

**From:** Gold, David  
**Sent:** Monday, December 7, 2020 2:26 PM  
**To:** Rules Committee; Del Ciampo, Joseph  
**Cc:** Casaubon, Katharine  
**Subject:** FW: hospital arraignments  
**Attachments:** Revised Proposal for Arraignment without Defendant Presence\_12-7-2020.pdf

Dear Attorney Del Ciampo,

Attached please find proposed revisions to the Revised Proposal regarding Arraignments without the Defendant, RC # 2019-001 g. The proposed revisions not only address the concerns that Attorney Christine Rapillo, Chief Public Defender, raised with respect to the Revised Proposal, but also address the expanding capability of the courts to conduct proceedings remotely in the wake of the COVID-19 pandemic. They also make other minor clarifying revisions to the Revised Proposal. In particular, the attached proposed revisions include:

- A change to the terminology used throughout the proposal from “waiving the defendant’s presence at arraignment” to “arraigning the defendant remotely or without his or her presence,” so as to make clear that the alternative arraignment proceedings allowable in Section 37-1 are by court action, rather than by the defendant affirmatively waiving his or her constitutional right to be present at arraignment;
- In Section 37-1:
  - o A change new subsection (c) to incorporate a “good cause” requirement before a court can arraign a hospitalized or otherwise incapacitated defendant pursuant to the alternative proceedings provided for in that subsection;
  - o The addition, in new subsection (c), of a requirement to arraign hospitalized or otherwise incapacitated defendants remotely when feasible, rather than requiring all arraignments of hospitalized or otherwise incapacitated defendants pursuant to new subsection (c) be conducted without the presence of the defendant;
  - o The addition of a new subsection (d) clarifying the procedure and effect of arraignments conducted pursuant to new subsection (c);
  - o The addition of a new subsection (e) requiring defendants who have been arraigned pursuant to new subsection (c) and who remain in custody, to be presented to court immediately after their medical discharge; and
  - o A change to the commentary to remove content rendered unnecessary because of the addition of new subsection (d);
- In Section 37-6:
  - o A change in new subsection (c) to make the appointment of a Public Defender in alternative arraignments permissive, rather than mandatory; and
  - o The addition of an automatic expiration of any Public Defender appearance entered in proceedings pursuant to new subsection (c) of Section 37-1, and a requirement that defendants for whom a Public Defender was appointed for such proceedings apply for Public Defender services for continued representation upon their first appearance in court after such arraignment; and
- In Section 3-6:
  - o A change clarifying that an appearance entered for the alternative arraignment proceedings pursuant to new subsection (c) of Section 37-1 will remain effective until the defendant’s first appearance in court after such arraignment. As previously written, the appearance would have expired upon the conclusion

of such arraignment in the same manner as the “for bail purposes only” appearances allowed in Section 3-6 (a). The change will ensure that hospitalized or incapacitated defendants have representation not only for any hearing on a motion pursuant to new subsection (c) of Section 37-1 and at any arraignment conducted pursuant to that subsection, but also until they are able to be present in court and have the opportunity to retain “full” counsel.

These proposed revisions have been developed and discussed with Attorney Rapillo and Attorney Richard Colangelo, Chief State’s Attorney, and are submitted to the Committee with their support. On our joint behalf, I request that these proposed revisions to the Revised Proposal, RC # 2019-001 g, be presented to the Rules Committee for consideration at its December 14, 2020 meeting.

Very truly yours,

Judge Gold

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Hon. David Gold  
Judge, Superior Court  
State Of Connecticut  
Email: David.Gold@jud.ct.gov  
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### **Sec. 37-1. Arraignment; Timing, Alternative Proceedings**

(a) Unless otherwise provided in this section, [A]a defendant who is not released from custody sooner shall be brought before a judicial authority for arraignment no later than the first court day following arrest. A defendant not in custody shall appear for arraignment in person at the time and place specified in the summons or the terms of release, or at such other date or place fixed by the judicial authority.

(b) Except as provided in subsection (c) of this section, [A]any defendant who is hospitalized, has escaped, or is otherwise incapacitated shall be presented for arraignment no later than the next court day following such defendant's medical discharge or return to police custody or a determination that the defendant is no longer incapacitated.

