

2022 JUDICIARY ANNUAL REPORT ON THE IMPLEMENTATION AND IMPACT OF CPL ARTICLE 245

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CHIEF ADMINISTRATIVE JUDGE

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NEW YORK STATE UNIFIED COURT SYSTEM

Introduction

State Judiciary Law Section 216(5) requires the Division of Criminal Justice Services (DCJS) and the Office of Court Administration (OCA) to prepare a report on the impact of the discovery legislation (CPL 245), including case outcomes and information on resources needed for implementation. To obtain the information for this statutorily-required report, DCJS surveyed district attorneys, law enforcement agencies, forensic laboratories, and institutional public defense providers while OCA surveyed criminal court judges. This annual joint report is due in November of each year.

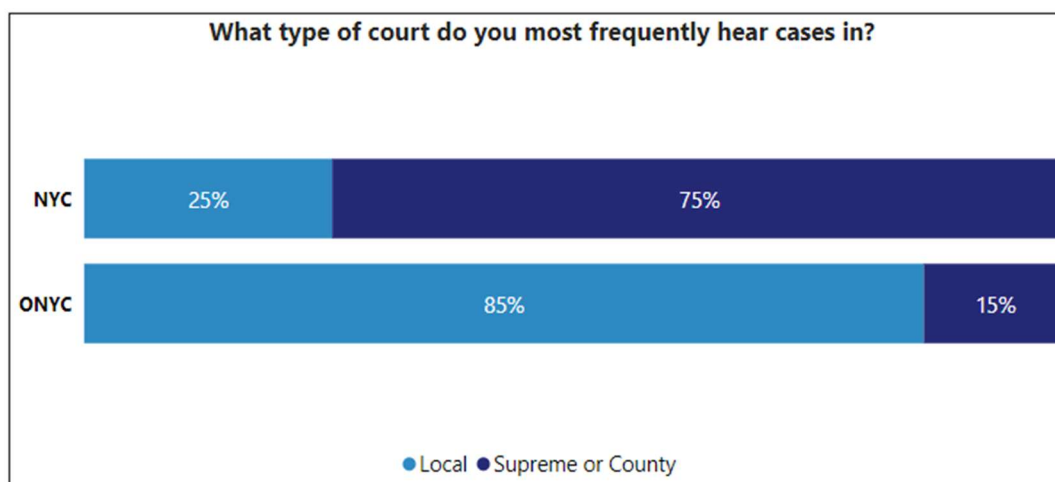
The second annual judicial survey was distributed the Fall of 2022 and covers the previous 12 month time period. 16% of the completed responses were from NYC and 84% were from courts outside of NYC (ONYC). Note that a much larger number of surveys were distributed ONYC as town & village judges were included. Survey questions were organized into the following topical areas:

- Respondent location,
- Judge and staff time impact of discovery implementation,
- Challenges of specific aspects of discovery
- Results and reasons for discovery not being met,
- COVID-19 implications, and
- Additional needs for a successful implementation.

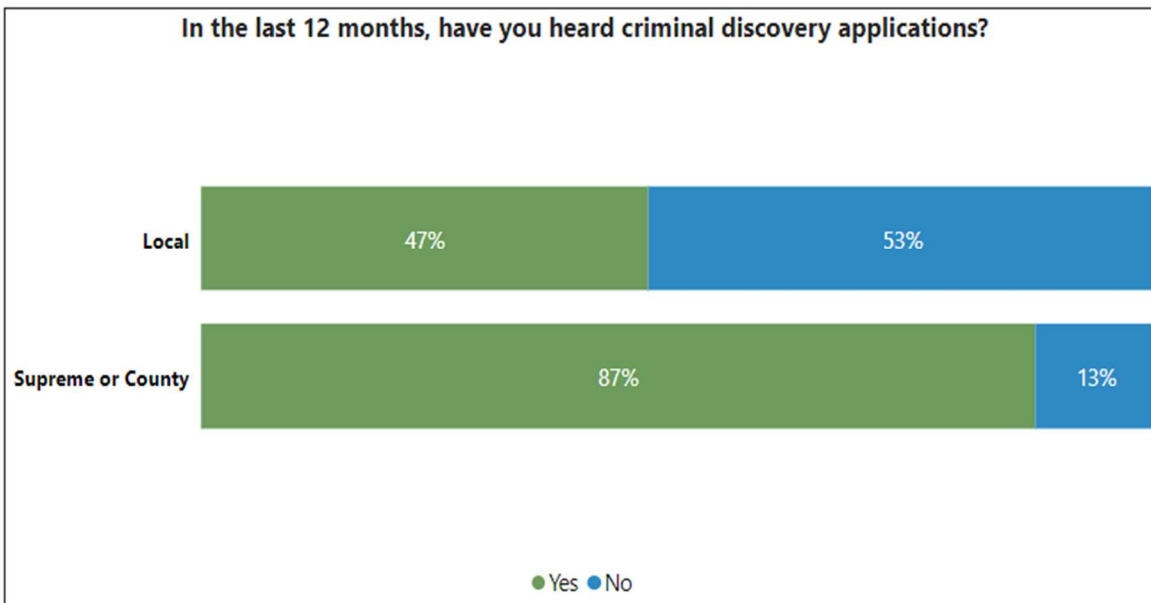
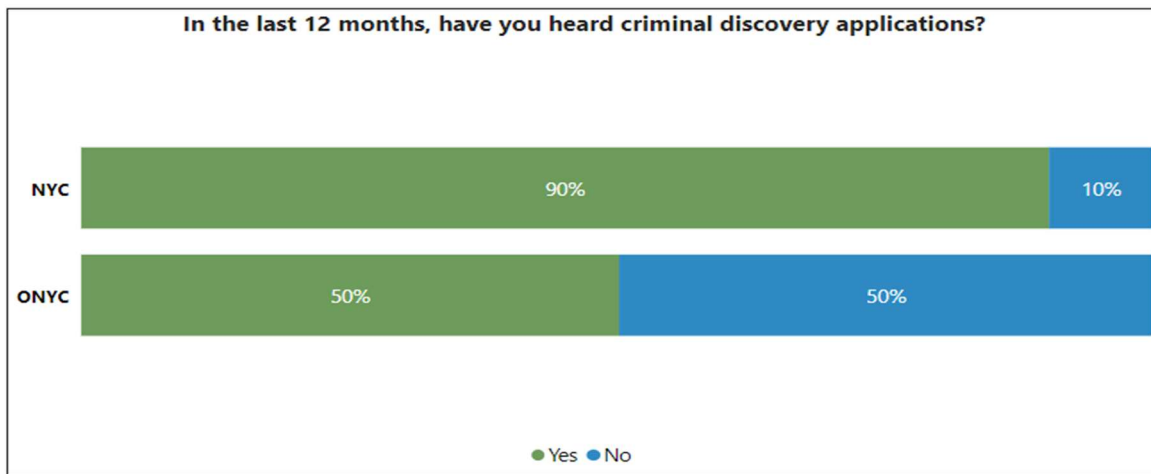
Survey Results

Notes:

