

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

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 PROVIDES TESTIMONY FOR THE STATE REGARDING STATEMENTS MADE BY
2 A SUSPECT OR DEFENDANT, AND WHO HAS REQUESTED, HAS BEEN OFFERED,
3 OR MAY IN THE FUTURE RECEIVE A BENEFIT IN CONNECTION WITH THE
4 TESTIMONY.

5 **16-10-502. Tracking use of and benefits provided to jailhouse**
6 **witnesses.** (1) EACH DISTRICT ATTORNEY'S OFFICE SHALL MAINTAIN A
7 CENTRAL RECORD THAT TRACKS:

8 (a) EACH CASE IN WHICH A JAILHOUSE WITNESS HAS BEEN
9 ENDORSED BY THE STATE TO TESTIFY AGAINST A SUSPECT'S OR
10 DEFENDANT'S INTEREST;

11 (b) THE SUBSTANCE OF THE TESTIMONY; AND

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

15 (2) EACH DISTRICT ATTORNEY'S OFFICE SHALL SEND THE
16 INFORMATION DESCRIBED IN SUBSECTION (1) OF THIS SECTION TO THE
17 COLORADO DISTRICT ATTORNEYS' COUNCIL, WHICH SHALL MAINTAIN A
18 STATEWIDE RECORD OF THE PROVIDED INFORMATION.

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

22 **16-10-503. Discovery.** (1) IF A DISTRICT ATTORNEY ENDORSES A
23 JAILHOUSE WITNESS, THE FOLLOWING MATERIALS AND INFORMATION
24 SHALL BE DISCLOSED WITHIN THE TIME FRAME ARTICULATED IN RULE 16
25 OF THE COLORADO RULES OF CRIMINAL PROCEDURE:

26 (a) THE COMPLETE CRIMINAL HISTORY OF THE JAILHOUSE WITNESS,
27 INCLUDING ANY CHARGES THAT ARE PENDING OR WERE REDUCED OR

1 DISMISSED AS PART OF A PLEA BARGAIN;

2 (b) THE JAILHOUSE WITNESS'S COOPERATION AGREEMENT AND ANY
3 DEAL, PROMISE, INDUCEMENT, OR BENEFIT THAT HAS BEEN REQUESTED, OR
4 THAT HAS BEEN OR MAY, IN THE FUTURE, BE OFFERED OR PROVIDED TO THE
5 JAILHOUSE WITNESS IN CONNECTION WITH TESTIMONY AGAINST THE
6 SUSPECT OR DEFENDANT'S INTEREST;

7 (c) THE SUBSTANCE, TIME, AND PLACE OF ANY STATEMENT
8 ALLEGEDLY GIVEN BY THE SUSPECT OR DEFENDANT TO THE JAILHOUSE
9 WITNESS AND THE SUBSTANCE, TIME, AND PLACE OF ANY STATEMENT
10 GIVEN BY THE JAILHOUSE WITNESS TO LAW ENFORCEMENT IMPLICATING
11 THE SUSPECT OR DEFENDANT IN THE CRIME CHARGED;

12 (d) WHETHER, AT ANY TIME, THE JAILHOUSE WITNESS RECANTED
13 THAT TESTIMONY OR STATEMENT, AND, IF SO, THE TIME AND PLACE OF THE
14 RECANTATION, THE NATURE OF THE RECANTATION, AND THE NAMES OF
15 THE PERSONS WHO WERE PRESENT AT THE RECANTATION; AND

16 (e) INFORMATION CONCERNING OTHER CRIMINAL CASES IN ANY
17 COUNTY IN WHICH THE JAILHOUSE WITNESS WAS ENDORSED BY THE STATE
18 TO TESTIFY AGAINST A SUSPECT OR DEFENDANT WITH WHOM THE
19 JAILHOUSE WITNESS WAS IMPRISONED OR CONFINED, INCLUDING:

20 (I) THE CASE NAME AND NUMBER;

21 (II) THE SUBSTANCE OF THE TESTIMONY;