(c) The judicial authority may, upon motion of any party or upon its own motion, and for good cause shown, arraign remotely, via interactive audio visual device or other remote technology, any defendant who is hospitalized or otherwise incapacitated or, if a remote arraignment is not feasible, arraign the defendant without his or her presence. Upon request, the judicial authority shall provide counsel for the defendant with a reasonable opportunity to consult with the defendant privately prior to any hearing on such motion and any arraignment conducted pursuant to this subsection. For the purposes of this subsection, "good cause" includes, but is not limited to, a risk that the defendant's constitutional rights may be violated were the defendant's arraignment to be conducted in accordance with subsection (b) of this section.

(d) An arraignment conducted in accordance with subsection (c) of this section shall, in all other respects, be carried out in accordance with the rules and procedures otherwise applicable to arraignments, and any such arraignment shall be considered to have complied with the requirements set forth in section 54-1g of the Connecticut General Statutes.

(e) Any defendant whom the court has arraigned pursuant to subsection (c) of this section and who has not posted bond or been otherwise released from custody prior to his or her medical discharge or a determination that he or she is no longer incapacitated shall be presented to the court no later than the next court day following his or her medical discharge or the determination that he or she no longer incapacitated.

(f) Any defendant whom the court has arraigned pursuant to subsection (c) of this section shall have the right to de novo review of any orders entered at such arraignment.

COMMENTARY: This section has been amended to allow the judicial authority to arraign a defendant remotely or without his or her presence if the defendant is hospitalized or otherwise incapacitated. Although defendants have a fundamental constitutional right to be physically present at all critical stages of trial; *Rushen v. Spain*, 464 U.S. 114, 117 (1983); including arraignment, this change is intended to balance a defendant's right to be physically present at arraignment with his or her other constitutional rights such as the right to counsel, the right against self-incrimination, and the right to be released on bail. This change is also intended to provide greater First Amendment access to the public in cases where the public might otherwise be excluded from an arraignment that needs to take place in a hospital room due to the defendant's extended hospitalization. It is the intent that arraignments conducted pursuant to new subsection (c) of this section, particularly arraignments conducted without the presence of the defendant, be conducted sparingly and only upon good cause.

***\*\*It is intended that this commentary be a permanent part of this section.\*\****

### **Sec 37-3. —Advisement of Constitutional Rights**

(a) Unless a defendant has been previously advised of his or her constitutional rights by a clerk pursuant to General Statutes § 54-64b or by a judicial authority pursuant to General Statutes § 54-1b, or unless the arraignment is proceeding without the presence of the defendant in accordance with subsection (c) of Section 37-1, the judicial authority shall, personally and in open court advise any defendant or defendants appearing for arraignment, either individually or collectively of the following at the opening of the court session[The judicial authority shall personally, at the opening of the court session, in open court, advise the defendant, or the defendants, unless previously so advised by a clerk pursuant to General Statutes § 54-64b or by a judicial authority pursuant to General Statutes § 54-1b, either individually or collectively of the following]:

(1) That the defendant is not obligated to say anything and that anything the defendant says may be used against him or her;

(2) That the defendant is entitled to the services of an attorney;

(3) If the defendant is unable to pay for one, what the procedures are through which the services of an attorney will be provided for him or her; and

(4) That the defendant will not be questioned unless he or she consents, that the defendant may consult with an attorney before being questioned and that the defendant may have an attorney present during any questioning.

(b) If the judicial authority arraigns a defendant without his or her presence in accordance with subsection (c) of Section 37-1, the judicial authority shall order that the defendant be informed in writing of his or her rights under subsection (a) of this section as quickly as possible under the circumstances. The judicial authority shall also advise the defendant of his or her rights pursuant to subsection (a) of this section upon the defendant's first appearance in court.

COMMENTARY: This section has been amended to address the advisement of rights for defendants whom the judicial authority arraigns without his or her presence pursuant to new subsection (c) of Section 37-1.

