

HOUSE BILL 637

D1, E2

0lr1880
CF 0lr1881

By: **Delegates D.M. Davis, Barron, Acevero, Fennell, and Moon**

Introduced and read first time: January 29, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Discovery – In-Custody Witness Testimony**

3 FOR the purpose of requiring a State’s Attorney to record certain information if a State’s
4 Attorney obtains certain testimony from an in-custody witness and to report certain
5 information to the Governor’s Office of Crime Control and Prevention; specifying that
6 certain information is not subject to disclosure under the Maryland Public
7 Information Act; requiring a State’s Attorney to comply with certain discovery
8 requirements; authorizing a court to grant a certain extension under certain
9 circumstances; requiring a court to hold a certain hearing at the request of the
10 defendant to determine whether testimony of an in-custody witness is admissible at
11 trial; requiring a State’s Attorney to disclose certain information to a certain victim;
12 defining certain terms; providing for the application of this Act; and generally
13 relating to in-custody witness testimony.

14 BY adding to
15 Article – Courts and Judicial Proceedings
16 Section 10–924
17 Annotated Code of Maryland
18 (2013 Replacement Volume and 2019 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
20 That the Laws of Maryland read as follows:

21 **Article – Courts and Judicial Proceedings**

22 **10–924.**

23 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
24 **INDICATED.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2) (I) "BENEFIT" MEANS ANY CONSIDERATION GIVEN TO AN IN-CUSTODY WITNESS, OR TO A THIRD PARTY AT THE REQUEST OF OR ON BEHALF OF THE IN-CUSTODY WITNESS, IN RETURN FOR TESTIMONY FROM THE IN-CUSTODY WITNESS IN A CRIMINAL PROCEEDING AGAINST A SUSPECT OR DEFENDANT.

(II) "BENEFIT" INCLUDES AN OFFER BY A STATE'S ATTORNEY TO:

1. RECOMMEND OR AGREE NOT TO OPPOSE A MORE FAVORABLE RELEASE STATUS;

2. RECOMMEND OR AGREE NOT TO OPPOSE A MOTION FOR MODIFICATION OR REDUCTION OF A SENTENCE;

3. PROVIDE INFORMATION TO THE DIVISION OF PAROLE AND PROBATION TO ASSIST THE IN-CUSTODY WITNESS OR A THIRD PARTY IN OBTAINING A FAVORABLE ACTION BY A PROBATION AGENT, A PAROLE OFFICER, OR THE PAROLE COMMISSION;

4. PROVIDE IMMUNITY IN A CRIMINAL PROCEEDING;

5. DISMISS OUTSTANDING CRIMINAL CHARGES, CRIMINAL PROSECUTIONS, OR PAROLE OR PROBATION VIOLATIONS;

6. PROVIDE FINANCIAL ASSISTANCE; OR

7. PROVIDE ANY ASSISTANCE IN OBTAINING AN AMELIORATION OF CUSTODIAL CONDITIONS, STATUS, OR CONDITIONS OF INCARCERATION.

(3) (I) "IN-CUSTODY WITNESS" MEANS 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; AND

2. RECEIVES, OR HAS AN EXPECTATION OF RECEIVING, A BENEFIT IN RETURN FOR THE TESTIMONY.

(II) "IN-CUSTODY WITNESS" DOES NOT INCLUDE A CONFIDENTIAL INFORMANT WHO DOES NOT PROVIDE TESTIMONY AGAINST A SUSPECT OR DEFENDANT.

(B) (1) IF A STATE'S ATTORNEY OBTAINS TESTIMONY FROM AN IN-CUSTODY WITNESS, THE STATE'S ATTORNEY SHALL RECORD:

(I) THE SUBSTANCE OF THE IN-CUSTODY WITNESS'S TESTIMONY, EVEN IF THE TESTIMONY IS NOT PRESENTED IN A COURT PROCEEDING;

(II) THE PURPOSE FOR WHICH THE STATE'S ATTORNEY USED THE TESTIMONY; AND

(III) WHETHER THE IN-CUSTODY WITNESS RECEIVED A BENEFIT AND, IF SO, WHAT THE BENEFIT IS OR WILL BE.

