



**STATE OF CONNECTICUT  
JUDICIAL BRANCH  
COURT OPERATIONS DIVISION**

**LEGAL SERVICES**

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February 7, 2020

MEMO TO: The Rules Committee of the Superior Court

SUBJECT: Subcommittee recommendation in response to Open File Criminal  
Discovery Request No. 1

In their August 29, 2019 letter to the Rules Committee, Senators Martin M. Looney and Gary Winfield and Representative Steve Stafstrom requested the Rules Committee to amend the Practice Book to adopt the following policy:

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 the deadline should not count against the defendant for calculation of speedy trial purposes.

The Rules Committee tasked a Subcommittee, consisting of Judges Alexander, Cradle, and Truglia, Jr., with reviewing this request, and recommending appropriate Practice Book amendments. The Subcommittee fielded input from Criminal practitioners, including the Division of Public Defender Services, the Office of the Chief State's Attorney, the Connecticut Criminal Defense Lawyers Association, the Connecticut Bar Association's Criminal Justice Section, the Office of Victim Services, and myself, as a representative of Judicial Legal Services.

The Subcommittee and the Criminal practitioners met on January 9, 2020, and agreed to recommend that the Rules Committee address this Request at this time. The Prosecutors asked, however, and the group agreed, that the recommended Practice Book amendments provide that any delay because of the prosecutors' inability to obtain discovery items from third parties (e.g., police or forensic reports) despite the prosecutors' due diligence not be held against the State. The group also suggested adding authority for the Court to subpoena third parties who have failed to turn over discovery materials in their possession despite the Prosecutors' due diligence to obtain those materials into the recommended Practice Book amendments.

The group ultimately agreed on a “basic concept” to address this Request, and a draft of the Basic Concept, with proposed amendments to Practice Book §§ 40-2 and 43-40 and a new Practice Book § 43-40A, was circulated to the Subcommittee and the Criminal practitioners. Although some of the comments to this draft were minor, uncontroversial, and easily incorporated, both the Defense practitioners and the Prosecutors also responded with alternative wording/approaches that the Rules Committee could take to address this Request. Given the limited timeframe between the January 9<sup>th</sup> meeting and the Rules Committee meeting scheduled for February 10, 2020, however, there was not sufficient time for the Subcommittee and the Criminal Practitioners to meet again to consolidate and incorporate these suggested alternative approaches into a single recommendation acceptable to the entire group.

Therefore, Judge Alexander suggested presenting both the recommended Practice Book amendments in the Basic Concept and the suggested alternative approaches for your consideration. Accordingly, I have included the following in this recommendation:

**1. The Basic Concept**

This embodies the concepts discussed by the Subcommittee and the Criminal practitioners to address the concerns presented in Request No.1, and incorporates the minor comments that were easily incorporated. The Basic Concept now includes recommendations for:

- a. A minor amendment to Practice Book § 40-2, which allows the court to subpoena documents or objects subject to discovery on its own motion;
- b. A minor amendment to Practice Book § 43-40 (7), to provide for an exception to the exclusion of time periods resulting from defense-requested continuances from the speedy trial calculation, as provided in the proposed new Practice Book § 43-40A (and a minor, unrelated, but necessary, amendment to § 43-40 (1) (F), to bring that provision up to date with the currently available diversionary programs); and
- c. A new Practice Book § 43-40A, which provides that a continuance granted at the request of the defendant because of the prosecutor’s willful failure to meet discovery deadlines shall not count against the defendant for the purpose of the speedy trial calculation, and authorizes the court to exercise its newly amended subpoena power to assist in the timely completion of discovery.

**2. The Defense practitioners’ suggested alternative approach.**

The Defense practitioners agreed with the amendments to Practice Book §§ 40-2 and 43-40 (7) proposed in the recommended Basic Concept, so I have not repeated those proposed amendments in this section. The Defense practitioners, however, proposed alternative language for the recommended new Practice Book § 43-40A, and a new sentence at the end of the corresponding Commentary. This section, therefore, presents this proposed

alternative language and proposed revision to the corresponding Commentary.

\*At Judge Alexander's request, I have also included additional comments and concerns with various aspects of this proposed alternative language in Comment bubbles, along with some suggested edits to this language for your consideration, should the Rules Committee decide to take this approach to Request No. 1.

