

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 637
 Judiciary

(Delegate D.M. Davis, *et al.*)

Judicial Proceedings

Courts - Discovery - In-Custody Witness Testimony

This bill requires a State’s Attorney to take specified actions regarding testimony from an “in-custody witness,” including reporting the information to the Governor’s Office of Crime Prevention, Youth, and Victim Services (GOVS) and disclosing it to the defendant. GOVS must securely store and maintain the reported information and may disclose it only to (1) a State’s Attorney, or designee; (2) the Attorney General, or designee; and (3) the State Prosecutor, or designee. The bill has prospective application only and does not affect criminal trials or hearings before the October 1, 2020 effective date.

Fiscal Summary

State Effect: General fund expenditures increase by up to \$366,500 in FY 2021. Future years reflect annualization and elimination of one-time costs. Revenues are not affected.

| (in dollars) | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
|----------------|-------------|------------|------------|------------|------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 366,500 | 79,100 | 81,000 | 83,800 | 86,700 |
| Net Effect | (\$366,500) | (\$79,100) | (\$81,000) | (\$83,800) | (\$86,700) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect the operations or finances of the circuit courts or State’s attorneys’ offices.

Small Business Effect: None.

Analysis

Bill Summary: “Benefit” means any consideration given to an in-custody witness, or to a third party at the request of or on the behalf of the in-custody witness, in return for testimony from the in-custody witness in a criminal proceeding against a suspect or defendant. “Benefit” includes an offer by a State’s Attorney to (1) recommend or agree not to oppose a more favorable release status; (2) recommend or agree not to oppose a motion for modification or reduction of a sentence; (3) provide information to the Division of Parole and Probation to assist the in-custody witness or a third party in obtaining a favorable action by a probation agent, a parole officer, or the parole commission; (4) provide immunity in a civil proceeding; (5) dismiss outstanding criminal charges, criminal prosecutions, or parole or probation violations; (6) provide financial assistance; or (7) provide any assistance in obtaining an amelioration of custodial conditions, status, or incarceration conditions.

An “in-custody witness” means an individual, other than an accomplice or a co-defendant, who (1) is incarcerated at the time that the individual offers or provides testimony against a suspect or defendant and (2) receives, or has an expectation of receiving, a benefit in return for the testimony. An “in-custody witness” does not include a confidential informant who does not provide testimony against a suspect or defendant.

If a State’s Attorney obtains testimony from an in-custody witness, the State’s Attorney must record, in writing (1) the substance of the testimony, even if it is not presented in a court proceeding; (2) the purpose for which the testimony was used; and (3) whether the witness received a benefit, and, if so, what the benefit is or will be. This information must be reported to GOVS and is not subject to disclosure under the Maryland Public Information Act.

Within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court, the State’s Attorney must disclose to the defendant, or an attorney for a defendant, all material and information required for disclosure under Maryland Rule 4-263, including:

- any benefits an in-custody witness has received, or expects to receive, in exchange for providing testimony;
- the substance, time, and place of any statement allegedly made by a suspect or defendant to the in-custody witness or made by an in-custody witness to law enforcement implicating the suspect or defendant; and
- other cases in which the in-custody witness testified, if such information can be ascertained through reasonable inquiry, and whether the in-custody witness received a benefit in exchange for providing the testimony in those cases.

The court may grant the State's Attorney an extension if the court finds that the material or information could not have been discovered or obtained by the State after the exercise of due diligence within the prescribed period of time. On a finding of good cause, the court may set a reasonable period of time for disclosure or continue the trial to allow for a reasonable period of time for disclosure. Prior to admitting testimony of an in-custody witness, the court must conduct a hearing, at the request of the defendant, to ensure that the State's Attorney has disclosed all material and information related to the in-custody witness as required by the bill and Maryland Rule 4-263.

If an in-custody witness receives a sentence reduction or modification, a favorable release status, immunity in a criminal proceeding, dismissal, or a criminal charge, or other leniency or incentive in exchange for testimony, the information must be provided to any victim in the in-custody witness's case.

Current Law: Pursuant to Maryland Rule 4-263, which governs discovery in circuit court cases, State's Attorneys must, without the necessity of request, provide specified information to the defense, including (1) information regarding each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony and (2) material or information in any form, whether or not admissible, that tends to impeach a State's witness, including a relationship between the State's Attorney and the witness; this includes the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness. Neither the State's Attorney nor the defense is required to disclose material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure. The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant. Maryland Rule 4-262, which governs discovery in District Court cases, includes similar provisions.

State Expenditures: General fund expenditures for GOVS increase by *up to* \$366,467 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring one administrator to maintain the secure database and disclose information to authorized individuals. It includes a salary, fringe benefits, one-time start-up costs, including the creation of a secure database, and ongoing operating expenses.

| | |
|-------------------------------------------|------------------|
| Position | 1 |
| Salary and Fringe Benefits | \$61,101 |
| Database Creation | 300,000 |
| Operating Expenses | <u>5,366</u> |
| Maximum FY 2021 State Expenditures | \$366,467 |

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses. The Department of Legislative Services notes that the estimate reflects a preliminary assessment of potential expenditures based on information provided by GOVS. To the extent that the number of reports and disclosures and/or database programming needs are less than expected, the expenditures reflected above may be reduced.

The bill is not anticipated to materially affect the operations or finances of the Judiciary or the Office of the Public Defender.

Additional Information

Prior Introductions: SB 769 of 2019, a similar bill, received a hearing in the Senate Judicial Proceedings Committee and was referred for interim study. Its cross file, HB 1361, was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Designated Cross File: SB 534 (Senator Smith, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Governor’s Office of Crime Prevention, Youth, and Victim Services; Department of Legislative Services

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