(2) A STATE'S ATTORNEY SHALL REPORT ANY INFORMATION RECORDED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION.

(3) THE INFORMATION RECORDED AND REPORTED UNDER THIS SUBSECTION IS NOT SUBJECT TO DISCLOSURE UNDER THE MARYLAND PUBLIC INFORMATION ACT.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, 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 SHALL DISCLOSE TO THE DEFENDANT, OR AN ATTORNEY FOR THE DEFENDANT, ALL MATERIAL AND INFORMATION THAT MAY IMPEACH A STATE'S WITNESS WHETHER OR NOT ADMISSIBLE AS EVIDENCE, INCLUDING:

(I) ANY BENEFITS AN IN-CUSTODY WITNESS HAS RECEIVED, OR EXPECTS TO RECEIVE, IN EXCHANGE FOR PROVIDING TESTIMONY;

(II) THE SUBSTANCE, TIME, AND PLACE OF ANY STATEMENT:

1. ALLEGEDLY MADE BY A SUSPECT OR DEFENDANT TO THE IN-CUSTODY WITNESS; OR

2. MADE BY AN IN-CUSTODY WITNESS TO LAW ENFORCEMENT IMPLICATING THE SUSPECT OR DEFENDANT; AND

(III) OTHER CASES IN WHICH THE IN-CUSTODY WITNESS TESTIFIED, PROVIDED THAT THE TESTIMONY CAN BE ASCERTAINED THROUGH REASONABLE INQUIRY, AND WHETHER THE IN-CUSTODY WITNESS RECEIVED A BENEFIT IN EXCHANGE FOR PROVIDING THE TESTIMONY IN THOSE OTHER CASES.

1 **(2) (I) THE COURT MAY GRANT THE STATE’S ATTORNEY AN**
2 **EXTENSION UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE COURT FINDS THAT**
3 **THE MATERIAL OR INFORMATION COULD NOT HAVE BEEN DISCOVERED OR**
4 **OBTAINED BY THE STATE AFTER THE EXERCISE OF DUE DILIGENCE WITHIN THE**
5 **PRESCRIBED PERIOD OF TIME.**

6 **(II) ON A FINDING OF GOOD CAUSE, THE COURT MAY:**

7 **1. SET A REASONABLE PERIOD OF TIME FOR**
8 **DISCLOSURE; OR**

9 **2. CONTINUE THE TRIAL TO ALLOW FOR A REASONABLE**
10 **PERIOD OF TIME FOR DISCLOSURE.**

11 **(D) PRIOR TO ADMITTING TESTIMONY OF AN IN-CUSTODY WITNESS, THE**
12 **COURT SHALL CONDUCT A HEARING, AT THE REQUEST OF THE DEFENDANT, TO**
13 **ENSURE THAT THE STATE’S ATTORNEY HAS DISCLOSED ALL MATERIAL AND**
14 **INFORMATION RELATED TO THE IN-CUSTODY WITNESS AS REQUIRED UNDER**
15 **SUBSECTION (C) OF THIS SECTION AND MARYLAND RULE 4-263.**

16 **(E) IF AN IN-CUSTODY WITNESS RECEIVES A SENTENCE REDUCTION OR**
17 **MODIFICATION, A FAVORABLE RELEASE STATUS, IMMUNITY IN A CRIMINAL**
18 **PROCEEDING, DISMISSAL OR A CRIMINAL CHARGE, OR OTHER LENIENCY IN**
19 **EXCHANGE FOR TESTIMONY, THIS INFORMATION SHALL BE PROVIDED TO ANY**
20 **VICTIM IN THE IN-CUSTODY WITNESS’S CASE.**

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
22 apply only prospectively and may not be applied or interpreted to have any effect on or
23 application to any criminal trial or hearing before the effective date of this Act.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2020.