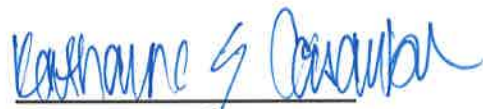
**3. The Prosecutor's suggested alternative approach.**

The Prosecutors agreed with the amendments to Practice Book § 40-2 proposed in the recommended Basic Concept, so I have not repeated those proposed revisions in this section. The Prosecutors suggested, however, that Practice Book § 43-40 (7) be more substantially revised to except defense-requested continuances for prosecutors' willful failure to comply with Chapter 40 from the periods of time excluded from the speedy trial calculation rather than creating a new Practice Book § 43-40A to specifically include those time periods in the speedy trial calculation, however. The Prosecutors also suggested that any language authorizing the court to issue subpoenas be split off from any exception to the periods of time excluded from the speedy trial calculation. This section, therefore, presents the proposed alternative amendment to Practice Book § 43-40 (7), which would obviate the need for a new Practice Book § 43-40A.

\*At Judge Alexander's request, I have also included additional comments and concerns with this proposed alternative approach in Comment bubbles. I have also drafted proposed alternative Commentary to fit this alternative approach, should the Rules Committee decide to take this approach to address Request No. 1

The Subcommittee submits the attached recommendation for the Rules Committee's consideration to determine whether the proposed amendments to Practice Book §§ 40-2 and 43-40, and the creation of a new Practice Book § 43-40A in the Basic Concept and/or any of the proposed language in the suggested alternative approaches should be adopted to address Request No. 1.

Thank you for your consideration in this matter.



Katharine E. Casaubon  
Counsel, Legal Services

## **Subcommittee's recommendation in response to Open File Criminal Discovery Request No. 1**

### **1. The Basic Concept**

#### **Sec. 40-2. –Good Faith Efforts and Subpoenas**

When documents or objects are the subject of discovery orders, good faith efforts shall be made by the party to whom any such order is directed to secure their possession. If the efforts of such party are unsuccessful the judicial authority shall, upon written request or upon its own motion, issue a subpoena or order directing that such documents or objects be delivered to the clerk of the court within a specified time. The clerk shall give a receipt for them and be responsible for their safekeeping. Such documents and tangible objects shall be sealed and shall be open to inspection to the parties to the action and their attorneys only upon an order of the judicial authority.

COMMENTARY: The changes to this Section provide the court with the authority to issue subpoenas and orders directing documents and objects subject to discovery orders to the clerk upon its own motion, and that such documents and object be open to inspection only to the parties and their attorneys as the court deems appropriate.

#### **Sec. 43-40. –Excluded Time Periods in Determining Speedy Trial**

The following periods of time shall be excluded in computing the time within which the trial of a defendant charged by information with a criminal offense must commence pursuant to Section 43-39:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to:

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) delay resulting from trial with respect to other charges against the defendant;

(C) delay resulting from any interlocutory appeal;

(D) the time between the commencement of the hearing on any pretrial motion and the issuance of a ruling on such motion;

(E) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the judicial authority;

(F) delay resulting from any proceeding under General Statutes §§ 17a-685, 17a-693, et seq., 53a-39c, 54-56e, 54-56g, 54-56i, 54-56l, 54-56m, 54-56p, or any other pretrial diversion program authorized by statute.

(2) Any period of delay resulting from the absence or unavailability of the defendant, counsel for the defendant, or any essential witness for the prosecution or defense. For purposes of this subdivision, a defendant or any essential witness shall be considered absent when such person's whereabouts are unknown and cannot be determined by due diligence. For purposes of this subdivision, a defendant or any essential witness shall be considered unavailable whenever such person's whereabouts are known but his or her presence for trial cannot be obtained by due diligence or he or she resists appearing at or being returned for trial.

(3) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(4) A reasonable period of delay when the defendant has been joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

(5) Any period of time between the date on which a defendant or counsel for the defendant and the prosecuting authority agree that the defendant will plead guilty or nolo contendere to the charge and the date the judicial authority accepts or rejects the plea agreement.

(6) Any period of time between the date on which the defendant enters a plea of guilty or nolo contendere and the date an order of the judicial authority permitting the withdrawal of the plea becomes final.

(7) Except as provided in Section 43-40A, [T]the period of delay resulting from a continuance granted by the judicial authority at the personal request of the defendant.

