

2021 JUDICIARY  
ANNUAL REPORT ON THE  
IMPLEMENTATION AND  
IMPACT OF CPL ARTICLE 245

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CHIEF ADMINISTRATIVE JUDGE

NOVEMBER 3, 2021



NEW YORK STATE UNIFIED COURT SYSTEM

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## **2021 Judiciary Annual Report on the Implementation and Impact of CPL Article 245**

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### **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' offices, police departments, sheriffs' offices, forensic laboratories, and defense service providers while OCA surveyed criminal court judges. The joint report is due in November 2021.

The judicial survey was distributed in August 2021. Twenty percent of the responses were from NYC and eighty percent were from courts outside of NYC (ONYC). 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
- Additional needs for a successful implementation

### **Staff Training**

In preparation for the implementation of the 2019 Criminal Justice reforms, the Unified Court System (UCS) formed two Criminal Justice Legislation (CJL) Committees to tackle specific issues related to bail, speedy trial and discovery. The speedy trial and discovery committee was tasked with coordinating efforts related to legal decision making, court operations and technological impacts by the discovery reforms. Committee members consisted of judicial representatives from both the state-paid and justice courts, court operations, technology and data staff.

#### **Legal**

The CJL committee created in depth bench books to provide judges with relevant legal precedents related to speedy trial and discovery, as well as bail decisions.

Members of the committee traveled statewide to provide in-person trainings to the judiciary. Judges received three to four hours of training on the new legislation at the Judicial Institute (JI) Summer Seminars. In addition, the new legislation was prominently featured in the new judges' training that occurs every year. The JI also held four regional trainings for court attorneys. Training for the town and village judges was provided by the Office of Justice Court Support (OJCS). In addition, updated lectures were both recorded and presented live during lunch and learn programs after the April 2020 amendments were passed.

### Court Operations

As an operational effort, the Administrative Judges (AJs) met with judicial and non-judicial staff and stakeholders in their judicial districts to organize the rollout process and to identify additional staffing and resources that would be necessary for successful implementation. The AJs worked with the chief clerks to close any of the potential gaps in CJL workflow. The chief clerks and the AJs met regularly to discuss operational impacts from staffing needs to the filing of new forms (e.g., interlocutory appeals, certificates of compliance, new motion types). All new forms were distributed statewide and posted to the SharePoint site, as well as to the UCS website.

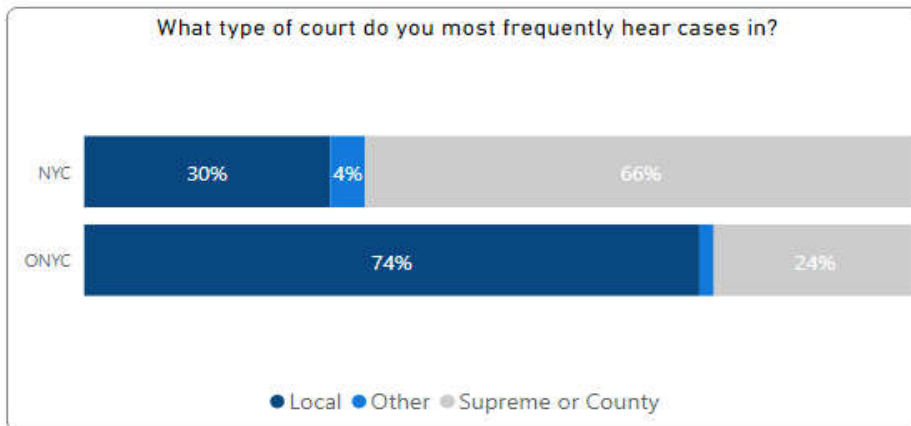
### Technology

Changes were made to the numerous case management systems to track certificates of readiness and filings of compliance for the people and defense. Enhancements were also made to track whether adjournments were being charged to the defense or the prosecution. Statewide, chief clerks and their designees were provided with training on how the new information should be inputted into the various criminal case management systems. This training, along with accompanying materials (e.g., build notes and bulletins) were posted to the SharePoint site.

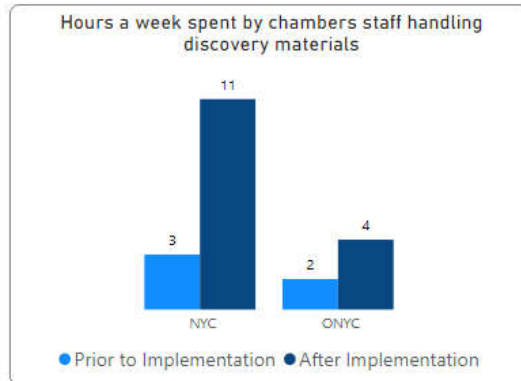
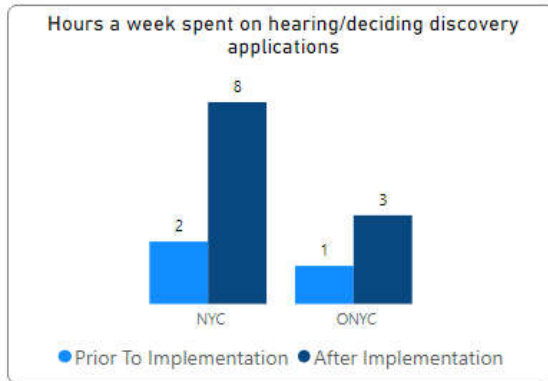
### Survey Results

