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HB 637/SB 534: Preventing Wrongful Convictions Involving Jailhouse Witnesses

The Problem

- **Incentivized to lie.** Jailhouse witnesses are incarcerated individuals who testify against a defendant in connection with leniency in their own cases, which creates a strong incentive for them to lie.
- **Risk of wrongful conviction:** In *Maryland four innocent people* were wrongfully convicted based on false jailhouse witness testimony.
- **Victims of the jailhouse witness’s crimes are denied justice** when testimony is rewarded with leniency.
- **Taxpayers pay the price.** The wrongful convictions of James Owens and Clarence Shipley in Baltimore were based on lying jailhouse witnesses and cost taxpayers more than \$11 million.

House Bill 637 (Del Davis)/ Senate Bill 534 (Senator Smith)

Who Does the Bill Apply to?

Applies Only To:	Does NOT Apply:
Incarcerated witnesses.	Confidential informants, accomplices, co-defendants.
Who provide testimony.	If only information is provided, not testimony.
Receive or reasonably expect a benefit for testimony.	If there is no benefit for the testimony.

1. **Creates a statewide record for prosecutors to track jailhouse witnesses.** Each state’s attorneys’ office would be required to maintain a central record of the use of and benefits provided to jailhouse witnesses who testify, which can be kept on a Word or Excel document. The Governor’s Office of Crime Control and Prevention (GOCAP) will maintain records for state’s attorneys’ offices across Maryland to access, providing prosecutors with more complete information before putting a potential witness on the stand.

National Picture: Texas, Nebraska and Connecticut require each prosecutor’s office to maintain a central record of jailhouse witness testimony/benefits. Connecticut requires the Office of Policy Management to collect this information from each prosecutor’s office and make it available to prosecutors statewide.

2. **Enhanced disclosure requirements:** Maryland Rules of Discovery already require that within 30 days of the defendant appearing in court, the prosecution must disclose evidence on state witnesses including: the benefits or cooperation agreements, their complete criminal history and evidence of prior untruthful conduct.¹ The legislation codifies these requirements and adds that prosecutors must disclose other cases of providing jailhouse witness testimony.

National Picture: Connecticut, Florida, Illinois, Nebraska, Oklahoma, Texas have laws to specify when and what types of jailhouse witness evidence must be disclosed to the defense.

3. **Disclosure enforcement hearing.** If the state intends to use a jailhouse witness’s testimony, the defendant should be able to request a pre-trial hearing to enforce disclosure requirements.
4. **Victim Notification:** The victims of the jailhouse witness’s crimes should be notified before the jailhouse witness is granted leniency for testimony.

¹ MD Rules of Discovery Rule 4-263 (d) (6) & (h)