(8) The period of delay resulting from a continuance granted by the judicial authority at the request of the prosecuting authority, if:

(A) the continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting authority has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at a later date; or

(B) the continuance is granted to allow the prosecuting authority additional time to prepare the state's case and additional time is justified because of the exceptional circumstances of the case.

(9) With respect to a defendant incarcerated in another jurisdiction, the period of time until the defendant's presence for trial has been obtained, provided the prosecuting authority has exercised reasonable diligence (A) in seeking to obtain the defendant's presence for trial upon receipt of a demand from the defendant for trial, and (B) if the defendant has not theretofore demanded trial, in filing a detainer with the official having custody of the defendant requesting that official to advise the defendant of the defendant's right to demand trial.

(10) Other periods of delay occasioned by exceptional circumstances.

COMMENTARY: The change to subdivision (F) of Subsection (1) of this Section makes that provision consistent with the current available diversionary programs. The change to Subsection (7) of this Section provides for an exception to the time periods excluded from the speedy trial calculation when a defendant requests a continuance.

**(NEW) Sec. 43-40A. —Included Time Period in Determining Speedy Trial; Failure to Comply with Disclosure by Prosecuting Authority**

Unless the prosecuting authority is unable, after the exercise of due diligence, to comply with the disclosure of discovery within any applicable required time period, the time for trial set forth in Section 43-39 shall continue to run during any period of delay resulting from a continuance granted by the judicial authority at the request of the defendant on the basis of the prosecuting authority's failure to comply with disclosure of

discovery pursuant to Chapter 40. During any such continuance, the judicial authority may issue subpoenas, pursuant to Sections 40-2 and 40-20, to assist in the timely completion of discovery.

COMMENTARY: This new Section allows the speedy trial calculation to run during any continuance granted on the basis of the prosecutor's willful failure to comply with disclosure of discovery, as required by Chapter 40, consistent with Open File Criminal Discovery. This Section also authorizes the judicial authority to exercise its existing subpoena power to assist in the timely completion of discovery.

## 2. The Defense practitioners' suggested alternative approach

### **(NEW) Sec. 43-40A. —Included Time Period in Determining Speedy Trial; Failure to Comply with Disclosure by Prosecuting Authority**

The judicial authority shall issue a continuance at the request of the defendant in the event the prosecuting authority has not complied with the disclosure of discovery within any applicable required time period.

Notwithstanding the provisions of Section 43-40(7), The time for trial set forth in Section 43-39 shall continue to run during any such period of delay resulting from a continuance granted by the judicial authority unless the Prosecuting authority demonstrates due diligence to comply with the disclosure of discovery pursuant to Chapter 40. The due diligence of the prosecuting authority includes disclosure of discovery materials pursuant to Chapter 40.

**Commented [CK1]:** \*\*Judge Alexander suggests that the Rules Committee change this to "may," should it adopt this alternative language.

**Commented [CK2]:** \*\*Since the Basic Concept proposes amending Practice Book § 40-43 (7) to say "except as provided in Section 43-40A," and the Defense practitioners have not suggested not making that change, saying "Notwithstanding the provisions of Section 43-40 (7)" here would render the following language essentially inoperative.

Therefore, should the Rules Committee adopt this alternative language, I suggest removing "Notwithstanding the provisions of Section 43-40 (7)."

**Commented [CK3]:** \*\*This alternative language hasn't referenced any "period of delay" yet.

Therefore, should the Rules Committee adopt this alternative language, I suggest removing "such," and adding "pursuant to this Section" after "judicial authority" on the next line.

**Commented [CK4]:** \*\*Section 40-2 already imposes a duty of "good faith" to obtain documents and objects subject to discovery orders. Worded like this, this sentence makes it sound like there can only be due diligence if the prosecutor has complied with the time requirements of Chapter 40. In that case, a continuance granted because the prosecutor hasn't complied with the requirements of chapter 40 would always be without "due diligence."

The Prosecutors expressly asked, and the Subcommittee and Defense practitioners agreed, that the exception to the exclusion of time periods for speedy trial calculations for defense-requested continuances when the prosecutors have failed to meet the time requirements in Chapter 40 only apply when the delay is the result of the prosecutors' willful failure to comply. The Subcommittee and the Criminal practitioners agreed that this exception should not apply when the prosecutors have tried with due diligence to comply with Chapter 40, but have simply been unable to do so.

Therefore, should the Rules Committee adopt this alternative language, I suggest removing this sentence altogether.



