

**Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 20-0824.01 Michael Dohr x4347

**HOUSE BILL 20-1102**

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**HOUSE SPONSORSHIP**

**Tipper and Soper,**

**SENATE SPONSORSHIP**

**(None),**

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**House Committees**

Judiciary  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING REQUIRED PROCEDURES TO PROTECT THE DEFENDANT**  
102              **WHEN JAILHOUSE WITNESSES ARE USED IN A CRIMINAL CASE,**  
103              **AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

The bill requires each district attorney's office to maintain a central record that tracks each case in which a jailhouse witness is endorsed by the state to testify against a suspect or defendant's interest. Each district attorney's office shall send the information to the Colorado district attorneys' council, which shall maintain a statewide record of the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

information. The information is not subject to open records requests.

A district attorney shall disclose all jailhouse witnesses who have been endorsed by the state and specified information pursuant to rule 16 of the Colorado rules of criminal procedure. In a criminal prosecution for homicide or sexual assault in which the state intends to introduce the testimony of a jailhouse witness, upon a motion of the defendant, the court shall conduct a pre-trial hearing to determine whether the jailhouse witness's testimony is admissible based upon specified factors. Unless the district attorney shows by a preponderance of the evidence that the jailhouse witness's testimony is reliable based on the specified factors, the court shall not allow the testimony to be heard at trial. If a jailhouse witness's testimony is admitted into evidence, the court shall instruct the jurors to consider specific factors when assessing the jailhouse witness's testimony. If a jailhouse witness receives leniency related to a pending charge, a conviction, or a sentence for a crime against a victim, in connection with offering or providing testimony against a suspect or defendant, the prosecutor shall notify the victim.

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **add** part 5 to article 10 of title 16 as follows:

PART 5

JAILHOUSE WITNESS PROCEDURES

**16-10-501. Definitions.** AS USED IN THIS PART 5, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BENEFIT" MEANS ANY PLEA BARGAIN, BAIL CONSIDERATION, REDUCTION OR MODIFICATION OF SENTENCE, OR ANY OTHER LENIENCY, IMMUNITY, FINANCIAL PAYMENT, REWARD, OR AMELIORATION OF CURRENT OR FUTURE CONDITIONS OF INCARCERATION THAT HAS BEEN REQUESTED, OR THAT HAS BEEN OR MAY, IN THE FUTURE, BE OFFERED OR PROVIDED IN CONNECTION WITH, OR IN EXCHANGE FOR, THE TESTIMONY OF A JAILHOUSE WITNESS WHO WAS ENDORSED BY THE STATE.

(2) (a) "JAILHOUSE WITNESS" MEANS A WITNESS ENDORSED BY THE STATE AS A POTENTIAL WITNESS WHO OFFERS OR PROVIDES TESTIMONY

1 FOR THE STATE REGARDING STATEMENTS MADE BY A DEFENDANT, WHILE  
2 BOTH WERE INCARCERATED, REGARDLESS OF WHETHER THE DEFENDANT  
3 HAS BEEN CHARGED WITH THE CRIME AT THE TIME THE ALLEGED  
4 STATEMENTS WERE MADE, AND WHO HAS REQUESTED, HAS BEEN OFFERED,  
5 OR MAY IN THE FUTURE RECEIVE A BENEFIT IN CONNECTION WITH THE  
6 TESTIMONY.

7 (b) "JAILHOUSE WITNESS" DOES NOT MEAN A CO-DEFENDANT IN  
8 THE CASE. [REDACTED]

9 **16-10-502. Tracking use of and benefits provided to jailhouse**  
10 **witnesses.** (1) EACH DISTRICT ATTORNEY'S OFFICE SHALL MAINTAIN A  
11 CENTRAL RECORD THAT TRACKS:

12 (a) EACH CASE IN WHICH A JAILHOUSE WITNESS HAS BEEN  
13 ENDORSED BY THE STATE TO TESTIFY AGAINST A [REDACTED] DEFENDANT'S  
14 INTEREST;

15 (b) THE SUBSTANCE OF THE TESTIMONY; AND

16 (c) ANY BENEFIT THAT HAS BEEN REQUESTED BY, OR HAS BEEN  
17 OFFERED TO, THE JAILHOUSE WITNESS AND ANY BENEFIT THAT MAY BE  
18 PROVIDED IN THE FUTURE IN CONNECTION WITH SUCH TESTIMONY.

