

ShawnArmbrust_FAV_SB534

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Position: FAV



Senate Bill 534 FAVORABLE
Shawn Armbrust, Mid-Atlantic Innocence Project
Senate Judicial Proceedings Committee Hearing
February 18, 2020

The Mid-Atlantic Innocence Project (MAIP) is dedicated to exonerating innocent people who have been wrongfully convicted in Maryland, Virginia, and Washington, D.C. and promoting policies to prevent and address wrongful convictions. MAIP supports Senate Bill 534 because it will help prevent wrongful convictions in Maryland that are based on the testimony of jailhouse informants.

Nationally, jailhouse witnesses played a role in 1 in 5 wrongful convictions of innocent Americans since 1989, including four wrongful convictions in Maryland. The wrongful convictions of James Owens and Clarence Shipley in Baltimore were based on lying jailhouse witnesses and cost taxpayers more than \$11 million in state compensation and civil lawsuits.

On February 5, 2020 a federal court vacated a Baltimore conviction that was largely based on jailhouse witness testimony. MAIP client Matthew Horner was convicted of the attempted murder of his wife in 2006, despite strong evidence that she shot herself in a suicide attempt. He was convicted in a bench trial in Baltimore County Circuit Court and the judge relied heavily on the testimony of a prolific jailhouse witness named Richard Shaffer.

Federal habeas relief was granted and the conviction was vacated based on Shaffer's unreliability and the state's failure to disclose and investigate key evidence. The case highlights the problems with jailhouse witness testimony and the need for Senate Bill 534.

Profile of Jailhouse Witness Richard Shaffer

After Horner's arrest, Shaffer and Horner were housed together in jail. Shortly thereafter, Shaffer approached police, telling them that Horner had confessed to not only this crime but also to murdering his brother, best friend, ex-girlfriend, and daughter. Horner claimed to have taken contemporaneous notes of that conversation, as well as his conversations with other confessing inmates.

Shaffer's Criminal History

- Between 1993 and 2015, Richard Shaffer faced more than **24 separate felony charges** including: one count of armed robbery, several counts of burglary and robbery, several counts of assault, and two counts of making a false statement to a police officer.
- Shaffer could have been sentenced to hundreds of years in prison; instead, he **served less than five years**.
- Of his 24 charges, **15 were dismissed, and only three resulted in any jail time**.
- In 2005, when he was housed with Horner, Shaffer was facing multiple charges that could have led to nearly 70 years in prison. Instead, Shaffer received probation.
- **Shaffer likely avoided charges for other crimes he committed**. Shaffer's ex-wife testified under oath that when he was violating protective orders against her and harassing her by phone, Shaffer could call "his guardian angel," a Baltimore County detective, who "would get things wiped away."



Reliability Problems

As a witness, Shaffer had a number of reliability problems, including:

- **Prior history of making false statements** to police officers.
- **Reported incorrect details of the crime in his initial statements to law enforcement**, such as the number of shots fired; detectives later admitted to “correcting” some of those details before Shaffer testified.
- **Initially claimed that Horner had confessed to murdering four other people.** Those alleged crimes were reported to the relevant authorities; none of them found the deaths to be suspicious, and all found no merit to the claims.

Key Evidence Not Disclosed

- **Shaffer’s cooperation deal:** Shaffer testified that he had been given a 20-year sentence, with all but four years suspended. That was a lie –he received time served for his cooperation. Prosecutors did not correct his testimony or disclose his actual deal to the defense.
- **History of acting as a jailhouse witness:** Shaffer had offered testimony about three other inmates, and had several charges dismissed for his cooperation. He was also a paid police informant. While he admitted to providing information to law enforcement, he denied receiving any benefit. Prosecutors did not correct this testimony or turn over records about Shaffer’s prior cooperation with law enforcement.
- **Record of unreliable statements:** Shaffer initially reported that Horner confessed not only to trying to kill his wife, but also to murdering four other people. The claims were investigated and found to have no merit. His initial statement got key details, such as the number of shots, wrong; detectives later admitted to “correcting” some of those details before Shaffer testified.

Witnesses like Shaffer have inherent reliability problems, and their testimony deserves special scrutiny. Despite the lessons of cases like Horner, Shipley, and Smith, it is not clear that this happens on a uniform basis. In fact, both the state and the individual prosecutors who sponsored Shaffer have continued to defend the lack of investigation into Shaffer’s background and the failure to disclose critical information about his history. It therefore is clear that Senate Bill 534 is needed to ensure that prosecutors are taking seriously their obligation to investigate the reliability of jailhouse informants, to disclose what they find, and to help prevent wrongful convictions.