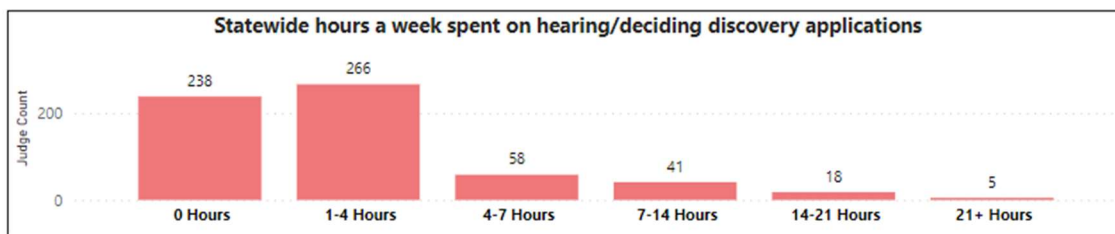
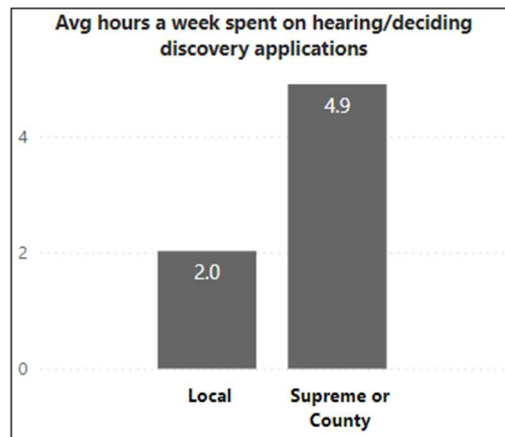
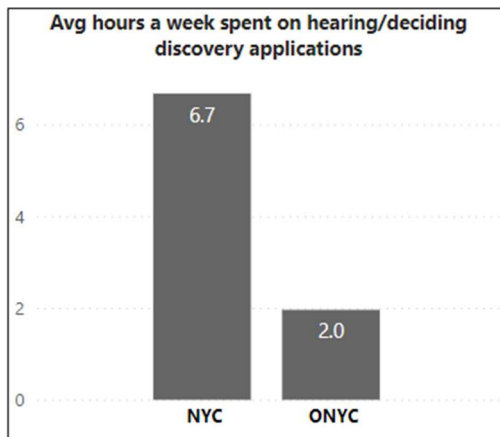
- Some of the percentages in the tables below add up to more than 100% due to rounding.
- Visualizations may not display the percentage when it is less than three percent.
- As will be seen, because the majority of the surveys in NYC were completed by Supreme Court judges and the majority ONYC were completed by local court judges, when you look at the results by court location and judge type, the NYC results closely match those of the Supreme/County court judges while the ONYC results align with those of the local court judges. Nonetheless, we present the data both by court location and judge type.



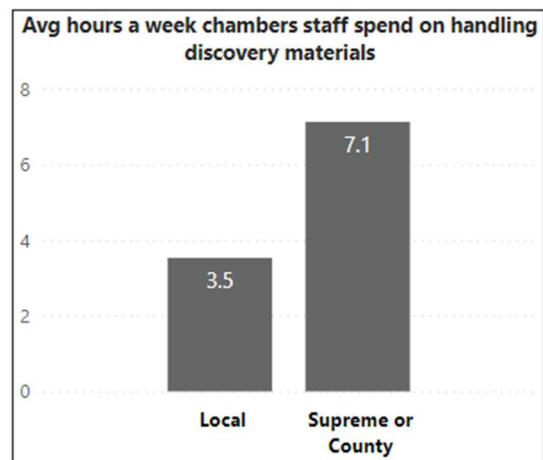
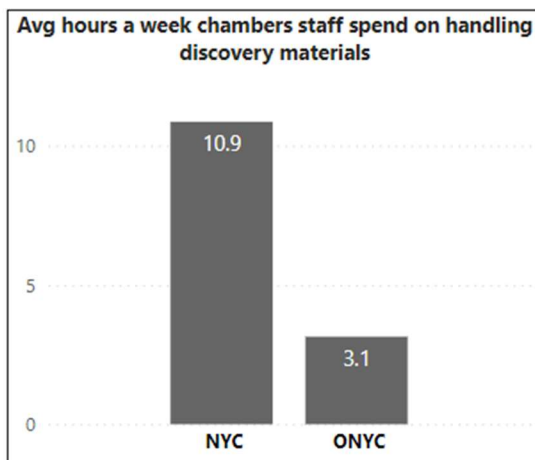
- In NYC, the vast majority of survey responses, 75%, were received from Supreme Court judges while ONYC, most responses, 85%, were from local court judges (city, district, and town & village courts).

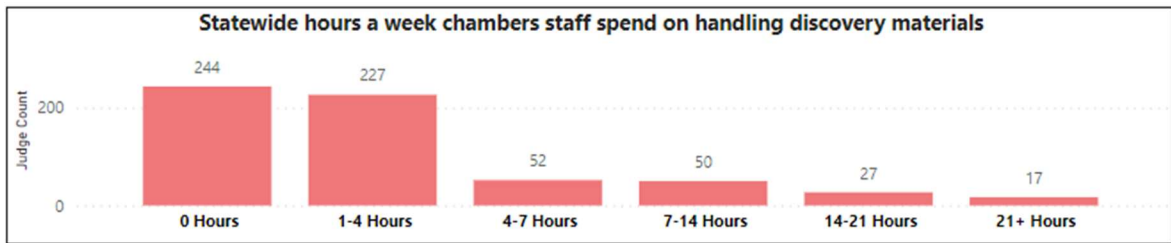


- In NYC, 90% of respondents reported hearing criminal discovery applications in the last 12 months compared with only 50% ONYC. This is likely because, as noted above, 75% of the NYC respondents reported most frequently hearing cases in Supreme Court compared to only 15% of the respondents ONYC who indicated most frequently hearing cases in County Court. This shows that discovery applications are more regularly made in courts hearing felony cases.
- Of the local court judges that responded to the survey, the majority, 53%, indicated hearing criminal discovery applications in the last 12 months. Of the Supreme/County court judges responding to the survey, the vast majority, 87%, reported hearing criminal discovery applications in the last 12 months. This again confirms that discovery applications are more commonly made in courts hearing felony cases.

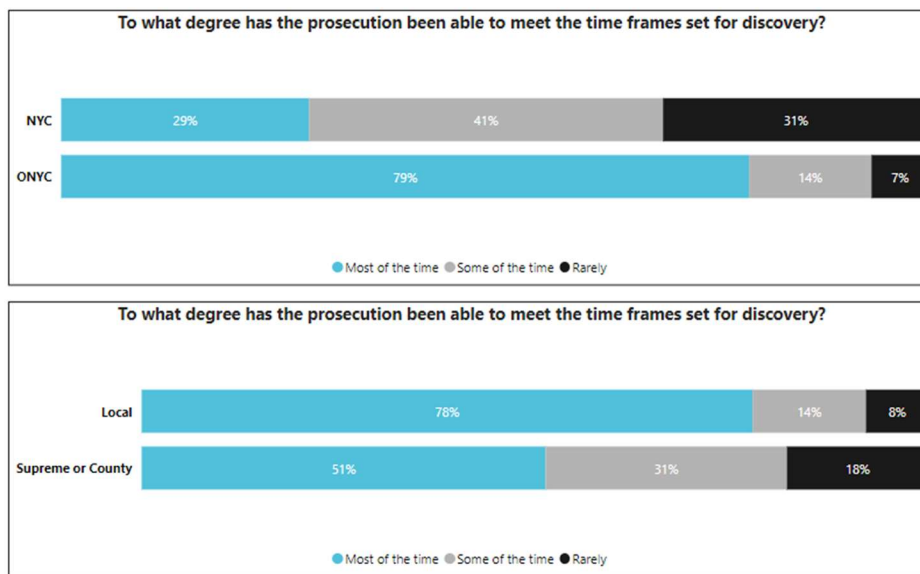


- NYC judges reported the legislation has led to spending nearly seven hours per week hearing and deciding discovery applications. This is compared to the two hours per week reported by the ONYC judges.
- Not surprisingly, the Supreme/County Court judges reported spending more than twice as much time than the local court judges on hearing/deciding discovery applications.
- Statewide, judges reported spending a range of 0 to 21+ hours per week hearing/deciding discovery applications. Most judges (42%) reported spending an average of 1-4 hours per week on this task while slightly less (38%) reported spending 0 hours on discovery work. The remaining 20% indicated spending between four hours and 21+ hours per week on discovery applications.