#### **Notes:**

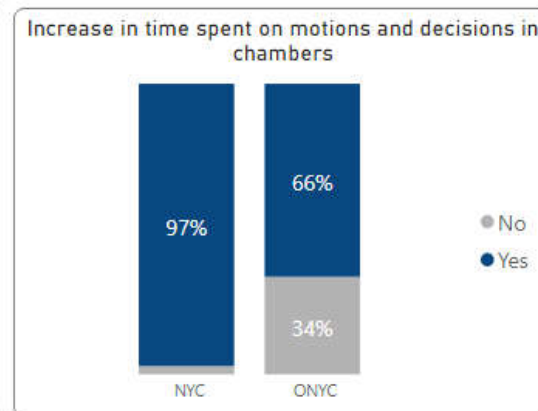
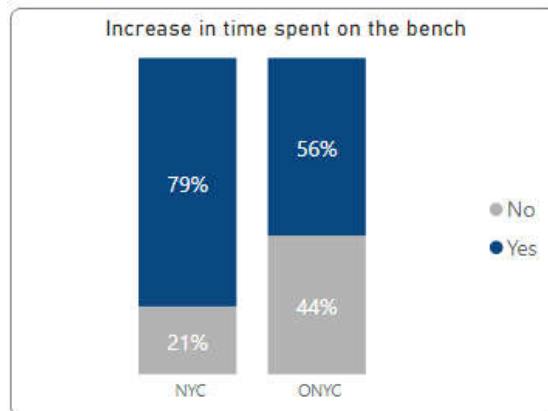
- Some of the percentages in the tables below add up to more than 100% due to rounding.
- Visualizations may not display the percentage when it is less than three percent.
- The results below are provided by NYC/ONYC. Since the vast majority of respondents from NYC were supreme court judges and those from ONYC were local judges (city, district, town and village) the court type does account for some of the variation reported between the regions. The supreme and county courts consistently reported more difficulty with the implementation than the local courts. However, when controlling for court type, the significant regional difference remained.



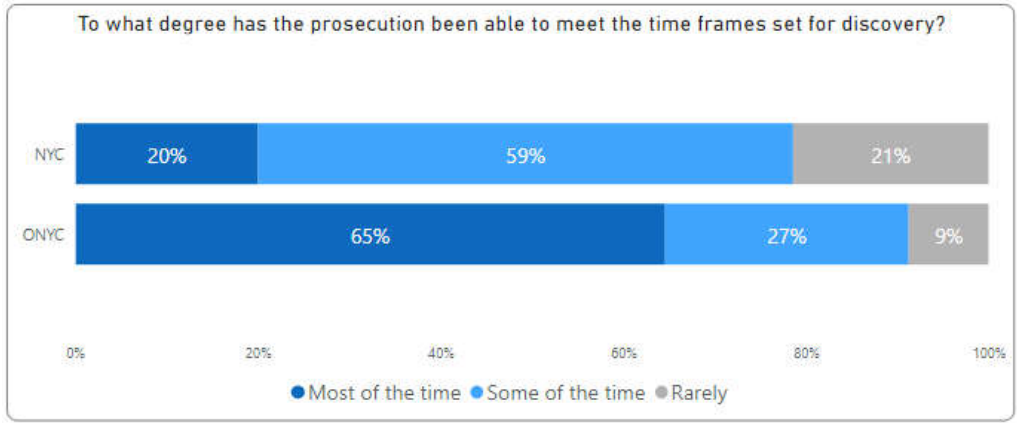
- The vast majority of responses from ONYC, 74%, were received from judges presiding over city, district, and town and village courts, while the majority of responses from NYC, 66%, were from judges who primarily hear cases in supreme court.



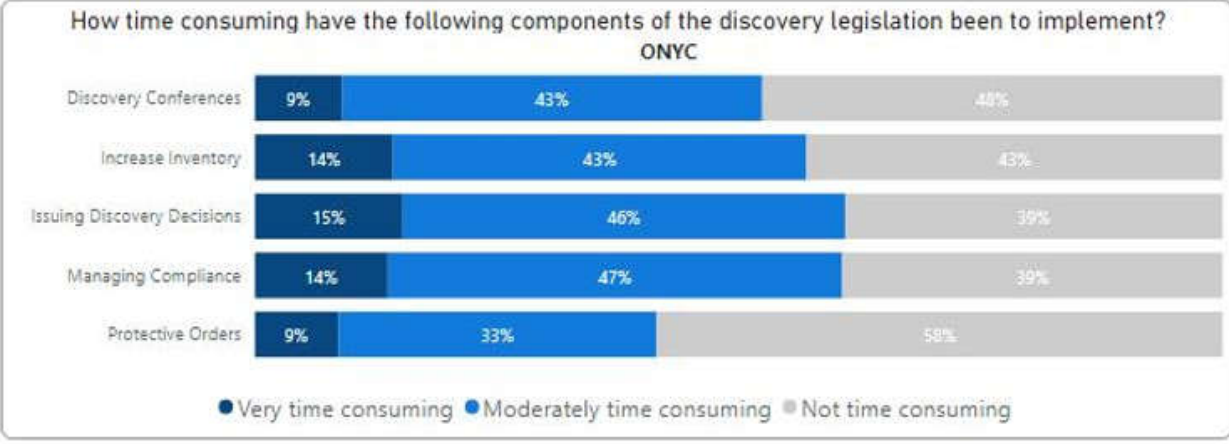
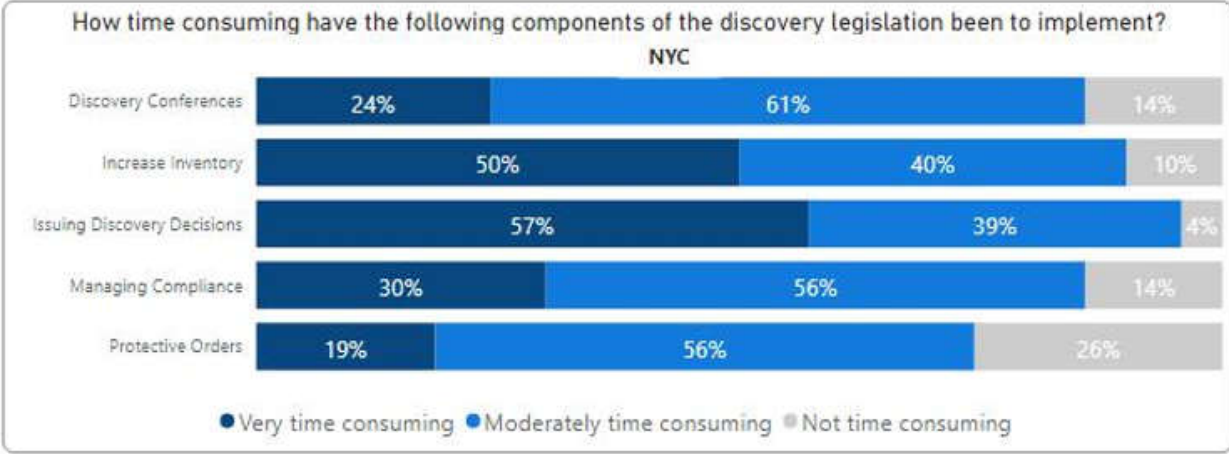
- NYC judges reported the legislation has led to an average increase of six hours per week spent on hearing and deciding discovery applications. This is compared to the two hours increase per week ONYC judges reported spending on the same.
- Consistent with NYC judges experiencing the largest increase in time handling discovery applications, discovery work for the NYC chamber staff increased an average of eight hours per week (from three hours per week to 11 hours per week). Also consistent with the ONYC judges increase in discovery workload, ONYC chamber staff experienced an average of two hours per week increase in discovery work post legislation.



