

2023 JUDICIARY
ANNUAL REPORT ON THE
IMPLEMENTATION AND
IMPACT OF CPL ARTICLE 245

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CHIEF ADMINISTRATIVE JUDGE

FEBRUARY 21, 2024



NEW YORK STATE UNIFIED COURT SYSTEM

Discovery Judicial Survey Report 2023

Introduction

State Judiciary Law Section 216(6) requires the Office of Court Administration (OCA) and state Division of Criminal Justice Services (DCJS) to report annually on the impact of the state's Discovery Law (CPL 245). [This online Discovery Reform Dashboard](#) is publicly available and satisfies this requirement by displaying information regarding caseload activities and speedy trial dismissals across NYS courts. This report provides additional information on issues and challenges which, from the judiciary's perspective, impact ongoing implementation of discovery reform.

The third annual discovery reform judicial survey was distributed in the Fall of 2023 and covers the previous 12-month time period. There were 751 surveys received, with 117 from judges in NYC and 634 from judges outside NYC (ONYC). Because town and village judges were included in the survey's distribution, a much larger number of surveys were distributed ONYC as compared with NYC.

Of those surveys received from NYC, 22 respondents said they did not hear a criminal discovery application in the last 12 months, while 370 of respondents from ONYC indicated not hearing such applications across the same time period. Therefore, the findings throughout the report are based on the remaining 359 respondents (95 from NYC, 264 from ONYC) across 54 out of 62 of New York State's counties, who said they heard a criminal discovery application in the last 12 months.

Survey questions were organized into the following topical areas:

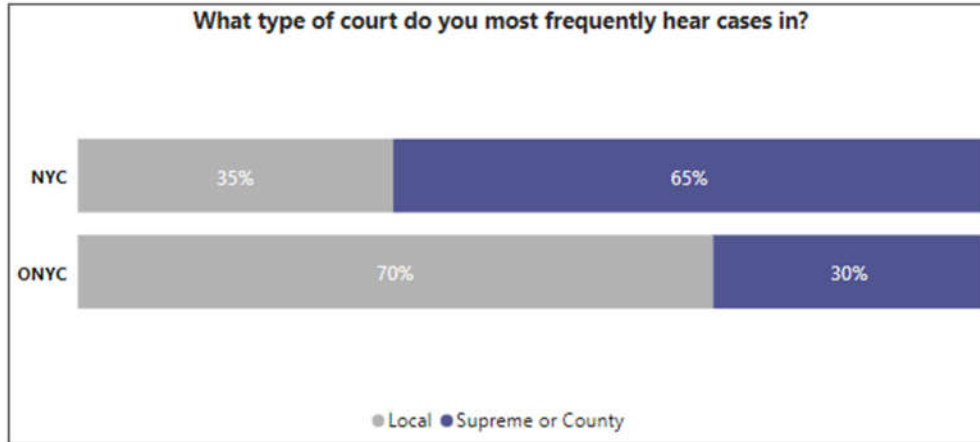
- Respondent location and court type
- Judge and staff time impact of discovery implementation
- Challenges of specific aspects of discovery
- Results and reasons for discovery not being met
- Additional needs for successful implementation

Survey Results

Notes:

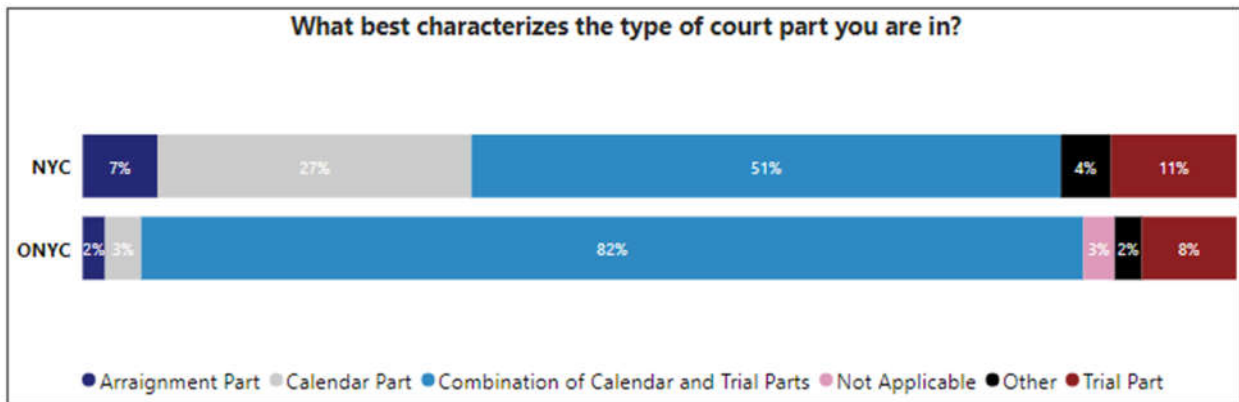
- Some of the percentages in the tables below add up to more than 100% due to rounding.
- Visualizations may not display the percentage when it is less than three percent.
- In some instances, the totals do not add up to 359 (total number of respondents) as some respondents left some questions blank. The percentages are based on the total number of respondents who answered a particular question.

Figure 1
Most Frequent Court Type Where Cases are Heard



- In NYC, a majority (65%) of survey responses were Supreme Court judges while ONYC, most responses (70%) were from local court judges (i.e., city, district, and town & village courts).

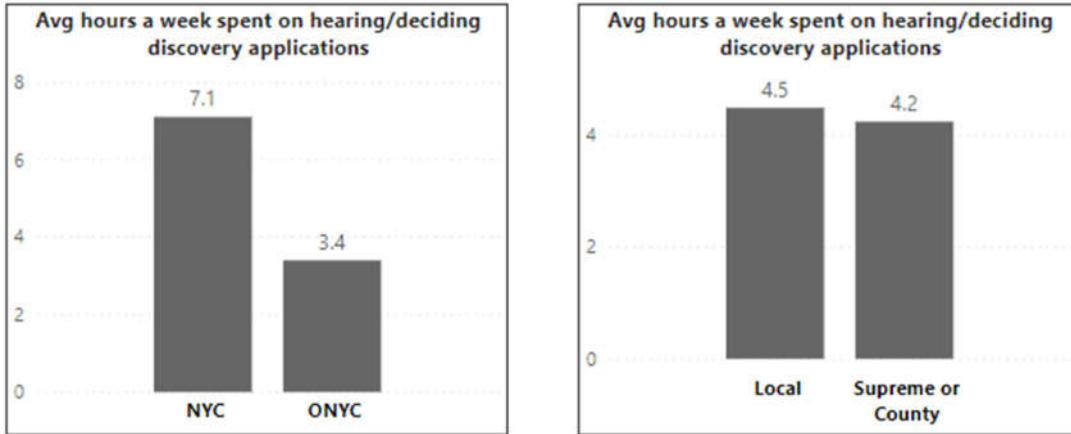
Figure 2
Court Type Part



- In both NYC and ONYC, most of the respondents who heard discovery applications in the last 12 months sat in the calendar and trial parts.

Figures 3 and 4

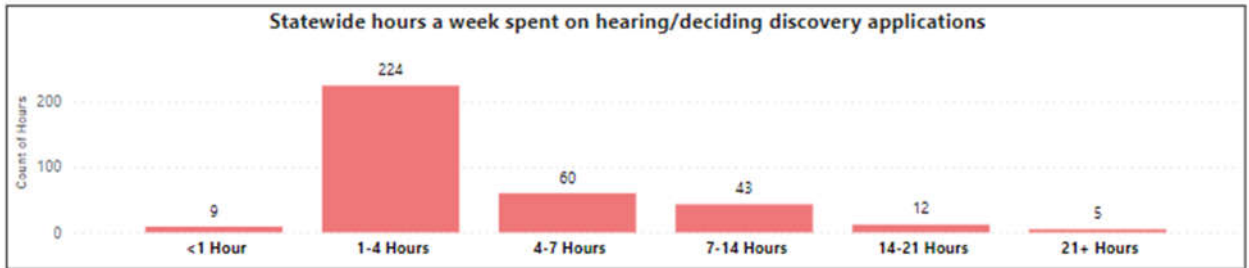
Judges' Average Hours a Week Hearing/Deciding Discovery Applications



- NYC judges reported that the legislation has led to spending slightly more than seven hours per week hearing and deciding discovery application, whereas judges ONYC reported spending about half the amount of time (almost 3.5 hours per week) reviewing these applications (Figure 3).
- In previous years, the Supreme/County Court judges reported spending more time than the local court judges on hearing/deciding discovery applications. However, in the last 12 months, the local and Supreme/County court judges report spending almost equal time on discovery applications (Figure 4).