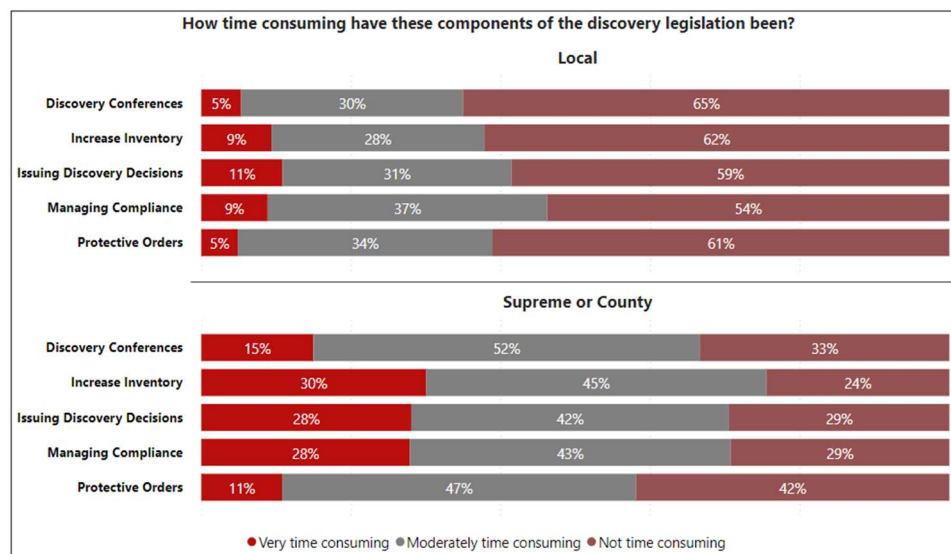
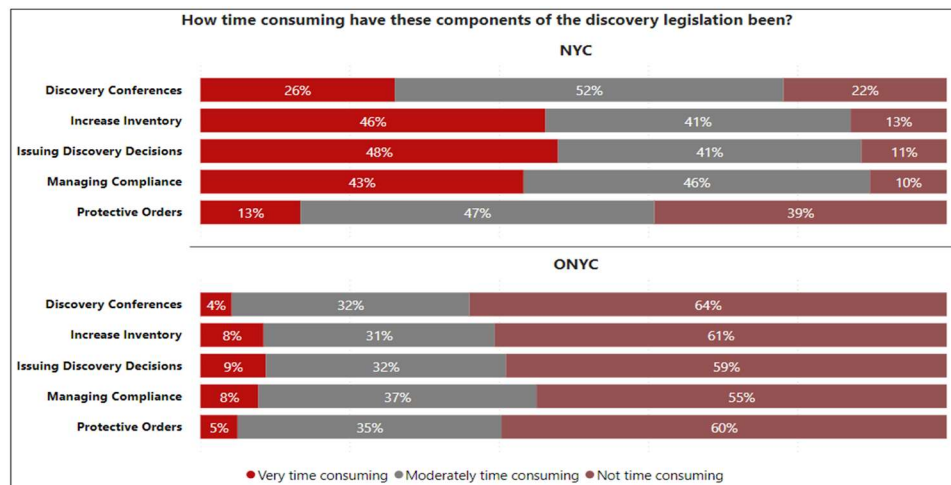




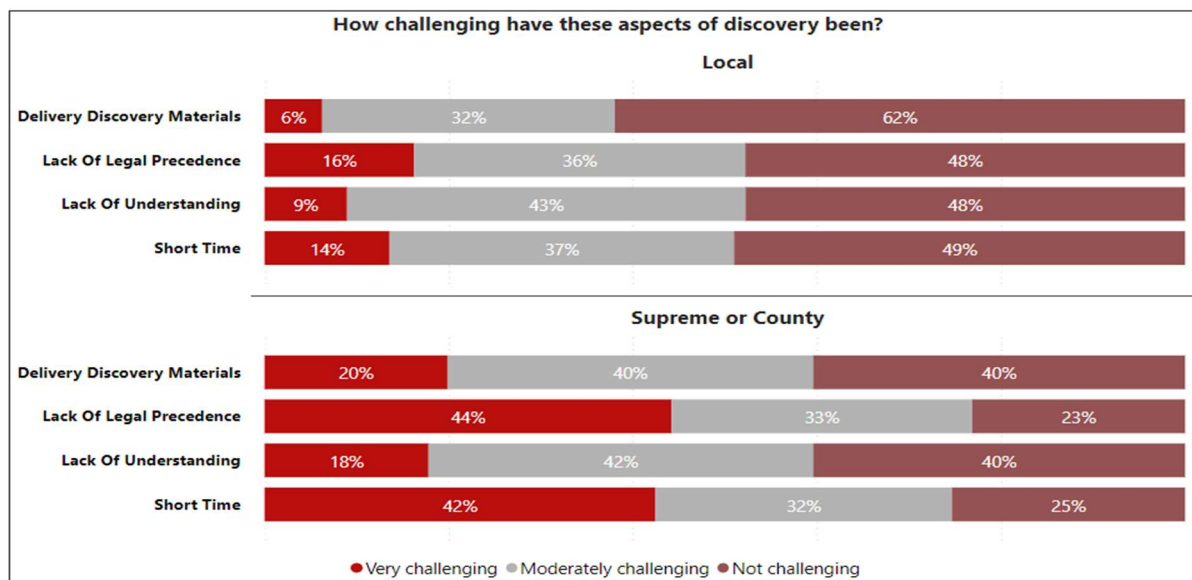
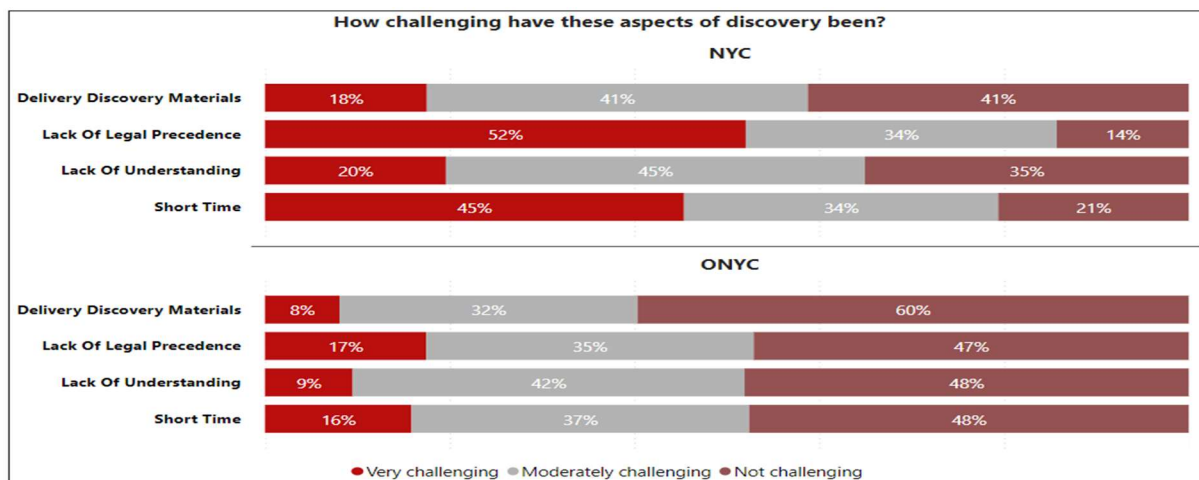
- Consistent with NYC judges spending the most time handling discovery materials, NYC chamber staff reported spending nearly four times more hours per week on discovery work than ONYC chamber staff.
- The Supreme/County court judges reported that their chamber staff spends twice as much time each week on discovery work than the chamber staff of local court judges.
- Statewide, most judges (40%) reported that chamber staff spent no time on discovery work, while slightly less (37%) indicated their chamber staff spends 1-4 hours per week on this work. The remaining 23% indicated spending between four and 21+ hours per week on discovery materials.