Any order by the judicial authority made pursuant to this Section shall be stated on the record in open court. During any such continuance, the judicial authority shall issue subpoenas consistent with Sections 40-2 and 40-20. The time for trial set forth in Section 43-39 shall continue to run during any such period of delay resulting from a continuance granted by the judicial authority.

**Commented [CK5]:** \*\*This language repeats the proposed new language in the first and second paragraphs.

COMMENTARY: This new Section allows the speedy trial calculation to run during any continuance granted on the basis of the prosecutor's [inability] willful failure to comply with disclosure of discovery, as required by Chapter 40, consistent with Open File Criminal Discovery. This Section also authorizes the judicial authority to exercise its existing subpoena power to assist in the timely completion of discovery. If the prosecuting authority is unable to obtain and disclose discovery, resulting in a continuance under this Section, the prosecuting authority should seek to exercise its authority under Section 40-2 and 40-20.

**Commented [CK6]:** \*\*As noted above, the group agreed that it should be the prosecutors' willful failure to comply with the time requirements in Chapter 40, not just their inability to do so that continues the speeding trial calculation.

Therefore, should the Rules Committee adopt this alternative language, I suggest replacing "inability" with "willful failure."

### 3. The Prosecutors' suggested alternative approach

#### Sec. 43-40. –Excluded Time Periods in Determining Speedy Trial

... (7) The period of delay resulting from a continuance granted by the judicial authority at the personal request of the defendant except a continuance granted because the prosecuting authority has failed to comply with a request for discovery within the time period required by these rules unless the prosecuting authority is able to establish that he or she is unable to comply with the request despite the exercise of due diligence.

**Commented [CK7]:** \*\*Including this exception in the rule for "excluded" time periods for the speedy trial calculation, when there is an exception to the exception (for when the prosecutor is unable to comply despite due diligence), results in a rule containing a triple negative. This is likely less clear than stating in a new rule that periods of delay because of a prosecutor's failure to comply with discovery time requirements affirmatively count toward the speedy trial calculation, with a single negative (unless the delay is despite due diligence).

**Commented [CK8]:** \*\*Should the Rules Committee adopt this alternative approach, for ease of reference, I suggest directly specifying the discovery rules: "Chapter 40," instead of using this generic "these rules"

COMMENTARY: The changes to this Section provide an exception to the exclusion of time periods resulting from defense-requested continuances from the speedy trial calculation for when the continuance is granted on the basis of a prosecutor's failure to comply with the time periods required in Chapter 40, but only if the prosecutor's failure is willful.

**Commented [CK9]:** \*\*1 drafted this potential Commentary to go with the Prosecutors' suggested alternative approach to have something ready in the event that the Rules Committee decides adopt this alternative approach to address Request No. 1.



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February 7, 2020

MEMO TO: The Rules Committee of the Superior Court

SUBJECT: Subcommittee recommendation in response to Open File Criminal  
Discovery Request No. 2

In their August 29, 2019 letter to the Rules Committee, Senators Martin M. Looney and Gary Winfield and Representative Steve Stafstrom requested the Rules Committee to amend the Practice Book to adopt the following policy:

1. 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 Rules Committee tasked a Subcommittee, consisting of Judges Alexander, Cradle, and Truglia, Jr., with reviewing this request, and recommending appropriate Practice Book amendments. The Subcommittee fielded input from the Division of Public Defender Services, the Office of the Chief State's Attorney, the Connecticut Criminal Defense Lawyers Association, the Connecticut Bar Association's Criminal Justice Section, the Office of Victim Services, and myself, as a representative of Judicial Legal Services.

The Subcommittee and the Criminal practitioners met on January 9, 2020, and agreed to recommend that the Rules Committee address this Request at this time. The Prosecutors requested, however, and the group agreed, that this new canvass should cover only requested discovery that is then within the possession of the prosecuting authority. The group also suggested that the recommended Practice Book amendments include a provision allowing for the knowing and voluntary waiver of the defendant's right to receive any outstanding requested discovery in order to move forward with a plea when it is advantageous to the defendant not to wait for discovery to be complete. Finally, the group suggested excepting exculpatory evidence that the prosecutors are required under the Constitution, statutes, or rules to disclose regardless of whether the defendant has requested such evidence from any such waiver by the defendant in the recommended Practice Book revisions.