22 (III) ANY COOPERATION AGREEMENT, DEAL, PROMISE,
23 INDUCEMENT, OR BENEFIT THAT WAS REQUESTED, OFFERED, OR PROVIDED
24 TO THE JAILHOUSE WITNESS IN CONNECTION WITH HIS OR HER TESTIMONY;
25 AND

26 (IV) ANY OTHER INFORMATION THAT IS REQUIRED TO BE
27 DISCLOSED PURSUANT TO THE UNITED STATES AND STATE CONSTITUTIONS

1 AND THE COLORADO RULES OF CRIMINAL PROCEDURE.

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

11 (3) IF THE COURT FINDS THAT DISCLOSING THE EVIDENCE IN
12 SUBSECTION (1) OF THIS SECTION WOULD RESULT IN THE POSSIBILITY OF
13 BODILY HARM TO THE JAILHOUSE WITNESS, THE COURT MAY ORDER THAT
14 THE EVIDENCE ONLY BE VIEWED BY THE DEFENSE COUNSEL AND NOT BY
15 THE DEFENDANT OR OTHER PARTIES.

16 **16-10-504. Pre-trial reliability hearing for murder and sexual**
17 **assault cases.** (1) IN ANY CRIMINAL PROSECUTION OF A DEFENDANT FOR
18 A HOMICIDE OFFENSE IN PART 1 OF ARTICLE 3 OF TITLE 18 OR A SEXUAL
19 ASSAULT OFFENSE IN PART 4 OF ARTICLE 3 OF TITLE 18 IN WHICH THE
20 DISTRICT ATTORNEY INTENDS TO INTRODUCE THE TESTIMONY OF A
21 JAILHOUSE WITNESS, UPON A MOTION OF THE DEFENDANT, THE COURT
22 SHALL CONDUCT A PRE-TRIAL HEARING TO DETERMINE WHETHER THE
23 JAILHOUSE WITNESS'S TESTIMONY IS RELIABLE AND THEREFORE
24 ADMISSIBLE BASED UPON THE MATERIAL AND INFORMATION DISCLOSED
25 PURSUANT TO SECTION 16-10-503, AS WELL AS THE FOLLOWING FACTORS:

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

- 1 (b) THE SPECIFICITY OF THE TESTIMONY;
- 2 (c) THE EXTENT TO WHICH THE TESTIMONY CONTAINS DETAILS
3 KNOWN ONLY BY THE PERPETRATOR;
- 4 (d) THE EXTENT TO WHICH THE DETAILS OF THE TESTIMONY COULD
5 BE OBTAINED FROM A SOURCE OTHER THAN THE DEFENDANT; AND
- 6 (e) THE CIRCUMSTANCES UNDER WHICH THE JAILHOUSE WITNESS
7 INITIALLY PROVIDED THE INFORMATION TO THE POLICE OR THE
8 PROSECUTOR, INCLUDING WHETHER THE JAILHOUSE WITNESS WAS
9 RESPONDING TO LEADING QUESTIONS.

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

14 **16-10-505. Jury instruction.** IF A JAILHOUSE WITNESS'S
15 TESTIMONY IS ADMITTED INTO EVIDENCE, THE COURT SHALL INSTRUCT
16 JURORS TO CONSIDER THE MATERIAL AND INFORMATION DISCLOSED
17 PURSUANT TO SECTION 16-10-503 (1) AND THE FACTORS ENUMERATED IN
18 SECTION 16-10-504 (1) WHEN ASSESSING THE JAILHOUSE WITNESS'S
19 TESTIMONY.

20 **16-10-506. Victim notification.** IF A JAILHOUSE WITNESS
21 RECEIVES A BENEFIT RELATED TO A PENDING CHARGE, A CONVICTION, OR
22 A SENTENCE FOR A CRIME AGAINST A VICTIM IN CONNECTION WITH
23 OFFERING OR PROVIDING TESTIMONY AGAINST A SUSPECT OR DEFENDANT,
24 THE PROSECUTOR SHALL NOTIFY THE VICTIM.

25 **SECTION 2. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly (August

1 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part will not take effect
5 unless approved by the people at the general election to be held in
6 November 2020 and, in such case, will take effect on the date of the
7 official declaration of the vote thereon by the governor.