New York’s 2019 Criminal Justice Reforms
Summary and Analysis

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The 2019 New York State Legislative Session was historic in the number of bills passed by both the Senate and the Assembly. Among the myriad topics addressed by New York’s State Legislators, criminal justice reforms were a top priority for lawmakers. To further that objective, the Governor proposed and the NYS Legislature ultimately enacted three major revisions to New York’s criminal justice system as part of the 2019-2020 Adopted State Budget. Specifically:

1. The State’s criminal procedure discovery laws were modified to require increased transparency from prosecutors and provide defendants with more information related to their criminal prosecution (Part LLL of Chapter 59 of the Laws of 2019);
2. The State’s speedy trial mandates were changed to require prosecutors to actually be ready for trial (Part KKK of Chapter 59 of the Laws of 2019); and
3. The State’s criminal procedure laws were amended to reform the bail system (Part JJJ of Chapter 59 of the Laws of 2019).

These amendments become effective January 1, 2020, and as that date approaches, State and local law enforcement officials, prosecutors, defense counsel, and court administrators are preparing to implement these changes to the criminal justice process. However, confusion and serious concerns have arisen regarding how some of these amendments will be implemented and what impacts the amendments will have on the local criminal justice system.

This policy brief is intended to provide a summary of these criminal justice reforms, identify the critical changes the legislation will have on the criminal justice system, and discuss the potential impacts the changes will have on cities and villages. This summary does not address every criminal justice reform enacted by the State Legislature in 2019. Accordingly, local officials should review the many changes with their attorney to ensure compliance with State and federal regulations.

Criminal Procedure Discovery Reforms
Summary of the Amendments

The Criminal Procedure Law (CPL) was amended in relation to the obligations imposed on prosecutors to disclose evidence relating to defendants’ criminal prosecutions. Part LLL of Chapter 59 of the Laws of 2019 repealed CPL Article 240 and added a new CPL Article 245 to expand the types of evidence relating to criminal prosecutions available to defense counsel and defendants themselves. Specifically, these provisions require prosecutors to:
1. Perform their initial discovery obligations as soon as practicable but not later than 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. If the discoverable materials are exceptionally voluminous or are not in the prosecution's possession, the initial discovery may be delayed up to an additional 30 calendar days;

2. Complete supplemental discovery as soon as practicable but not later than 15 calendar days prior to the first scheduled trial date; and

3. Disclose defendant statements if their offense is the subject of a prospective or pending grand jury proceeding no later than 48 hours before the time the defendant is scheduled to testify at a grand jury proceeding.

Additional changes to the CPL relating to discovery include:

1. CPL § 245.20 now requires prosecutors to disclose to defendants all items and information that relate to the case and are in the possession, custody or control of the prosecution or persons under the prosecution’s direction or control, including but not limited to: (a) all written and recorded statements and the substance of all oral statements made by the defendant to public servants engaged in law enforcement; (b) transcripts of testimony before a grand jury; (c) names and contact information for all persons whom the prosecutor knows to have evidence or information relevant to the offense(s) charged; (d) law enforcement reports and notes relevant to the offense charged; (e) police reports, notes; (f) expert opinion evidence; (g) all records of 911 telephone calls related to the alleged criminal incident; (h) photographs, drawings, and videos; (i) test results from physical and mental examinations and scientific tests; (j) all exculpatory evidence and information; (k) a summary of promises, rewards, and inducements made to individuals who may be called as witnesses; (l) information about and evidence gained from search warrants; (m) 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 6 months prior and 6 months after such test was conducted; and (n) a copy of all electronically created or stored information from defendant’s devices that are in the possession or custody of the prosecution.

