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Senate Bill 534 Favorable
Preventing Wrongful Convictions Involving Jailhouse Witnesses
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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.

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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.