

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 20-0824.01 Michael Dohr x4347

HOUSE BILL 20-1102

HOUSE SPONSORSHIP

Tipper and Soper,

SENATE SPONSORSHIP

(None),

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIRED PROCEDURES TO PROTECT THE DEFENDANT**
102 **WHEN JAILHOUSE WITNESSES ARE USED IN A CRIMINAL CASE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires each district attorney's office to maintain a central record that tracks each case in which a jailhouse witness is endorsed by the state to testify against a suspect or defendant's interest. Each district attorney's office shall send the information to the Colorado district attorneys' council, which shall maintain a statewide record of the information. The information is not subject to open records requests.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 FOR THE STATE REGARDING STATEMENTS MADE BY A DEFENDANT, WHILE
2 BOTH WERE INCARCERATED, REGARDLESS OF WHETHER THE DEFENDANT
3 HAS BEEN CHARGED WITH THE CRIME AT THE TIME THE ALLEGED
4 STATEMENTS WERE MADE, AND WHO HAS REQUESTED, HAS BEEN OFFERED,
5 OR MAY IN THE FUTURE RECEIVE A BENEFIT IN CONNECTION WITH THE
6 TESTIMONY.

7 (b) "JAILHOUSE WITNESS" DOES NOT MEAN A CO-DEFENDANT IN
8 THE CASE. [REDACTED]

9 **16-10-502. Tracking use of and benefits provided to jailhouse**
10 **witnesses.** (1) EACH DISTRICT ATTORNEY'S OFFICE SHALL MAINTAIN A
11 CENTRAL RECORD THAT TRACKS:

12 (a) EACH CASE IN WHICH A JAILHOUSE WITNESS HAS BEEN
13 ENDORSED BY THE STATE TO TESTIFY AGAINST A [REDACTED] DEFENDANT'S
14 INTEREST;

15 (b) THE SUBSTANCE OF THE TESTIMONY; AND

16 (c) ANY BENEFIT THAT HAS BEEN REQUESTED BY, OR HAS BEEN
17 OFFERED TO, THE JAILHOUSE WITNESS AND ANY BENEFIT THAT MAY BE
18 PROVIDED IN THE FUTURE IN CONNECTION WITH SUCH TESTIMONY.

19 (2) EACH DISTRICT ATTORNEY'S OFFICE SHALL SEND THE
20 INFORMATION DESCRIBED IN SUBSECTION (1) OF THIS SECTION ON A
21 MONTHLY BASIS TO BE MAINTAINED IN A CENTRALIZED STATEWIDE
22 RECORD OF THE PROVIDED INFORMATION THAT SHALL BE MADE
23 AVAILABLE TO DISTRICT ATTORNEYS THROUGHOUT THE STATE.

24 (3) THE INFORMATION DESCRIBED IN THIS SECTION IS ONLY
25 ACCESSIBLE TO DISTRICT ATTORNEYS AND IS NOT SUBJECT TO THE
26 PROVISIONS OF ARTICLE 72 OF TITLE 24.

27 **16-10-503. Discovery.** (1) IF A DISTRICT ATTORNEY ENDORSES A

1 PERSON TO TESTIFY AS A JAILHOUSE WITNESS, THE FOLLOWING MATERIALS
2 AND INFORMATION SHALL BE DISCLOSED WITHIN THE TIME FRAME
3 ARTICULATED IN RULE 16 OF THE COLORADO RULES OF CRIMINAL
4 PROCEDURE:

5 (a) THE COMPLETE CRIMINAL HISTORY OF THE JAILHOUSE WITNESS,
6 INCLUDING ANY CHARGES THAT ARE PENDING OR WERE REDUCED OR
7 DISMISSED AS PART OF A PLEA BARGAIN;

8 (b) THE JAILHOUSE WITNESS'S COOPERATION AGREEMENT AND ANY
9 DEAL, PROMISE, INDUCEMENT, OR BENEFIT THAT HAS BEEN REQUESTED, OR
10 THAT HAS BEEN OR MAY, IN THE FUTURE, BE OFFERED OR PROVIDED TO THE
11 JAILHOUSE WITNESS IN CONNECTION WITH TESTIMONY AGAINST THE [REDACTED]
12 DEFENDANT'S INTEREST;