Figure 5

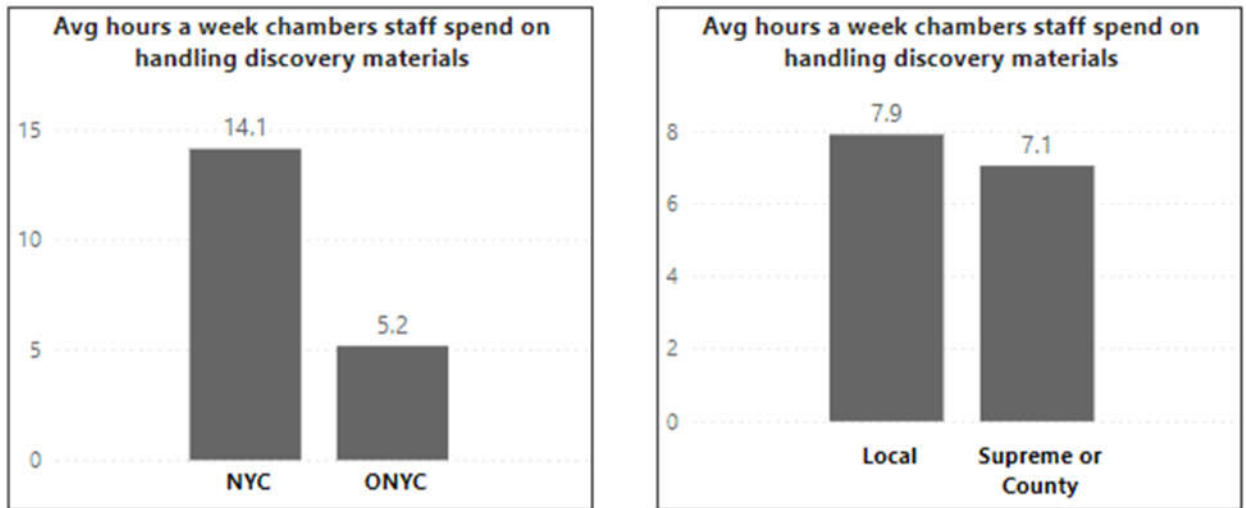
Judges' Statewide Hours a Week Hearing/Deciding Discovery Applications



- Statewide, judges reported spending a range of less than one hour to 21+ hours per week hearing/deciding discovery applications. Most judges (63%) reported spending an average of 1-4 hours per week on this task while 3% reported spending less than one hour. The remaining 34% indicated spending between four hours and 21+ hours per week on discovery applications.

Figures 6 and 7

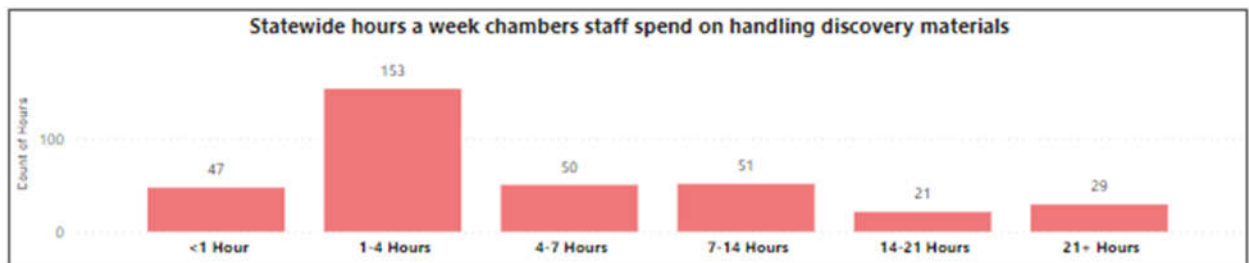
Chamber Staff Average Hours a Week Hearing/Deciding Discovery Applications



- Consistent with judges' average hours a week hearing/deciding discovery applications presented in Figure 3, NYC chamber staff spends approximately 2.5 times more hours per week on discovery work than ONYC chamber staff (Figure 6).
- Similar to the trend shown in Figure 5, the local and Supreme/County courts chambers staff report spending almost equal time on discovery applications in the last 12 months, when in previous years Supreme/County Court chambers staff reported spending more time than the local court judges on such applications (Figure 7).

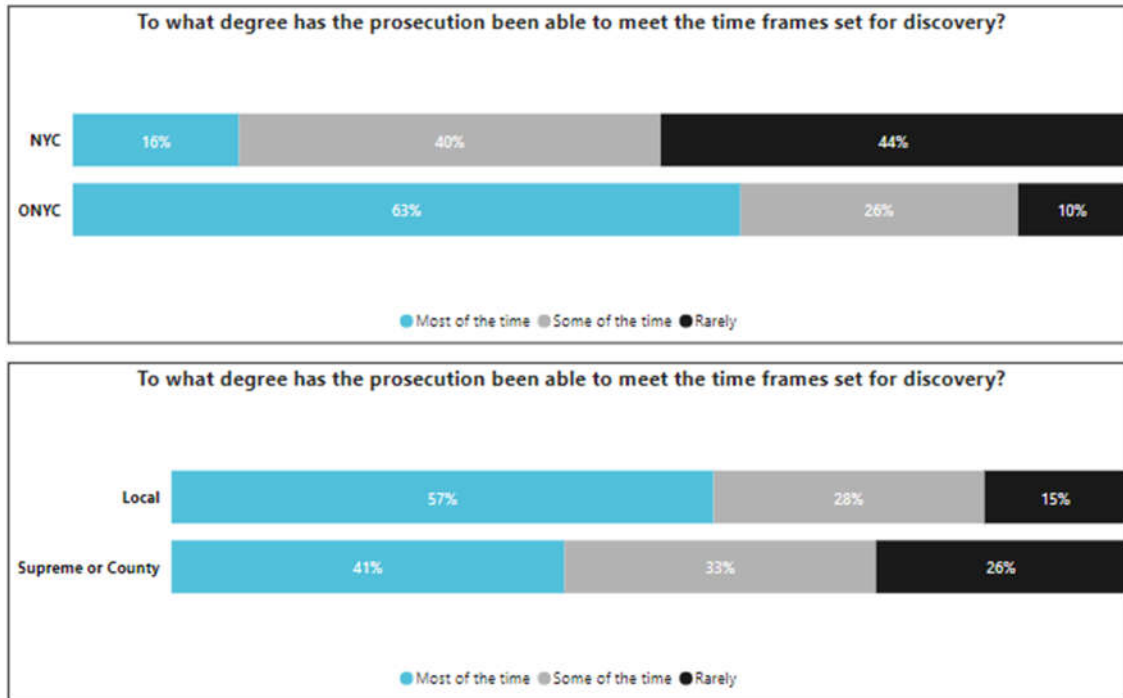
Figure 8

Chamber Staff Statewide Hours a Week Hearing/Deciding Discovery Applications



- Statewide, 44% of respondents reported that chamber staff spend 1-4 hours per week on discovery work, while 13% indicated their chamber staff spends less than an hour per week on this work. The remaining 43% of respondents indicated their chamber staff spends between four and 21+ hours per week on discovery materials.

Figures 9 and 10
Degree Prosecution Meets Time Frames for Discovery



- Only 16% of the judges in NYC reported that discovery obligations were met by the prosecution most of the time compared to the majority (63%) of ONYC judges. Conversely, 84% of the NYC judges reported discovery obligations were only rarely or sometimes met by the prosecution, while 36% of the judges ONYC reported the prosecution rarely or only sometimes meet these obligations (Figure 9).
- The majority of the local court judges (57%) reported that the prosecution meets their discovery obligation most of the time compared to 41% of Supreme/County court judges. Less than a majority (43%) of the local court judges said that discovery obligations were only rarely or sometimes met compared with a majority (59%) of the Supreme/County court judges who indicated the same (Figure 10).

