



General Assembly

January Session, 2019

Committee Bill No. 653

LCO No. 6345



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

AN ACT CONCERNING OPEN FILE DISCLOSURE IN CRIMINAL CASES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-86a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2020*):

3 [(a) Upon motion of a defendant at any time after the filing of the
4 indictment or information, and upon a showing that the items sought
5 may be material to the preparation of his defense and that the request
6 is reasonable, the court shall order the attorney for the state to permit
7 the defendant to inspect and copy or photograph any relevant (1)
8 written or recorded statements, admissions or confessions made by the
9 defendant; (2) books, papers, documents or tangible objects obtained
10 from or belonging to the defendant or obtained from others by seizure
11 or process; (3) copies of records of any physical or mental
12 examinations of the defendant; and (4) records of prior convictions of
13 the defendant, or copies thereof, within the possession, custody or
14 control of the state, the existence of which is known to the attorney for
15 the state or to the defendant.

16 (b) An order of the court granting relief under subsection (a) of this
17 section shall specify the time, place and manner of making the
18 discovery and inspection permitted and may prescribe such terms and
19 conditions as are just.

20 (c) A motion under subsection (a) of this section may be made only
21 in a criminal case and shall include all relief sought under subsection
22 (a) of this section. A subsequent motion may be made only upon a
23 showing of cause why such motion would be in the interest of justice.]

24 [(d)] (a) Prior to the arraignment of any arrested person before the
25 court to determine the existence of probable cause to believe such
26 person committed the offense charged or to determine the conditions
27 of such person's release pursuant to section 54-64a, the [attorney for
28 the state] prosecutorial official shall provide the arrested person or his
29 or her counsel with a copy of any affidavit or report submitted to the
30 court for the purpose of making such determination; except that the
31 court may, upon motion of the [attorney for the state] prosecutorial
32 official and for good cause shown, limit the disclosure of any such
33 affidavit or report, or portion thereof.

34 (b) Upon written request by a defendant filed in accordance with
35 section 41-5 of the Connecticut Practice Book, as amended from time to
36 time, and without requiring any order of the court, the prosecutorial
37 official, subject to section 40-40 et seq. of the Connecticut Practice Book,
38 as amended from time to time, shall promptly, but no later than forty-
39 five days from the filing of such request, unless such time is extended
40 by the court for good cause shown, disclose in writing the existence of,
41 provide photocopies of, and allow the defendant in accordance with
42 section 40-7 of the Connecticut Practice Book, as amended from time to
43 time, to inspect, copy, photograph and have reasonable tests made on
44 any of the following items that are within the possession, custody or
45 control of the prosecutorial official, the state or any agent of the state,
46 including a person under contract with the state: (1) Relevant police or
47 uniform arrest reports, including all recorded statements, whether oral
48 or written, of all witnesses; (2) relevant books, papers, documents,

49 photographs or other tangible materials; (3) relevant recorded
50 statements, whether oral or written, admissions or confessions made
51 by the defendant; (4) relevant records or copies of such records of any
52 prior conviction of the defendant or any witness; (5) any warrant
53 executed for the arrest of the defendant for the offense charged, and
54 any search and seizure warrants issued in connection with the
55 investigation of the offense charged; and (6) exculpatory information
56 and material with respect to the defendant. Upon request from a
57 defendant, the prosecutorial official shall provide such information
58 and material in the same electronic format and file type, if any, in
59 which the state maintains such information and material.

60 (c) As soon as practicable, but not later than thirty-five days before
61 the start of a trial in a criminal case, except that the court may, upon
62 motion of the defendant or prosecutorial official and for good cause
63 shown, adjust such period of time, the prosecutorial official shall
64 obtain and disclose to the attorney for the defendant the following
65 information and material not required to be disclosed under
66 subsection (b) of this section and that is within the possession, custody
67 or control of the prosecutorial official, the state or any agent of the
68 state, including a person under contract with the state: (1) Reports or
69 statements of experts made in connection with the particular case,
70 including results of physical or mental examinations and of scientific
71 tests, experiments or comparisons; (2) tapes and transcripts of any
72 electronic surveillance of conversations involving the defendant, any
73 codefendant or witness in the case; (3) a summary of any unwritten or
74 unrecorded admissions or confessions made by the defendant, or any
75 codefendant; and (4) copies of relevant records of any physical or
76 mental examinations of the defendant. Upon request from the
77 defendant, the prosecutorial official shall provide any such
78 information or material in the same electronic format and file type, if
79 any, in which the state maintains such information or material. If prior
80 to or during trial, the prosecutorial official discovers additional
81 information or material that must be disclosed to the defendant under
82 this subsection, the prosecutorial official shall immediately disclose

83 such information or material.

84 (d) In the case of a defendant charged with a class A, B or C felony,
85 before (1) the court accepts a plea of guilty or nolo contendere, (2) the
86 court requires a defendant to accept or reject a plea agreement, the
87 rejection of which would cause the case to go to trial, or (3) trial, the
88 defendant and the prosecutorial official shall acknowledge, in writing
89 or otherwise on the record in open court, the disclosure of all
90 information or material provided to the defendant under this section.

91 (e) The prosecutorial official shall provide to the defendant an
92 itemized list of information or material disclosed pursuant to this
93 section. The listing of such information or material shall be in the order
94 in which the prosecutorial official disclosed such information or
95 material. The defendant shall acknowledge receipt of any such list on
96 the record.

97 (f) A party may object to any requirement to disclose under this
98 section and the court shall evaluate and make a determination
99 concerning such objection in the same manner as provided in section
100 40-8 of the Connecticut Practice Book, as amended from time to time.