13 (c) THE SUBSTANCE, TIME, AND PLACE OF ANY STATEMENT
14 ALLEGEDLY GIVEN BY THE [REDACTED] DEFENDANT TO THE JAILHOUSE WITNESS AND
15 THE SUBSTANCE, TIME, AND PLACE OF ANY STATEMENT GIVEN BY THE
16 JAILHOUSE WITNESS TO LAW ENFORCEMENT IMPLICATING THE [REDACTED]
17 DEFENDANT IN THE CRIME CHARGED;

18 (d) WHETHER, AT ANY TIME, THE JAILHOUSE WITNESS RECANTED
19 THAT TESTIMONY OR STATEMENT, AND, IF SO, THE TIME AND PLACE OF THE
20 RECANTATION, THE NATURE OF THE RECANTATION, AND THE NAMES OF
21 THE PERSONS WHO WERE PRESENT AT THE RECANTATION; AND

22 (e) INFORMATION CONCERNING OTHER CRIMINAL CASES IN ANY
23 COUNTY IN WHICH THE JAILHOUSE WITNESS WAS ENDORSED BY THE STATE
24 TO TESTIFY AGAINST A [REDACTED] DEFENDANT WITH WHOM THE JAILHOUSE
25 WITNESS WAS IMPRISONED OR CONFINED, INCLUDING:

26 (I) THE CASE NAME AND NUMBER;

27 (II) THE SUBSTANCE OF THE TESTIMONY;

1 (III) ANY COOPERATION AGREEMENT, DEAL, PROMISE,
2 INDUCEMENT, OR BENEFIT THAT WAS REQUESTED, OFFERED, OR PROVIDED
3 TO THE JAILHOUSE WITNESS IN CONNECTION WITH HIS OR HER TESTIMONY;
4 AND

5 (IV) ANY OTHER INFORMATION THAT IS REQUIRED TO BE
6 DISCLOSED PURSUANT TO THE UNITED STATES AND COLORADO
7 CONSTITUTIONS AND THE COLORADO RULES OF CRIMINAL PROCEDURE.

8 (2) THE COURT MAY PERMIT THE DISTRICT ATTORNEY TO COMPLY
9 WITH THIS SECTION AFTER THE TIME PRESCRIBED IN SUBSECTION (1) OF
10 THIS SECTION IF THE COURT FINDS THAT THE JAILHOUSE WITNESS WAS NOT
11 KNOWN AND THAT MATERIALS IN SUBSECTION (1) OF THIS SECTION COULD
12 NOT BE DISCOVERED OR OBTAINED BY THE DISTRICT ATTORNEY WITH THE
13 EXERCISE OF DUE DILIGENCE WITHIN THAT PERIOD. UPON GOOD CAUSE
14 SHOWN, THE COURT MAY SET A REASONABLE COMPLIANCE PERIOD UNDER
15 THE CIRCUMSTANCES OR MAY CONTINUE THE PROCEEDINGS ON ITS OWN
16 MOTION TO ALLOW FOR A REASONABLE COMPLIANCE PERIOD.

17 (3) IF THE COURT FINDS THAT DISCLOSING THE EVIDENCE IN
18 SUBSECTION (1) OF THIS SECTION WOULD RESULT IN THE POSSIBILITY OF
19 BODILY HARM TO THE JAILHOUSE WITNESS, THE COURT MAY ISSUE A
20 PROTECTIVE ORDER PURSUANT TO THE PROVISIONS OF RULE 16 (III)(D) OF
21 THE COLORADO RULES OF CRIMINAL PROCEDURE.

