

Item 03-02a
(111819)

State of Connecticut
GENERAL ASSEMBLY
STATE CAPITOL
300 CAPITOL AVENUE
HARTFORD, CONNECTICUT 06106-1591

August 29, 2019

Hon. Andrew J. McDonald, Chair
Hon. Holly Abery-Wetstone
Hon. Joan K. Alexander
Hon. Barbara N. Bellis
Hon. Susan Quinn Cobb

Hon. Melanie L. Cradle
Hon. Donna Nelson Heller
Hon. Barry K. Stevens
Hon. Anthony D. Truglia, Jr.

Dear Chairman Justice McDonald and fellow members of the Rules Committee,

In anticipation of the new term beginning in September, we request that in the coming year the Rules Committee consider changes to Chapter 40 of the Practice Book concerning discovery in criminal matters.

In recent decades, there has been a decline in the percentage of criminal defendants exercising their constitutional right to a trial. Roughly 95% of all criminal cases will end with a plea deal. Prosecutors have more power today than at any other point in our nation's history, and case outcomes are dependent less on judges and juries, and more on which crimes are charged and the timeliness of proper discovery.

In 2017 and 2018, we sponsored "Open File" legislation that would have superseded sections of Chapter 40 because we believe that criminal defendants are too often asked to accept plea deals before knowing what evidence the state has against them. Also, an improved discovery system will reduce the occurrence of wrongful convictions. Without changing requirements on the content of what must be disclosed, the bill would have made changes to *when* materials are disclosed. Waiting for trial greatly increases the likelihood that the case will end in a dismissal or nolle, but many defendants do not have the luxury to wait. A plea deal is even more coercively compelling to a defendant who has not made bail. One study found that people in jail were 25% more likely to plead guilty.¹ Forcing incarcerated pre-trial defendants to wait for trial becomes a punishment for those not convicted of a crime.

In Connecticut, a prosecutor has generally not fully responded to the discovery requests at the time he or she offers a plea deal. The defendant does not know what evidence is in the state's possession, or what may arise through a full investigation, which could exonerate the defendant or at least reduce the charges.

¹ Paul Heaton, Sandra Mayson & Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stanford L. Rev. 711, 747 (2017).

Prosecutors often do not invest time into reviewing a file, following up with police, or obtaining lab results until the eve of trial—which is often months or years following the initial criminal charges. This process can be highly problematic. Cases that should have been dismissed much earlier instead result in considerable hardship for the defendant. Late discovery also provides inadequate time for defense attorneys to properly review critical evidence in the days right before trial, which represents nothing less than the suppression of the defendant's Sixth Amendment right to effective counsel. In addition, part of the problem in Connecticut is that the state attorneys in each judicial district have their own practices for the collection, inventory, and timely disclosure of information.

It is not that we believe state attorneys intentionally cause delays. High caseloads and limited resources contribute to a challenging environment for prosecutors. There may be little incentive to scour a case for the truth if it can be put on the back burner while attention is given to a case currently called for trial. However, when we view the system as it operates today, the potential to protect against injustice demands changes that we should all favor. The goal of the proposed legislation was simple: (1) ensure all materials in the possession of a state or municipal criminal justice agency, not just the SA's office, are shared with the defendant, (2) require that all exculpatory materials be shared with the defendant before that defendant is asked to enter into a plea bargain, *and* far enough in advance of trial for attorneys to review the materials, and (3) uniform discovery standards across the state that do not vary by judicial district.

Legislation is one option to institute change, but we acknowledge these goals can be fully addressed by the Rules Committee. Specifically, we request the Committee amend the Practice Book to adopt the following policies:

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.
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.
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 not to adhere to the 35 day delay.
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.

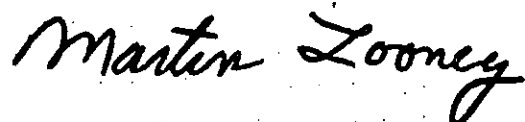
All of these proposals are consistent with the ABA's Standards for Criminal Justice, which underscore that the job of a prosecutor before going to trial is to search for the truth, even if the evidence negates guilt, mitigates the offenses charged, impeaches the government's witnesses, or would reduce the punishment for the defendant.²

We understand there are many aspects of state court practices and procedures that compete for the attention of the Rules Committee, and we appreciate consideration being given to the matters we raise.

² Criminal Justice Standards (Fourth) for the Prosecution Function § 3-5.4 (2015).

Please do not hesitate to contact our offices if we can be of any assistance.

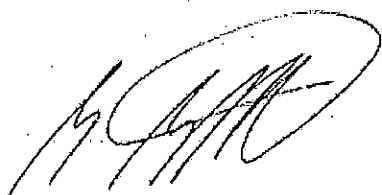
Sincerely,



Senator Martin M. Looney
Senate President Pro Tempore



Senator Gary Winfield
Co-Chair
Judiciary Committee



Representative Steve Stafstrom
Co-Chair
Judiciary Committee