SUMMARY OF RICHARD SHAFFER'S CHARGES AND POSSIBLE SENTENCES

Date	Case # *	Charge	Sentence/ Outcome	Possible Sentence (Max) **
8/27/93	00718819C3	Robbery	other plea, dismissed	15y
		Break & Steal-Shop Etc	other plea, dismissed	1y or less
		Theft \$300+ Value	Other plea, dismissed	18m
3/23/99	2C00105093	Assault 2 nd Dg.	Forwarded to Circuit Court	10y
		Violate Ex-parte/ Prot. Order	Forwarded to Circuit Court	1y or less
3/27/99	1C00105337	Assault 2 nd Dg.	Forwarded to Circuit Court	10y
		Violate Ex-parte/ Prot. Order	Forwarded to Circuit Court	1y or less
4/26/99	6C99196931	Burglary- 4 th Dg.	Other plea, Nolle Pros.	3y
		Violate Exparte/ Pro Order	Other plea, Nolle Pros.	1y or less
4/26/99	6C00106938	Assault 2 nd Dg.	Other plea, Nolle Pros.	10y
		Mal Dest. Prop Val. +\$300	Other plea, Nolle Pros.	60d
7/20/01	4C00151078	Con-Motor Veh- Unlawful Taking	Other plea, Nolle Pros.	5y
		False Statement to Officer	Other plea, Nolle Pros.	6m
5/27/04	6C000210734	False Statement to Officer	Other plea, Nolle Pros.	6m
		Resisting Arrest	Guilty, \$200 Fine	3y
12/11/04	2C00220229	Armed Robbery	Forwarded to Circuit Court	20y
1/7/05	Civil Case 03C05000223	Habeas Corpus Petition w/ Bail Review	Bail review- granted, bail set at 10k cash, D have no contact w/ V	
3/11/05	03K05001046	Armed Robbery	Guilty, Probation (same terms and conditions)	20y
Part of Horner plea deal.		Robbery	Guilty plea, No Sentence	15y
		Assault 2nd Dg.	Guilty plea, No Sentence	10y
		Theft, Less than \$500 Value	Nolle Pros.	18m



		Burglary, 1st Dg.	Guilty plea, No Sentence	20y
		Burglary, 3rd Dg.	Nolle Pros.	10y
		Burglary, 4th Dg.	Nolle Pros.	3y
3/26/12	3B02155975	Theft, 10k, Und. 100k	Other Plea, Stet.	15y
		Con-Theft, 1k- Und. 10k	Other Plea, Stet.	10y
2/6/12	000000HC69270	Driving with Suspended License	Probation Before Judgment	1y
4/27/15	03K15002164	Burglary- 1 st Dg.	Nolle Pros.	20y
		Burglary- 4 th Dg.	Nolle Pros.	3y
		Theft \$1k- Und. \$10k	Jail Term: 10 years Suspended: 8 y, 6m Unsuspended: 1 y, 6m Probation: 3 y Court recommends work release.	
		Malicious Dest. Of Prop. Less than \$1k	Serve time: 1 y 6 m Probation: 3 y Credit Time Served: 1	60d
7/7/15	03K15003603	Theft Less \$1k Val.	Guilty Jail Term: 18 m Suspended: 18m Probation (supervised): 2y	18m

* Each case, charge, and sentence included in this exhibit is public record that may be found on the Maryland Case Search database. See <http://casesearch.courts.state.md.us/casesearch>.

** The possible sentences for each crime listed in this exhibit reflect the statutory maximum for a particular offense. See Maryland Sentencing Guidelines Manual, Appendix A (2018).

AlfredChestnut_FAV_SB534

Uploaded by: Chestnut, Alfred

Position: FAV

Favorably for Senate Bill 534
Alfred Chestnut, *Baltimore Exoneree*
Senate Judicial Proceedings Committee Hearing
February 19, 2020

Thank you to the House Judiciary Committee for hearing this important bill. From personal experience I can tell you that wrongful conviction is a nightmare for innocent people, crime victims and their family members.

At the age of 16, I was wrongfully convicted, along with my friends Ransom Watkins and Andrew Stewart, of the murder of another teenager named DeWitt Duckett in Baltimore. That was in 1983. It would take 36 years before the truth came out based on a reinvestigation by the Baltimore City State's Attorney's Conviction Review Unit. We finally walked free on November 25, 2019.

