

SENATE BILL 769

D1, E2

9lr2293
CF 9lr3151

By: **Senator Smith**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Discovery – In-Custody Witness Testimony**

3 FOR the purpose of requiring a State’s Attorney to record certain information if a State’s
4 Attorney obtains certain testimony or information from an in-custody witness and
5 to report certain information to the Criminal Justice Information System Central
6 Repository; requiring a State’s Attorney to comply with certain discovery
7 requirements; requiring a court to hold a certain hearing to determine whether
8 testimony of an in-custody witness is admissible at trial; requiring a State’s Attorney
9 to disclose certain information to a certain victim; requiring the Criminal Justice
10 Information System’s Central Repository to maintain a repository of certain records
11 concerning in-custody witnesses; defining certain terms; providing for the
12 application of this Act; and generally relating to in-custody witness testimony.

13 BY adding to

14 Article – Courts and Judicial Proceedings
15 Section 10-924
16 Annotated Code of Maryland
17 (2013 Replacement Volume and 2018 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article – Criminal Procedure
20 Section 10-213
21 Annotated Code of Maryland
22 (2018 Replacement Volume)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
24 That the Laws of Maryland read as follows:

25 **Article – Courts and Judicial Proceedings**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **10-924.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (2) (I) "BENEFIT" MEANS ANY CONSIDERATION GIVEN TO AN
5 IN-CUSTODY WITNESS, OR TO A THIRD PARTY AT THE REQUEST OF OR ON THE
6 BEHALF OF THE IN-CUSTODY WITNESS, IN RETURN FOR TESTIMONY OR
7 INFORMATION FROM THE IN-CUSTODY WITNESS IN A CRIMINAL PROCEEDING
8 AGAINST A SUSPECT OR DEFENDANT.

9 (II) "BENEFIT" INCLUDES AN OFFER BY A STATE'S ATTORNEY
10 TO:

11 1. RECOMMEND OR AGREE NOT TO OPPOSE A MORE
12 FAVORABLE RELEASE STATUS;

13 2. RECOMMEND OR AGREE NOT TO OPPOSE A MOTION
14 FOR MODIFICATION OR REDUCTION OF A SENTENCE;

15 3. PROVIDE INFORMATION TO THE DIVISION OF
16 PAROLE AND PROBATION TO ASSIST THE IN-CUSTODY WITNESS OR A THIRD PARTY
17 IN OBTAINING A FAVORABLE ACTION BY A PROBATION AGENT, A PAROLE OFFICER,
18 OR THE PAROLE COMMISSION;

19 4. PROVIDE IMMUNITY IN A CRIMINAL PROCEEDING;

20 5. DISMISS OUTSTANDING CRIMINAL CHARGES,
21 CRIMINAL PROSECUTIONS, OR PAROLE OR PROBATION VIOLATIONS;

22 6. PROVIDE FINANCIAL ASSISTANCE; OR

23 7. PROVIDE ANY ASSISTANCE IN OBTAINING AN
24 AMELIORATION OF CUSTODIAL CONDITIONS, STATUS, OR CONDITIONS OF
25 INCARCERATION.

26 (III) "IN-CUSTODY WITNESS" MEANS AN INDIVIDUAL, OTHER
27 THAN AN ACCOMPLICE OR A CO-DEFENDANT, WHO:

28 1. IS INCARCERATED AT THE TIME THAT THE
29 INDIVIDUAL OFFERS OR PROVIDES TESTIMONY AGAINST A SUSPECT OR DEFENDANT;
30 AND

1 **2. RECEIVES, OR HAS AN EXPECTATION OF RECEIVING,**
2 **A BENEFIT IN RETURN FOR THE TESTIMONY.**

3 **(B) (1) IF A STATE'S ATTORNEY OBTAINS TESTIMONY OR INFORMATION**
4 **FROM AN IN-CUSTODY WITNESS, THE STATE'S ATTORNEY SHALL RECORD:**

5 **(I) THE SUBSTANCE OF THE IN-CUSTODY WITNESS'S**
6 **TESTIMONY OR THE INFORMATION OBTAINED FROM THE IN-CUSTODY WITNESS,**
7 **EVEN IF THE TESTIMONY IS NOT PRESENTED IN A COURT PROCEEDING;**

8 **(II) THE PURPOSE FOR WHICH THE STATE'S ATTORNEY USED**
9 **THE TESTIMONY OR INFORMATION; AND**

10 **(III) WHETHER THE IN-CUSTODY WITNESS RECEIVED A BENEFIT**
11 **AND, IF SO, WHAT THE BENEFIT IS OR WILL BE.**

12 **(2) A STATE'S ATTORNEY SHALL REPORT ANY INFORMATION**
13 **RECORDED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO THE CRIMINAL**
14 **JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF**
15 **PUBLIC SAFETY AND CORRECTIONAL SERVICES.**

