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Judiciary Committee

Subcommittees

Juvenile Law

Public Safety



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THE MARYLAND HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401

Chair Luke Clippinger and Vice Chair Vanessa Atterbeary  
House Judiciary Committee  
House Office Building Room 101  
Annapolis, Maryland 21401

February 18, 2020

**Testimony in Support of House Bill 637 – Courts – Discovery – In-Custody Witness Testimony**

Dear Chair Clippinger and Vice Chair Atterbeary,

I fully support House Bill 637 which I believe would help end wrongful conviction in our state.

Jailhouse informants are a leading cause of wrongful conviction, accounting for one in five DNA-based exonerations.<sup>1</sup> Jailhouse witnesses often provide unreliable evidence as they have incentive to lie in order to receive immunity, favorable release terms and other leniency in return for their testimony. These wrongful convictions cost Maryland taxpayers at least \$9 million in civil payments due to post-conviction claims and appeals this year.<sup>2</sup> The Constitution and Maryland Rules of Criminal Discovery require the State to disclose impeaching information on jailhouse witnesses, so that the judge and jury can address credibility concerns. However, State's Attorneys can and often do submit this evidence late or in an incomplete manner rendering it useless to defense.<sup>3</sup>

This bill would reform the use of jailhouse witness testimony by 1) creating a statewide record for prosecutors to track the use of and benefits provided to jailhouse witnesses who testify; 2) requiring prosecution to disclose jailhouse witness testimony, any benefits they would receive from testifying and any previous testimony that was incentivized; 3) allowing defense to request a pretrial disclosure enforcement hearing, so defense can receive such testimony; and 4) requiring that victims of jailhouse witness' crimes be notified that the witness is receiving leniency for testifying.

This bill and its implementation would provide prosecutors with more complete information before putting a jailhouse witness on the stand. Without a tracking system, prosecutors are forced to rely on jailhouse witnesses' account of previous cases in which they provided incentivized testimony. A tracking system would save prosecutors time and resources by helping them screen out unreliable witnesses. The tracking system would also help protect against appeals and post-conviction claims alleging issues with jailhouse witness testimony, saving the state taxpayer dollars spent on settlements. The Governor's Office

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<sup>1</sup> The Innocence Project. "Informing Injustice: The Disturbing Use of Jailhouse Informants."  
<https://www.innocenceproject.org/informing-injustice/>

<sup>2</sup> Broadwater, Luke. "When Innocent People Go to Prison, Jailhouse Informants Are Often To Blame. Some Maryland Lawmakers Want to Change the System." *The Baltimore Sun*. 13 February 2020. <https://www.baltimoresun.com/politics/bs-md-pol-ga-jailhouse-informants-20200213-y4gdo4fy45hjbizvpsmjlcei-story.html>

<sup>3</sup> MD Rules of Discovery. Rule 4-263 (d) (6)

of Crime Control and Prevention would maintain these records for the State Attorneys across Maryland to access, protecting witness safety as the information would not subject to Public Information Act requests.

Several states already use similar procedures to ensure for conviction integrity. Connecticut was the first state to establish a statewide jailhouse witness tracking system. Their Office of Policy Management, the agency responsible for policy, planning and budgeting of state government manages the tracking system. No additional staff were hired to maintain the database system because prosecutors may directly input data, making maintenance minimal. Texas, Nebraska, Illinois and Connecticut have also enacted similar legislation and have implemented tracking systems with little to no additional expenditures. The fiscal note on this bill does not anticipate any increase in expenditures.

Instituting a tracking system would serve prosecutors and the accused better by ensuring that incentivized jailhouse witnesses are put through a vigorous vetting process before they can take the stand. This bill defines jailhouse witnesses very narrowly as incarcerated witnesses who provide testimony and receive or expect to receive benefits for that testimony. It does not apply to confidential informants or to accomplices/co-defendants. It also does not apply to situations where the individual only provides information (rather than testimony) or if there is no expectation of a benefit for the testimony. These tracking measures do not stop the state from using jailhouse witnesses, they merely add an additional layer of transparency to safeguard against perjured testimony with the goal of preventing wrongful conviction.

For all these reasons, I respectfully request a favorable report on HB 637.

Sincerely,

Delegate Debra Davis

District 28, Charles County