Figure 11
Time Consuming Components of Discovery Legislation, by Court Location

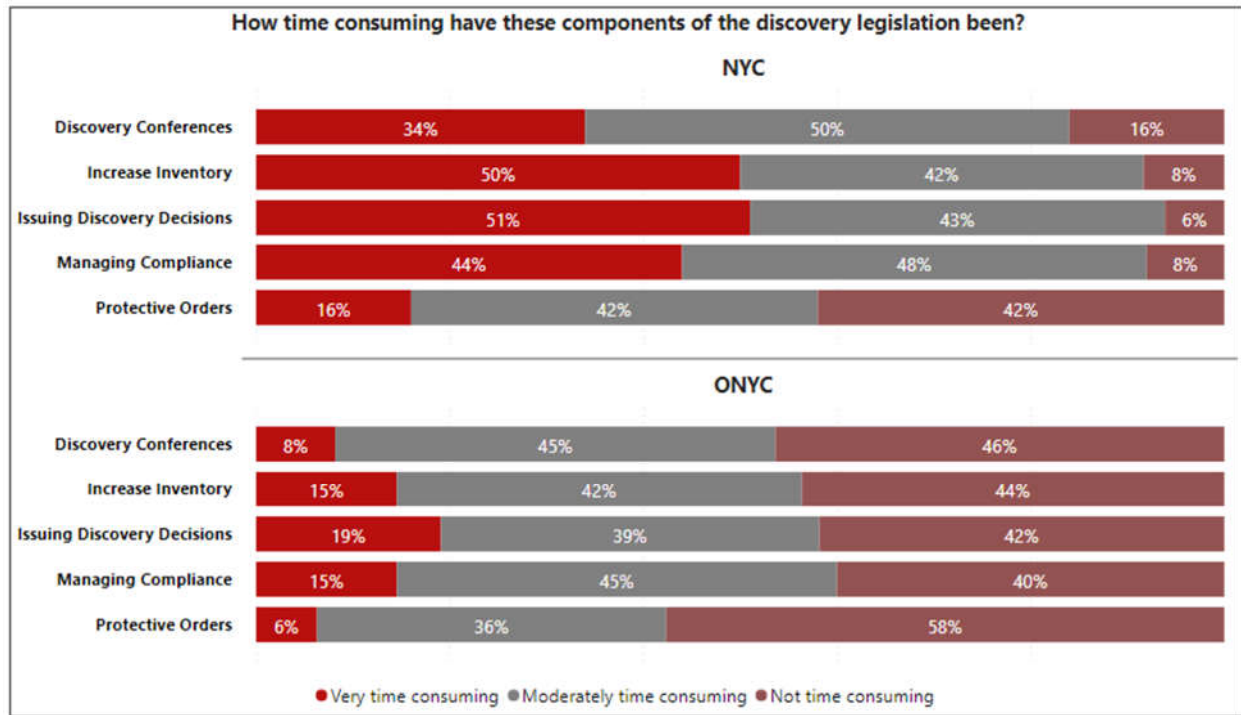
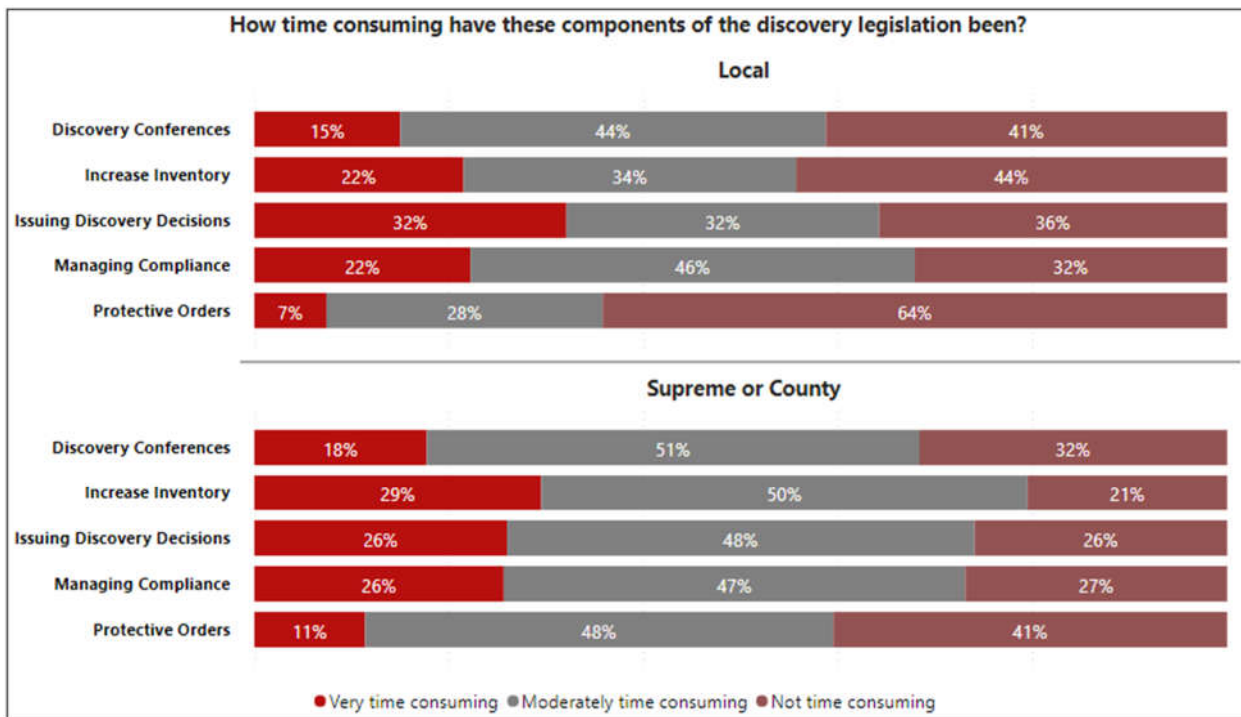


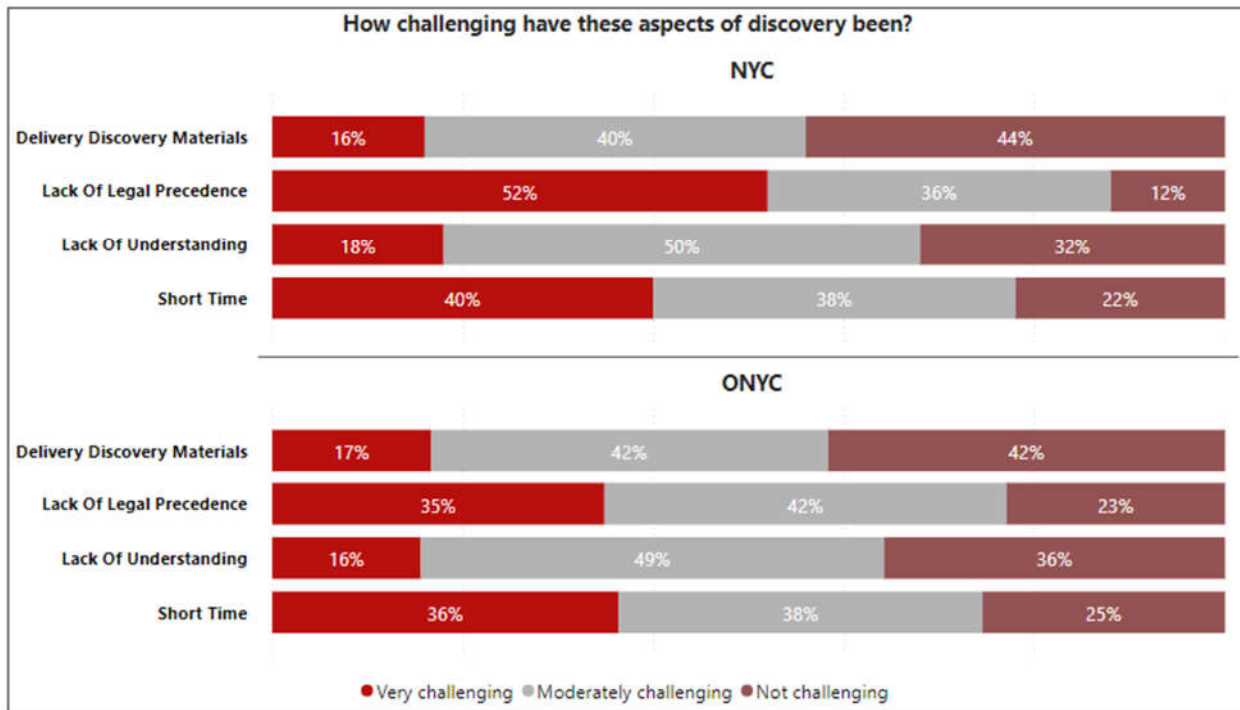
Figure 12
Time Consuming Components of Discovery Legislation, by Judge Type