2. CPL § 245.25 requires prosecutors to disclose evidence to the defendant prior to certain guilty pleas.

Analysis of the Criminal Procedure Discovery Reforms

Some stakeholders viewed the existing discovery requirements under the New York Criminal Procedure Law as being “highly circumscribed” and too late in the criminal procedure process to permit both prosecutors and defendants to investigate the facts fully and make informed decisions before trial. While the new criminal procedure discovery reforms are intended to rectify the inequities of Criminal Procedure Law Article 240, many impacted parties are concerned that the new disclosure requirements swing the pendulum too far in the other direction, placing a significant burden on law enforcement and prosecutors to provide discovery in an extremely short time period.

Because the vast majority of criminal cases never go to trial, as they are settled or dismissed before then, prosecutors currently only ever have to disclose evidence to defendants in a relatively small number of cases. Beginning January 1, 2020, prosecutors must disclose evidence to the defendants no later than 15 days after the day of arraignment. While this time period may be extended up to an additional 30 days under certain circumstances, these new disclosure laws will require State and local law enforcement agencies and prosecutors to dedicate significant human and fiscal resources processing evidence for disclosure to defendants.

While these new discovery obligations clearly apply to both felony and misdemeanor cases, it appears they also apply to non-criminal violations that are prosecuted in criminal court, whether this was intended or not. The
provisions of the new Article 245 do not specifically address this issue, but the plain language regarding the types of cases to which these discovery obligations apply references the types of instruments upon which defendants are arraigned as triggering the disclosure requirements. Specifically, CPL § 245.10 provides in relevant part that the prosecution must perform its initial discovery obligations “as soon as practicable but not later than fifteen calendar days after the defendant’s arraignment on an indictment, superior court information, prosecutor’s information, information, simplified information, misdemeanor complaint or felony complaint.” [Emphasis added] Of particular importance is the fact that the now repealed CPL § 240.20 referenced “simplified information charging a misdemeanor” but the new CPL § 245.10 simply references “simplified information” and does not limit its applicability to misdemeanors. If, as it appears, these discovery obligations are not limited to felonies and misdemeanors, the burden on prosecutors, law enforcement, local code enforcement officials, and the courts could be overwhelming.

Additionally, these new discovery requirements are likely to result in law enforcement and prosecutors being more selective regarding the less serious criminal actions they bring and maintain, resulting in fewer criminal prosecutions, particularly in light of the changes to the State’s speedy trial law, which is discussed below. These new disclosure requirements may also have other unintended consequences, including prosecutors being less willing to enter plea deals in cases for which a substantial amount of evidence has been gathered and disclosed, which may in turn lead to an increase in the backlog of court cases.

**Speedy Trial Reforms**

**Summary of the Amendments**

The 2019-2020 Adopted State Budget also amended the Criminal Procedure Law in relation to the obligations of prosecutors regarding their speedy trial obligations under CPL § 30.30. Specifically, Part KKK of Chapter 59 of the Laws of 2019 makes the following relevant changes to State law:

1. Amends CPL § 30.30 to subject Vehicle and Traffic Law infractions to the Criminal Procedure Law’s speedy trial provisions;
2. Requires courts to inquire on the record as to the prosecution’s “actual readiness” for trial, and mandates prosecutor’s statements/notices of readiness be accompanied or preceded by a certification of good faith compliance with CPL § 245.20’s disclosure requirements; and
3. Directs prosecutors to certify that all counts included in the accusatory instruments meet the form and content requirements established by CPL §§ 100.15 & 100.40.

**Analysis of the Speedy Trial Reforms**

New York State Law has long required prosecutors to bring criminal actions to trial within a reasonable time. The amount of time has depended upon the severity of the crime charged, with prosecutors having more time to prepare for felony cases than misdemeanors and violations. Under the current law, courts have been relatively lenient regarding holding prosecutors accountable for their speedy trial obligations under CPL § 30.30. However, the new 30.30 requirements mandate that the courts inquire, on the record, as to the prosecution’s “actual readiness” for trial. Additionally, prosecutors must certify that they have complied in good faith with the disclosure of evidence requirements set forth in CPL § 245.20 (described above). These new speedy trial requirements are likely to result in prosecutors being more judicious in the cases they prosecute.