22 **16-10-504. Pre-trial reliability hearing for murder and sexual**
23 **assault cases.** (1) IN ANY CRIMINAL PROSECUTION OF A DEFENDANT FOR
24 A HOMICIDE OFFENSE IN PART 1 OF ARTICLE 3 OF TITLE 18 OR A SEXUAL
25 ASSAULT OFFENSE IN PART 4 OF ARTICLE 3 OF TITLE 18 IN WHICH THE
26 DISTRICT ATTORNEY INTENDS TO INTRODUCE THE TESTIMONY OF A
27 JAILHOUSE WITNESS, UPON A MOTION OF THE DEFENDANT, THE COURT

1 SHALL CONDUCT A PRE-TRIAL HEARING TO DETERMINE WHETHER THE
2 JAILHOUSE WITNESS'S TESTIMONY IS RELIABLE AND THEREFORE
3 ADMISSIBLE BASED UPON THE MATERIAL AND INFORMATION DISCLOSED
4 PURSUANT TO SECTION 16-10-503, AS WELL AS THE FOLLOWING FACTORS:

5 (a) THE EXTENT TO WHICH THE JAILHOUSE WITNESS'S TESTIMONY
6 IS CONFIRMED BY OTHER EVIDENCE;

7 (b) THE SPECIFICITY OF THE TESTIMONY;

8 (c) THE EXTENT TO WHICH THE TESTIMONY CONTAINS DETAILS
9 KNOWN ONLY BY THE PERPETRATOR;

10 (d) THE EXTENT TO WHICH THE DETAILS OF THE TESTIMONY COULD
11 BE OBTAINED FROM A SOURCE OTHER THAN THE DEFENDANT; AND

12 (e) THE CIRCUMSTANCES UNDER WHICH THE JAILHOUSE WITNESS
13 INITIALLY PROVIDED THE INFORMATION TO THE POLICE OR THE
14 PROSECUTOR, INCLUDING WHETHER THE JAILHOUSE WITNESS WAS
15 RESPONDING TO LEADING QUESTIONS.

16 (2) THE DISTRICT ATTORNEY MUST SHOW BY A PREPONDERANCE
17 OF THE EVIDENCE THAT THE JAILHOUSE WITNESS'S TESTIMONY IS RELIABLE
18 IN ORDER FOR THE COURT TO ALLOW THE TESTIMONY TO BE HEARD AT
19 TRIAL BASED ON THE FACTORS IN SUBSECTION (1) OF THIS SECTION.

20 **16-10-505. Jury instruction.** IF A JAILHOUSE WITNESS'S
21 TESTIMONY IS ADMITTED INTO EVIDENCE, THE COURT SHALL INSTRUCT
22 JURORS TO CONSIDER THE MATERIAL AND INFORMATION DISCLOSED
23 PURSUANT TO SECTION 16-10-503 (1) AND THE FACTORS ENUMERATED IN
24 SECTION 16-10-504 (1) WHEN ASSESSING THE JAILHOUSE WITNESS'S
25 TESTIMONY.

26 **16-10-506. Victim notification.** IF A JAILHOUSE WITNESS
27 RECEIVES A BENEFIT RELATED TO A PENDING CHARGE, A CONVICTION, OR

1 A SENTENCE FOR A CRIME COMMITTED BY THE JAILHOUSE WITNESS, THE
2 PROSECUTOR SHALL COMPLY WITH THE REQUIREMENTS OF SECTION
3 24-4.1-302.5 IF THE JAILHOUSE WITNESS HAS HIS OR HER OWN PENDING OR
4 CLOSED CASE PURSUANT TO SECTION 24-4.1-302 (1).

5 **SECTION 2. Act subject to petition - effective date.** This act
6 takes effect at 12:01 a.m. on the day following the expiration of the
7 ninety-day period after final adjournment of the general assembly (August
8 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
9 referendum petition is filed pursuant to section 1 (3) of article V of the
10 state constitution against this act or an item, section, or part of this act
11 within such period, then the act, item, section, or part will not take effect
12 unless approved by the people at the general election to be held in
13 November 2020 and, in such case, will take effect on the date of the
14 official declaration of the vote thereon by the governor.