What happened in our case is a tragedy all around. DeWitt Duckett's parents lost their child and our parents had their children taken from them. We were forced to grow up in prison and it was torture. The only thing that got us through was leaning on each other. Now we have to figure out how to survive in the world as men in our 50's. The lawmakers on this committee have the power to make sure that no other innocent person has to experience a wrongful conviction.

House Bill 637 would protect against wrongful convictions based on lies told by jailhouse witnesses. In the decades I spent in prison, I have seen everything that goes on in the system. I can tell you that people aren't talking about their crimes to other inmates in jail or prison. That just doesn't happen. Everyone knows that what you say about your case can be used against you.

It is not difficult for inmates to go through their cellmate's belongings and find information about their cases. Then the jailhouse witness can use the details to contact law enforcement and make it seem like he heard his cellmate confess or witnessed him commit the crime. If an inmate testifies the state already puts him into protective custody away from the general population, so there is no fear of reprisal. These inmates have everything to gain and nothing to lose by lying.

Convictions should be based on truth. Jury should know that these men are getting deals for their testimony, and if they have a history of trading testimony for lighter sentences. This legislation will help the truth come out so that justice is actually served.

SamEpps_FAV_SB534

Uploaded by: Epps, Sam

Position: FAV



UNITE HERE Local 25

Testimony of Samuel Epps
Political Director, UNITE HERE Local 25
IN FAVOR of SB534 Jailhouse Witness Testimony

UNITE HERE Local 25, (Local 25 for short), is a hospitality workers union, which represents over 7,500 workers in the District of Columbia, Maryland, and Virginia. We represent workers across a huge cross section of departments from the front and back of the hotel. We are here to urge a favorable report of SB534

Criminal justice reform is becoming a core component of Local 25's advocacy. Our broken, racist criminal justice system disproportionately targets the working class people of color who make up our union. Many of our members are returning citizens. We are a union that believes in fairness, justice and equality. That's why, as a labor union, we must be at the forefront of criminal justice reform, to help those who have been wrongly convicted re-enter the workplace with dignity.

Our Union supports SB534 for three reasons:

1. It creates a statewide record for prosecutors to track jailhouse witnesses
2. It would put in place enhanced disclosure requirements
3. Victim Notification

As a matter of public policy, we believe that the state should ensure fairness and transparency in the front and back end of the sentencing process. .

SB 534 would be a step in the right direction in ensuring that the state doesn't wrongly convict based on jailhouse testimony without proper safe guards in place. These reforms would have an outside, positive impact on the workers and people of color who are state has long marginalized.

For these reasons, UNITE HERE Local 25 urges a favorable report of SB 534.

MichelleFeldman_FAV_SB534

Uploaded by: feldman, michelle

Position: FAV



Contact: Michelle Feldman, State Campaigns Director Mfeldman@innocenceproject.org; (516) 557-6650

Senate Bill 534 Favorable
Preventing Wrongful Convictions Involving Jailhouse Witnesses
Michelle Feldman, Innocence Project
Senate Judicial Proceedings Committee
February 19, 2020

My name is Michelle Feldman and I am the state campaigns director for the Innocence Project. We are a national organization that works to exonerate the wrongfully convicted with our local partners the University of Baltimore Innocence Project Clinic and the Mid-Atlantic Innocence Project.

House Bill 637 would help prevent wrongful convictions based on false jailhouse witness testimony. Jailhouse witnesses are incarcerated individuals who testify against other inmates in exchange for leniency or other benefits in their own cases. That creates a strong motivation for them to lie. There is little disincentive not to because states' witnesses are rarely charged with perjury, even when wrongful convictions reveal their testimony was untrue.

However, first and foremost H.B. 637 is about public safety. You will hear about Maryland cases in which a single jailhouse witness became a one-man crime spree, engaging in a pattern of getting arrested, testifying for the state to get out of jail or prison, and then going on to commit more crimes. Victims of the jailhouse witness's crimes are denied justice and communities are put at risk when leniency is traded for testimony.

You might ask why a jailhouse witness is different than other witnesses who might be motivated to lie—like a family member who offers an alibi for a defendant. The answer is that the motivation to lie for a loved one is obvious to a jury, while a jailhouse witness's motivations are often not clear.