101 Sec. 2. Section 54-86b of the general statutes is repealed and the
102 following is substituted in lieu thereof (*Effective January 1, 2020*):

103 [(a) In any criminal prosecution, after a witness called by the
104 prosecution has testified on direct examination, the court shall on
105 motion of the defendant order the prosecution to produce any
106 statement oral or written of the witness in the possession of the
107 prosecution which relates to the subject matter as to which the witness
108 has testified, and the court shall order said statement to be delivered
109 directly to the defendant for his examination and use.]

110 (a) In any criminal prosecution, except as provided in sections 54-
111 86d and 54-86e, not later than the thirtieth day before the date that jury
112 selection is scheduled to begin or in the case of a trial without a jury, or
113 not later than the thirtieth day before the date that presentation of

114 evidence is scheduled to begin, the defendant or the attorney for the
115 defendant or prosecutorial official may request that the other party
116 disclose the name and address of any person the party receiving such
117 request may use as a witness at trial to present evidence. Such
118 disclosure shall be made in writing not later than the tenth day after
119 receiving such request and subject to the provisions of section 40-10 of
120 the Connecticut Practice Book, as amended from time to time. On
121 motion of a party and after notice from the moving party to the other
122 parties, the court may order an earlier date on which one or more of
123 the other parties must disclose such requested information.

124 (b) If the [prosecution fails to comply with the order of the court]
125 defendant or the attorney for the defendant or the prosecutorial official
126 fails to comply with the provisions of subsection (a) of this section, the
127 court [shall] may strike from the record the testimony of the witness
128 and the trial shall proceed unless the court in its discretion shall
129 determine that the interests of justice require that a mistrial be
130 declared.

131 Sec. 3. Section 54-86c of the general statutes is repealed and the
132 following is substituted in lieu thereof (*Effective January 1, 2020*):

133 [(a) Not later than thirty days after any defendant enters a plea of
134 not guilty in a criminal case, the state's attorney, assistant state's
135 attorney or deputy assistant state's attorney in charge of the case shall
136 disclose any exculpatory information or material which he may have
137 with respect to the defendant whether or not a request has been made
138 therefor. If prior to or during the trial of the case, the prosecutorial
139 official discovers additional information or material which is
140 exculpatory, he shall promptly disclose the information or material to
141 the defendant.

142 (b) Any state's attorney, assistant state's attorney or deputy assistant
143 state's attorney may request an ex parte in camera hearing before a
144 judge, who shall not be the same judge who presides at the hearing of
145 the criminal case if the case is tried to the court, to determine whether

146 any material or information is exculpatory.]

147 [(c)] Each peace officer, as defined in subdivision (9) of section 53a-
148 3, shall disclose in writing any exculpatory information or material
149 which [he] such peace officer may have with respect to any criminal
150 investigation to the prosecutorial official in charge of [such case] any
151 criminal case for which such peace officer knows or should know such
152 investigation is relevant. Not later than thirty-five days prior to the
153 start of trial, the prosecutorial official shall represent to the defendant
154 and the court that such prosecutorial official has inquired of each
155 peace officer in the case whether such peace officer has made the
156 prosecutorial official aware of all such information or material and that
157 all such information or material has been disclosed to the defendant.

158 Sec. 4. Subsection (b) of section 54-86k of the general statutes is
159 repealed and the following is substituted in lieu thereof (*Effective*
160 *January 1, 2020*):

161 (b) If the results of the DNA analysis tend to exculpate the accused,
162 the prosecuting authority shall disclose such exculpatory information
163 or material to the accused in accordance with section [54-86c] 54-86a,
164 as amended by this act.

165 Sec. 5. (NEW) (*Effective January 1, 2020*) (a) Notwithstanding the
166 provisions of sections 54-86a to 54-86c, inclusive, of the general
167 statutes, as amended by this act, any disclosure of information or
168 material made by a prosecutorial official or a defendant pursuant to
169 said sections may be limited in the same manner as provided in
170 sections 40-14 and 40-31 of the Connecticut Practice Book, as amended
171 from time to time.

172 (b) Notwithstanding the provisions of sections 54-86a to 54-86c,
173 inclusive, of the general statutes, as amended by this act, a party to a
174 criminal case may move for a protective order to prevent the
175 disclosure of certain information or material in accordance with the
176 provisions of 40-40 to 40-43, inclusive, of the Connecticut Practice

177 Book, as amended from time to time, in which case the court may issue
 178 an order in the same manner and form as provided in said sections of
 179 the Connecticut Practice Book.

180 (c) Upon motion of a party, the court may find that an opposing
 181 party failed to comply with disclosure requirements under the
 182 provisions of sections 54-86a to 54-86c, inclusive, of the general
 183 statutes, as amended by this act, in which case the court may issue an
 184 order in the same manner and form as provided in section 40-5 of the
 185 Connecticut Practice Book, as amended from time to time.

186 (d) Unless the court orders otherwise for good cause, if a party to a
 187 criminal case intends to perform a scientific test or experiment on any
 188 material subject to disclosure under the provisions of sections 54-86a to
 189 54-86c, inclusive, of the general statutes, as amended by this act, and
 190 such test or experiment may preclude or impair any further tests or
 191 experiments on such material, such party shall give reasonable notice
 192 and opportunity to be present to any other party to the criminal case
 193 and any other person known to have or believed to have an interest in
 194 the matter, unless the court orders otherwise for good cause. Such
 195 other party or other person may have an expert observe or participate
 196 in the test or experiment.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2020</i>	54-86a
Sec. 2	<i>January 1, 2020</i>	54-86b
Sec. 3	<i>January 1, 2020</i>	54-86c
Sec. 4	<i>January 1, 2020</i>	54-86k(b)
Sec. 5	<i>January 1, 2020</i>	New section

JUD *Joint Favorable*