- The majority of both NYC and ONYC judges indicated that the discovery legislation has resulted in increased time spent on the bench, with a greater portion of NYC judges (79%) reporting this increase than ONYC (56%).
- Similarly, the majority of judges in both NYC and ONYC indicated the discovery legislation increased time spent in chambers handling discovery motions and decisions. Notably, nearly all the NYC judges responding to the survey (97%) reported an increase compared to only two-thirds (66%) of the ONYC judges.

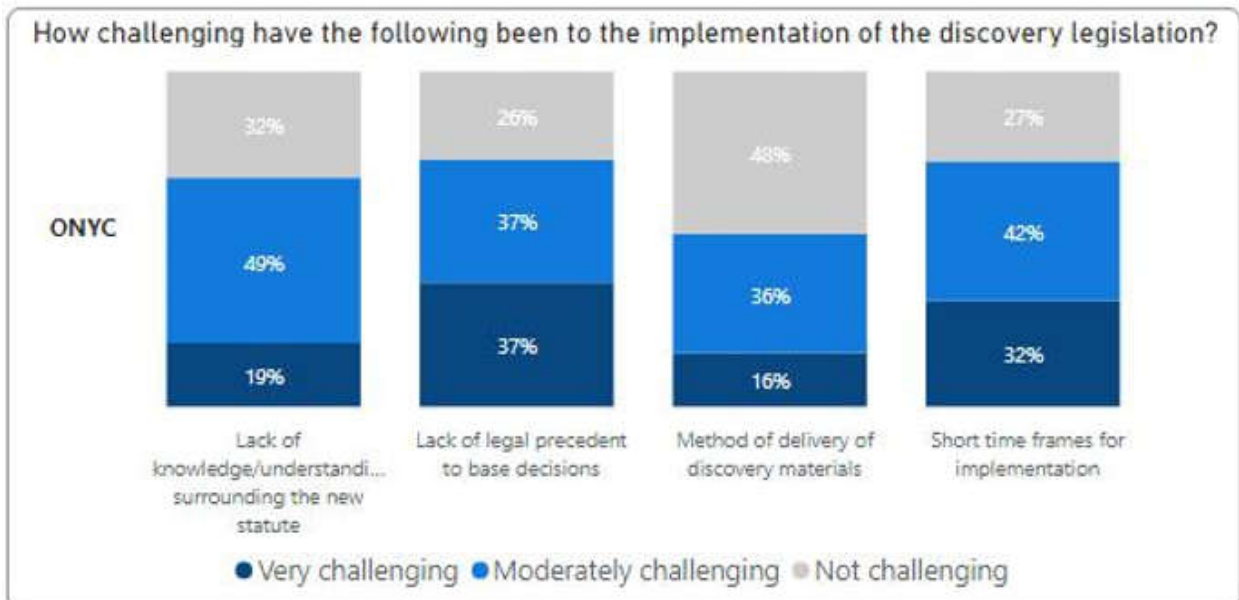
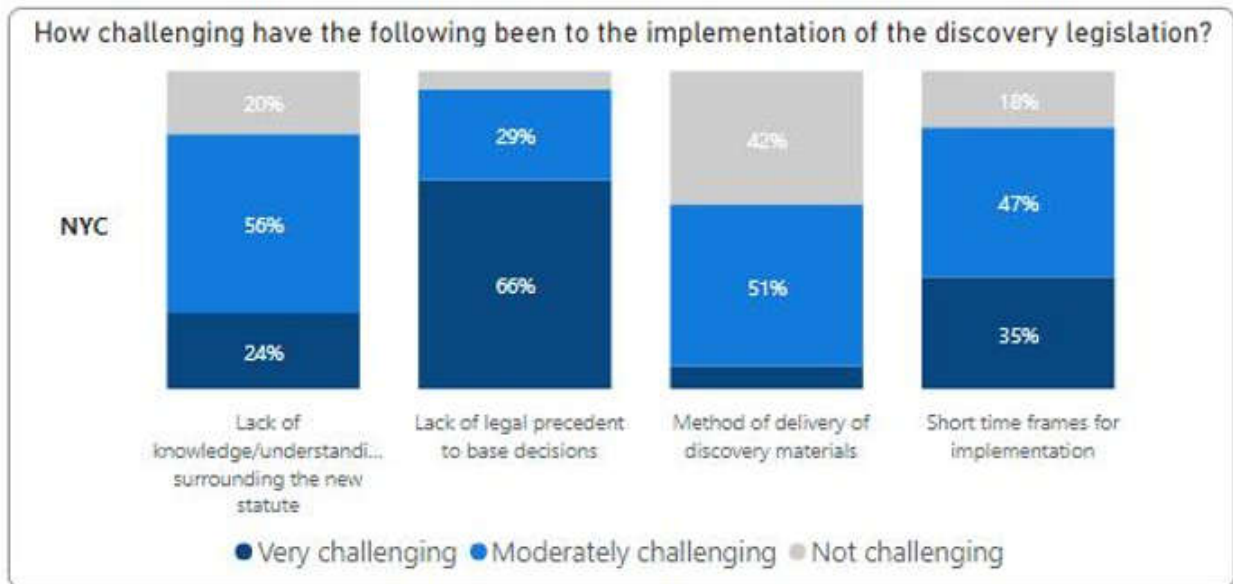