Under Maryland Rules of Discovery and the U.S. Constitution, the prosecution is required to disclose specific witness evidence within 10 days of the defendant first appearing in court including: 1) witness names and statements, 2) cooperation agreements, and 3) previous convictions, pending charges or probationary status. However, when this evidence is disclosed late, incompletely or not at all, the accused cannot prepare an adequate defense that raises concerns about a witness's reliability to the judge and jury.

Even more troubling is that prosecutors can dangle the possibility of leniency without formalizing a deal before the jailhouse witness testifies. In the federal system, the practice is to write and disclose formal cooperation agreements, but that doesn't usually happen on the state level. Without a formal deal, the jailhouse witness can honestly testify that he's not getting anything for his cooperation. Then, the prosecutor can boost the testimony by telling the jury that the jailhouse witness risked his or her life to do the right thing.

The best solution would be for the state to stop providing deals to witnesses for their testimony. However, this bill doesn't end the use of jailhouse witnesses, it simply creates more transparency.

Application

HB 637 applies to a small but risky group of witnesses who meet three criteria.

1. First, they are incarcerated.
2. Second, they provide testimony, and
3. Third, they receive or reasonably expect to receive a benefit.

Contact: Michelle Feldman, State Campaigns Director Mfeldman@innocenceproject.org; (516) 557-6650

The bill specifically does NOT apply to confidential informants or inmates who provide information to law enforcement, but do not testify. Ideally, all incentivized witnesses would be included, but the definition is limited to address witness intimidation concerns. State witnesses in jail and prison can already be placed in protective custody, and nothing in this legislation would increase safety risks that do not currently exist.

HB 637 would implement three important safeguards.

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. The Governor's Office of Crime Control and Prevention (GOCAP) would maintain a statewide record available ONLY to prosecutors. GOCAP maintains other confidential criminal justice information, such as parole and probation data. The agency has said that it can securely house these records and absorb the task into its existing workload.

Last year Connecticut became the first state to implement statewide tracking of jailhouse witnesses, and Nebraska and Texas require each district attorneys' office to establish a centralized record of this information internally. In Maryland, prosecutors have to rely on the jailhouse witness's own account of their previous testimony in other counties. Rather than spending time and resources investigating their own potential witnesses, this legislation would allow prosecutors to access the information in one place.

The statewide record would also provide critical information for charging decisions and sentencing recommendations. Right now, a prosecutor can access records of arrests and charges in other counties, but not if charges were reduced, dismissed or not filed in exchange for testimony. If a jailhouse witness commits additional crimes, the state's attorney who is prosecuting the case would be able to see if there is a history of the defendant gaming the system to allude justice.

2. **Enforcing disclosure requirements.** The legislation codifies existing Rules of Discovery and U.S constitutional requirements for the state to disclose specific witness evidence. It also adds that the state must disclose other cases in which a jailhouse witness gave incentivized testimony. In addition, defense attorneys would be able to request pre-trial hearings to ensure that all evidence is turned over. This provision mirrors laws in Connecticut, Florida, Illinois, Nebraska and Oklahoma that provide detailed descriptions of when and what types of jailhouse witness information must be disclosed by the state to the defense.
3. **Victim notification:** Finally, victims of the jailhouse witness's crimes would have to be notified if leniency is provided for testimony. Existing victim notification requirements

When everything is done correctly before a conviction, it saves money on the back end. There would be fewer appeals and post-conviction claims alleging that jailhouse witness evidence was illegally withheld. Preventing wrongful convictions will save state compensation and civil lawsuit costs to taxpayers.

Other states have gone much further than House Bill 637. For example, Illinois and Connecticut both require jailhouse witnesses to pass a pre-trial reliability hearing before their testimony is admissible. This legislation is a modest but important step in revealing truth, ensuring accountability and delivering justice for crime victims and innocent defendants.

Giannetti MCDAA_FAV_SB534

Uploaded by: GIANNETTI, JOHN

Position: FAV

Maryland Criminal Defense Attorney's Association



MD Senate -Judicial Proceedings Committee

February 19, 2020 1pm

Hearing on SB 0534

Courts - Discovery - In-Custody Witness Testimony

MCDAA POSITION: SUPPORT

Brief bill explanation: If a State's Attorney obtains testimony from an in-custody witness, the State's Attorney must record (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 GOCCP 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 that may impeach a State's witness whether or not admissible as evidence, any benefits an in-custody witness has received, or expects to receive, in exchange for providing testimony; including: 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; 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.