- Only 29% of the judges in NYC reported that discovery obligations were met by the prosecution most of the time compared to the vast majority (79%) of the ONYC judges.
- Conversely, 72% of the NYC judges reported discovery obligations were rarely or sometimes met by the prosecution while only 21% of the judges ONYC said the prosecution rarely or only sometimes meet their discovery obligations.
- The vast majority of local court judges (78%) reported that the prosecution meets their discovery obligation most of the time compared to 51% of Supreme/County court judges.
- Only 22% of the local court judges said that discovery obligations were only rarely or sometimes met compared with 49% of the Supreme/County court judges who thought this.

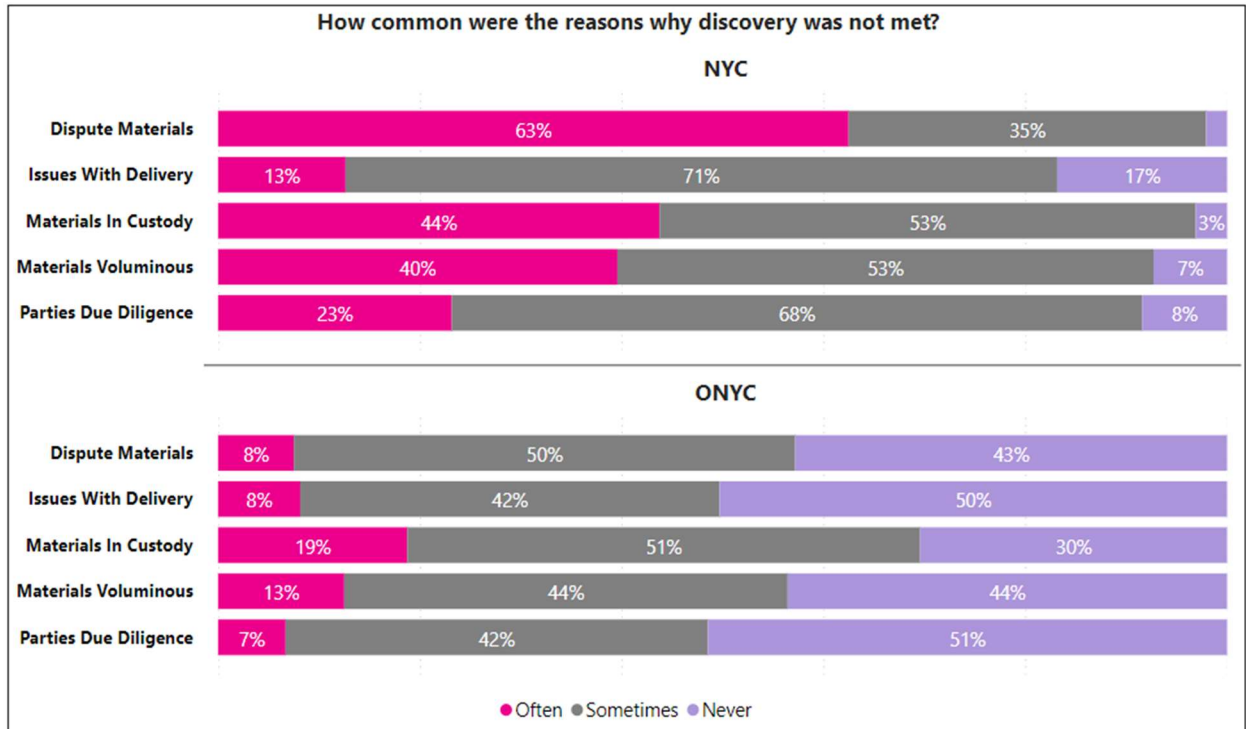


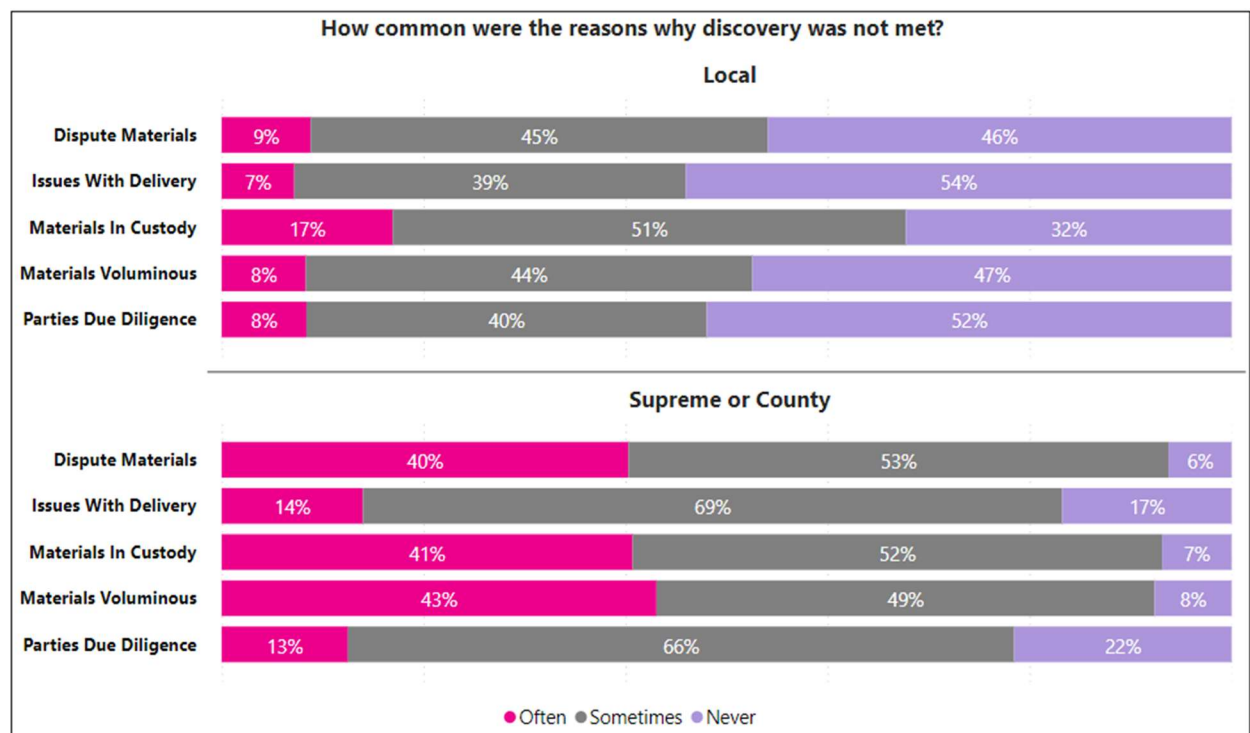
- NYC judges reported with much greater frequencies than ONNYC judges that discovery conferences, increased inventory, issuing discovery decisions, managing discovery compliance and protective orders were very time consuming.
- For both NYC and ONNYC, issuing discovery decisions was reported to be the most time consuming of the categories of work asked about, although NYC reported this to be significantly greater.
- For both NYC and ONNYC, handling of protective orders was reported to be the least time consuming of the discovery-related work. Again, ONNYC indicated the work associated with this task to be one-half of the time commitment than that reported by NYC.
- When the responses are examined by judge type, the Supreme/County judges' responses are similar to those of the NYC judges and the local court judges' responses are comparable to those from ONNYC.