- Only 20% of judges in NYC reported that discovery obligations were met by the prosecution most of the time compared to the majority (65%) of ONYC judges.
- Conversely, 80% of NYC judges reported discovery obligations were rarely or sometimes met by the prosecution while only 36% of judges ONYC said the prosecution rarely or only sometimes meet their discovery obligations.





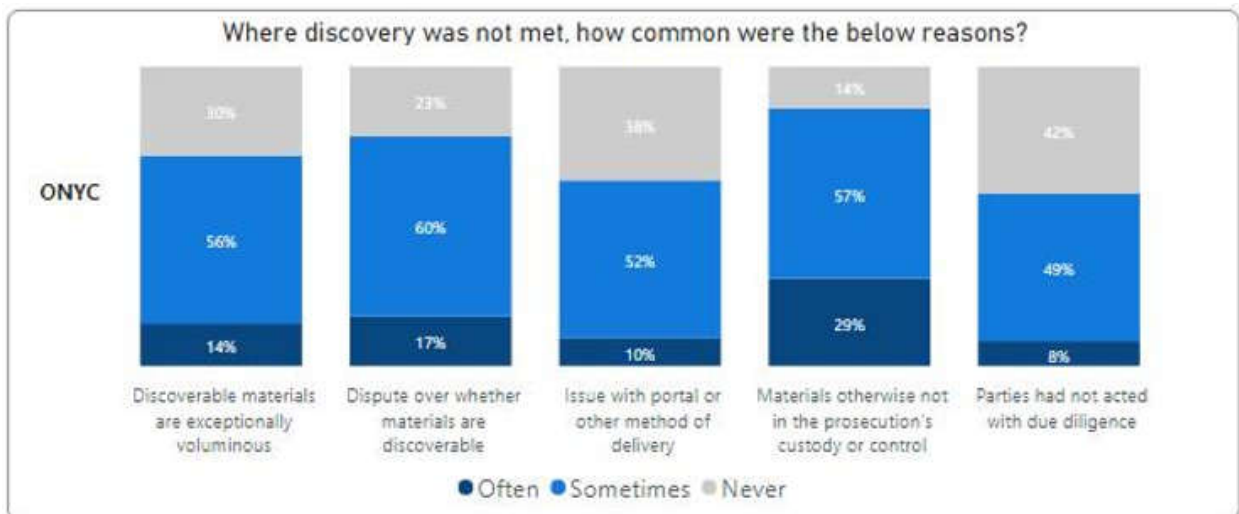
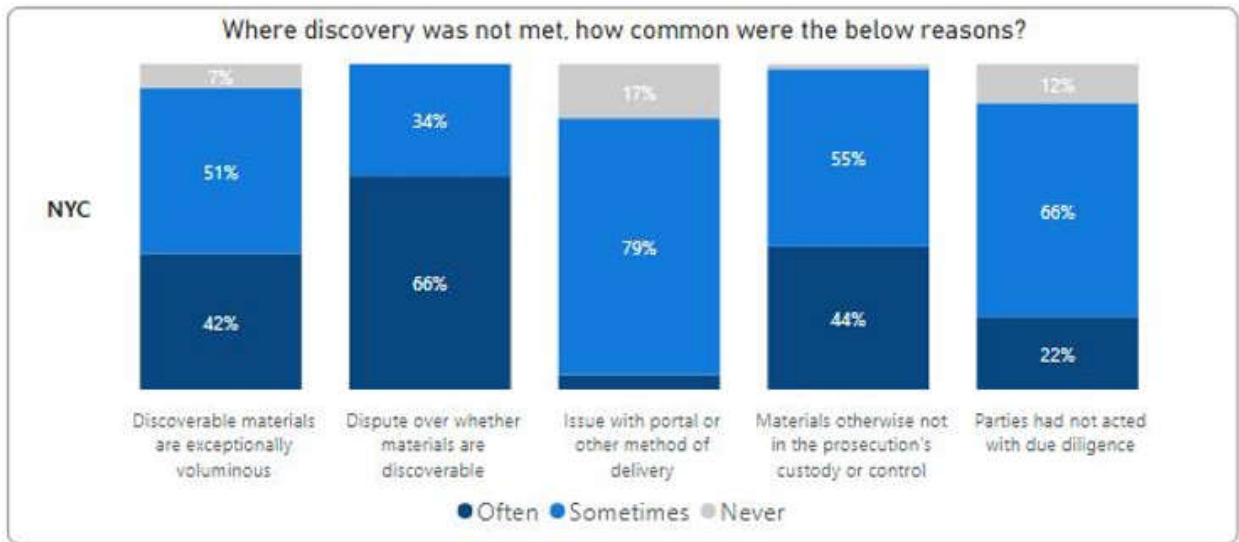
- NYC judges reported with much greater frequencies than ONYC judges that discovery conferences, increased inventory, issuing discovery decisions, managing discovery compliance and protective orders were very time consuming.
- For both NYC and ONYC, issuing discovery decisions was reported to be the most time consuming of the categories of work asked about, although NYC reported this to be significantly greater.
- Handling of protective orders was reported to be the least time consuming of the discovery-related work asked about for both NYC and ONYC. Again, ONYC indicated the time associated with this task to be far less than that reported by NYC.