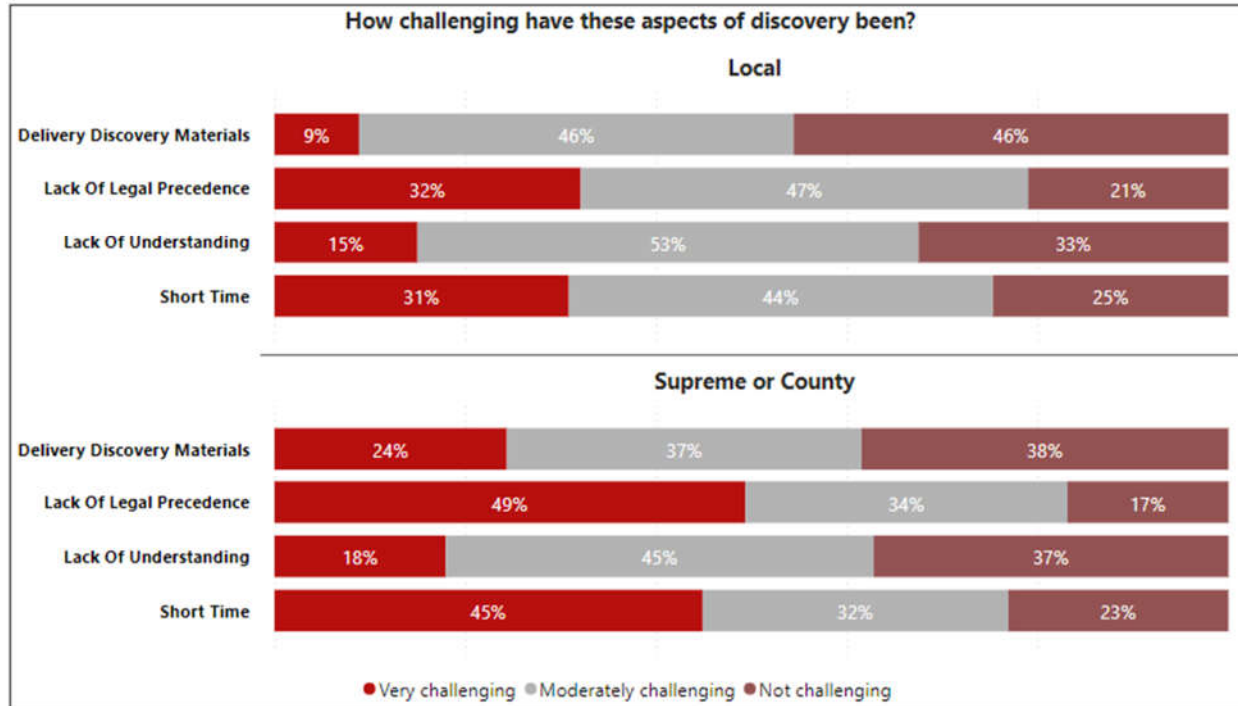
- NYC judges reported with much greater frequencies than ONYC judges that discovery conferences, increased inventory, issuing discovery decisions, managing discovery compliance and protective orders were very time consuming (Figure 11).

- For both NYC and ONYC, issuing discovery decisions was most frequently reported to be the most time consuming of compared to the other categories of discovery reform asked about (51% and 19% of respondents, respectively), although more than double the number of NYC judges reported this to be the case compared to those ONYC (Figure 11).
- For both NYC and ONYC, the handling of protective orders was most frequently reported to be the least time consuming of the discovery-related work (42% and 55%, respectively) (Figure 11).
- When the responses are examined by judge type, the results for local court judges are similar to judges both in NYC and ONYC, in that these groups reported that issuing discovery decisions as the most time consuming of their discovery-related work compared to other components. However, Supreme/County judges' most frequently reported increasing inventory to be their very time consuming discovery component (Figure 12).

Figures 13
Challenging Aspects of Discovery, by Court Location



Figures 14
Challenging Aspects of Discovery, by Judge Type



- With the exception of *method of delivery of discovery material*, NYC respondents reported all issues related to the implementation of discovery (i.e., *short time frames for implementation, lack of legal precedent to base decisions* and *lack of knowledge/understanding surrounding the new statute*) were somewhat more challenging in implementing the discovery legislation than reported by ONYC respondents. Both NYC and ONYC respondents reported almost equally that the *method of delivery of discovery material* was very or moderating challenging (56% and 59%, respectively) (Figure 13).
- 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 (35%), *lack of legal precedent* was still among the most frequent categories cited as being very challenging to the implementation of the discovery legislation, with short time frames for implementation being mentioned slightly more (36%) (Figure 13).
- Supreme/County court judges reported all issues related to the implementation of discovery were more challenging than their local court counterparts (Figure 14).
- Both Supreme/County and local judges reported that *lack of legal precedent to base decisions* is the most challenging aspect of the discovery legislation (49% and 32%, respectively) (Figure 14).
- The *method of delivery of discovery materials* was cited by local court judges as being the least challenging aspect of discovery reform implementation (9%) while the Supreme/County judges said that *lack of knowledge/understanding surrounding the new statute* was the least challenging aspect of discovery implementation (18%) (Figure 14).

Figure 15
Common Reasons Discovery was not met, by Court Location

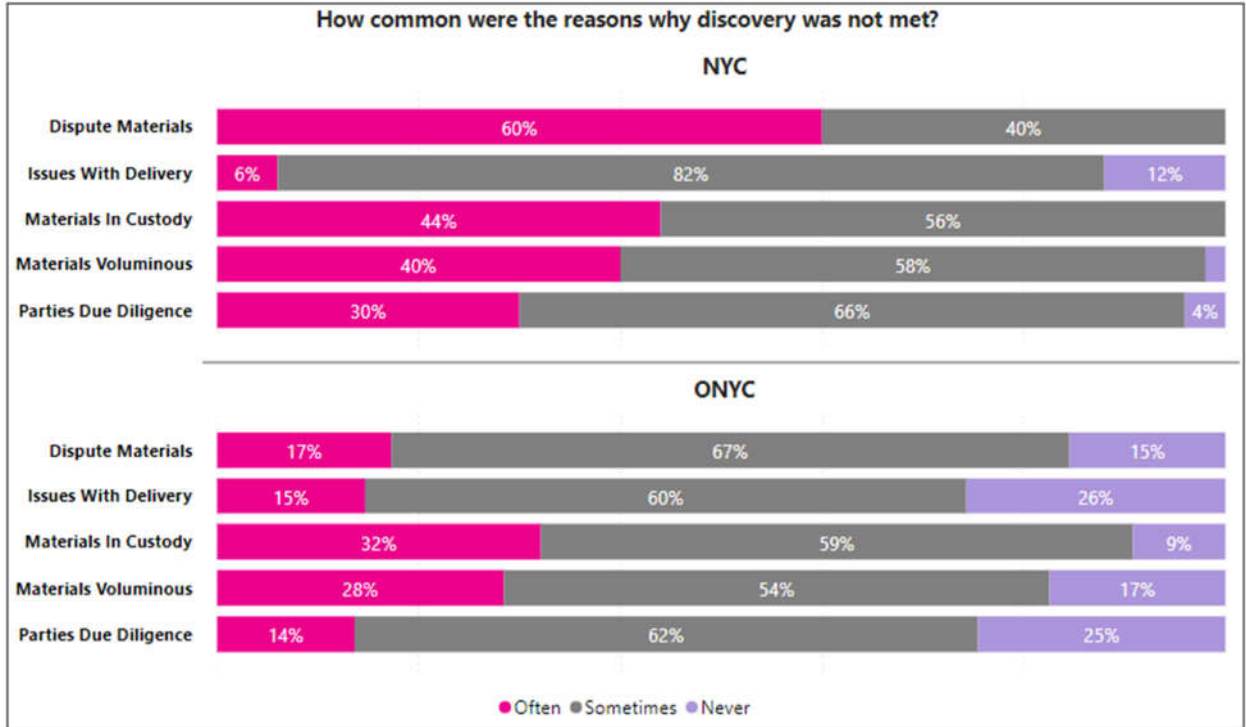
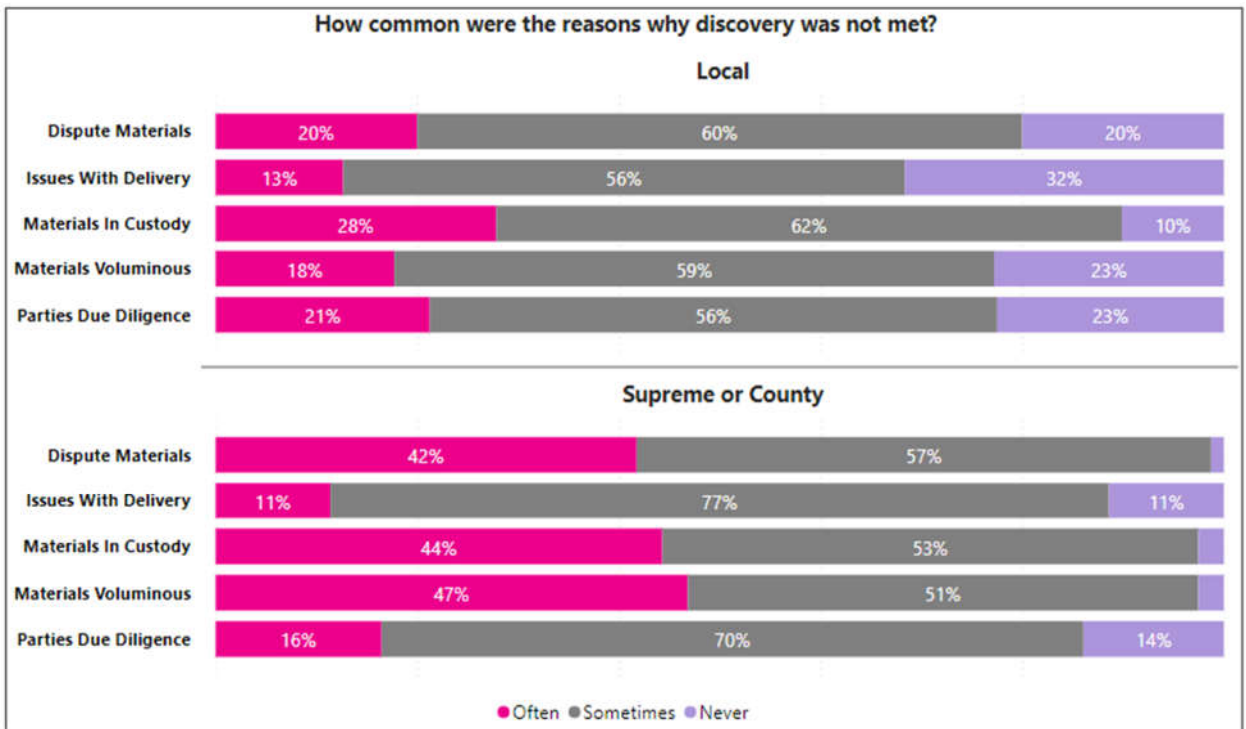


