



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of Jennifer Bourn, Supervisory Assistant Public Defender Office of Chief Public Defender

**Committee on the Judiciary
March 9, 2020**

S.B. No. 402

An Act Concerning the Disclosure of Evidence to a Defendant in a Criminal Case

The Office of Chief Public Defender **supports S.B. 402, *An Act Concerning the Disclosure of Evidence to a Defendant in a Criminal Case.***

This office has been working with other interested groups, including judges on the Superior Court Rules Committee, prosecutors, the Connecticut Criminal Defense Lawyers Association, and the Criminal Justice Section of the Connecticut Bar Association, to propose changes and reform to existing discovery rules, as suggested and encouraged by Senators Looney and Winfield and Representative Stafstrom in an August 19, 2019, letter to the Rules Committee. The Rules Committee will consider the proposal and any additional comments from the interested parties at their March 16, 2020, meeting.

This raised bill would work in conjunction with the proposed changes to the Connecticut Practice Book rules, which will be considered by the Superior Court Rules Committee at their next meeting.

Full and timely discovery promotes transparency and the appearance of fairness of the system, promotes expeditious and appropriate disposition of cases, and avoids unnecessary litigation – both trying a case because the defendant made an ill-informed decision to reject a plea bargain and litigation having to do with the discovery itself.

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This proposed bill's modification of General Statutes § 54-86c furthers these and other important interests:

(1) It requires police officers to produce and disclose all information or material about a criminal investigation to the prosecutorial official in charge of the case. Previously, the statute required police officers to disclose only exculpatory information. Promoting timely and full disclosure from police departments to prosecutors is necessary to ensure that prosecutors can discharge their duty to disclose all required information to the defense.

(2) It requires that law enforcement produce an inventory, or itemized list of all information that has been disclosed to the prosecution, and a written acknowledgement that all police officers have disclosed all information required. The creation of a written record about what was and was not disclosed is important, and the requirement will also promote full disclosure of all relevant information.

(3) It works to ensure that disclosure happens in a timely manner by requiring that in felony cases, information be disclosed at the time a defendant is required to accept or reject a plea offer, unless the defendant wishes to move forward without discovery, and waives his or her right to it. This provision not only ensures that plea negotiations are conducted with adequate and accurate information about a case and that defendants may make informed decisions about whether to accept or reject a plea agreement, but it also ensures that the work necessary to produce required disclosure is conducted well before the eve of trial.

This office strongly supports and applauds the effort to improve and streamline the discovery practice in this state because the practice varies widely depending on the jurisdiction, and discovery failures have led to much post conviction litigation, including numerous wrongful convictions in this state.¹ In cases where the disclosure violation is discovered decades after

¹ Examples include *Henning v. Commissioner of Correction*, 334 Conn. 1 (2019) & *Birch v. Commissioner of Correction*, 334 Conn. 37 (2019) (new trial warranted where there was nondisclosure of exculpatory evidence and false testimony); *Lewis v. Conn. Commissioner of Correction*, 790 F.3d 109 (2d Cir. 2015) (granting federal habeas challenging state conviction based on nondisclosure of exculpatory information); *LaPointe v. Commissioner of Correction*, 316 Conn. 225 (2015) (new trial warranted because of nondisclosure of evidence regarding burn time of fire); *Adams v. Commissioner of Correction*, 309 Conn. 359 (2013) (new trial warranted due to nondisclosure of incentive promised to cooperating witness and witness' false testimony about it); *Turner v. Commissioner of Correction*, 181 Conn. App. 743, 758-59 (2018) (same). There

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conviction, the prosecution may be unable to re-try the defendants or build and prove a case against the real perpetrator. These discovery failures harm the integrity of and confidence we have in our system, as well as the interests of all interested parties in a case.

We thank you for your consideration and are happy to provide additional information and input on this important issue and bill.

are also numerous cases involving disclosure issues that have been resolved short of post conviction litigation and reported decision, but resulted in some form of relief – often release from incarceration – for a defendant. Finally, there was recently a reversal of a murder conviction where there had been late disclosure of an expert witness. *State v. Jackson*, 334 Conn. 793 (2020).