For additional information or questions regarding this legislation, please contact MCDAA legislative chair: Andrew Jezic, 301.742.7470 avjezic@aol.com or our Government Relations Contacts: Alan Drew 240.856.2607 da4617@gmail.com and John Giannetti 410.300.6393, JohnGiannetti.mcdaa@gmail.com

AlanDrew_FAV_SB534

Uploaded by: Giannetti, Jr., John

Position: FAV



Maryland Criminal Defense Attorneys' Association

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Maryland Criminal Defense Attorneys' Association Favorably for Senate Bill 534 Senate Judicial Proceedings Committee Hearing February 19, 2020

The Maryland Criminal Defense Attorneys' Association (MCDAA) includes public and private defense attorneys and associated professionals. MCDAA supports Senate Bill 534 to safeguards against false jailhouse witness testimony.

Our members report that currently, jailhouse informants are commonly used in some jurisdictions in Maryland. For example, a criminal defense attorney reported the following about the use of jailhouse informants in Charles County:

“They [jailhouse informants] are all over the place in the jail in La Plata, having in many cases pleaded guilty and then having their sentencing postponed over and over again—as long as three years in some cases—as they sit in the Charles County Detention Center and try to harvest or manufacture information on other inmates. Up to two or three years ago, they were routinely testifying at trials. For example:

- In 2016, there was a jailhouse informant wired up to try to get another inmate to confess to an uncharged crime. The informant basically led the detective on a wild goose chase. A month or so later, the same informant testified in a jury trial against a different, unrelated defendant and the State never disclosed that he had just given bogus information against a different defendant.*
- In December 2016, a man charged with attempted murder testified against his co-defendant and went on to be listed as a jailhouse informant witness for the state in at least four cases. He was then linked to a couple of armed robberies that predated his incarceration, and resolved those cases favorably because of his work as a jailhouse informant. In total, he received a 7.5 year sentence for attempted murder and armed robbery charges.*
- case had been charged with attempted murder, and previously with armed robbery and car theft. For these charges he received a total of 7.5 year in local jail, rather than going to prison.*
- A jailhouse informant was on the witness list for a homicide case in 2018. The jailhouse informant by his own account had offered to testify in 14 different cases. His first sentencing date was set for November 2016, and as a result of his offering to testify repeatedly, he is still pending sentencing in Charles County. The state disclosed this witness to me as late as possible, forcing the trial to be postponed, and did not provide anything close to adequate impeachment discovery.”*

MCDAA encourages the House Judiciary committee to vote in support of SB534.

JeffKukucka_FAV_SB534

Uploaded by: Kukucka, Jeff

Position: FAV



Testimony Concerning SB 534

“Courts – Discovery – In-Custody Witness Testimony”

Submitted to the Senate Judicial Proceedings Committee

February 19, 2020

Jeff Kukucka, Ph.D.

Assistant Professor
Dept. of Psychology

8000 York Road
Towson, MD 21252

Position: SUPPORT

Dear Senators Smith and Waldstreicher,

I, Dr. Jeff Kukucka, Assistant Professor of Psychology at Towson University, strongly support SB 534. My research examines the causes and consequences of wrongful convictions in the criminal justice system. In my career, I have published 18 peer-reviewed papers on this topic and presented my work at professional conferences over 50 times. This testimony represents my own views based on the extant scientific literature and does not necessarily represent the views of Towson University.

Since 1989, the National Registry of Exonerations has catalogued over 2,500 wrongful convictions in the United States. On average, these individuals spent nine years incarcerated for crimes that they did not commit. The most common cause of these miscarriages of justice, seen in 59% of these cases, was false incriminating testimony given by someone other than the exoneree—often by incentivized jailhouse informants.

Laboratory studies suggest that incentivizing informants increases the risk of obtaining unreliable information, but does not produce a concomitant increase in reliable information. For example, two studies have found that offering informants an incentive to implicate another person in a transgression made them more likely to *falsely* implicate an innocent person, but not any more likely to *truly* implicate a guilty person.

Importantly, research has also shown that informant testimony is persuasive to jurors even if they know the circumstances under which it was obtained. Mock jury studies have found that neither awareness of the incentive, nor knowledge of the informant’s testimony history, nor hearing expert testimony on the unreliability of informant testimony weakened jurors’ perceptions of the informant’s credibility. As such, documenting

and disclosing information as to how such testimony was obtained should not inhibit prosecutors' ability to convict guilty individuals.

SB 534 would require State's Attorneys' offices to document and disclose the benefit received by an in-custody informant as well as the number of other cases in which that informant has previously testified. This increased transparency would allow the Court to make more informed decisions as to the reliability (and therefore admissibility) of the informant's testimony without undermining prosecutors' work.