16 **(C) WITHIN 30 DAYS AFTER THE EARLIER OF THE APPEARANCE OF**
17 **COUNSEL OR THE FIRST APPEARANCE OF THE DEFENDANT BEFORE THE COURT, THE**
18 **STATE'S ATTORNEY SHALL DISCLOSE THE FOLLOWING INFORMATION TO THE**
19 **DEFENDANT, WHETHER OR NOT ADMISSIBLE AS EVIDENCE:**

20 **(1) ANY BENEFITS AN IN-CUSTODY WITNESS HAS RECEIVED, OR**
21 **EXPECTS TO RECEIVE, IN EXCHANGE FOR PROVIDING TESTIMONY OR INFORMATION;**

22 **(2) THE SUBSTANCE, TIME, AND PLACE OF ANY STATEMENT:**

23 **(I) ALLEGEDLY MADE BY A SUSPECT OR DEFENDANT TO THE**
24 **IN-CUSTODY WITNESS; OR**

25 **(II) MADE BY AN IN-CUSTODY WITNESS TO LAW ENFORCEMENT**
26 **IMPLICATING THE SUSPECT OR DEFENDANT; AND**

27 **(3) OTHER CASES IN WHICH THE IN-CUSTODY WITNESS TESTIFIED OR**
28 **PROVIDED INFORMATION, PROVIDED THAT THE TESTIMONY OR INFORMATION CAN**
29 **BE ASCERTAINED THROUGH REASONABLE INQUIRY, AND WHETHER THE**
30 **IN-CUSTODY WITNESS RECEIVED A BENEFIT IN EXCHANGE FOR PROVIDING THE**
31 **TESTIMONY OR INFORMATION IN THOSE OTHER CASES.**

1 (D) (1) PRIOR TO ADMITTING TESTIMONY OF AN IN-CUSTODY WITNESS,
2 THE COURT SHALL CONDUCT A HEARING, UNLESS WAIVED BY THE DEFENDANT, TO
3 DETERMINE WHETHER THE IN-CUSTODY WITNESS'S TESTIMONY IS RELIABLE.

4 (2) AT THE HEARING, THE COURT SHALL CONSIDER ANY BENEFIT THE
5 IN-CUSTODY WITNESS HAS RECEIVED OR EXPECTS TO RECEIVE AND ALL MATERIAL
6 OR INFORMATION THAT TENDS TO IMPEACH THE IN-CUSTODY WITNESS.

7 (3) A COURT MAY NOT ALLOW AN IN-CUSTODY WITNESS TO TESTIFY
8 IN A TRIAL UNLESS THE STATE'S ATTORNEY SHOWS BY A PREPONDERANCE OF THE
9 EVIDENCE THAT THE IN-CUSTODY WITNESS'S TESTIMONY IS RELIABLE.

10 (E) IF AN IN-CUSTODY WITNESS RECEIVES A BENEFIT, THE STATE'S
11 ATTORNEY THAT PROVIDED THE BENEFIT SHALL NOTIFY ANY VICTIM IN THE
12 IN-CUSTODY WITNESS'S CASE OF THE BENEFIT RECEIVED.

13 Article – Criminal Procedure

14 10-213.

15 (a) There is a Criminal Justice Information System Central Repository in the
16 Department.

17 (b) The Secretary:

18 (1) has administrative control of the Central Repository; and

19 (2) shall operate the Central Repository with the advice of the Advisory
20 Board.

21 (c) (1) The Central Repository is the official State repository for criminal
22 history record information.

23 (2) The Central Repository:

24 (i) shall maintain and disseminate criminal history record
25 information required under this subtitle; [and]

26 (ii) may maintain a repository of fingerprints, latent prints, palm
27 prints, photographs, or other such identification submitted to the Central Repository as
28 determined by the Secretary; AND

29 (III) SHALL MAINTAIN A REPOSITORY OF RECORDS CONCERNING
30 TESTIMONY AND INFORMATION OBTAINED FROM IN-CUSTODY WITNESSES AND
31 BENEFITS RECEIVED BY IN-CUSTODY WITNESSES SUBMITTED TO THE CENTRAL

1 **REPOSITORY UNDER § 10-924 OF THE COURTS ARTICLE.**

2 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
3 apply only prospectively and may not be applied or interpreted to have any effect on or
4 application to any criminal trial or hearing before the effective date of this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2019.