Figure 16
Common Reasons Discovery was not met, by Judge Type



- 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: *dispute over whether materials are discoverable, discoverable materials being voluminous, parties had not acted with due diligence or materials otherwise not in the prosecution's control or custody* (Figure 15).
- Conversely, ONYC judges were generally more likely to report the reasons above never impacted discovery from being met (Figure 15).
- The most common reason cited by NYC judges for discovery often not being met was *dispute over whether the materials are discoverable* (60%). Only 17% of the ONYC judges cited this as the reason discovery was often not met (Figure 15).
- The most common reason cited ONYC for discovery often not being met was *materials otherwise not in the prosecution's custody or control* (32%) (Figure 15).
- Supreme/County court judges reported with greater frequency than local court judges that *discoverable materials being voluminous, materials otherwise not in the prosecution's control or custody* and *dispute over whether materials are discoverable* are the reasons discovery is often not met. Local court judges were more likely than Supreme/County judges to report that *parties had not acted with due diligence* (21% versus 16%, respectively) and *issues with delivery of discoverable material* (13% versus 11%, respectively) were the reasons discovery was often not met (Figure 16).

Figure 17
Imposition of Discovery Sanctions for Non-Compliance, by Court Location

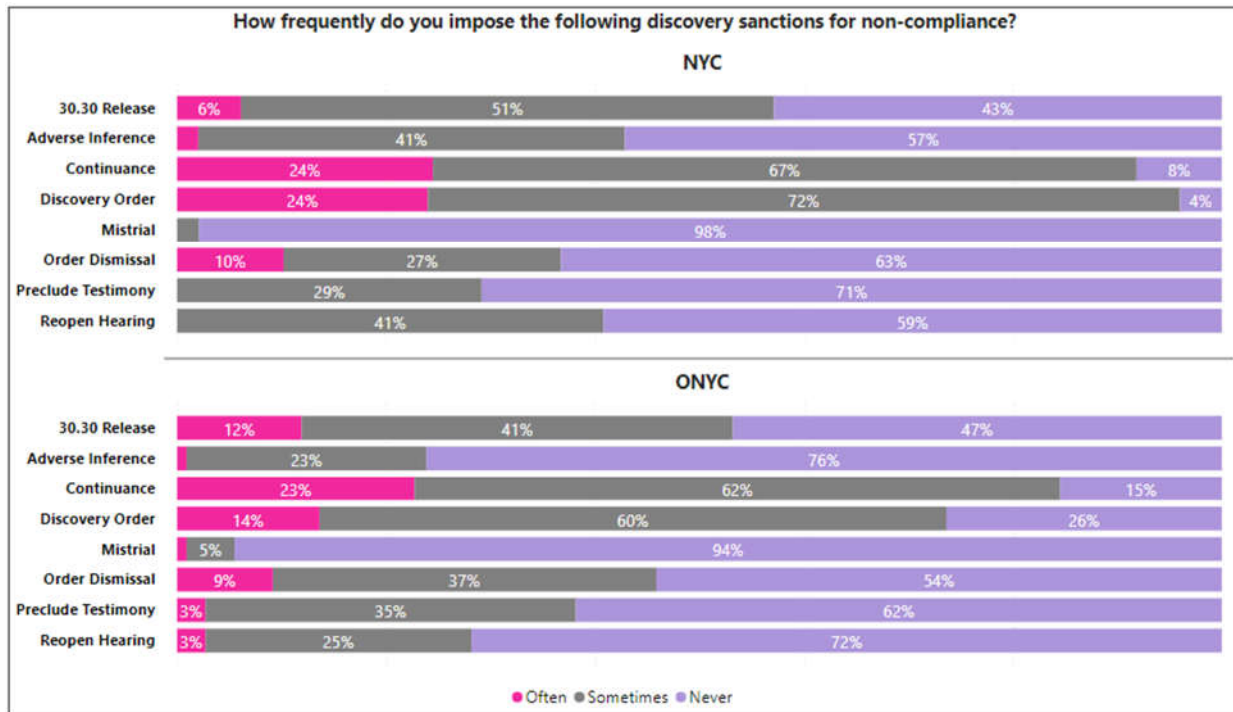
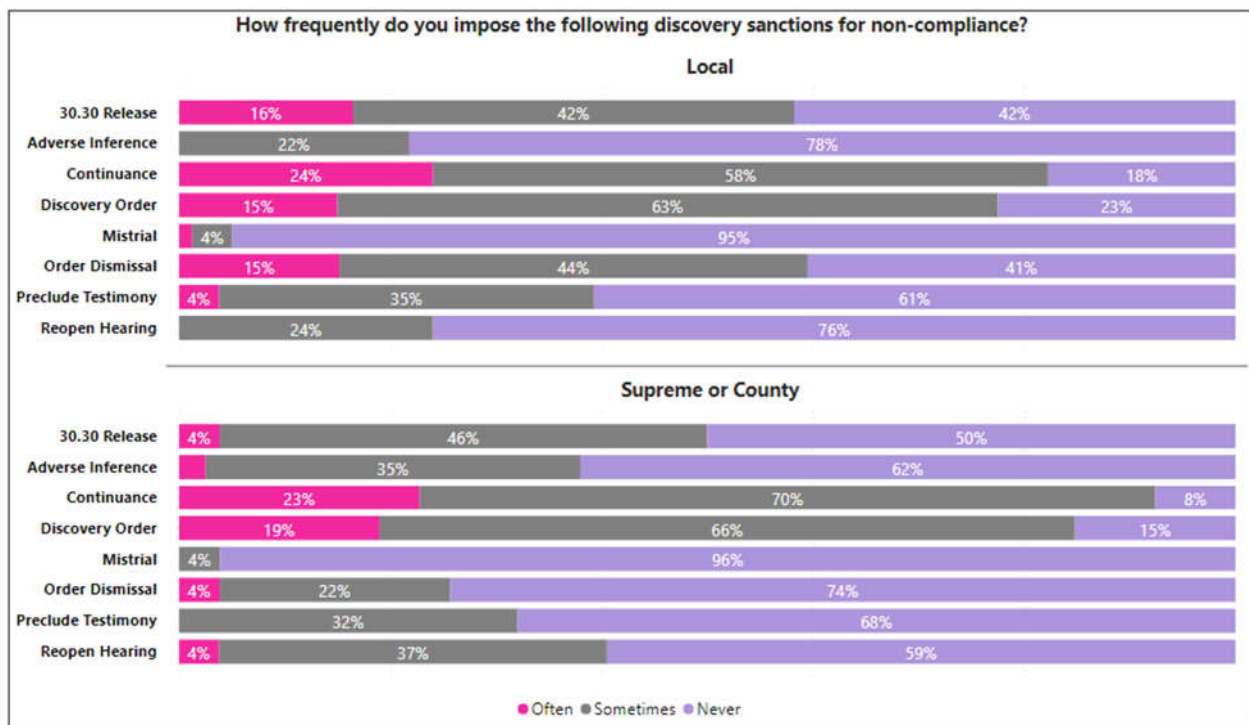
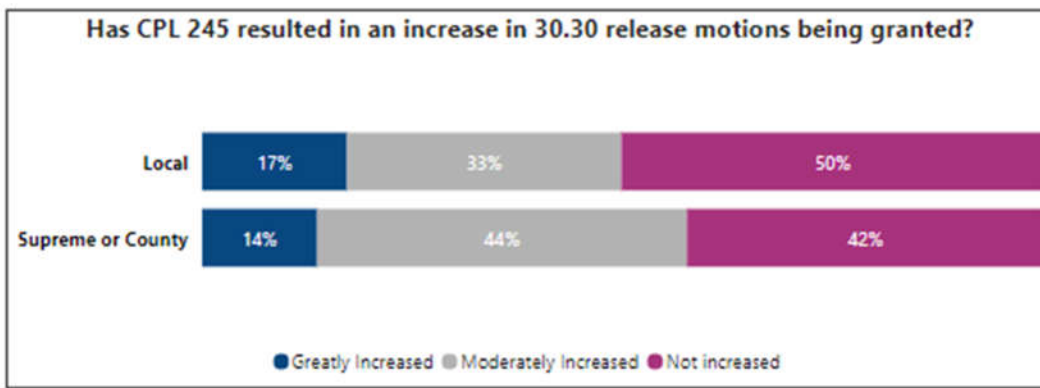
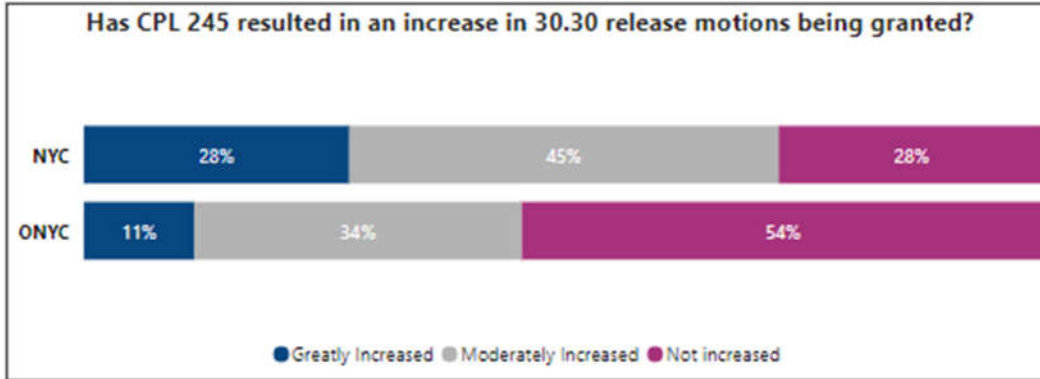