- With the exception of *method of delivery of discovery materials*, NYC respondents reported all other issues related to the implementation of discovery (*short time frames for implementation*,

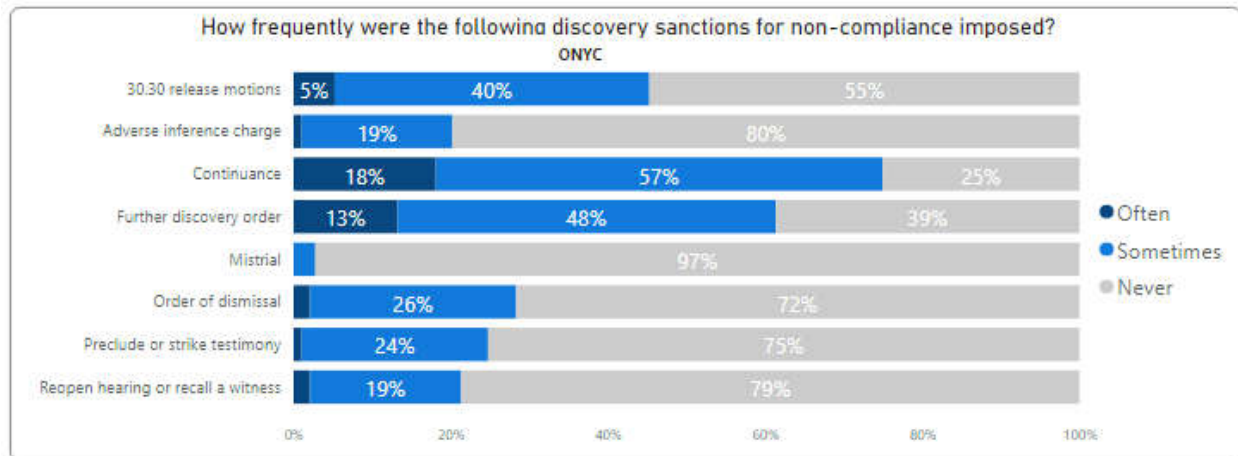
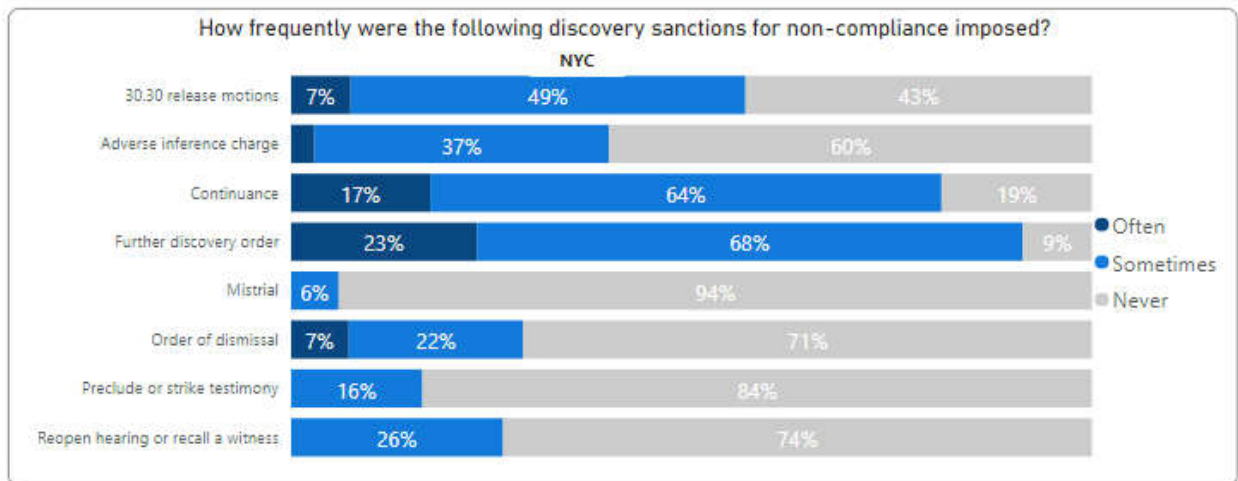
*lack of legal precedent to base decisions and lack of knowledge/understanding surrounding the new statute*) were more challenging in implementing the discovery legislation than reported by ONYC respondents.

- Two-thirds of the NYC judges (66%) indicated that the *lack of legal precedent to base decisions* has been a very challenging aspect of implementing the discovery legislation. Although ONYC, this issue was cited far less as being very challenging (37%), *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 material* was cited by both NYC and ONYC as being the least challenging aspect of discovery reform implementation (42% and 48%, respectively).



- 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.*

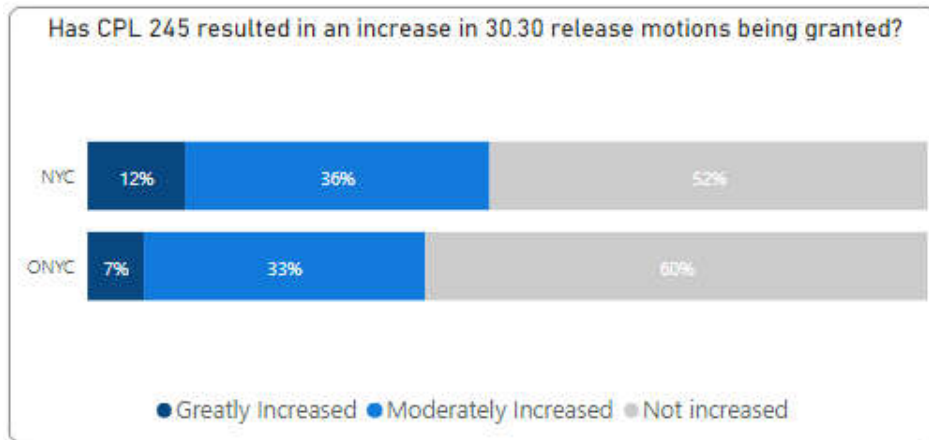
- Conversely, ONYC judges were generally more likely to report the reasons above never impacted discovery from being met.
- ONYC respondents reported slightly more than the NYC judges that *an issue with portal or other method of delivery* was often the reason for discovery not being met (4% and 10%, respectively).
- The most common reason cited by NYC judges for discovery often not being met was *dispute over whether materials are discoverable* (66%). Notably, only 17% 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* (29%).