The group ultimately agreed on a “basic concept” to address this Request, and a draft was circulated to the Subcommittee and the Criminal practitioners, including recommendations for:

- A minor amendment to Practice Book § 39-7, clarifying that the court may only accept a plea agreement in accordance with Practice Book § 39-18; and
- Amendments to Practice Book § 39-18, requiring that the court confirm that the defendant has received all requested discovery, or that the defendant waives the right to further discovery disclosure, except for exculpatory evidence, before allowing a defendant to enter a plea of guilty or nolo contendere.

The Defense practitioners submitted several suggested revisions to this draft. Given the limited timeframe between the January 9<sup>th</sup> meeting and the Rules Committee meeting scheduled for February 10, 2020, however, there was not sufficient time for the Subcommittee and the Criminal practitioners to meet again to consolidate and incorporate these suggested revisions into a single recommendation acceptable to the entire group.

Therefore, Judge Alexander suggested presenting both the recommended amendments to Practice Book §§ 39-7 and 39-18 and the Defense practitioners’ suggested revisions for your consideration. I have included the Defense practitioners’ suggested revisions to the recommended Practice Book amendments that follow in Comment bubbles. At Judge Alexander’s request, I have also included comments or concerns about these revisions in the corresponding Comment bubbles for your consideration, should the Rules Committee decide to incorporate these revisions into any Practice Book amendments it adopts to address Request No. 2.

Thank you for your consideration in this matter.



Katharine E. Casaubon  
Counsel, Legal Services

## Subcommittee recommendation in response to Open File Criminal Discovery Request No. 2

### Sec. 39-7. –Notice of Plea Agreement

If a plea agreement has been reached by the parties, which contemplates the entry of a plea of guilty or nolo contendere, the judicial authority shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera at the time the plea is offered. Thereupon the judicial authority may accept the agreement in accordance with Section 39-18. or reject the agreement, or may defer his or her decision on acceptance or rejection until there has been an opportunity to consider the presentence report, or may defer it for other reasons.

COMMENTARY: The change to this section clarifies that the judicial authority may only accept a plea agreement in accordance with Section 39-18.

### Sec. 39-18. Plea of Guilty or Nolo Contendere; Entering

(a) In the discretion of the judicial authority, the defendant may enter a plea of guilty or nolo contendere to the information or complaint at arraignment[. At] or any later time [the defendant also may enter any such plea.], provided that the judicial authority confirms in open court that the prosecuting authority has made available, and the defendant has received, all discovery materials that he or she requested in writing from the prosecuting authority pursuant to Chapter 40 that are then within the possession of the prosecuting authority. If the defendant has not received all such discovery, the

**Commented [CK1]:** The Defense practitioners suggest that this addition, and the corresponding Commentary is unnecessary and already contemplated by the recommended amendments to Practice Book § 39-18.

**Commented [CK2]:** The Defense practitioners suggest putting a period after "Chapter 40" and deleting the remainder of this sentence.

\*\*The Prosecutors specifically asked, however, that this new canvass cover only discovery items that are within their possession as of the date of the plea.

judicial authority shall, prior to allowing the defendant to enter a plea of guilty or nolo contendere, confirm that the defendant and, if applicable, his or her counsel agree to waive any right to receive further discovery disclosure, with the exception of any exculpatory information or materials that the prosecuting authority is required by law to disclose, before entering the plea.

**Commented [CK3]:** The Defense practitioners suggest ending the sentence after "information" and deleting the remaining language.

(b) A plea of nolo contendere shall be in writing, shall be signed by the defendant, and, when accepted by the judicial authority, shall be followed by a finding of guilty.

COMMENTARY: The changes to this section require the judicial authority to confirm that a criminal defendant has either received all discovery requested pursuant to Chapter 40 or waives the right to receive further disclosure of the discovery materials they have already requested in writing, except for exculpatory evidence, before accepting a plea agreement, consistent with Open File Criminal Discovery.

**Commented [CK4]:** The Defense practitioners suggest removing the word "further."



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February 7, 2020

MEMO TO: The Rules Committee of the Superior Court

SUBJECT: Subcommittee recommendation in response to Open File Criminal  
Discovery Requests No. 3

In their August 29, 2019 letter to the Rules Committee, Senators Martin M. Looney and Gary Winfield and Representative Steve Stafstrom requested the Rules Committee to amend the Practice Book to adopt the following policy:

1. 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 not to adhere to the 35 day delay.

