

Sec. 37-1. Arraignment; Timing, Waiver of Presence of Defendant

(a) Unless otherwise provided in this section, [A]a defendant who is not released from custody sooner shall be brought before a judicial authority for arraignment no later than the first court day following arrest. A defendant not in custody shall appear for arraignment in person at the time and place specified in the summons or the terms of release, or at such other date or place fixed by the judicial authority.

(b) Except as provided in subsection (c) of this section, [A]any defendant who is hospitalized, has escaped, or is otherwise incapacitated shall be presented for arraignment no later than the next court day following such defendant's medical discharge or return to police custody or a determination that the defendant is no longer incapacitated.

(c) The judicial authority may, upon motion of any party or upon its own motion, waive the presence at arraignment of any defendant who is hospitalized or otherwise incapacitated, provided the judicial authority finds, after a hearing on the record, that such waiver is necessary to protect the defendant's constitutional rights. Any defendant whose presence at arraignment was waived pursuant to this subsection and who was not present at his or her arraignment shall have the right to de novo review of any orders entered at such arraignment on the first court date at which the defendant is physically able to be present in court.

COMMENTARY: This section has been amended to allow the judicial authority to waive the presence of a defendant at arraignment if the defendant is in the hospital or is otherwise incapacitated. Although defendants have a fundamental constitutional right to be physically present at all critical stages of trial; *Rushen v. Spain*, 464 U.S. 114, 117 (1983); including arraignment, this change is intended to balance a defendant's right to be physically present at arraignment with his or her other constitutional rights such as the right to counsel, the right against self-incrimination, and the right to be released on bail. This change is also intended to provide greater First Amendment access to the public in cases where the public might otherwise be excluded from an arraignment that needs to take place in a hospital room due to the defendant's extended hospitalization. It is the intent that this provision be used sparingly and only for extraordinary circumstances where there is a risk that the defendant's rights may be negatively affected or may not be adequately protected were his or her arraignment to be conducted in accordance with subsection (b) of this section. This provision is to be interpreted and applied in a manner that preserves and protects the rights that a defendant would normally assert at arraignment. During any arraignment at which the defendant's presence is waived, the judicial authority should set any conditions of release that may be appropriate and, if the defendant was arrested without a warrant, make a probable cause determination.

*****It is intended that this commentary be a permanent part of this section.*****

Sec 37-3. — Advisement of Constitutional Rights

(a) Unless a defendant has been previously advised of his or her constitutional rights by a clerk pursuant to General Statutes § 54-64b or by a judicial authority pursuant to General Statutes § 54-1b, or unless the arraignment is proceeding without the defendant's presence in accordance with subsection (c) of Section 37-1, the judicial authority shall, personally and in open court advise any defendant or defendants appearing for arraignment, either individually or collectively of the following at the opening of the court session[The judicial authority shall personally, at the opening of the court session, in open

court, advise the defendant, or the defendants, unless previously so advised by a clerk pursuant to General Statutes § 54-64b or by a judicial authority pursuant to General Statutes § 54-1b, either individually or collectively of the following]:

(1) That the defendant is not obligated to say anything and that anything the defendant says may be used against him or her;

(2) That the defendant is entitled to the services of an attorney;

(3) If the defendant is unable to pay for one, what the procedures are through which the services of an attorney will be provided for him or her; and

(4) That the defendant will not be questioned unless he or she consents, that the defendant may consult with an attorney before being questioned and that the defendant may have an attorney present during any questioning.

(b) If the judicial authority has waived the presence of any defendant at arraignment, the order waiving the defendant's presence shall provide that the defendant be informed or warned in writing of his or her rights under subsection (a) of this section as quickly as possible under the circumstances. The judicial authority shall also advise the defendant of his or her rights pursuant to subsection (a) of this section on the first court date at which the defendant is physically able to be present in court.

COMMENTARY: This section has been amended to address the advisement of rights for defendants whose presence at arraignment is waived pursuant to new subsection (c) of Section 37-1.