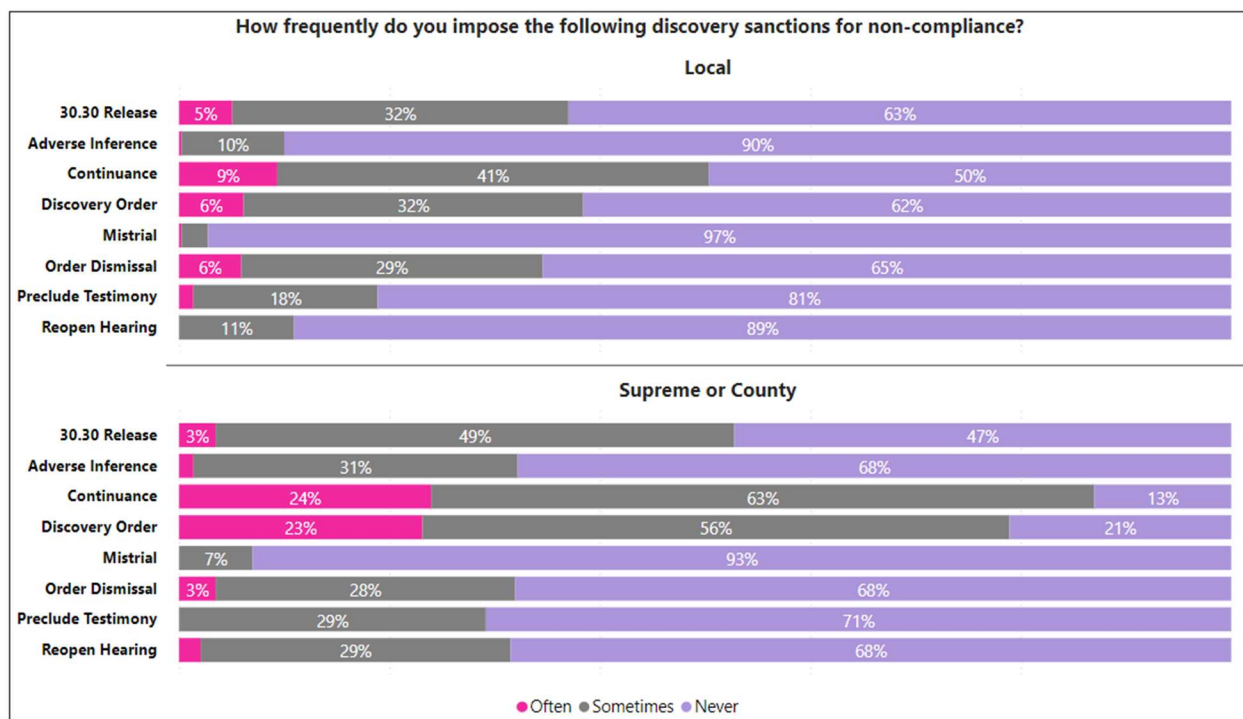
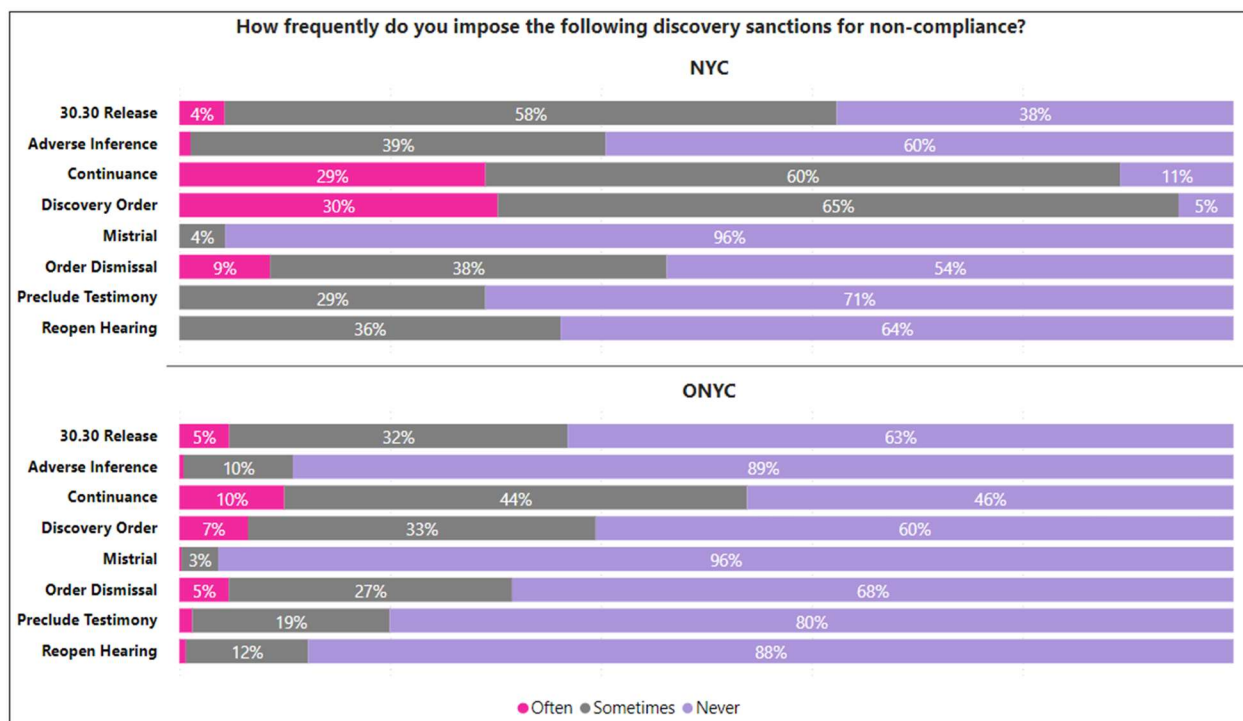
- NYC respondents reported all issues related to the implementation of discovery (i.e., *method of delivery of discovery material*, *short time frames for implementation*, *lack of legal precedent to base decisions* and *lack of knowledge/understanding surrounding the new statute*) were more challenging in implementing the discovery legislation than reported by ONYC respondents.
- Over one-half of the NYC judges (52%) indicated that the *lack of legal precedent to base decisions* has been a very challenging aspect of implementing the discovery legislation. Although this issue was cited less ONYC than in NYC as being very challenging (17%), *lack of legal precedent* was still mentioned most frequently as being very challenging to the implementation of the discovery legislation.
- The *method of delivery of discovery materials* was cited by both NYC and ONYC as being the least challenging aspect of discovery reform implementation (18% and 8%, respectively).
- Supreme/County court judges reported all issues related to the implementation of discovery were more challenging than their local court counterparts.

- Both Supreme/County and local judges reported that *lack of legal precedent to base decisions* is the most challenging aspect of the discovery legislation.
- The *method of delivery of discovery materials* was cited by local court judges as being the least challenging aspect of discovery reform implementation while the Supreme/County judges said that *lack of knowledge/understanding surrounding the new statute* was the least challenging aspect of discovery implementation.



