

# Judiciary Committee JOINT FAVORABLE REPORT

**Bill No.:** SB-653

**Title:** AN ACT CONCERNING OPEN FILE DISCLOSURE IN CRIMINAL CASES.

**Vote Date:** 4/9/2019

**Vote Action:** Joint Favorable

**PH Date:** 3/29/2019

**File No.:**

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## **SPONSORS OF BILL:**

Judiciary Committee

## **REASONS FOR BILL:**

About 95% of the criminal cases that happen at the state level end in a plea bargain, so many cases do not even make it to trial. Since so many cases do not even go to trial, the pre-trial process of discovery is becoming so much more crucial. The current guidelines in the state regarding pre-trial discovery do not set strict guidelines for prosecutorial disclosure of discovery and are not uniform throughout the state. These guidelines do not help the defendants make what could be a difficult and important life decision on whether they should take a plea bargain. This bill would create uniform standards throughout all of the judicial districts in Connecticut and create a judicial system that is fairer for defendants.

## **RESPONSE FROM ADMINISTRATION/AGENCY:**

**CT Division of Criminal Justice:** Opposes bill because it “places untenable burdens on law enforcement and the prosecution to obtain information outside their control, assumes notice requirements prosecutors do not receive, and requires prosecutors to compile chronological lists of discovery at multiple points in a prosecution, which will bog down our trial courts while providing scant additional protection to the accused”. DCJ is also “not aware of systemic problems with discovery or trial court opinions ruling prosecutors have violated the rules of court in this area”.

**CT Division of Public Defender Services, Supervisory Assistant Public Defender, Jennifer Bourn:** Supports bill because it “calls for uniformity in discovery practice in the state and works to eliminate disparity in the practice from courthouse to courthouse”, ensures that “disclosure happens in a timely manner and that a record is made of what is disclosed and when”, “requires communication between prosecutors and law enforcement about the

identification and timely disclosure of exculpatory information”, and “offers protection against wrongful conviction”. **Offer several amendments** to streamline the discovery process and impose guidelines if prosecutors do not follow the new language of the law in regards to discovery.

#### **NATURE AND SOURCES OF SUPPORT:**

**CT Senate Democrats:** Support bill because it “strives to fix issues causing unfair treatment for defendants” and the bill “starts with the premise that before trial begins, the job of a prosecutor is to search for the truth, even if the evidence negates guilt”.

**Sen. Martin Looney:** Supports bill because the changes in this bill would “have the potential to impact every case in the system, bring more procedural consistency across the state, and create the time necessary for defense counsel to properly fulfil each defendant’s Sixth Amendment right to counsel in a criminal proceeding”.

**ACLU-CT, Executive Director, David McGuire:** Supports bill because it “allows the court process to be more open and transparent for both parties and it would help to create a more fair and equal justice system” and since “94% of state-level criminal cases end in plea bargains... this increases the chances that these negotiations will be fair and informed for all sides”.

**Connecticut Criminal Defense Lawyers Association, Executive Board Member, Ioannis Kaloidis:** Supports bill because it “brings much needed change to discovery practice in criminal cases” and agrees with the proposed amendments brought by the Office of the Chief Public Defender.

**National Association of Criminal Defense Lawyers:** Supports bill because it “will provide much needed access to the basic information necessary for a meaningful defense without compromising public safety or imposing an undue fiscal burden on the state” and it “helps assure that decisions to plead guilty are undertaken with a full understanding of the state’s evidence”.

#### **NATURE AND SOURCES OF OPPOSITION:**

**Connecticut Association of Prosecutors (CAP):** Opposes bill because it requires prosecutors to acquire and provide information during discovery that they do not have access to. The requirement for the prosecution to provide the defendant an itemized list of information provided to the defense, “is impractical and time consuming in every case”. CAP also takes issue with the expanded “exculpatory obligations beyond the case at hand to any criminal case...such an expansive requirement...would impede a necessary law enforcement function”.

**Reported by: Logan Durant**

**Date: April 25, 2019**