Figure 18
Imposition of Discovery Sanctions for Non-Compliance, by Judge Type



- Most judges in NYC and ONYC reported using both *continuances* (91% and 85%, respectively) and *further discovery orders* (96% and 74%, respectively) often or sometimes as the sanction for discovery non-compliance (Figure 17).
- *Mistrials* were cited as never being used as a discovery sanction for non-compliance by the vast majority of both NYC and ONYC judges (98% and 94%, respectively) (Figure 17).
- NYC respondents indicated they were more likely than their ONYC counterparts to use *adverse inference charge* as a sanction for non-compliance. More specifically, 57% of NYC judges said they had never used this compared to 76% of the ONYC judges (Figure 17).
- Supreme/County and local court judges reported using both *continuances* (93% and 82%, respectively) and *further discovery orders* (85% and 78%, respectively) often or sometimes as the sanction for discovery non-compliance (Figure 18).
- Similar to the results by court location in Figure 17, *mistrials* were cited as never being used as a discovery sanction for non-compliance by a large majority of both Supreme/County and local court judges (96% and 95%, respectively) (Figure 18).
- Supreme/County court judges indicated they were more likely than their local court counterparts to use *adverse inference charges* as a sanction for non-compliance. Specifically, 62% of Supreme/County judges said they had never used this compared to 78% of the local court judges (Figure 18).

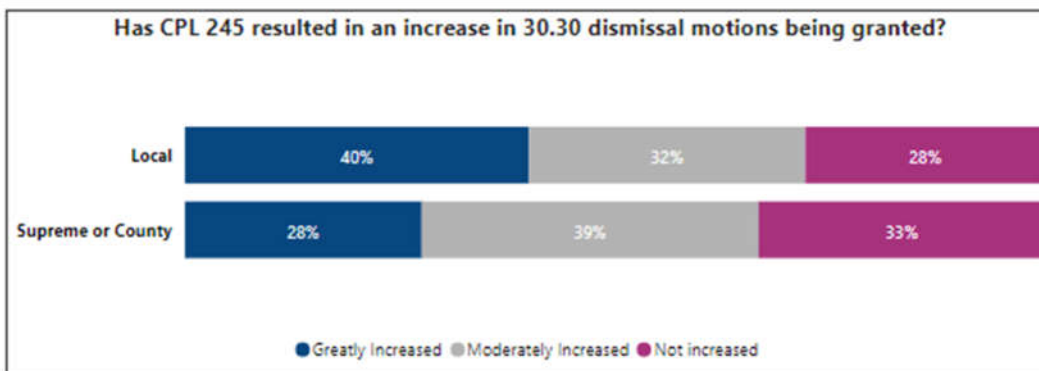
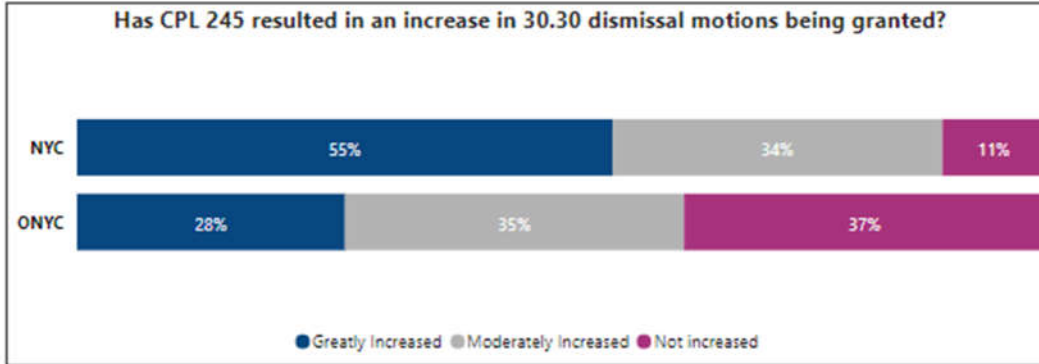
Figures 19 and 20
CPL 245 increases in Granting of 30.30 Release Motions



- The majority of NYC judges (73%) reported that the discovery legislation (CPL 245) has greatly or moderately led to an increase in 30.30 release motions being granted compared with the majority of ONYC judges (54%) who said that that the discovery legislation has *not* caused an increase in these motions being granted (Figure 19).
- Like NYC judges, the majority (58%) of Supreme/County judges reported that the discovery legislation has greatly or moderately increased 30.30 release motions being granted. Local judges were split as to whether discovery legislation has caused an increase in these motions being granted.