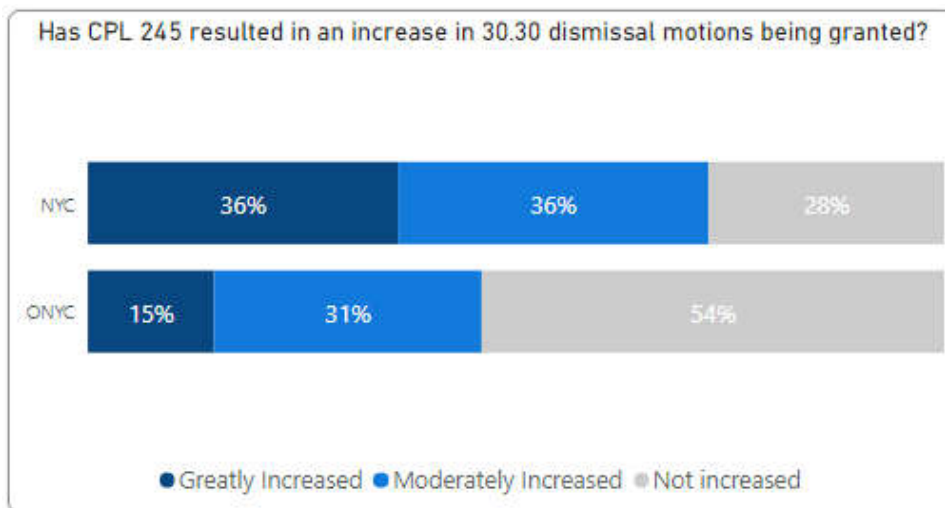
- NYC and ONYC reported using both *Continuance* (81% and 75%, respectively) and *further discovery order* (91% and 61%, respectively) sometimes or often as the sanction for discovery non-compliance.
- *Mistrial* was cited as never being used by both NYC and ONYC judges (94% and 97%, respectively) as a discovery sanction for non-compliance.



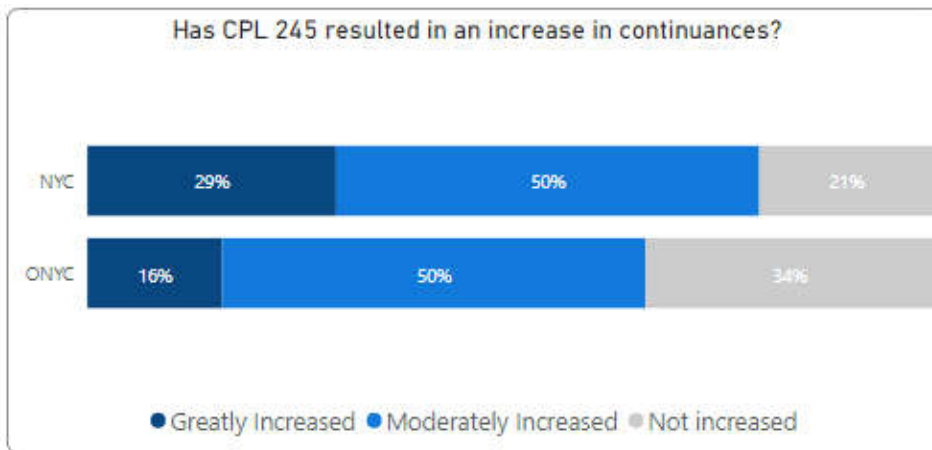
- NYC respondents were more likely than their ONYC counterparts to use *adverse inference charge* as a sanction for non-compliance. (60% of NYC judges said they had never used this compared to 80% of the ONYC judges).



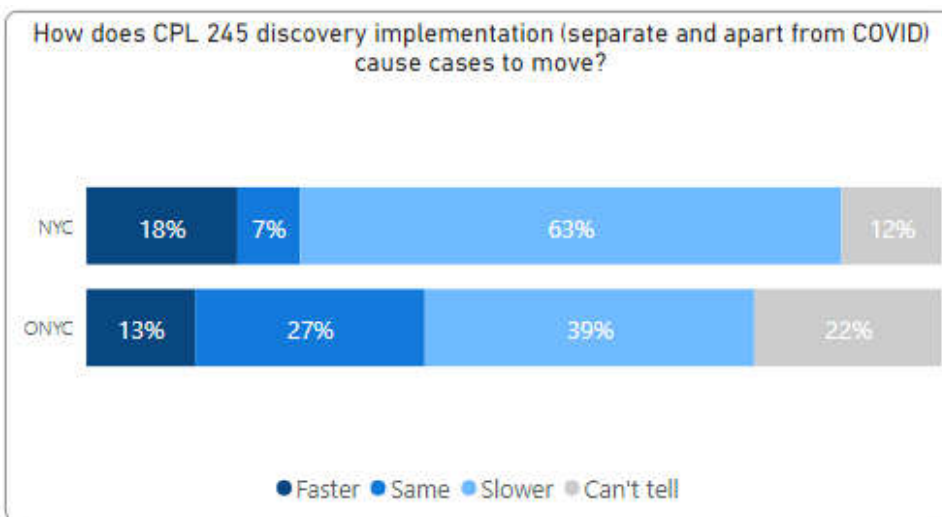
- The majority of both NYC and ONYC judges reported that the discovery legislation has not led to an increase in *30.30 release motions being granted* (52% and 60%, respectively).
- 48% of the NYC judges reported a great or moderate increase in *30.30 release motions being granted* whereas 40% of the ONYC judges reported this.



