations
  - ▶ Within 15 calendar days of arraignment (with limited exceptions)

# Certificate of Compliance

- ▶ The Prosecution must file a Certificate of Compliance with the court and serve a copy on the Defendant
- ▶ With the time periods involved in discovery, what happens if the court isn't available for filing?
  - ▶ New 22 NYCRR 200.4 is applicable to court filing requirement

# New Rule: 22 NYCRR 200.4

## Criminal Filings

- ▶ Where a court does not employ a clerk for at least part of every business day, papers may be submitted by:
  - ▶ Regular mail accompanied by an affidavit of service, or
  - ▶ Facsimile or electronic mail and a copy filed with the clerk at the first available opportunity
- ▶ Will be considered filed upon the date of mailing or when the papers are successfully delivered by facsimile or email

# Discovery – Judge's Responsibilities

## Judge's Responsibility

- ▶ The Court has a greater role in overseeing the process than under previous law
- ▶ If motions are filed, sanctions and other remedies for non-compliance are permitted
- ▶ The court will be required to supervise and rule on discovery matters which have been greatly expanded

# Discovery – Clerk's Responsibilities

## Clerk's Responsibilities

- ▶ Note the filing of the Certificate of Compliance in the case file
- ▶ If discovery motions are filed with the Court, inform the judge **immediately**
- ▶ Track and schedule any discovery motions and resulting orders
- ▶ Note: Discovery materials **SHOULD NOT** be filed with Court



# Negotiated Plea to a Crime

- ▶ If prosecutor makes a plea offer that requires the D to plea to a **crime**, the prosecutor must provide all required discoverable material that exists in the case:
  - ▶ **Not less than 3 days** before plea deadline on a felony complaint; or
  - ▶ **Not less than 7 days** before plea deadline on a misdemeanor information, misdemeanor complaint, prosecutor's information or simplified information
- ▶ Remember! Crime = misdemeanor or felony (not a violation or traffic infraction)

# Discovery and VTL Infractions

- ▶ **Guilty plea to ticket by mail:** Discovery waived by plea
- ▶ **Not Guilty plea at arraignment or by mail:** Defendant entitled to discovery within 15 days of the initial appearance in court
- ▶ **Guilty plea at arraignment or through a plea bargain:** Stay tuned for further guidance regarding discovery!

## What does this mean for pending cases on January 1, 2020?

- ▶ The new discovery rules **will** apply to “legacy” cases pending on January 1, 2020
  - ▶ Unless the case is only awaiting sentencing

# Speedy Trial

CPL §30.30

# Speedy Trial

- ▶ After the commencement of a criminal case, the People are statutorily (and constitutionally) required to be ready to try their case within certain time limitations
- ▶ If they fail to ready within the prescribed time limitations, the Defendant may make a motion to:
  - ▶ Dismiss case with prejudice, pursuant to CPL § 30.30(1); or
  - ▶ Release Defendant from custody, pursuant to CPL § 30.30(2)

# Speedy Trial

- ▶ It is crucial that the court keep track of adjournments and other delays in the prosecution of a case and note who is responsible for adjournments or a delay in the prosecution of a case

# Speedy Trial – Judge's Responsibilities

## Judge's Responsibilities

- ▶ On each adjournment, decide who is responsible for a requested adjournment or delay:
  - ▶ The court,
  - ▶ The prosecution,
  - ▶ The defense, or
  - ▶ On consent of both prosecution and defense

# Speedy Trial – Judge’s Responsibilities, continued

## Judge’s Responsibilities

- ▶ The Prosecution is required to file a Statement of Readiness and Certificate of Compliance, and the Judge must inquire as to “Actual Readiness” on the record
  - ▶ Inquiry on the record
  - ▶ Defense counsel given opportunity to respond
- ▶ Judge should conclude on the record that the Statement of Readiness is VALID or NOT VALID



# Speedy Trial – Clerk's Responsibilities

## Clerk's Responsibilities

- ▶ Record adjournments and delays in the CourtRoom Program
  - ▶ These codes should be used for every appearance, except where there is a disposition entered
- ▶ Enter the prosecution's Statement of Readiness and Certificate of Compliance in courtroom program
- ▶ Enter the Judge's determination regarding actual readiness of the prosecution for trial

# Speedy Trial Action Codes

**New action codes are NOT available yet – use the existing action code for 30.30 and include the reason as a Comment:**

ADJOURN A CASE Hon. Joan J. Thomas

Enter Adjudgment Information For:  
CASE: 19110001 - Jon Q. Defendant

Action Code: 013 30/30 Hearing

Date: 01/15/2020

Time: 11:00PM

Arraignment Date: / /

Comment: Defense Request

Save & Exit Letter Notes

Quit

- ▶ Consent 30.30
- ▶ Defense Request 30.30
- ▶ Other 30.30 (Require a comment, other than “Other”)
- ▶ People’s Request Over Objection 30.30
- ▶ Split 30.30 (Require a comment, other than “Split”)

# Speedy Trial and VTL Infractions

- ▶ Speedy trial has been extended to traffic infractions
- ▶ **HOWEVER:** A traffic infraction is **NOT** subject to dismissal for failure to be ready for trial
  - ▶ **UNLESS** the infraction is joined with a violation, misdemeanor or felony

# Marihuana Legislation

# Marihuana Reform

## For PL §§221.05 & PL 221.10 convictions after August 28, 2019:

- ▶ Defendant pleads guilty, is sentenced to a fine and surcharge
- ▶ Court then immediately vacates, dismisses, and expunges the conviction
- ▶ Clerk notifies DCJS and law enforcement of the expungement
- ▶ Conspicuously mark the file EXPUNGED
  - ▶ Do NOT destroy any records until further notice!