Sec. 37-6. Appointment of Public Defender

(a) If the judicial authority determines after investigation by the public defender that the defendant is indigent, the judicial authority may designate the public defender or a special public defender to represent the defendant unless, in a misdemeanor case, at the time of the application for appointment of counsel, the judicial authority decides or believes that disposition of the pending case will not result in a sentence involving incarceration or a suspended sentence of incarceration with a period of probation or conditional discharge, and makes a statement to that effect on the record. If the public defender or his or her office determines that a defendant is not eligible to receive the services of a public defender, the defendant may appeal the public defender's decision to the judicial authority in accordance with General Statutes § 51-297 (g). The judicial authority may not appoint the public defender unless the judicial authority finds the defendant indigent following such appeal. If a conflict of interest or other circumstance exists which prevents the public defender from representing the defendant, the judicial authority, upon recommendation of the public defender or upon its own motion, may appoint a special public defender to represent the defendant.

(b) The fact that the judicial authority, in a misdemeanor case, decides or believes that disposition of the pending case will not result in a sentence involving incarceration or a suspended sentence of incarceration with a period of probation or conditional discharge, shall not preclude the judicial authority from appointing, in its discretion, a public defender or a special public defender to represent an indigent defendant.

(c) If a defendant, who is subject to a motion to waive his or her presence at arraignment pursuant to subsection (c) of Section 37-1, is not represented by counsel, the judicial authority shall designate the public defender or a special public defender to represent such defendant for the purpose

of the waiver hearing and any subsequent arraignment. Counsel for the defendant shall file an appearance in accordance with subsection (c) of Section 3-6. Upon request, the judicial authority shall provide counsel for the defendant with a reasonable opportunity to consult with the defendant privately prior to any such waiver hearing or arraignment.

COMMENTARY: This section has been amended to ensure that any defendant whose presence at arraignment may be waived pursuant to new subsection (c) of Section 37-1 has counsel for the waiver hearing under that section and any subsequent arraignment.

Sec. 44-7. Presence of Defendant; Attire of Incarcerated Defendant or Witness

The defendant has the right to be present at the arraignment, at the time of the plea, at evidentiary hearings, at the trial, and at the sentencing hearing, except as provided in Section 37-1 and Sections 44-7 through 44-10. Whenever present, the defendant shall be seated where he or she can effectively consult with counsel and can see and hear the proceedings. An incarcerated defendant or an incarcerated witness shall not be required during the course of a trial to appear in court in the distinctive attire of a prisoner or convict.

COMMENTARY: This section has been amended to address new subsection (c) of Section 37-1, which authorizes the judicial authority to waive the presence of the defendant at arraignment in limited circumstances.

Sec. 3-6 Appearance for Bail, [or] Detention Hearing, or Waiver Hearing and Arraignment Only

(a) An attorney, prior to the entering of an appearance by any other attorney, may enter an appearance for the defendant in a criminal case for the sole purpose of representing the defendant at a hearing for the fixing of bail. Such appearance shall be in writing and shall be styled, “for the purpose of the bail hearing only.” Upon entering such an appearance, that attorney shall be entitled to confer with the prosecuting authority in connection with the bail hearing.

(b) An attorney may enter an appearance in a delinquency proceeding for the sole purpose of representing the respondent at any detention hearing; such appearance shall be in writing and styled “for the purpose of detention hearing only.”

(c) An attorney may enter an appearance for the defendant in a criminal case for the sole purpose of representing the defendant at a hearing regarding the waiver of the defendant’s presence at arraignment pursuant to subsection (c) of Section 37-1 and any subsequent arraignment. Such appearance shall be in writing and shall be styled, “for the purpose of waiver hearing and arraignment only.” Upon entering such an appearance, that attorney shall be entitled to confer with the prosecuting authority in connection with the waiver hearing and, if the defendant’s presence at arraignment is waived, for the subsequent arraignment of the defendant.

COMMENTARY: This section has been amended to address new subsection (c) of Section 37-6, which requires the appointment of counsel for any unrepresented defendant who is subject to a motion to waive his or her presence at arraignment pursuant to new subsection (c) of Section 37-1.