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| General Assembly | File No. 844 |
| ***January Session, 2019*** | Substitute Senate Bill No. 1098 |

*Senate, April 29, 2019*

The Committee on Judiciary reported through SEN. WINFIELD of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

 AN ACT CONCERNING THE TESTIMONY OF JAILHOUSE WITNESSES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2019*) (a) In any criminal prosecution, upon written request by a defendant filed with the court, but not requiring an order of the court, the defendant may request of the prosecutorial official whether such official intends to introduce testimony of a jailhouse witness. The prosecutorial official shall promptly, but not later than forty-five days after the filing of such motion, disclose to the defendant whether the official intends to introduce such testimony and, if so, the following information and material:

(1) The complete criminal history of any such jailhouse witness, including any charges pending against such witness, or which were reduced or dismissed as part of a plea bargain;

(2) The jailhouse witness's cooperation agreement with the prosecutorial official and any benefit that the official has provided, offered or may offer in the future to any such jailhouse witness;

(3) The substance, time and place of any statement allegedly given by the defendant to a jailhouse witness, and the substance, time and place of any statement given by a jailhouse witness implicating the defendant in an offense for which the defendant is indicted;

(4) Whether at any time the jailhouse witness recanted any testimony subject to the disclosure and, if so, the time and place of the recantation, the nature of the recantation and the name of any person present at the recantation; and

(5) Information concerning any other criminal prosecution in which the jailhouse witness testified, or offered to testify, against a person suspected as the perpetrator of an offense or defendant with whom the jailhouse witness was imprisoned or otherwise confined, including any cooperation agreement with a prosecutorial official or any benefit provided or offered to such witness by a prosecutorial official.

(b) The prosecutorial official may move for an extension of time to make any disclosure pursuant to subsection (a) of this section. The court may agree to such extension of time if the court finds that the jailhouse witness was not known to the prosecutorial official at the time the defendant filed the written request under subsection (a) of this section, and that information or material required to be disclosed pursuant to subsection (a) of this section could not be disclosed with the exercise of due diligence within the period of time required under subsection (a) of this section. Upon good cause shown, the court may set a reasonable extension of time or may, upon the court's own motion, allow such extension.

(c) If the court finds that a disclosure pursuant to subsection (a) of this section may result in the possibility of bodily harm to the jailhouse witness, the court may order that such information or material may only be viewed by the defense counsel, and not by the defendant or other parties.

(d) For the purposes of this section, "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 offered or provided in connection with, or in exchange for, testimony that is offered or provided by a jailhouse witness; and "jailhouse witness" means a person who offers or provides testimony concerning statements made to such person by another person with who he or she was incarcerated, or an incarcerated person who offers or provides testimony concerning statements made to such person by another person who is suspected of or charged with committing a criminal offense.

Sec. 2. (NEW) (*Effective October 1, 2019*) (a) In any criminal prosecution of a defendant for a violation of section 53a-54a, 53a-54b, 53a-54c, 53a-54d, 53a-70, 53a-70a or 53a-70c of the general statutes, upon a motion of the defendant before the start of a trial on any such offense, the court shall conduct a hearing at which hearsay or secondary evidence shall be admissible to determine whether any jailhouse witness's testimony is reliable and admissible. The court shall make a prima facie determination concerning the reliability of such testimony after evaluation of the evidence submitted at the hearing and the information or material disclosed pursuant to subdivisions (1) to (5), inclusive, of subsection (a) of section 1 of this act, and may consider the following factors:

(1) The extent to which the jailhouse witness's testimony is confirmed by other evidence;

(2) The specificity of the testimony;

(3) The extent to which the testimony contains details known only by the perpetrator of the alleged offense;

(4) The extent to which the details of the testimony could be obtained from a source other than the defendant; and

(5) The circumstances under which the jailhouse witness initially provided information supporting such testimony to a sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of Emergency Services and Public Protection or a prosecutorial official, including whether the jailhouse witness was responding to a leading question.

(b) If the prosecutorial official fails make a prima facie showing that the jailhouse witness's testimony is reliable, the court shall not allow the testimony to be admitted.

(c) For the purposes of this section, "jailhouse witness" means jailhouse witness, as defined in section 1 of this act substitute senate bill 1098 of the current section.

Sec. 3. (NEW) (*Effective October 1, 2019*) (a) Each state's attorney's office shall track the following:

(1) The substance and use of any testimony of a jailhouse witness, as defined in section 1 of this act, against the interest of a (A) person suspected as the perpetrator of an offense, or (B) defendant, regardless of whether such testimony is presented at trial; and

(2) The jailhouse witness's agreement to cooperate with the state's attorney and benefit, as defined in section 1 of this act, that the state's attorney has provided, offered or may offer in the future to the jailhouse witness in connection with the testimony described in subdivision (1) of this subsection.

(b) Each state's attorney's office shall send the information described in subsection (a) of this section to the Criminal Justice Policy and Planning Division within the Office of Policy and Management, which shall maintain a state-wide record of such materials.

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| This act shall take effect as follows and shall amend the following sections: |
| Section 1 | *October 1, 2019* | New section |
| Sec. 2 | *October 1, 2019* | New section |
| Sec. 3 | *October 1, 2019* | New section |

***Statement of Legislative Commissioners:***

In Section 1(a)(3), "a crime" was replaced with "an offense" for consistency. In Section 2(a) "an offense" was replaced with "a violation" for clarity.

