



# Senate

General Assembly

**File No. 844**

January Session, 2019

Substitute Senate Bill No. 1098

*Senate, April 29, 2019*

The Committee on Judiciary reported through SEN. WINFIELD of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2019*) (a) In any criminal  
2 prosecution, upon written request by a defendant filed with the court,  
3 but not requiring an order of the court, the defendant may request of  
4 the prosecutorial official whether such official intends to introduce  
5 testimony of a jailhouse witness. The prosecutorial official shall  
6 promptly, but not later than forty-five days after the filing of such  
7 motion, disclose to the defendant whether the official intends to  
8 introduce such testimony and, if so, the following information and  
9 material:

10 (1) The complete criminal history of any such jailhouse witness,  
11 including any charges pending against such witness, or which were  
12 reduced or dismissed as part of a plea bargain;

13 (2) The jailhouse witness's cooperation agreement with the

14 prosecutorial official and any benefit that the official has provided,  
15 offered or may offer in the future to any such jailhouse witness;

16 (3) The substance, time and place of any statement allegedly given  
17 by the defendant to a jailhouse witness, and the substance, time and  
18 place of any statement given by a jailhouse witness implicating the  
19 defendant in an offense for which the defendant is indicted;

20 (4) Whether at any time the jailhouse witness recanted any  
21 testimony subject to the disclosure and, if so, the time and place of the  
22 recantation, the nature of the recantation and the name of any person  
23 present at the recantation; and

24 (5) Information concerning any other criminal prosecution in which  
25 the jailhouse witness testified, or offered to testify, against a person  
26 suspected as the perpetrator of an offense or defendant with whom the  
27 jailhouse witness was imprisoned or otherwise confined, including any  
28 cooperation agreement with a prosecutorial official or any benefit  
29 provided or offered to such witness by a prosecutorial official.

30 (b) The prosecutorial official may move for an extension of time to  
31 make any disclosure pursuant to subsection (a) of this section. The  
32 court may agree to such extension of time if the court finds that the  
33 jailhouse witness was not known to the prosecutorial official at the  
34 time the defendant filed the written request under subsection (a) of  
35 this section, and that information or material required to be disclosed  
36 pursuant to subsection (a) of this section could not be disclosed with  
37 the exercise of due diligence within the period of time required under  
38 subsection (a) of this section. Upon good cause shown, the court may  
39 set a reasonable extension of time or may, upon the court's own  
40 motion, allow such extension.

41 (c) If the court finds that a disclosure pursuant to subsection (a) of  
42 this section may result in the possibility of bodily harm to the jailhouse  
43 witness, the court may order that such information or material may  
44 only be viewed by the defense counsel, and not by the defendant or  
45 other parties.

46 (d) For the purposes of this section, "benefit" means any plea  
47 bargain, bail consideration, reduction or modification of sentence or  
48 any other leniency, immunity, financial payment, reward or  
49 amelioration of current or future conditions of incarceration offered or  
50 provided in connection with, or in exchange for, testimony that is  
51 offered or provided by a jailhouse witness; and "jailhouse witness"  
52 means a person who is incarcerated at the time that he or she offers or  
53 provides testimony concerning statements made by a person suspected  
54 as the perpetrator of an offense or a defendant.

55 Sec. 2. (NEW) (*Effective October 1, 2019*) (a) In any criminal  
56 prosecution of a defendant for a violation of section 53a-54a, 53a-54b,  
57 53a-54c, 53a-54d, 53a-70, 53a-70a or 53a-70c of the general statutes,  
58 upon a motion of the defendant before the start of a trial on any such  
59 offense, the court shall conduct a hearing to determine whether any  
60 jailhouse witness's testimony is reliable and admissible. The court shall  
61 make such determination concerning the reliability of the witness after  
62 evaluation of the information or material disclosed pursuant to  
63 subdivisions (1) to (5), inclusive, of subsection (a) of section 1 of this  
64 act, and the following factors:

65 (1) The extent to which the jailhouse witness's testimony is  
66 confirmed by other evidence;

67 (2) The specificity of the testimony;

68 (3) The extent to which the testimony contains details known only  
69 by the perpetrator of the alleged offense;

70 (4) The extent to which the details of the testimony could be  
71 obtained from a source other than the defendant; and

72 (5) The circumstances under which the jailhouse witness initially  
73 provided information supporting such testimony to a sworn member  
74 of a municipal police department, a sworn member of the Division of  
75 State Police within the Department of Emergency Services and Public  
76 Protection or a prosecutorial official, including whether the jailhouse

77 witness was responding to a leading question.

78 (b) If the prosecutorial official fails to show by a preponderance of  
79 the evidence that the jailhouse witness's testimony is reliable, the court  
80 shall not allow the testimony to be admitted.

81 (c) For the purposes of this section, "jailhouse witness" means  
82 jailhouse witness, as defined in section 1 of this act.

83 Sec. 3. (NEW) (*Effective October 1, 2019*) (a) Each state's attorney's  
84 office shall track the following:

85 (1) The substance and use of any testimony of a jailhouse witness, as  
86 defined in section 1 of this act, against the interest of a (A) person  
87 suspected as the perpetrator of an offense, or (B) defendant, regardless  
88 of whether such testimony is presented at trial; and

89 (2) The jailhouse witness's agreement to cooperate with the state's  
90 attorney and benefit, as defined in section 1 of this act, that the state's  
91 attorney has provided, offered or may offer in the future to the  
92 jailhouse witness in connection with the testimony described in  
93 subdivision (1) of this subsection.

94 (b) Each state's attorney's office shall send the information described  
95 in subsection (a) of this section to the Criminal Justice Policy and  
96 Planning Division within the Office of Policy and Management, which  
97 shall maintain a state-wide record of such materials.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	New section
Sec. 2	<i>October 1, 2019</i>	New section
Sec. 3	<i>October 1, 2019</i>	New section

**Statement of Legislative Commissioners:**  
In Section 1(a)(3), "a crime" was replaced with "an offense" for consistency. In Section 2(a) "an offense" was replaced with "a violation" for clarity.

**JUD**      *Joint Favorable Subst. -LCO*

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

---

**OFA Fiscal Note****State Impact:** None**Municipal Impact:** None**Explanation**

The bill requires reporting by the Division of Criminal Justice and does not result in a fiscal impact.

**The Out Years****State Impact:** None**Municipal Impact:** None

**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)