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## **OLR Bill Analysis**

### **SB 1098**

#### ***AN ACT CONCERNING THE TESTIMONY OF JAILHOUSE WITNESSES.***

#### **SUMMARY**

This bill allows a criminal defendant, by filing a written request with the court, to ask the prosecutor if he or she intends to introduce the testimony of a jailhouse witness in the prosecution. Under the bill, a jailhouse witness is a person who is incarcerated when he or she offers to provide testimony concerning statements a defendant or suspected perpetrator made.

Under the bill, the prosecutor must respond promptly but no later than 45 days after the defendant files the motion. If the prosecutor does plan to introduce such testimony, he or she must provide certain specified information and material related to the witness's testimony within that time period. The prosecutor may request, and the court may grant, an extension under certain circumstances. If the court finds that the requested disclosure may result in possible bodily harm to the witness, the court may order that the information and materials be viewed by defense counsel and not the defendant or other parties.

The bill also requires the court, upon the motion of a defendant facing prosecution for murder or certain other serious felony offenses, to conduct a hearing to decide whether a jailhouse witness's testimony is reliable and admissible. The bill specifies information and materials the court must consider when determining the reliability of the witness.

Additionally, the bill requires each state's attorney's office to track certain information related to its use of jailhouse witnesses and send the information to the Office of Policy and Management's (OPM) Criminal Justice Policy and Planning Division, which must maintain a

statewide record of the materials. The bill does not specify (1) how frequently the offices must report the information to OPM or a deadline for doing so or (2) who will be able to access the statewide record.

EFFECTIVE DATE: October 1, 2019

### **INFORMATION AND MATERIALS ABOUT JAILHOUSE WITNESS**

Under the bill, when a prosecutor plans to introduce testimony from a jailhouse witness, he or she must provide the defendant the following information and materials in response to the defendant's written request as described above:

1. the witness's complete criminal history, including any charges against him or her that are pending or were reduced or dismissed as part of a plea bargain;
2. the witness's cooperation agreement with the prosecutor and any benefit the prosecutor has provided, offered, or may offer him or her in the future;
3. the substance, time, and place of any statement (a) the defendant allegedly gave the witness and (b) the witness gave (presumably to the prosecutor) implicating the defendant in an offense for which the defendant was indicted;
4. whether the witness recanted, at any time, any testimony subject to the disclosure and, if so, the time, place, and nature of the recantation and name of any person present when the witness recanted; and
5. information about any other criminal prosecution in which the witness testified or offered to testify against a suspected perpetrator or defendant with whom the witness was imprisoned or otherwise confined, including any cooperation agreement with a prosecutor or any benefit the prosecutor provided or offered the witness.

**Benefits**

A “benefit” for the bill’s purposes is a plea bargain, bail consideration, sentence modification or reduction, or any other leniency, immunity, financial payment, reward, or amelioration of current or future incarceration conditions offered or provided in connection with, or in exchange for, testimony that a jailhouse witness offers or provides.

**Extension to Gather Information and Materials**

The bill permits the prosecutor to move for an extension to make the required disclosure, and the court may grant the extension if it finds that (1) the prosecutor did not know about the witness when the defendant filed the above request and (2) the information the prosecutor must disclose under the bill could not be disclosed by exercising due diligence within the required time period. The bill permits the court, upon good cause shown, to set a reasonable extension or, on its own motion, allow the requested extension.

**HEARING ON WITNESS RELIABILITY**

The bill also requires the court to conduct a hearing to decide whether a jailhouse witness’s testimony is reliable and admissible upon the motion of a defendant facing prosecution for one of the following offenses:

1. murder (CGS § 53a-54a),
2. murder with special circumstances (CGS § 53a-54b),
3. felony murder (CGS § 53a-54c),
4. arson murder (CGS § 53a-54d),
5. 1<sup>st</sup> degree sexual assault (CGS § 53a-70),
6. aggravated 1<sup>st</sup> degree sexual assault (CGS § 53a-70a), or
7. aggravated sexual assault of a minor (CGS § 53a-70c).

The motion must be filed before the start of the trial for the alleged

offense.

When determining the witness's reliability, the court must consider the information and materials related to the witness that the prosecutor disclosed (as described above) and the following factors:

1. the extent to which the witness's testimony is confirmed by other evidence,
2. the testimony's specificity,
3. the extent to which the testimony contains details known only by the alleged perpetrator,
4. the extent to which the testimony's details could be obtained from a source other than the defendant, and
5. the circumstances under which the witness initially provided information supporting the testimony to a sworn municipal or state police officer or prosecutor, including whether the witness was responding to a leading question.

The bill prohibits the court from allowing the witness's testimony to be admitted if the prosecutor fails to show by a preponderance of the evidence that the testimony is reliable.

#### **STATE'S ATTORNEY'S OFFICE REPORTING REQUIREMENT**

Under the bill, each state's attorney's office must track the following:

1. the substance and use of any jailhouse witness's testimony against the interest of a suspected perpetrator or defendant, regardless of whether the testimony is presented at trial, and
2. the witness's agreement to cooperate with the prosecutor and benefit the prosecutor has provided, offered, or may offer in the future to the witness in connection to his or her testimony.

#### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 38 Nay 2 (04/09/2019)