For these reasons, I urge your favorable consideration of SB 534.

Sincerely,



Jeff Kukucka, Ph.D.
Assistant Professor of Psychology
Towson University



LaurenLipscomb_FAV_SB534

Uploaded by: Lipscomb, Lauren

Position: FAV



February 19, 2020

Senator Will Smith
Chair, Judicial Proceedings
Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Re: Support for SB534 Courts - Discovery - In-Custody Witness Testimony

Dear Chairman Smith and Committee Members:

I am submitting this written testimony to offer my support for SB534 Courts- Discovery – In Custody Witness Testimony. This bill will require a State's Attorney to record information if a State's Attorney obtains testimony from an in-custody witness, and to report that information to the Governor's Office of Crime Control and Prevention. Jailhouse witnesses testify for the state, usually about hearing another inmate confess while both were in jail or prison, and typically expect leniency for their cooperation. Unfortunately, with this practice, there have been documented times when these witnesses in custody lie in order to receive the provided incentives. Incentivized to lie, unreliable jailhouse witnesses played a role in four wrongful convictions in Maryland.

Currently, prosecutors have to rely on jailhouse witnesses' own accounts of their previous testimony in other cases. When a prosecutor seeks to find a full background regarding a witness in custody the prosecutor must rely upon communications with every State's Attorney office in the State. Given time constraints, caseloads and trial dates, this is neither always possible given capacity. It is even possible for a prosecutor, especially in larger jurisdictions such as Baltimore City, to have a witness to have testified previously in that jurisdiction without the knowledge of the current prosecutor. This poses a problem for prosecutors in that they don't know then which jailhouse informants are then repeatedly providing testimony.

SB534 would provide prosecutors with information they must have to secure strong convictions and develop worthy cases. The record created through this bill would only be accessible to prosecutors, and if the prosecutor decides to use the jailhouse witness's testimony, the information would be disclosed to the defense. It also gives prosecutors better information for charging decisions. When jailhouse witnesses commit and are charged with crimes, the prosecutor would not know about previous arrests that were not charged or charges that were dismissed in connection with their testimony. Prosecutors should know their complete criminal history to make better charging decisions and sentencing recommendations.

In 2013, the Baltimore City State's Attorney's Office prosecuted Michael Johnson for the murder of 16-year-old Phylicia Barnes. The case relied on the testimony of a serial jailhouse witness named James McCray who testified that Johnson had called him for help in disposing of the victim's body and admitted to sexually assaulting and strangling her. McCray also testified that he acted as a jailhouse witness in two other trials in Montgomery County.

STATE'S ATTORNEY
Marilyn J. Mosby



OFFICE of the STATE'S ATTORNEY for BALTIMORE CITY
120 East Baltimore Street | Baltimore, Maryland 21202

Johnson was convicted of second-degree murder. The day after the conviction, the Montgomery County State's Attorney's Office contacted the Baltimore City State's Attorney's Office to report that McCray testified as a jailhouse witness in one of their cases. He had such serious credibility issues the office refused to use him in the second case. A month later, Johnson was granted a new trial after the judge ruled that the state failed to disclose evidence about McCray's criminal history, charges that were dropped for his testimony, and his access to media accounts about the crime. Had the Baltimore City State's Attorney known about McCray's unreliability, it could have avoided using him as a witness.

SB534 would allow for safeguards against the type of witness that led to the example noted. I respectfully urge this committee provide favorable report on SB534 Discovery – In Custody Witness Testimony.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Marilyn J. Mosby". The signature is written in a cursive style with a large, stylized initial "M".

Marilyn J. Mosby
State's Attorney for Baltimore City

WalterLomax_FAV_SB534

Uploaded by: Lomax, Walter

Position: FAV

Favorably for Senate Bill 534

Courts- Discovery – In-Custody Witness Testimony

February 19, 2020

Chairman Smith and Members of the Senate Judicial Proceedings Committee

I fully support Senate Bill 534; it will give innocent people another layer of protection from being wrongfully convicted. The argument that it is not needed does nothing to protect the individual(s) who have been victimized by false testimony provided by those seeking favors for giving it. If this safe guard was in place neither Mr. Shipley (Clarence Shipley Jr.), Mr. Owens (James Owens), or Mr. Smith (Demetrius Smith) would have been convicted. There are many cases all over the country of serial jailhouse informants, making a career of testifying for the state in exchange for leniency from their charges. Even with the integrity unites some States Attorneys are beginning to establish is not enough, this second look gives an independent body an opportunity to evaluate whether the testimony should be allowed.