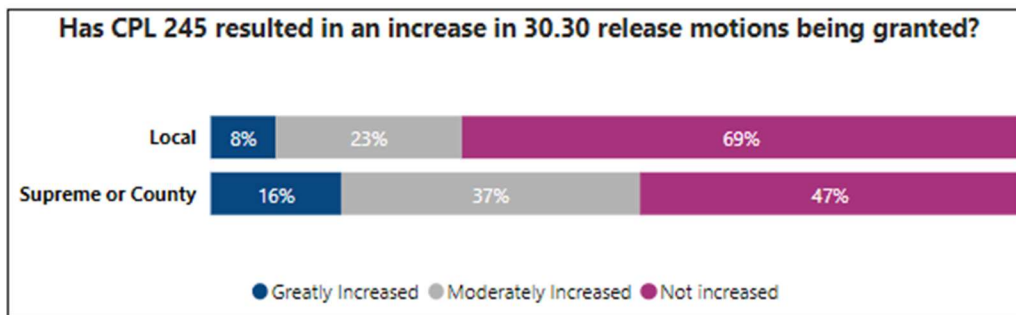
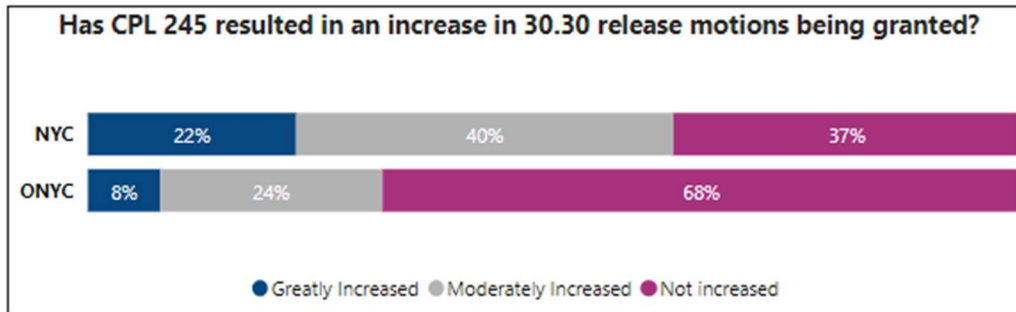


- NYC judges generally reported with greater frequency than the ONYC judges that when discovery was not met, it was often due to one of the following issues: *discoverable materials being voluminous, dispute over whether materials are discoverable, parties had not acted with due diligence or materials otherwise not in the prosecution's control or custody*.
- Conversely, ONYC judges were generally more likely to report the reasons above never impacted discovery from being met.
- The most common reason cited by NYC judges for discovery often not being met was *dispute over whether the materials are discoverable* (63%). Only 8% of the ONYC judges cited this as the reason discovery was often not met.
- The most common reason cited ONYC for discovery often not being met was *materials otherwise not in the prosecution's custody or control* (19%).
- Supreme/County court judges reported with much greater frequency than local court judges that all reasons cited above impacted discovery from being met with *discoverable materials being voluminous, materials otherwise not in the prosecution's control or custody* and *dispute over whether materials are discoverable* being the top three reasons.

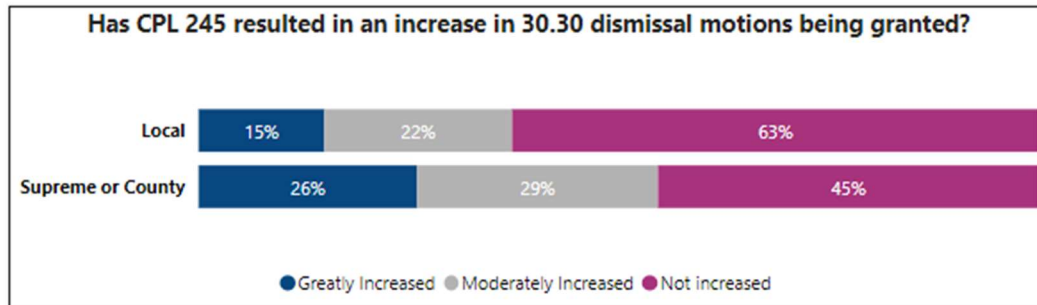
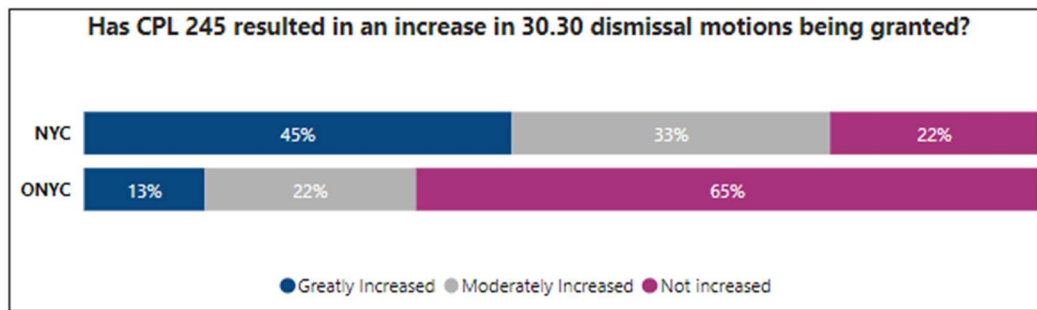


- NYC and ONYC reported using both *Continuance* (89% and 54%, respectively) and *further discovery order* (95% and 40%, respectively) often or sometimes as the sanction for discovery non-compliance.

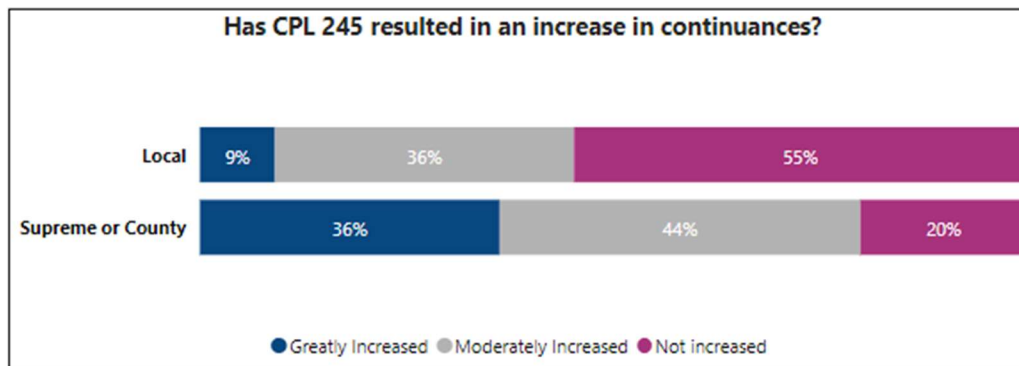
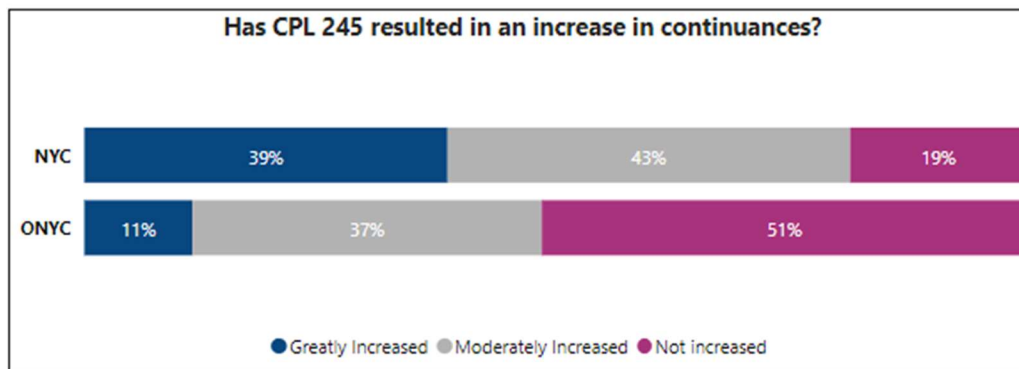
- *Mistrial* was cited as never being used by both NYC and ONYC judges (96% and 96%, respectively) as a discovery sanction for non-compliance.
- NYC respondents indicated they were more likely than their ONYC counterparts to use *adverse inference charge* as a sanction for non-compliance. (60% of NYC judges said they had never used this compared to 89% of the ONYC judges).
- Supreme/County and local court judges reported using both *Continuance* (87% and 50%, respectively) and *further discovery order* (79% and 38%, respectively) often or sometimes as the sanction for discovery non-compliance
- *Mistrial* was cited as never being used by both Supreme/County and local court judges (93% and 97%, respectively) as a discovery sanction for non-compliance.
- Supreme/County court judges indicated they were more likely than their local court counterparts to use *adverse inference charge* as a sanction for non-compliance. (68% of Supreme/County judges said they had never used this compared to 90% of the local court judges).