The Rules Committee tasked a Subcommittee, consisting of Judges Alexander, Cradle, and Truglia, Jr., with reviewing this request, and recommending appropriate Practice Book amendments. The Subcommittee fielded input from the Division of Public Defender Services, the Office of the Chief State's Attorney, the Connecticut Criminal Defense Lawyers Association, the Connecticut Bar Association's Criminal Justice Section, the Office of Victim Services, and myself, as a representative of Judicial Legal Services.

The Subcommittee and the Criminal practitioners met on January 9, 2020, and agreed to recommend that the Rules Committee address this Request at this time. The group suggested, however, that the recommended Practice Book amendments provide for a 45-day, rather than a 35-day, time period between discovery completion and the commencement of trial. The group also suggested that the recommended amendments provide that a party receiving evidence produced after the completion of discovery have the option to request a continuance, rather requiring that any such late evidence production automatically delay the trial.

The group ultimately agreed on a “basic concept” to address this Request, and a draft was circulated to the Subcommittee and the Criminal practitioners including recommendations for:

- A minor amendment to Practice Book § 39-17, clarifying that the court may only assign a case to the trial list in accordance with Practice Book § 44-15; and
- Amendments to Practice Book § 44-15:
  - o Requiring the court to confirm that discovery is complete before setting a date certain for trial;
  - o Authorizing the court to exercise its subpoena power to assist in the timely completion of discovery; and
  - o Authorizing the court to exercise its existing authority under Practice Book § 40-5 to address delayed discovery disclosures.

The Defense practitioners submitted several suggested revisions to this draft. Given the limited timeframe between the January 9<sup>th</sup> meeting and the Rules Committee meeting scheduled for February 10, 2020, however, there was not sufficient time for the Subcommittee and the Criminal practitioners to meet again to consolidate and incorporate these suggested revisions into a single recommendation acceptable to the entire group.

Therefore, Judge Alexander suggested presenting both the recommended amendments to Practice Book §§ 39-17 and 44-15 and the Defense practitioners’ suggested revisions for your consideration. I have included the Defense practitioners’ suggested revisions to the recommended Practice Book amendments that follow in Comment bubbles. At Judge Alexander’s request, I have also included comments or concerns about these revisions in the corresponding Comment bubbles for your consideration, should the Rules Committee decide to incorporate these revisions into any Practice Book amendments it adopts to address Request No. 3.

Thank you for your consideration in this matter.



Katharine E. Casaubon  
Counsel, Legal Services



## **Subcommittee's recommendation in response to Open File Criminal Discovery Request No. 3**

### **Sec. 39-17. –Effect of Disposition Conference**

If a case is not resolved at the disposition conference or if the judicial authority rejects the plea agreement, the case shall be assigned to a trial list in accordance with Section 44-15. If an agreement is reached, a judicial authority shall be available to accept guilty pleas and other dispositions.

COMMENTARY: The change to this section clarifies that the judicial authority may only assign a case to the trial list in accordance with Section 44-15.

### **Sec. 44-15. –Scheduling at Entry of Plea**

(a) Upon entry of a not guilty plea, the judicial authority shall, whenever feasible, assign a date certain for the trial of such case, and in jury cases, for a disposition conference pursuant to Sections 39-11 through 39-13, and it shall advise all parties that they are to be prepared to proceed to trial or to a disposition conference on that date.

(b) Prior to assigning any date certain for trial, the judicial authority shall inquire of the parties whether discovery pursuant to Chapter 40 is complete.

If discovery is not complete, the judicial authority shall continue the case for the timely completion of discovery. During any such continuance, the judicial authority may issue subpoenas, pursuant to Sections 40-2 and 40-20, to assist in the timely completion of discovery.

If discovery is complete, the judicial authority may assign a date certain for trial no earlier than 45 days after the completion of discovery unless the defendant moves for a speedy trial pursuant to Section 43-41.

(c) If the setting of a definite date at the time of the not guilty plea is not feasible, the case shall be placed on a trial list of pending cases which shall be maintained by the clerk. Cases shall be placed on the trial list in the order in which the not guilty pleas were entered, but in no event shall a trial commence earlier than 45 days after the completion of discovery in the case unless the defendant moves for a speedy trial pursuant to Section 43-41.