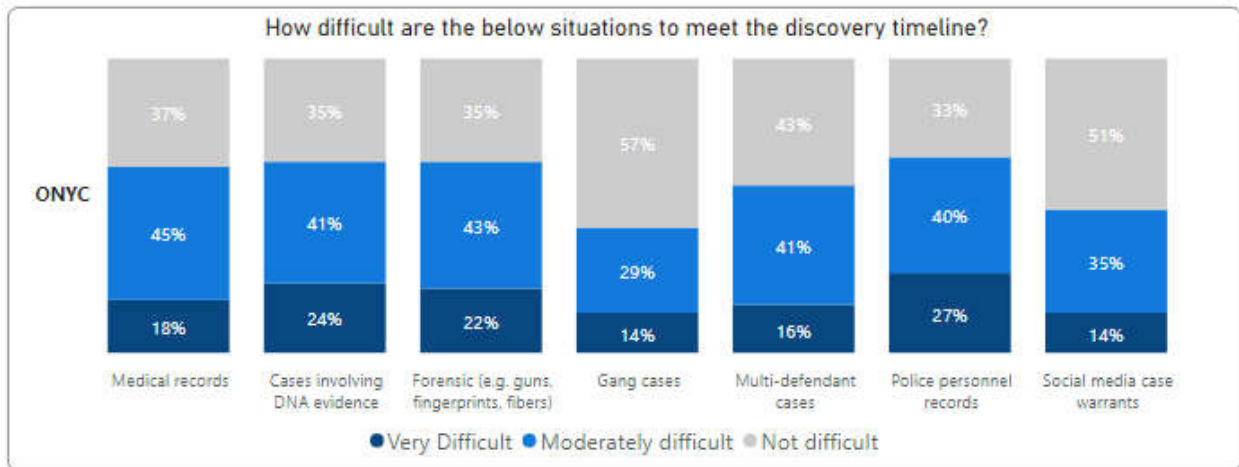
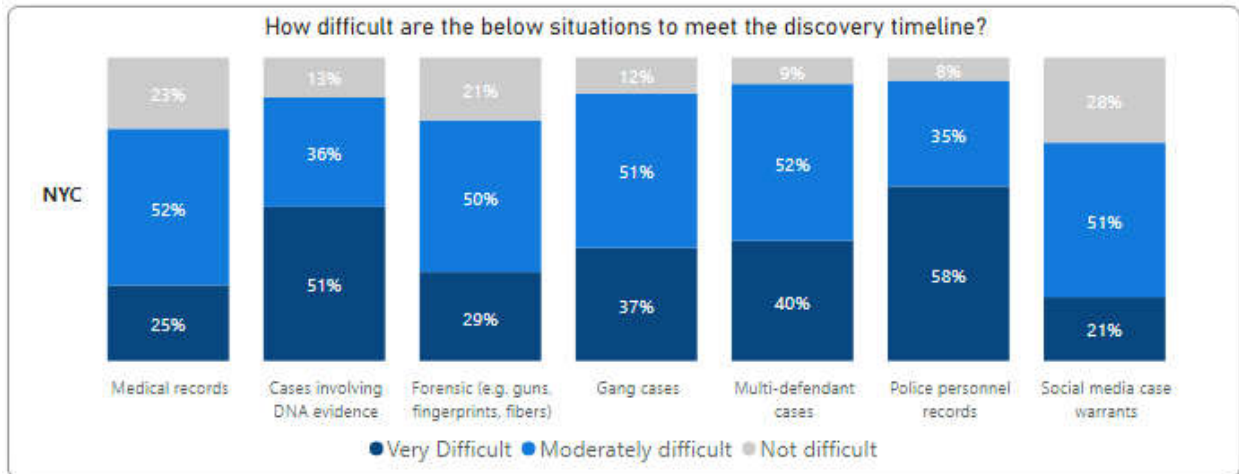
- While more than one-third (36%) of NYC respondents reported a great increase in *30.30 dismissal motions being granted*, with another one-third (36%) reporting a moderate increase, the majority of ONYC judges (54%) indicated that the discovery legislation did not increase the number of *30.30 dismissal motions being granted*.



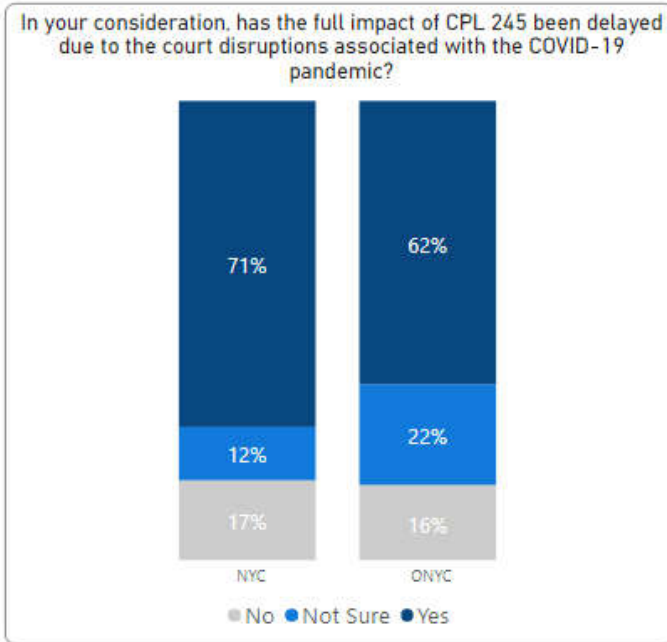
- While the majority of both NYC and ONYC survey respondents indicated that the discovery legislation greatly or moderately increased the number of continuances, this increase was greater in NYC (nearly 80%) while ONYC the increase was 66%.