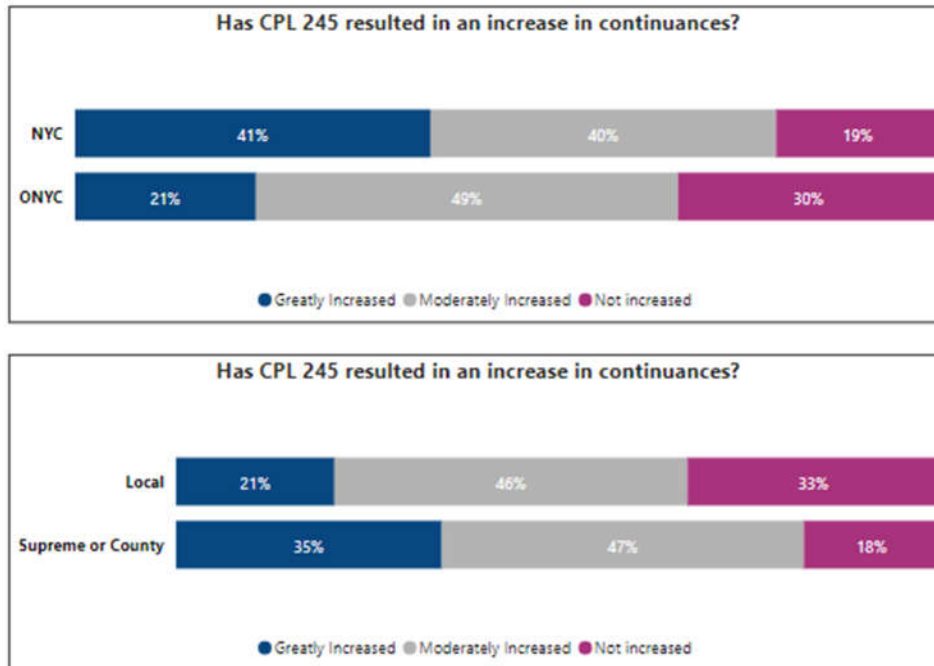
Figures 21 and 22

CPL 245 Increases in Granting of 30.30 Dismissal Motions



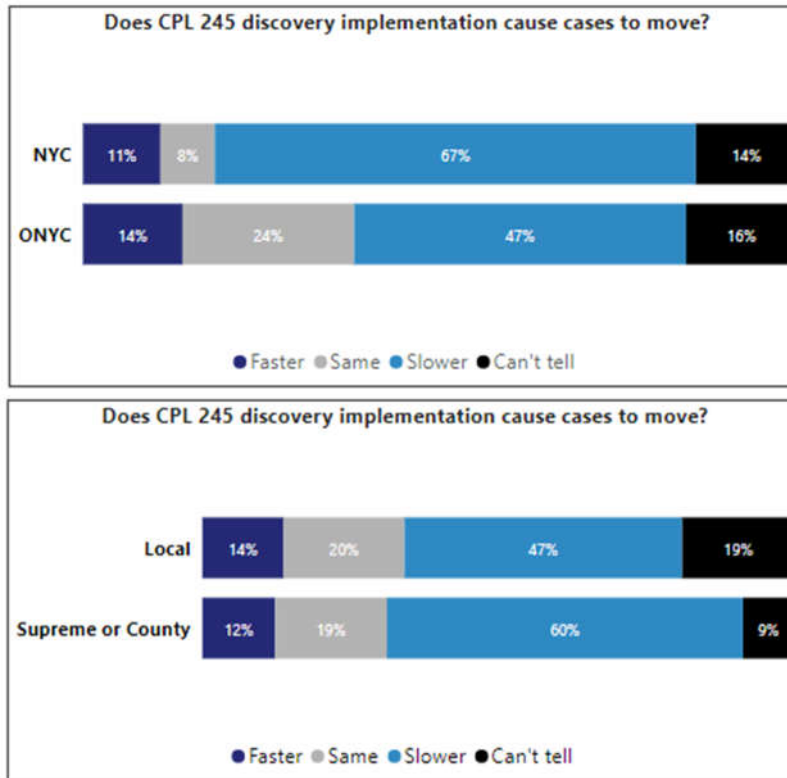
- While 55% of NYC respondents reported that 30.30 dismissal motions being granted greatly increased under the discovery legislation, one-third (34%) reported a moderate increase, amounting to a total of 89% of NYC respondents who saw any increase. Conversely, ONYC judges indicated that the discovery legislation did *not* lead to an increase in the number of 30.30 dismissal motions being granted more frequently than NYC judges. Only 28% of ONYC judges reported that 30.30 dismissal motions being granted greatly increased and another 35% reported a moderate increase, a total of 63% of respondents (Figure 21).
- Supreme/County judges reported slightly more than local court judges (33% and 28%, respectively) that the legislation did not increase 30.30 dismissal motions being granted, similar to judges ONYC (37%). Results displayed by both judge types overall indicated that there was a great or moderate increase in 30.30 dismissal motions being granted (67% of Supreme/County judges and 72% of local judges) (Figure 22).

Figures 23 and 24
CPL 245 Increases in Continuances



- Both the majority of NYC and ONYC (81% and 70%, respectively) survey respondents indicated that the discovery legislation greatly or moderately increased the number of continuances (Figure 23).
- As with court location, the majority of both the Supreme/County and local court judges (82% and 67%, respectively) also reported that the discovery legislation greatly or moderately increased continuances (Figure 24).

Figures 25 and 26
Discovery Implementation as Cause of Case Movement



- The majority of NYC judges (67%) indicated that the discovery legislation has led to slower case processing compared to 47% of respondents ONYC (Figure 25). This trend is also reflected across judge type, with most Supreme/County judges (60%) responding that the discovery legislation has led to slower case processing compared to 47% of the local court judges (Figure 26).
- Few NYC and ONYC judges (11% and 14%, respectively) said that the discovery legislation has led to faster case processing (Figure 25). Similarly, 12% of Supreme/County and 14% of local court judges reported that the discovery legislation has led to faster case processing (Figure 26).

