

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 20-0824.01 Michael Dohr x4347

HOUSE BILL 20-1102

HOUSE SPONSORSHIP

Tipper and Soper,

SENATE SPONSORSHIP

Lee and Priola,

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,**
103 **AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

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.

HOUSE
Amended 2nd Reading
March 3, 2020

information. The information is not subject to open records requests.

A district attorney shall disclose all jailhouse witnesses who have been endorsed by the state and specified information pursuant to rule 16 of the Colorado rules of criminal procedure. In a criminal prosecution for homicide or sexual assault in which the state intends to introduce the testimony of a jailhouse witness, upon a motion of the defendant, the court shall conduct a pre-trial hearing to determine whether the jailhouse witness's testimony is admissible based upon specified factors. Unless the district attorney shows by a preponderance of the evidence that the jailhouse witness's testimony is reliable based on the specified factors, the court shall not allow the testimony to be heard at trial. If a jailhouse witness's testimony is admitted into evidence, the court shall instruct the jurors to consider specific factors when assessing the jailhouse witness's testimony. If a jailhouse witness receives leniency related to a pending charge, a conviction, or a sentence for a crime against a victim, in connection with offering or providing testimony against a suspect or defendant, the prosecutor shall notify the victim.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 5 to article 10 of title 16 as follows:

PART 5

JAILHOUSE WITNESS PROCEDURES

16-10-501. Definitions. AS USED IN THIS PART 5, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BENEFIT" MEANS ANY PLEA BARGAIN, BAIL CONSIDERATION, REDUCTION OR MODIFICATION OF SENTENCE, OR ANY OTHER LENIENCY, IMMUNITY, FINANCIAL PAYMENT, REWARD, OR AMELIORATION OF CURRENT OR FUTURE CONDITIONS OF INCARCERATION THAT HAS BEEN REQUESTED, OR THAT HAS BEEN OR MAY, IN THE FUTURE, BE OFFERED OR PROVIDED IN CONNECTION WITH, OR IN EXCHANGE FOR, THE TESTIMONY OF A JAILHOUSE WITNESS WHO WAS ENDORSED BY THE STATE.

(2) (a) "JAILHOUSE WITNESS" MEANS A WITNESS ENDORSED BY THE STATE AS A POTENTIAL WITNESS WHO OFFERS OR PROVIDES TESTIMONY

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 OR
8 VICTIM IN THE CASE.

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 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 TO THE
21 DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY ON
22 A MONTHLY BASIS TO BE MAINTAINED IN A CENTRALIZED STATEWIDE
23 RECORD THAT IS AVAILABLE TO DISTRICT ATTORNEYS THROUGHOUT THE
24 STATE.

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

1 **16-10-503. Discovery.** (1) IF A DISTRICT ATTORNEY ENDORSES A
2 PERSON TO TESTIFY AS A JAILHOUSE WITNESS, THE FOLLOWING MATERIALS
3 AND INFORMATION SHALL BE DISCLOSED WITHIN THE TIME FRAME
4 ARTICULATED IN RULE 16 OF THE COLORADO RULES OF CRIMINAL
5 PROCEDURE:

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

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

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

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

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

27 (I) THE CASE NAME AND NUMBER;

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

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

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

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

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

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

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

8 (b) THE SPECIFICITY OF THE TESTIMONY;

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

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

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

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

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

27 **16-10-506. Victim notification.** IF A JAILHOUSE WITNESS

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

6 **SECTION 2. Appropriation.** (1) For the 2020-21 state fiscal
7 year, \$16,860 is appropriated to the department of public safety for use
8 by the division of criminal justice. This appropriation is from the general
9 fund. To implement this act, the division may use this appropriation for
10 the purchase of information technology services.

11 (2) For the 2020-21 state fiscal year, \$16,860 is appropriated to
12 the office of the governor for use by the office of information technology.
13 This appropriation is from reappropriated funds received from the
14 department of public safety under subsection (1) of this section. To
15 implement this act, the office may use this appropriation to provide
16 information technology services for the department of public safety.

17 **SECTION 3. Act subject to petition - effective date.** This act
18 takes effect at 12:01 a.m. on the day following the expiration of the
19 ninety-day period after final adjournment of the general assembly (August
20 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
21 referendum petition is filed pursuant to section 1 (3) of article V of the
22 state constitution against this act or an item, section, or part of this act
23 within such period, then the act, item, section, or part will not take effect
24 unless approved by the people at the general election to be held in
25 November 2020 and, in such case, will take effect on the date of the
26 official declaration of the vote thereon by the governor.