**Bail System Reforms**

**Summary of the Amendments**

Finally, the criminal justice reform that has received the most attention in the press involves changes to the NYS Criminal Procedure Law (CPL) that address the issuance of “securing orders.” Securing orders are used when an arrestee’s appearance in a future criminal proceeding is required and include committing an individual to custody, setting bail, or releasing the individual on their own recognizance. Specifically, Part JJJ of Chapter 59 of the Laws of 2019 changes the existing definitions of and conditions relating to appearance tickets and securing orders to accomplish the following:
1. Amends CPL § 150.10 to allow arrestees to provide contact information so that they may receive court notifications regarding their case;

2. Amends CPL § 150.20 to require police to issue appearance tickets for offenses other than Class A, B, C, D felonies or violations of NYS Penal Law §§ 130.25 (rape in the third degree), 130.40 (criminal sexual act in the third degree), 205.10 (escape in the second degree), 205.17 (abscending from temporary release in the first degree), 205.19 (abscending from a community treatment facility) or 215.56 (bail jumping in the second degree);

3. Amends CPL § 150.20 to allow police officers to make a custodial arrest of an individual if:
   a. The person has one or more outstanding local criminal or superior court warrants;
   b. The person has failed to appear in court proceedings during the previous two years;
   c. The person has failed to give verifiable identity and method of contact known (photo ID is not required if ID can otherwise be verified);
   d. The person is charged with a crime between family members or members of a household (see CPL § 530.11);
   e. The person is charged with a crime defined in Penal Law Article 130 (sex offenses);
   f. It reasonably appears that the person should be brought before a court for consideration of an order of protection pursuant to CPL § 530.13;
   g. The person is charged with a crime for which a court may suspend/revoke their driver license; or
   h. It reasonably appears, based on observed behavior, that the person would face harm without immediate medical or mental health care (officers must first make all reasonable efforts to assist the person in securing appropriate services before making a custodial arrest).

4. Adds CPL §§ 150.80 and 510.43 (court appearance reminders/notifications), which require local criminal courts to issue court appearance reminders to arrestees by text message, telephone call, electronic mail, or first class mail. No reminder is required if the appearance ticket requires an appearance within 72 hours of its issuance or the arrestee did not provide contact information.

5. Amends CPL § 500.10 (recognizance/bail) to add a definition for “release under non-monetary conditions,” which authorizes individuals to be released at liberty pending criminal actions under the least restrictive conditions that will reasonably assure the individuals return to court. Conditions courts may impose include: (a) the defendant must be in contact with a pretrial services agency; (b) the defendant must abide by reasonable, specified travel restrictions reasonably related to actual risk of flight; (c) the defendant must refrain from possessing weapons; (d) when, pursuant to CPL § 510.45(4), no realistic monetary condition or non-monetary conditions will reasonably assure the person's return to court, placed in reasonable pretrial supervision; and (e) when, pursuant to CPL § 510.40(4)(a), no other realistic non-monetary conditions will reasonably assure the defendant's return to court, their location may be monitored with an approved electronic monitoring device.