Figure 27
Difficulty in Meeting Discovery Timeline, by Court Location

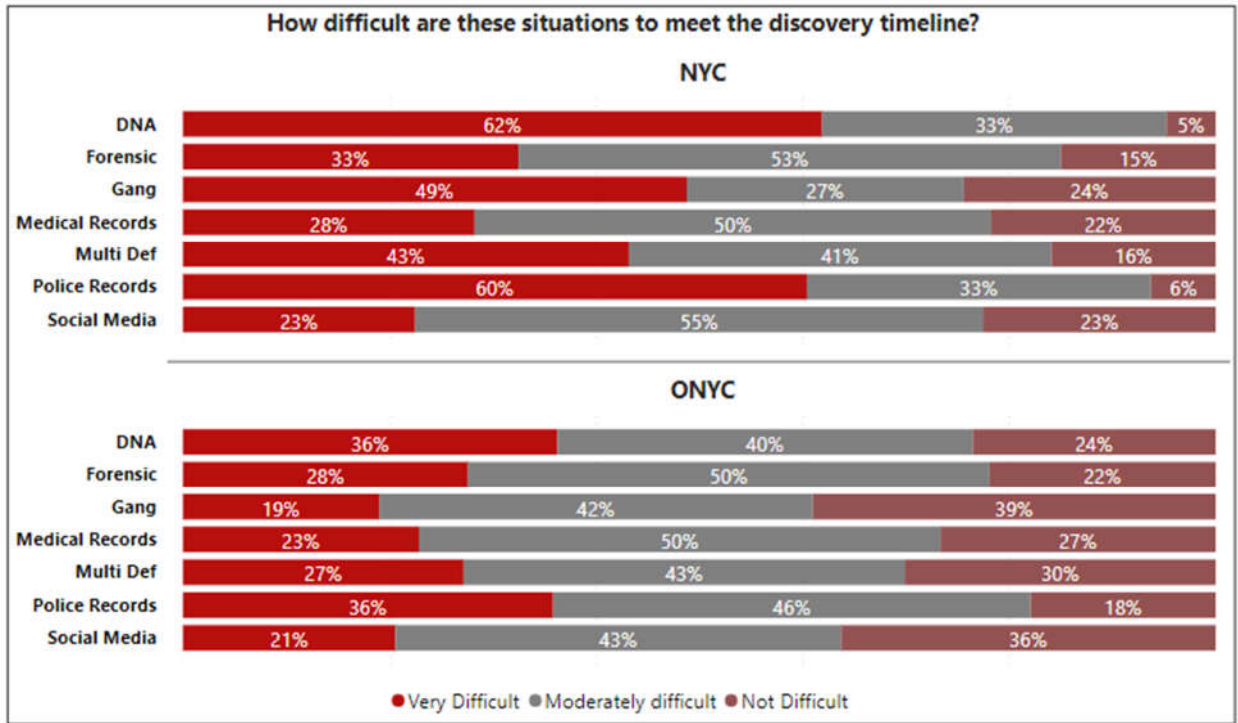
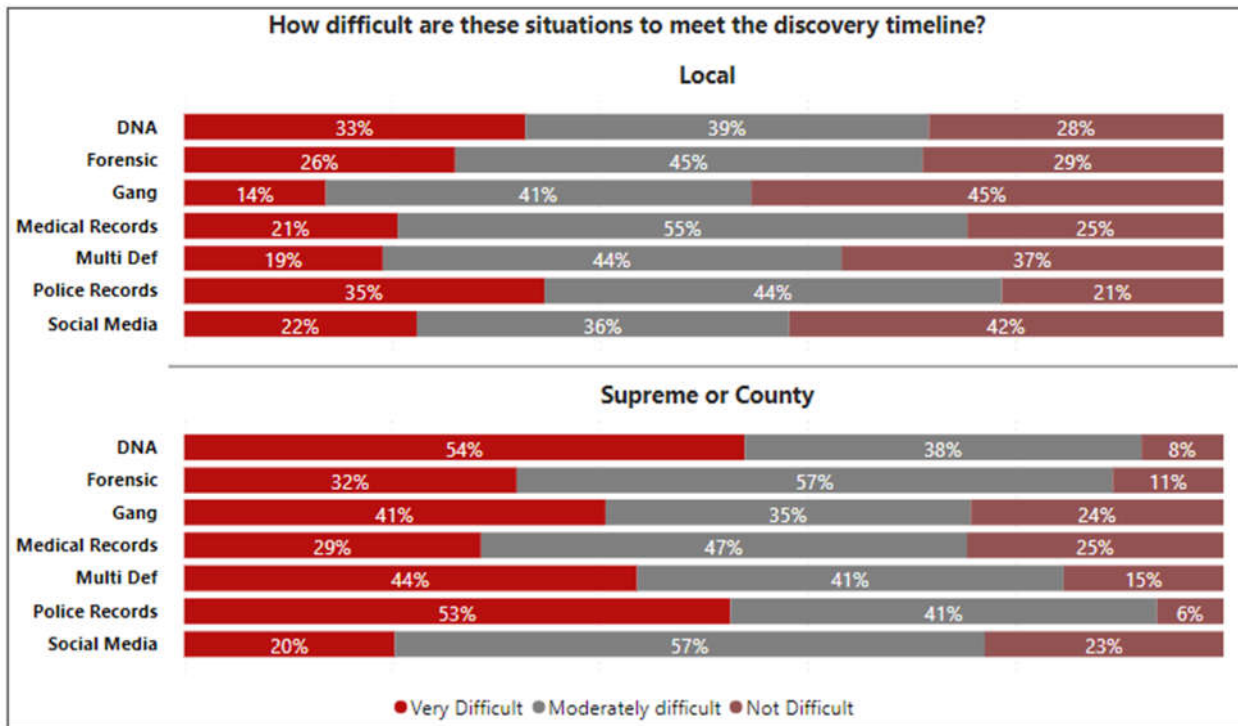
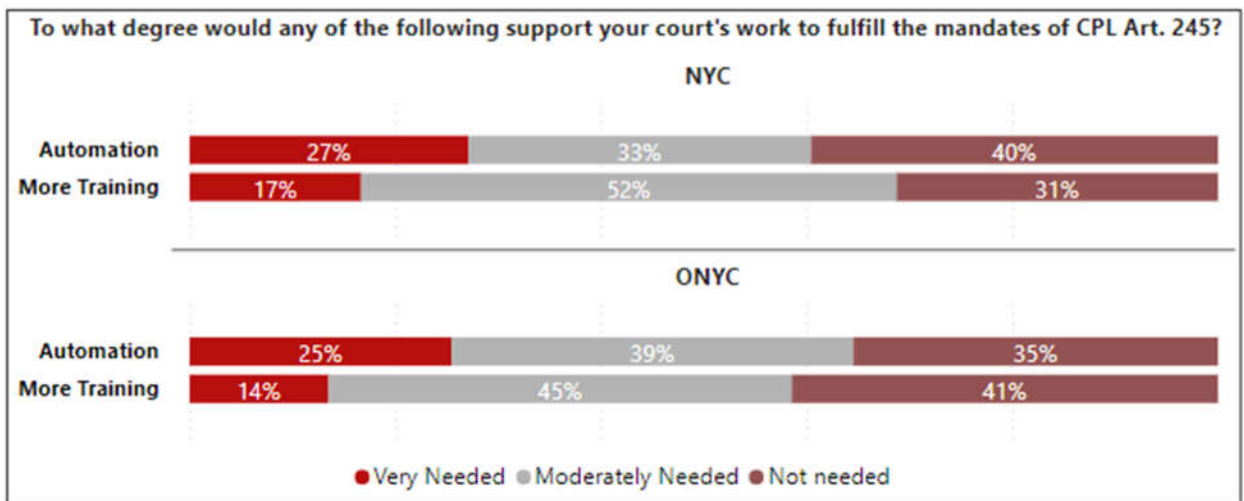


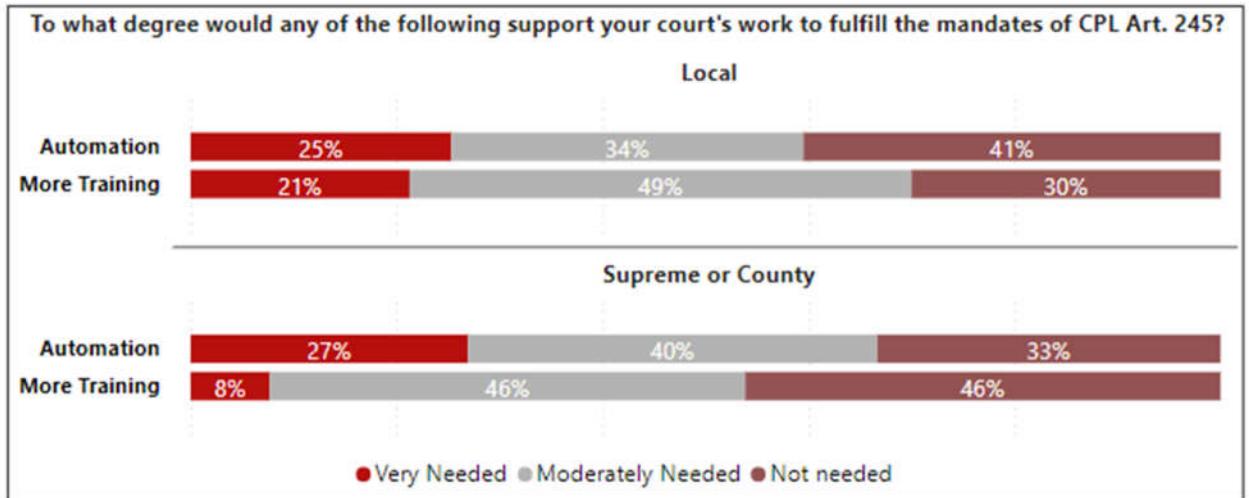
Figure 28
Difficulty in Meeting Discovery Timeline, by Judge Types



- In every category listed above (i.e., DNA, Forensic, Gang, Medical Records, Multiple Defendants, Police Records and Social Media), the ONYC respondents reported that these situations did not prove as difficult in meeting discovery guidelines as did their counterparts in NYC (18%-39% and 5%-24%, respectively). However, the majority of both NYC and ONYC judges did report that all the situations listed made it very or moderately difficult to meet the discovery timeline (Figure 27). This finding was also seen across judge types, with more local judges reporting that these situations were not difficult as compared with Supreme/County court judges (Figure 28).
- In NYC, the majority of judges reported that situations involving DNA and police records made meeting discovery timeframes very difficult (62% and 60% respectively). This is in contrast to judges ONYC, where only 36% reported that both situations involving DNA and police records made meeting discovery time frames very difficult (Figure 27).
- More than half of the Supreme/County court judges (54%), like NYC judges, reported that situations involving DNA made meeting discovery timeframes very difficult compared to one-third (33%) of the local court judges that indicated the same (much like judges ONYC) (Figure 28).

Figures 29 and 30
Supports for Court's Work to Fulfill CPL 245





- The majority of NYC and ONYC respondents (60% and 64%, respectively), indicated that more automation/electronic filing would support the court in implementing the discovery legislation (Figure 29). Responses were similar across Supreme/County and local court judges (67% and 59%, respectively) (Figure 30).
- Similarly, the majority of NYC and ONYC respondents (69% and 59%, respectively) said additional training would also support the court in implementing the discovery legislation (Figure 29). The majority of Supreme/County and local court judges (54% and 70%, respectively) also said additional training would support the court in implementing the discovery legislation (Figure 30).