A growing number of states that have passed laws to place greater scrutiny on “in-custody witnesses” Maryland would be among them. (Connecticut, Illinois, Nebraska and Texas have passed similar laws placing restrictions on jailhouse informants. Colorado, Kansas, Massachusetts and Oklahoma are debating their own reforms.)

Such laws force prosecutors to disclose to defense lawyers any deals cut with informants; track an informant’s record of testifying in other cases; and mandate hearings in front of a judge over whether an informant’s testimony should be allowed at trial. LUKE BROADWATER Baltimore Sun

We encourage you to vote favorably for SB-534

Walter Lomax Executive Director, Maryland Restorative Justice Initiative

JustinNalley_FAV_SB534

Uploaded by: Nalley, Justin

Position: FAV



Testimony for the Senate Judicial Proceedings Committee

February 19, 2020

SB 534 – Courts – Discovery – In-Custody Witness Testimony

JUSTIN NALLEY
POLICY ANALYST,
EDUCATION

FAVORABLE

AMERICAN CIVIL
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OF MARYLAND

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WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
JOHN HENDERSON
PRESIDENT

DANA VICKERS SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

The ACLU of Maryland supports SB 534 which would implement safeguards and transparency for the use of jailhouse witnesses. This means prosecutors would be able to access more complete information prior to putting potential jailhouse witnesses on the stand.

Unfortunately, jailhouse witnesses have the incentive to fabricate the truth in their testimony for exchange for a more lenient sentence from the state. In Maryland four innocent people have been wrongfully convicted based on false jailhouse witness testimony.

This bill would create a statewide record for prosecutors to track jailhouse witnesses inside each state's attorney's office. This practice has taken place in Texas, Nebraska, and Connecticut and its time that Maryland followed suit. The bill will also enhance disclosure requirements and codify that prosecutors must disclose other cases in which jailhouse witnesses have provided incentivized testimony.

This bill takes the right step towards balancing the scales of justice and enhancing public safety. For the foregoing reasons, ACLU of Maryland urges a favorable report on SB 534.

EricSimmons_FAV_SB534

Uploaded by: Simmons, Eric

Position: FAV

Favorably for Senate Bill 534
Eric Simmons, *Baltimore Exoneree*
Senate Judicial Proceedings Committee February 19th, 2020

My name is Eric Simmons and my brother J.R. McPherson and I spent nearly a quarter of a century in prison for a murder we did not commit. We were exonerated by the Baltimore City State's Attorney's Conviction Integrity Unit in May of 2019.

When I was sent to prison I was 24 years old. I finally walked free at age 48, after living as much of much life behind bars as in the outside world. My brother and I both had sons who we had to raise from prison. My wife and I had our dreams for the future that we can never get back.

The justice system failed my entire family, and also the victim's family. The only one who won in this case was the person who got away with murder. The state of Maryland needs to do everything it can to prevent what happened to my brother and me from happening to other innocent people.

Incentivized testimony played a big role in our wrongful conviction. A witness claimed that she saw us shoot the victim, but the prosecution never revealed that she was a paid police informant who was rewarded for her cooperation with a new apartment. Because the state withheld that evidence, my defense attorney could not reveal her motivations to lie to the jury, and they believed her.

When my brother and I heard that State's Attorney Marilyn Mosby was setting up a Conviction Integrity Unit we asked her to reinvestigate our case. The CIU found multiple witnesses who confirmed that my brother was at a party at the time of the murder and my mother had sent me to go check on him. The team also discovered that it was impossible for the paid police informant who said she saw us shoot the victim to have seen what she claimed.

While this bill would not have impacted my case because it only applies to incarcerated witnesses, it is still an important step in protecting against false testimony. In prison I saw how easy it is for inmates to lie to try to get out of their own situations. I know people who were convicted because their cellmates went through their belongings and found their court documents. They made up details about either seeing the crime or hearing them confess and no matter how flimsy the story was, it seemed like the state was willing to put them on the witness stand.

The expression that "snitches get stitches" doesn't apply to jailhouse witnesses. The state already puts them in protective custody before they testify, and they do not interact with the general population. There shouldn't be any concerns that there would be more witness intimidation.

Hopefully the state of Maryland will learn the lessons of what went wrong in my case and others. This bill can prevent wrongful convictions from happening in the future and I hope you will support it.