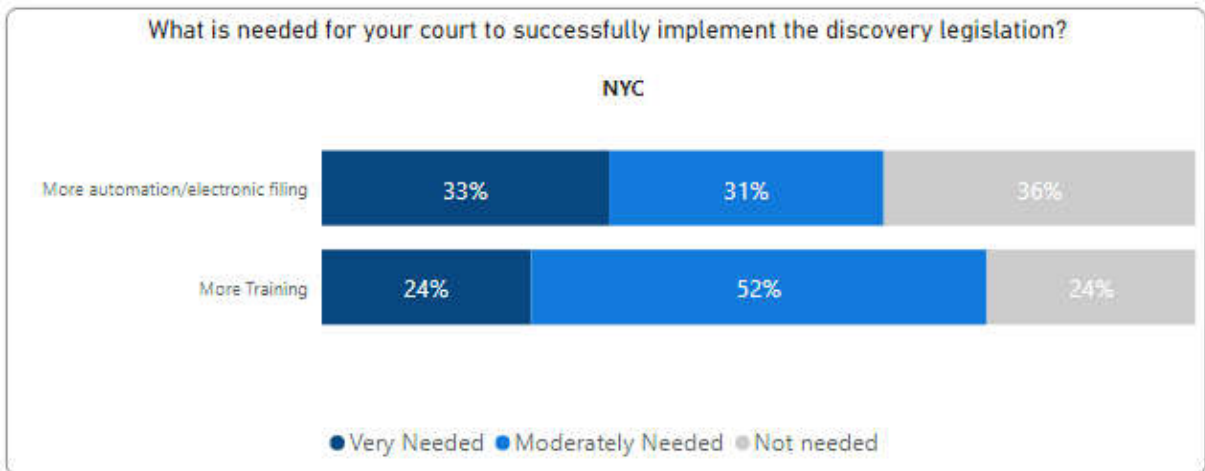
- The majority of responses from NYC (63%) revealed a belief that the discovery legislation has led to slower case processing compared to 39% ONYC.
- 18% of NYC and 13% of ONYC respondents said that the discovery legislation has led to faster case processing.

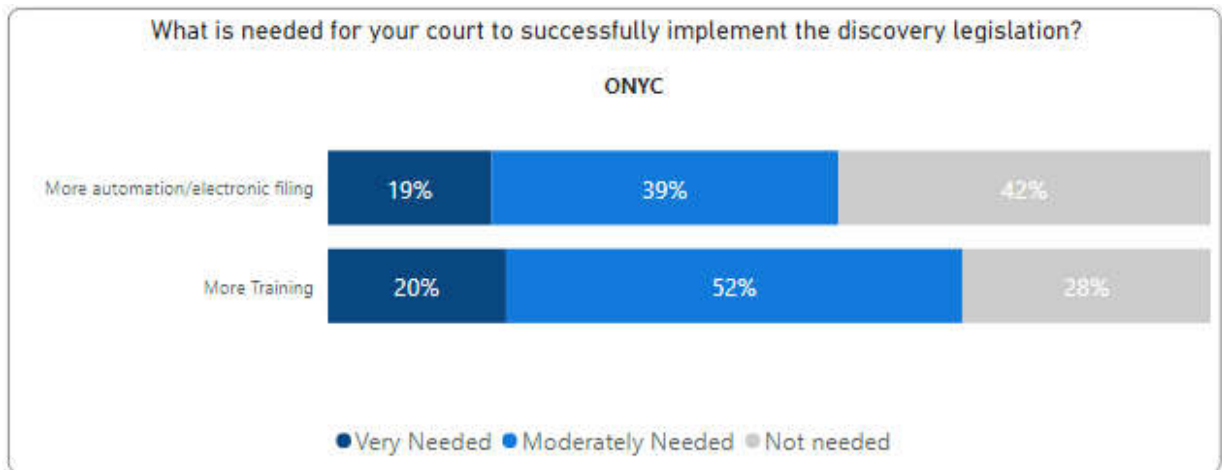


- The top scenarios reported by both NYC and ONYC resulting in discovery compliance being very difficult were obtaining *police personnel records* (58% and 27%, respectively) and *cases involving DNA evidence* (51% and 24%, respectively).
- Overall, ONYC respondents indicated, more so than NYC respondents, that all the scenarios presented no difficulties in meeting discovery timelines.



- The vast majority of both NYC and ONYC judges (71% and 62%, respectively) believe the full impact of the discovery legislation has been delayed because of COVID-19.





- The majority of NYC and ONYC respondents (76% and 72%, respectively) said *more training* is needed for their court to successfully implement the discovery legislation.
- Similarly, the majority of NYC and ONYC respondents (64% and 58%, respectively), indicated a need for *more automation/electronic filing* to be able to successfully implement the discovery legislation.

### Summary

The results overall indicate more challenges with the discovery legislation in NYC than ONYC. This may in part be due to differing challenges in supreme court versus local courts.

The COVID-19 pandemic has delayed the full impact of the discovery legislation (CPL 245), as indicated by a majority of judges who responded to this survey. A majority of judges across the state reported an increase in time spent on the bench and in chambers due to the discovery legislation, with the greatest increase reported by NYC respondents. While a majority of respondents across the state indicated that CPL 245 resulted in an increase in continuances, less than half of respondents ONYC reported that the legislation caused their cases to move more slowly. This contrasts with almost two-thirds of respondents in NYC who indicated the legislation has caused a slowdown.

Given the impacts of COVID-19 and the fact that the legislation is still early in the implementation phase, it remains to be seen if the perceived disparities in case processing time will continue.

### Discovery Court Activity Dashboard

[Click on this link](#) for data on case outcomes related to the discovery legislation.