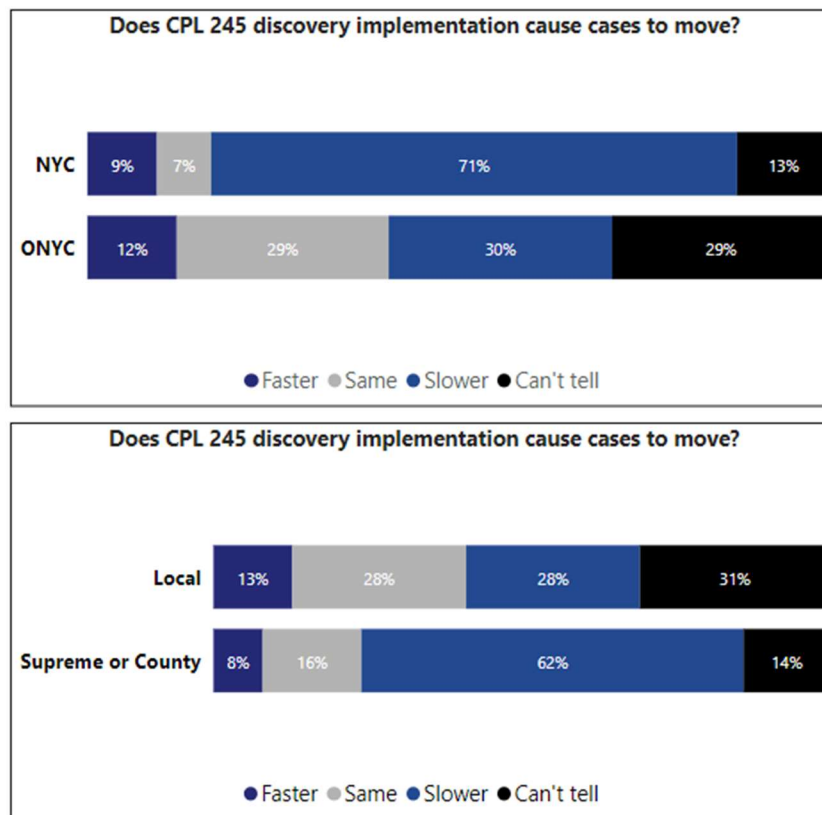
- The majority of NYC judges (62%) reported that the discovery legislation has greatly or moderately led to an increase in *30.30 release motions being granted* compared with the majority of ONYC judges (68%) who said that that the discovery legislation has not caused an increase in these motions being granted.
- More than two-thirds of the local court judges (69%) reported that the discovery legislation has not caused an increase in *30.30 release motions being granted* compared to 53% of Supreme/County judges who reported that the discovery legislation has greatly or moderately increased *30.30 release motions being granted*.



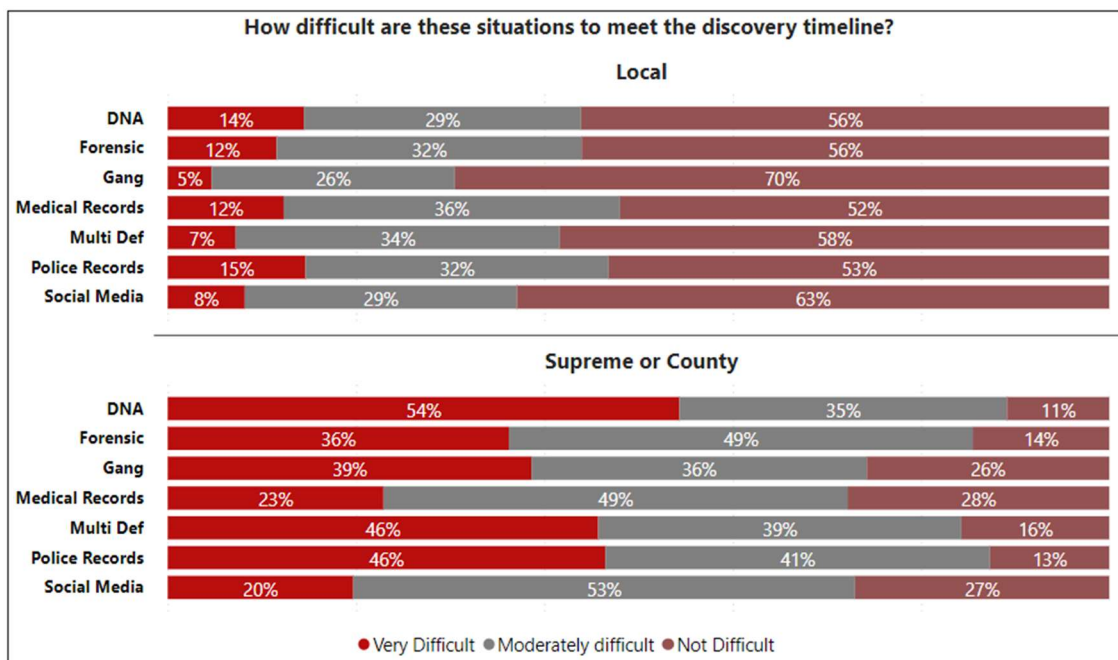
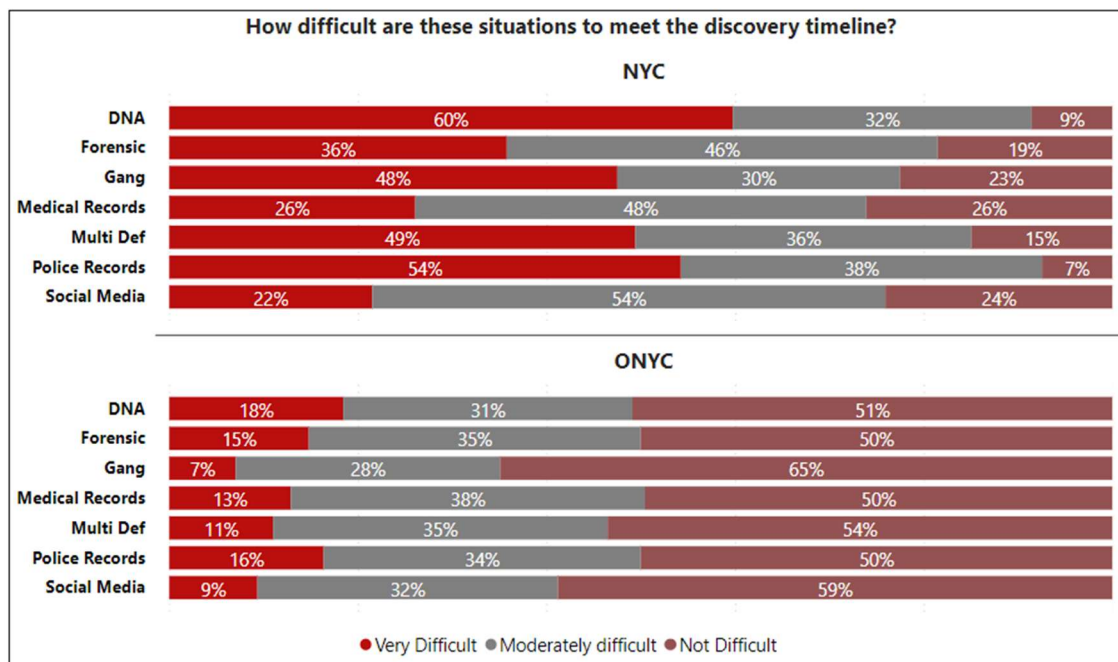
- While 45% of NYC respondents reported *30.30 dismissal motions being granted* greatly increased under the discovery legislation, while another one-third (33%) reported a moderate increase, the majority of ONYC judges (65%) indicated that the discovery legislation did not lead to an increase the number of *30.30 dismissal motions being granted*.
- The majority of local court judges (63%) indicated that the discovery legislation did not lead to an increase the number of *30.30 dismissal motions being granted*, while the majority of Supreme/County judges (55%) reported that the legislation did greatly or moderately increase *30.30 dismissal motions being granted*.