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| ***JUD*** | *Joint Favorable Subst. -LCO* |  |

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst’s professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

*OFA Fiscal Note*

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill requires reporting by the Division of Criminal Justice and does not result in a fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

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OLR Bill Analysis

SB 1098

AN ACT CONCERNING THE TESTIMONY OF JAILHOUSE WITNESSES.

SUMMARY

This bill allows a criminal defendant, by filing a written request with the court, to ask the prosecutor if he or she intends to introduce the testimony of a jailhouse witness in the prosecution. Under the bill, a jailhouse witness is a person who is incarcerated when he or she offers to provide testimony concerning statements a defendant or suspected perpetrator made.

Under the bill, the prosecutor must respond promptly but no later than 45 days after the defendant files the motion. If the prosecutor does plan to introduce such testimony, he or she must provide certain specified information and material related to the witness’s testimony within that time period. The prosecutor may request, and the court may grant, an extension under certain circumstances. If the court finds that the requested disclosure may result in possible bodily harm to the witness, the court may order that the information and materials be viewed by defense counsel and not the defendant or other parties.

The bill also requires the court, upon the motion of a defendant facing prosecution for murder or certain other serious felony offenses, to conduct a hearing to decide whether a jailhouse witness’s testimony is reliable and admissible. The bill specifies information and materials the court must consider when determining the reliability of the witness.

Additionally, the bill requires each state’s attorney’s office to track certain information related to its use of jailhouse witnesses and send the information to the Office of Policy and Management’s (OPM) Criminal Justice Policy and Planning Division, which must maintain a statewide record of the materials. The bill does not specify (1) how frequently the offices must report the information to OPM or a deadline for doing so or (2) who will be able to access the statewide record.

EFFECTIVE DATE: October 1, 2019

information and materials about jailhouse witness

Under the bill, when a prosecutor plans to introduce testimony from a jailhouse witness, he or she must provide the defendant the following information and materials in response to the defendant’s written request as described above:

1. the witness’s complete criminal history, including any charges against him or her that are pending or were reduced or dismissed as part of a plea bargain;
2. the witness’s cooperation agreement with the prosecutor and any benefit the prosecutor has provided, offered, or may offer him or her in the future;
3. the substance, time, and place of any statement (a) the defendant allegedly gave the witness and (b) the witness gave (presumably to the prosecutor) implicating the defendant in an offense for which the defendant was indicted;
4. whether the witness recanted, at any time, any testimony subject to the disclosure and, if so, the time, place, and nature of the recantation and name of any person present when the witness recanted; and
5. information about any other criminal prosecution in which the witness testified or offered to testify against a suspected perpetrator or defendant with whom the witness was imprisoned or otherwise confined, including any cooperation agreement with a prosecutor or any benefit the prosecutor provided or offered the witness.

Benefits

A “benefit” for the bill’s purposes is a plea bargain, bail consideration, sentence modification or reduction, or any other leniency, immunity, financial payment, reward, or amelioration of current or future incarceration conditions offered or provided in connection with, or in exchange for, testimony that a jailhouse witness offers or provides.

Extension to Gather Information and Materials

The bill permits the prosecutor to move for an extension to make the required disclosure, and the court may grant the extension if it finds that (1) the prosecutor did not know about the witness when the defendant filed the above request and (2) the information the prosecutor must disclose under the bill could not be disclosed by exercising due diligence within the required time period. The bill permits the court, upon good cause shown, to set a reasonable extension or, on its own motion, allow the requested extension.

hearing on witness reliability

The bill also requires the court to conduct a hearing to decide whether a jailhouse witness’s testimony is reliable and admissible upon the motion of a defendant facing prosecution for one of the following offenses:

1. murder (CGS § 53a-54a),
2. murder with special circumstances (CGS § 53a-54b),
3. felony murder (CGS § 53a-54c),
4. arson murder (CGS § 53a-54d),
5. 1st degree sexual assault (CGS § 53a-70),
6. aggravated 1st degree sexual assault (CGS § 53a-70a), or
7. aggravated sexual assault of a minor (CGS § 53a-70c).

The motion must be filed before the start of the trial for the alleged offense.

When determining the witness’s reliability, the court must consider the information and materials related to the witness that the prosecutor disclosed (as described above) and the following factors:

1. the extent to which the witness’s testimony is confirmed by other evidence,
2. the testimony’s specificity,
3. the extent to which the testimony contains details known only by the alleged perpetrator,
4. the extent to which the testimony’s details could be obtained from a source other than the defendant, and
5. the circumstances under which the witness initially provided information supporting the testimony to a sworn municipal or state police officer or prosecutor, including whether the witness was responding to a leading question.

The bill prohibits the court from allowing the witness’s testimony to be admitted if the prosecutor fails to show by a preponderance of the evidence that the testimony is reliable.

state’s attorney’s office reporting requirement

Under the bill, each state’s attorney’s office must track the following:

1. the substance and use of any jailhouse witness’s testimony against the interest of a suspected perpetrator or defendant, regardless of whether the testimony is presented at trial, and
2. the witness’s agreement to cooperate with the prosecutor and benefit the prosecutor has provided, offered, or may offer in the future to the witness in connection to his or her testimony.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

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| Yea | 38 | Nay | 2 | (04/09/2019) |