### **Sec. 37-6. Appointment of Public Defender**

(a) If the judicial authority determines after investigation by the public defender that the defendant is indigent, the judicial authority may designate the public defender or a [special] public defender assigned counsel to represent the defendant unless, in a misdemeanor case, at the time of the application for appointment of counsel, the judicial authority decides or believes that disposition of the pending case will not result in a sentence involving incarceration or a suspended sentence of incarceration with a period of probation or conditional discharge, and makes a statement to that effect on the record. If the public defender or his or her office determines that a defendant is not eligible to receive the services of a public defender, the defendant may appeal the public defender's decision to the judicial authority in accordance with General Statutes § 51-297 (g). The judicial authority may not appoint the public defender or a public defender assigned counsel unless the judicial authority finds the

defendant indigent following such appeal. If a conflict of interest or other circumstance exists which prevents the public defender from representing the defendant, the judicial authority, upon recommendation of the public defender or upon its own motion, may appoint a [special] public defender assigned counsel to represent the defendant.

(b) The fact that the judicial authority, in a misdemeanor case, decides or believes that disposition of the pending case will not result in a sentence involving incarceration or a suspended sentence of incarceration with a period of probation or conditional discharge, shall not preclude the judicial authority from appointing, in its discretion, a public defender or a [special] public defender assigned counsel to represent an indigent defendant.

(c) The judicial authority may designate the public defender or a public defender assigned counsel to represent a defendant who is subject to a motion to arraign such defendant remotely or without his or her presence, pursuant to subsection (c) of Section 37-1, and who is not represented by counsel. Counsel for the defendant shall file an appearance in accordance with subsection (c) of Section 3-6. Such appearance shall expire upon the defendant's first appearance in court. If the defendant thereafter applies for public defender services, the judicial authority may designate the public defender or public defender assigned counsel to represent the defendant in full in accordance with subsection (a) of this section.

COMMENTARY: This section has been amended to ensure that any defendant subject to a motion to arraign such defendant remotely or without his or her presence pursuant to new subsection (c) of Section 37-1 can obtain counsel for the motion hearing and any arraignment conducted pursuant to that subsection. This section has also been amended to update the term "special public defender" to the term "public defender assigned counsel" to comport with the Section 51-289a (c) of the Connecticut General Statutes.

#### **Sec. 44-7. Presence of Defendant; Attire of Incarcerated Defendant or Witness**

The defendant has the right to be present at the arraignment, at the time of the plea, at evidentiary hearings, at the trial, and at the sentencing hearing, except as provided in Section 37-1 and Sections 44-7 through 44-10. Whenever present, the defendant shall be seated where he or she can effectively consult with counsel and can see and hear the proceedings. An incarcerated defendant or an incarcerated witness shall not be required during the course of a trial to appear in court in the distinctive attire of a prisoner or convict.

COMMENTARY: This section has been amended to address new subsection (c) of Section 37-1, which authorizes the judicial authority to arraign the defendant remotely or without his or her presence in limited circumstances.

#### **Sec. 3-6 Appearance for Bail, [or] Detention Hearing, or Alternative Arraignment Proceedings Only**

(a) An attorney, prior to the entering of an appearance by any other attorney, may enter an appearance for the defendant in a criminal case for the sole purpose of representing the defendant at a hearing for the fixing of bail. Such appearance shall be in writing and shall be styled, "for the purpose of

the bail hearing only.” Upon entering such an appearance, that attorney shall be entitled to confer with the prosecuting authority in connection with the bail hearing.

(b) An attorney may enter an appearance in a delinquency proceeding for the sole purpose of representing the respondent at any detention hearing; such appearance shall be in writing and styled “for the purpose of detention hearing only.”

(c) An attorney may enter an appearance for the defendant in a criminal case who is subject to a motion to arraign such defendant remotely or without his or her presence pursuant to subsection (c) of Section 37-1 for the limited purpose of representing the defendant at the hearing on such motion, any arraignment conducted pursuant to that subsection, and until the defendant’s first appearance in court. Such appearance shall be in writing and shall be styled, “for the purpose of alternative arraignment proceedings only.” Upon entering such an appearance, that attorney shall be entitled to confer with the prosecuting authority in connection with the hearing on such motion, the arraignment of the defendant in accordance with subsection (c) of Section 37-1, if any, and until the defendant’s first appearance in court.

COMMENTARY: This section has been amended to address the alternative arraignment proceedings established in Section 37-1, and the need for a limited criminal appearance for public defenders designated to represent defendants subject to such alternative arraignment proceedings pursuant to new subsection (c) of Section 37-1 and new subsection (c) of Section 37-6.