- While the majority (82%) of NYC survey respondents indicated that the discovery legislation greatly or moderately increased the number of continuances, the majority of ONYC judges (51%) reported that the legislation had no impact on the number of continuances.
- The majority (55%) of local court judges reported that the discovery legislation did not increase the number of continuances while 80% of the Supreme/County judges indicated the legislation greatly or moderately increased continuances.

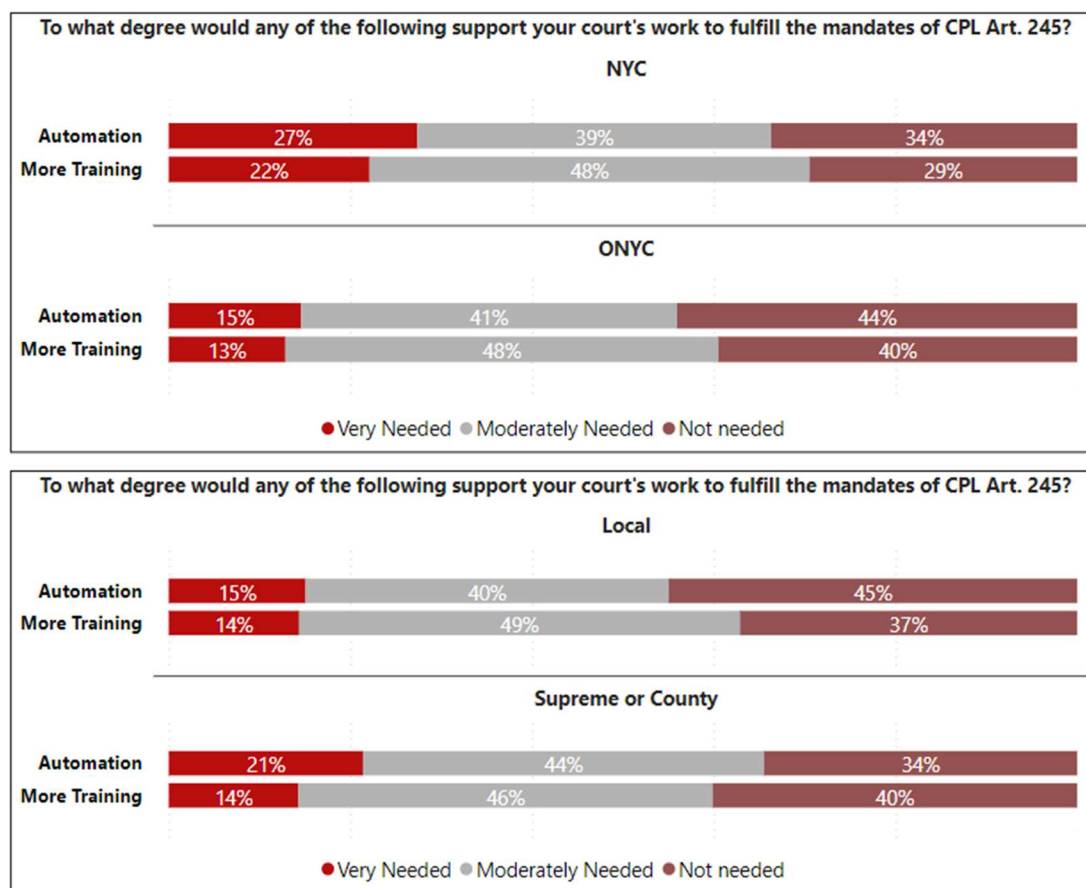


- The NYC judges overwhelmingly (71%) indicated that the discovery legislation has led to slower case processing compared to 30% ONYC.
- 9% of NYC and 12% of ONYC respondents said that the discovery legislation has led to faster case processing.
- Nearly two-thirds (62%) of the Supreme/County judges responded that the discovery legislation has led to slower case processing compared to 28% of the local court judges.
- 8% of Supreme/County and 13% of local court judges reported that the discovery legislation has led to faster case processing.



- In every category listed above (i.e., DNA, Forensic, Gang, Medical Records, Multiple Defendants, Police Records and Social Media), the majority of ONYS respondents reported that these situations did not provide difficulty in meeting discovery guidelines compared to the majority of NYC judges who indicated that these situations made meeting discovery timelines very or moderately difficult.

- In NYC, the majority of judges reported that situations involving DNA and police records made meeting discovery timeframes very difficult (60% and 54% respectively). Conversely, ONYC, only 18% of judges reported that situations involving DNA made meeting discovery time frames very difficult and only 16% reported situations involving police records made meeting discovery time frames very difficult.
- Similar to the ONYC results, in every category listed above, the majority of local court judges reported that these situations did not provide difficulty in meeting discovery guidelines. The Supreme/County court judges, however, indicated that these situations made meeting discovery timelines very or moderately difficult.
- The majority of Supreme/County court judges (54%) reported that situations involving DNA made meeting discovery timeframes very difficult while only 14% of local court judges indicated cases involving DNA made meeting discovery times frames very difficult.



- The majority of NYC and ONYC respondents (66% and 56%, respectively), indicated that more automation/electronic filing would support the court in implementing the discovery legislation.
- Similarly, the majority of NYC and ONYC respondents (70% and 61%, respectively) said additional training would support the court in implementing the discovery legislation.

- The majority of local and Supreme/County court judges (55% and 65%, respectively), indicated that more automation/electronic filing would support the court in implementing the discovery legislation
- Similarly, the majority of local and Supreme/County court judges (63% and 60%, respectively) said additional training would support the court in implementing the discovery legislation.

Summary

Similar to the 2021 findings ([Judicial Discovery.pdf \(nycourts.gov\)](#)), the results overall indicate more challenges with the discovery legislation in NYC than ONYC and with Supreme/County court judges than local court judges.

The data reveal that when the data is looked at by court location and judge type, NYC respondents and Supreme/County court judges spend much more time on discovery work than their ONYC and local court counterparts. While a majority of NYC and Supreme/County court respondents indicated that CPL 245 caused an increase in continuances, the majority of ONYC respondents and local court judges said that the discovery legislation has not led to more continuances. Similarly, the majority of NYC and Supreme/County respondents indicated the legislation has caused a slowdown in case processing while the majority of ONYC and local court judges reported no such slowdown.

While the majority of judges both in NYC and ONYC and in local and Supreme and County courts said some additional training would support the court in implementing the discovery legislation, follow up analysis is needed on the exact scope of and the relevant audiences to understand whether the data indicated a need to train any or all of the following groups: judicial and/or non-judicial staff, prosecutors, defense counsel, law enforcement, and/or other stakeholders.

Discovery Court Activity Dashboard

Click here <https://ww2.nycourts.gov/discovery-implementation> for data on case outcomes related to the discovery legislation.