State of Connecticut
DIVISION OF CRIMINAL JUSTICE
OFFICE OF
THE CHIEF STATE'S ATTORNEY

RC Proposal
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Joseph J. Del Ciampo
Counsel to the Rules Committee
State of Connecticut, Judicial Branch
100 Washington St., 3rd Floor
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Dear Attorney Del Ciampo,

I am writing to you in response to your request for comments on the proposed changes to the rules for pre-trial discovery in criminal matters.

The Division of Criminal Justice is not opposed in concept to changing the rules in order to assure that all parties in a criminal case receive the documentation and evidence they are entitled to at the appropriate time. The Division worked closely with members of the legislature and the Office of the Chief Public Defender before and during the last legislative session to create a workable framework for such a rule change. Also, since the end of the 2019 legislative session, the State's Attorneys, the Deputy Chief State's Attorney for Operations and myself have been working together in an attempt to bring more uniformity to our discovery procedures. These procedures currently vary somewhat from Judicial District to Judicial District.

The proposal refers to five areas of change and we will address them in order. The intention of our comments is to clarify where we see common ground and also where we believe the change may involve unanticipated consequences. We believe our comments, as well as those of the other interested parties, can provide a framework for further discussion on this issue. Our comments are as follows:

1. *Whereas Section 40-11 requires the prosecutor to disclose certain materials within 45 days of request, a Defense request for a continuance upon the prosecutor's failure to meet a deadline should not count against the defendant for calculation of speedy trial purposes.*

   The DCJ agrees that any intentional failure by a prosecutor to provide discovery in our possession by a specific deadline set by the rules of court should not count against the defendant for speedy trial purposes. We wish to specify that this mandate should not penalize the State in a matter where the requested material is not in our possession but rather with another agency. The State is required to make good faith efforts to secure their

possession. (see Sec. 40-2) If the State has made those efforts, and the court is satisfied that is the case, then the speedy trial calculation exemption should remain.

For example, the State frequently requests testing of forensic evidence. Evidence may be sent to the State Forensic Laboratory or outside Laboratories. Requests are made to produce medical records. The State may retain outside experts who must generate a report. Supplemental police reports may be requested as a prosecutor becomes more familiar with the file.

Section 43-40 excludes delay caused by a state expert retained to determine competency to stand trial, requests for testing of evidence by the laboratory or the state is waiting on another agency to produce an important report. These exclusions are premised on the practical fact that the State cannot compel the Laboratory to perform testing or a doctor to prepare a report within a specific window of time. We can, and often do, make requests of outside agencies to expedite the completion of all requested testing and reports in a timely manner. This rule is reasonable given our inability to compel production of results we do not possess or testing which has not been completed despite our best efforts. We agree that time should not be excluded from a defendant's speedy trial calculation if the court finds that we have not excercised due diligence or the evidence was in our possession but not turned over in a timely manner.

2. *Before a plea deal is approved by the court, the court must confirm that all discovery requested up to that time has been completed.*

   The DCJ agrees in concept to this request. We would request that a rule on this topic include a canvass by the court. The canvass should include a provision for the defendant to make a knowing and intelligent waiver that he or she is satisfied with discovery provided to date and wishes to proceed. This waiver should be accompanied by an indication from counsel, if the defendant is represented, that counsel agrees. The State should indicate that all discoverable evidence in our possession at the time of the plea has been made available to the defense.

3. *The start of trial cannot be scheduled until 35 days after the completion of discovery, and any evidence subsequently produced would delay the trial unless the recipient of the evidence waives the delay or the court determines there is good cause no to adhere to the 35 day delay.*

   The DCJ agrees in concept with this request. We would request that any matter placed on the trial list have a future hearing date scheduled for timely completion of discovery.

4. *Prosecutor and defense must disclose witness lists within 10 days, if requested at least 30 days before trial. If the trial date has not been set at the time of the request (and each side had not previously provided the other party with its witness list), then the court would not be permitted to set the trial start date within the following 30 days.*

   The DCJ agrees in concept with this request. We would request that this decision be in the discretion of the court in circumstances where the other party had prior notice of a witness who previously did not appear on the witness list. This occurs frequently in circumstances where a witness suddenly becomes unavailable and another competent witness is substituted for that person. If the secondary witness was known to the other party because they too gave a statement or their name also appeared in a report or medical record, then the other party cannot claim any surprise or disadvantage that would require a 30 day delay in the trial.

5. *Require the prosecutor to maintain a list of all disclosed materials as they are disclosed, which the defense confirms receiving on the record.*

   The DCJ agrees that a complete list of discovery should be received by both parties once a hearing is held pursuant to the rule change cited in #3 above. At that time, the court will require both sides, on the record, to indicate discovery has been completed. That is an appropriate time to list all the disclosed materials. In cases that are resolved short of trial, the court will canvass the parties pursuant to the rule change cited in #2 above. Therefore, in those cases resolved with a plea, a list is superfluous. This will remove the significant burden on DCJ offices to maintain lists of discolsure in the vast majority of cases involving pro-se litigants and minor G.A. matters which are frequently disposed in only a few continuances.

Thank you for allowing us to provide input into this process. The Division will continue its efforts to create a statewide system among the State's Attorneys to more uniformly comply with our discovery obligations. We will continue, to the best of our ability, to assure that we comply with all the rules of court and our constitutional obligations in a timely manner.

We look forward to working with the Committee on this issue.

Sincerely,

Kevin D. Lawlor
Deputy Chief State's Attorney for Operations