



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