# Marking the Case Sealed

## Clerk's Responsibility: Marking the Case Sealed

- ▶ Seal orders in the CourtRoom Program have been updated to reflect the new seal type 160.50 (5)(a) Expunged – Seal Type X
- ▶ When the court applies the seal, the charge will reflect 160.50 (5)(a) Expunged
- ▶ The seal notice will also print with the seal type 160.50 (5)(a) Expunged in place of the charge information

# Defendant Given Time to Pay Fine/Surcharge

- ▶ If the defendant is given time to pay the fine and surcharge, the court still immediately vacates, dismisses, and expunges the conviction and notifies DCJS and law enforcement of the expungement
- ▶ However, the internal file is kept open for payment
- ▶ Treat the file as sealed (i.e. “No Record Found”)
- ▶ When the defendant pays, internally close the case and mark accordingly

# Defendant Does Not Pay Fine/Surcharge

- ▶ If the defendant does not pay the fine and surcharge, the court still immediately vacates, dismisses, and expunges the conviction and notifies DCJS and law enforcement of the expungement
- ▶ Mark the case file as vacated, dismissed, and expunged
- ▶ Enter civil judgment



# Legacy Cases – Convictions Prior to August 28, 2019

- ▶ Cases deemed dismissed and vacated under this legislation will be sealed automatically
- ▶ Courts do not have to do anything
- ▶ Courts should not refund fines/surcharges paid
- ▶ HOWEVER, treat prior convictions as **sealed**, whether or not the automatic seal has been processed yet
- ▶ **Any request for information from the public should be responded to with “No Record Found”**
  - ▶ Defendant or his/her designated agent always entitled to access court records

## Legacy Cases – 440 Motions

- ▶ If a 440 motion is received by the court regarding a legacy conviction on a marijuana offense, it should be handled as usual
- ▶ Clerks should mark the motion as received and forward it to the judge for review

## Legacy Cases – Warrants

- ▶ If the court has any pending warrants for non-payment of the fine on a legacy conviction for a marijuana offense, these warrants should be **vacated and recalled immediately**

# More Resources on Criminal Justice Reform

Available on OCA's Sharepoint Site

# CITY, TOWN & VILLAGE COURTS

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## FOR JUDGES & CLERKS

### What's New

New [Criminal Justice Legislation SharePoint site](#) --The site includes links to the legislation, training materials, forms and an email address for question(s) for the Criminal Justice Legislation Implementation Committee. You may continue to submit questions to our office directly at [resourcecenter@nycourts.gov](mailto:resourcecenter@nycourts.gov) or to the [CJLQuestions@nycourts.gov](mailto:CJLQuestions@nycourts.gov) email.

**2019-20 JCAP:** The JCAP Application for the 2019-20 cycle is now closed -- Funds to be disbursed on or before April 1, 2020 ([more info.](#))

[Family Violence: The Changing Landscape](#) → -- training materials from the Unified Court System's Family Violence Task Force October 2019 Seminar

### Raise the Age: Updated Flowchart Effective October 1, 2019

Please note: If a 17 year old youth who was arrested and detained prior to October 1, 2019 is brought before the court for an appearance on or after October 1, 2019, and a new securing order is issued, that youth may no longer be detained in a facility for adults, and must go to a juvenile detention facility.

A memo was distributed to all Administrative Judges and District Executives statewide and discussed protocols that must be followed for any Juvenile Offender (JO) matter still pending in a criminal court. JOs are defendants who are 13, 14, or 15 years old charged with certain serious felony offenses and applies to JO matters still pending in town and village courts.

The memo summarizes the new law and the changes to local criminal court jurisdiction. Judges and clerks should review the memo and be familiar with its contents, as it significantly alters which courts may handle certain charges against 16-year-old defendants as well as Juvenile Offenders.

The new law resulted in the need for us to modify the memo and associated flowcharts that illustrate which court will have jurisdiction over a defendant, based on their age at the

### Most Requested

#### Criminal Justice Legislation Updates:

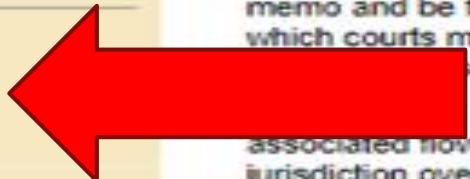
- [Criminal Justice Legislation SharePoint site](#)
- [Qualifying Offenses List](#) → (10-2019)
- [Bail](#) Topic
- [Discovery](#) Topic
- [Speedy trial](#) Topic

#### Education and Training for Justices and Court Clerks

- [MyCJE Online Training Portal](#)
- [Judicial Institute Webcasts](#)
- Training Materials:
  - [2019 CORE](#) (Advanced Training)
  - [2018 CORE](#) (Advanced Training)
  - [CORE Archived Materials](#)
  - [Taking the Bench & Return Session](#) (for New Judges)
  - [2018 Supporting the Bench & Advanced](#) (for Clerks)

#### Manuals:

- [Operations Manual](#) → (for



Questions?

YOU CAN ALWAYS CALL THE  
OFFICE OF JUSTICE COURT  
SUPPORT AT (800) 232-0630