(d) If, after the judicial authority has assigned a date certain for trial or has assigned the case to the trial list pursuant to this Section, either party identifies and produces any evidence or witness that is required to be disclosed pursuant to Chapter 40, the opposing party may move the judicial authority for an order in accordance with Section 40-5, including, but not limited to, moving for a continuance or an order prohibiting the producing party from introducing the delayed discovery at trial.]

COMMENTARY: The changes to this section require the judicial authority to confirm that discovery is complete before scheduling a date certain for trial or placing the case on the trial list and authorizes the judicial authority to exercise its subpoena power to assist in the timely completion of discovery, consistent with Open File Criminal Discovery. The changes also authorize the judicial authority to exercise its existing authority to, upon motion, make any order it deems appropriate to address delayed discovery disclosure.

**Commented [CK1]:** The Defense practitioners suggest replacing this language with: "Notwithstanding the preceding language, nothing in this Section shall limit the right of the parties to move for relief appropriate pursuant to Section 40-5."

\*\*First, I believe that they meant "preceding," instead of "proceeding," because, otherwise, the intro to this sentence would suggest that the following language should not control, which does not appear to make sense.

Secondly, I believe that the "Notwithstanding the preceding language" is not entirely clear as to what language this phrase is referring. Is it just the proposed revision to subsection (c), or the revised language in both subsections (b) and (c)? Regardless, I do not believe that the "notwithstanding" phrase is necessary in order to accomplish what they're intending.

Therefore, should the Rules Committee adopt this suggested alternative language, I suggest removing "Notwithstanding the preceding language," and only adopting "Nothing in this section shall limit the right of the parties to move for relief allowed pursuant to Section 40-5."



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February 7, 2020

MEMO TO: Rules Committee of the Superior Court

SUBJECT: Subcommittee recommendation in response to Open File Criminal  
Discovery Requests Nos. 4 and 5

In their August 29, 2019 letter to the Rules Committee, Senators Martin M. Looney and Gary Winfield and Representative Steve Stafstrom requested the Rules Committee to amend the Practice Book to adopt the following policies:

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.
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 Rules Committee tasked a Subcommittee, consisting of Judges Alexander, Cradle, and Truglia, Jr., with reviewing these requests, and recommending appropriate Practice Book amendments. The Subcommittee fielded input from the Division of Public Defender Services, the Office of the Chief State's Attorney, the Connecticut Criminal Defense Lawyers Association, the Connecticut Bar Association's Criminal Justice Section, the Office of Victim Services, and myself, as a representative of Judicial Legal Services. The Subcommittee and the Criminal practitioners met on January 9, 2020, and agreed to recommend that the Rules Committee not take any action to address Requests No. 4 and 5 at this time.

With respect to Request No. 4, the Subcommittee and Criminal practitioners believe that the proposed amendments to the Practice Book recommended to address Request No. 3, regarding the scheduling of a date certain for trial only after discovery has been completed, sufficiently address Request No. 4. Consequently, the

Subcommittee and Criminal practitioners recommend that no amendments to the Practice Book be made to address this Request at this time.

Should the amendments recommended to address Request No. 3 not address this Request as anticipated, however, the Subcommittee and the Criminal practitioners recommend that the Rules Committee take this Request up again in a future Session of the Rules Committee as necessary.

With Respect to Request No. 5, the Subcommittee and Criminal practitioners believe that the State's Attorney's forthcoming case management system may resolve the concern regarding maintaining an ongoing list of disclosed discovery materials upon its implementation. In addition, the Subcommittee and Criminal practitioners believe that the proposed amendments to the Practice Book recommended to address Request Nos. 1, 2, and 3, regarding speedy trial calculations for willful failure to comply with discovery time requirements, ensuring defendants have received all requested discovery or waive the right to further discovery disclosure prior to the acceptance of a guilty plea, and the scheduling of a date certain for trial only after discovery has been completed, respectively, may also ameliorate some or all of the concerns that prompted this Request. Consequently, the Subcommittee and Criminal practitioners recommend that the Rules Committee make no amendments to the Practice Book to address this Request at this time.

As with Request No. 4, should the State's Attorney's case management system or the amendments recommended to address the other Requests not address this Request as anticipated, however, the Subcommittee and the Criminal practitioners recommend that the Rules Committee take this Request up again in a future Session of the Rules Committee as necessary.

Thank you for your consideration in this matter.



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