6. Amends CPL §§ 510.10 and 530.20 (securing order) to mandate that courts make individualized determinations that individuals pose a flight risk to avoid prosecution before imposing the least restrictive alternative and conditions that will reasonably assure the defendant's return to court. Courts must explain their choice of (a) release, (b) release with conditions, (c) bail, or (d) remand either on the record or in writing. Furthermore, defendants are entitled to representation by counsel during the securing order process. Courts may fix bail or commit the defendant to the sheriff's custody when the defendant is charged with (a) a felony enumerated in Penal Law § 70.02 (violent felonies); (b) a crime involving witness intimidation under Penal Law § 215.15; (c) a crime involving witness tampering under Penal Law §§ 215.11, 215.12 or 215.13; (d) a class A felony defined in the Penal Law; (e) a felony sex offense defined in Penal Law § 70.80 or a crime involving incest as defined in Penal Law §§ 255.25, 255.26 or 255.27, or a misdemeanor defined in Penal Law Article 130 (sex offenses); (f) conspiracy in the second degree as defined in Penal Law § 105.15, where the underlying allegation of such charge is that the defendant conspired to commit a class A felony defined in Penal Law Article 125; (g) money laundering in support of terrorism in the first degree
as defined in Penal Law § 470.24; money laundering in support of terrorism in the second degree as defined in Penal Law § 470.23; or a felony crime of terrorism as defined in Penal Law Article 490, other than the crime defined in Penal Law § 490.20; (h) criminal contempt in the second degree as defined in Penal Law § 215.50(3), criminal contempt in the first degree as defined in Penal Law § 215.51(b), (c), or (d), or aggravated criminal contempt as defined in Penal Law § 215.52, and the underlying allegation of criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant’s same family or household as defined Penal Law § 530.11(1); or (i) facilitating a sexual performance by a child with a controlled substance or alcohol as defined in Penal Law § 263.30, use of a child in a sexual performance as defined in Penal Law § 263.05 or luring a child as defined in Penal Law § 120.70(1). See also CPL § 530.40.

7. Amends CPL § 510.30 to establish the factors that a court may consider when determining the likelihood that a defendant will return to court, including: (a) the defendant’s activities and history; (b) the charges facing the defendant; (c) the defendant’s criminal conviction record if any; (d) the defendant’s juvenile delinquency record; (e) the defendant’s previous record with respect to flight to avoid criminal prosecution; (f) if monetary bail is authorized, the defendant’s financial circumstances and ability to post bail without posing undue hardship, and (g) where the defendant is charged with a crime against a member of the same family or household.

8. Amends CPL § 510.40 to require that courts individualize non-monetary conditions of release and set forth those conditions in writing. Additionally, at future court appearances, courts must consider lessening conditions based on the defendant’s compliance with previously imposed conditions. Additionally, provided that the court provides reasonable notice, courts may impose additional conditions on the defendant if the defendant has been non-compliant with previously imposed conditions.

9. CPL § 530.60 still allows for courts to rescind an order of recognizance, after a hearing, when it has reasonable cause to believe that a defendant has committed a Class A felony, a violent felony, or intimidated a victim or witness.

Analysis of the Bail System Reforms
It is important to note that the reforms set to go into effect on January 1, 2020, do not completely strip the ability of courts to impose bail or to remand defendants into the custody of the sheriff. The new CPL § 530.20 enumerates numerous felonies and misdemeanors (“qualifying offenses”) for which courts may impose bail or remand defendants into sheriff’s custody pending the trial. There is concern, however, that the list of qualifying offenses (see CPL § 530.20) is incomplete and that many serious crimes have been left off this list, thereby requiring courts to release dangerous defendants pending completion of the trial or a plea deal. Additionally, concerns have been raised regarding the viability of an electronic monitoring system. While the reforms provide for implementation of such a system, they also prohibit local governments from using for-profit electronic monitoring systems or services. At this time, however, no not-for-profit electronic monitoring systems or services exist.

Conclusion
As outlined above, city and village officials are very concerned about the unfunded mandates incorporated into New York’s 2019 criminal justice reforms. The practical consequences of this dramatic swing in the criminal justice procedures pendulum will have administrative, fiscal, and justice impacts at the local level. NYCOM, therefore, is in support of amending these reforms in such a way that will preserve the intent but which will allow for more effective and affordable implementation.

Endnotes
1. Note that securing may be used to assure appearance by defendants and witnesses. As a result, the term “principal” is used in the Criminal Procedure Law to refer to individuals who are subject to securing orders. For purposes of this summary, the term defendants will be used as that is the primary concern of local officials regarding these amendments.
2. Other than burglary in the second degree as defined in Penal Law § 140.25(2) or robbery in the second degree as defined Penal Law § 160.10(1).
3. Other than in Penal Law Article 220, with the exception of Penal Law § 220.77.