DemetriusSmith_FAV_SB534

Uploaded by: Smith, Demetrius

Position: FAV

Demetrius Smith, Baltimore Exoneree
Favorable: Senate Bill 534

Preventing Wrongful Convictions Involving Jailhouse Witnesses
Senate Judicial Proceedings Committee Hearing
February 19, 2020

Chairman Clippinger and Members of the House Judicial Committee

My name is Demetrius Smith and I was wrongfully incarcerated for five years for a murder in Baltimore that I didn't commit.

In 2008, a jailhouse informant was arrested on a probation violation and made up a story that he saw me kill a man named Robert Long. There were a lot of reasons to doubt the jailhouse informant's story. The guy was a repeat informant in different cases, and he wrote a letter to the judge asking for a deal for cooperating in my case. This information never came out at my trial because the prosecutor broke the law and hid it from my attorney.

While I was in prison for a crime I didn't commit, the actual killers went on to commit other crimes. Jose Morales was Robert Long's boss and paid a member of the Dead Man Inc. gang to kill Long. Morales was under investigation for a series of thefts at construction sites, and ordered the hit when he found out Robert Long was going to testify against him. A couple of months later, Morales was arrested on drug smuggling charges.

While my case was on appeal, the Drug Enforcement Administration was investigating the drug smuggling and found evidence that Morales ordered the killing. With this new evidence, the prosecution dismissed my case in 2012. The next year Morales was convicted of ordering the killing, and in 2017 the hitman was convicted of the murder.

Being behind bars when you're innocent is the worst nightmare you can imagine. I would have been there the rest of my life if the federal prosecutors hadn't found out the truth. It's been hard to go back to a normal life after what I've been through—getting a job and housing after prison was a struggle. I'm working at University of Baltimore hospital in the trauma unit, but I am still dealing with my own trauma.

Jailhouse informants are incentivized to lie to get lighter sentences, and there should be more protections to make sure their lies don't send innocent people like me to prison. House Bill 637 would make the criminal justice system fairer and stronger and I hope you will support it.

Baranauskas_Info_SB534

Uploaded by: baranauskas, andy

Position: INFO



GOVERNOR'S COORDINATING OFFICES

Community Initiatives · Service & Volunteerism · Performance Improvement
Crime Prevention, Youth, & Victim Services · Small, Minority, & Women Business Affairs
Banneker-Douglass Museum · Volunteer Maryland · Deaf & Hard of Hearing

FROM THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES

February 19, 2020

Chair William C. Smith, Jr. and Members of the Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Re: Senate Bill 534: Discovery- In-Custody Witness Testimony

POSITION: Letter of Information

Dear Chair Smith and Members of the Judicial Proceedings Committee,

The Governor's Office of Crime Prevention, Youth, and Victim Services is providing this letter of information for Senate Bill 534: Discovery- In-Custody Witness Testimony

Senate Bill 534 would require the Governor's Office of Crime Prevention, Youth, and Victim Services to collect certain information whenever a State's Attorney uses an In-Custody Witness. The bill defines an In-Custody Witness as: "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, (2) receives, or has an expectation of receiving a benefit in return for the testimony." The bill does provide an exception for confidential informants.

Benefits are defined in the bill as: (1) recommendations for favorable release status, (2) recommendations for modifications or reduction of a sentence, (3) providing information to obtain a favorable action from the Division of Parole and Probation, (4) offering of immunity in a criminal proceeding, (5) dismissal of outstanding criminal charges, prosecutions, or parole or probation violations, (6) rendering of financial assistance, and (7) providing of assistance in the improvement of custodial conditions.

Senate Bill 534 requires that if a State's Attorney obtains testimony from an In-Custody Witness, the State's Attorney shall record: (1) the substance of the the testimony, even if it is not in a court proceeding, (2) the purpose for which the State's Attorney used the testimony, and (3) the benefit

exchanged for the testimony. This information is to be reported to the Governor's Office of Crime Prevention, Youth, and Victim Services ("Office").

The Office does not currently have a database constructed to record this information, and the bill is unclear in how the Office is to collect and/or release information when requested. Similar legislation from last Session, SB769 of 2019, was referred to an interim study.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "V. Glenn Fueston, Jr.", with a stylized flourish at the end.

V. Glenn Fueston, Jr.

Executive Director

Governor's Office of Crime Prevention, Youth, and Victim Services

For all inquiries, please contact
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