19 (2) EACH DISTRICT ATTORNEY'S OFFICE SHALL SEND THE  
20 INFORMATION DESCRIBED IN SUBSECTION (1) OF THIS SECTION TO THE  
21 DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY ON  
22 A MONTHLY BASIS TO BE MAINTAINED IN A CENTRALIZED STATEWIDE  
23 RECORD THAT IS AVAILABLE TO DISTRICT ATTORNEYS THROUGHOUT THE  
24 STATE.

25 (3) THE INFORMATION DESCRIBED IN THIS SECTION IS ONLY  
26 ACCESSIBLE TO DISTRICT ATTORNEYS AND IS NOT SUBJECT TO THE  
27 PROVISIONS OF ARTICLE 72 OF TITLE 24.

1           **16-10-503. Discovery.** (1) IF A DISTRICT ATTORNEY ENDORSES A  
2           PERSON TO TESTIFY AS A JAILHOUSE WITNESS, THE FOLLOWING MATERIALS  
3           AND INFORMATION SHALL BE DISCLOSED WITHIN THE TIME FRAME  
4           ARTICULATED IN RULE 16 OF THE COLORADO RULES OF CRIMINAL  
5           PROCEDURE:

6           (a) THE COMPLETE CRIMINAL HISTORY OF THE JAILHOUSE WITNESS,  
7           INCLUDING ANY CHARGES THAT ARE PENDING OR WERE REDUCED OR  
8           DISMISSED AS PART OF A PLEA BARGAIN;

9           (b) THE JAILHOUSE WITNESS'S COOPERATION AGREEMENT AND ANY  
10          DEAL, PROMISE, INDUCEMENT, OR BENEFIT THAT HAS BEEN REQUESTED, OR  
11          THAT HAS BEEN OR MAY, IN THE FUTURE, BE OFFERED OR PROVIDED TO THE  
12          JAILHOUSE WITNESS IN CONNECTION WITH TESTIMONY AGAINST THE [REDACTED]  
13          DEFENDANT'S INTEREST;

14          (c) THE SUBSTANCE, TIME, AND PLACE OF ANY STATEMENT  
15          ALLEGEDLY GIVEN BY THE [REDACTED] DEFENDANT TO THE JAILHOUSE WITNESS AND  
16          THE SUBSTANCE, TIME, AND PLACE OF ANY STATEMENT GIVEN BY THE  
17          JAILHOUSE WITNESS TO LAW ENFORCEMENT IMPLICATING THE [REDACTED]  
18          DEFENDANT IN THE CRIME CHARGED;

19          (d) WHETHER, AT ANY TIME, THE JAILHOUSE WITNESS RECANTED  
20          THAT TESTIMONY OR STATEMENT, AND, IF SO, THE TIME AND PLACE OF THE  
21          RECANTATION, THE NATURE OF THE RECANTATION, AND THE NAMES OF  
22          THE PERSONS WHO WERE PRESENT AT THE RECANTATION; AND

23          (e) INFORMATION CONCERNING OTHER CRIMINAL CASES IN ANY  
24          COUNTY IN WHICH THE JAILHOUSE WITNESS WAS ENDORSED BY THE STATE  
25          TO TESTIFY AGAINST A [REDACTED] DEFENDANT WITH WHOM THE JAILHOUSE  
26          WITNESS WAS IMPRISONED OR CONFINED, INCLUDING:

27                 (I) THE CASE NAME AND NUMBER;

1 (II) THE SUBSTANCE OF THE TESTIMONY;  
2 (III) ANY COOPERATION AGREEMENT, DEAL, PROMISE,  
3 INDUCEMENT, OR BENEFIT THAT WAS REQUESTED, OFFERED, OR PROVIDED  
4 TO THE JAILHOUSE WITNESS IN CONNECTION WITH HIS OR HER TESTIMONY;  
5 AND

6 (IV) ANY OTHER INFORMATION THAT IS REQUIRED TO BE  
7 DISCLOSED PURSUANT TO THE UNITED STATES AND COLORADO  
8 CONSTITUTIONS AND THE COLORADO RULES OF CRIMINAL PROCEDURE.

9 (2) THE COURT MAY PERMIT THE DISTRICT ATTORNEY TO COMPLY  
10 WITH THIS SECTION AFTER THE TIME PRESCRIBED IN SUBSECTION (1) OF  
11 THIS SECTION IF THE COURT FINDS THAT THE JAILHOUSE WITNESS WAS NOT  
12 KNOWN AND THAT MATERIALS IN SUBSECTION (1) OF THIS SECTION COULD  
13 NOT BE DISCOVERED OR OBTAINED BY THE DISTRICT ATTORNEY WITH THE  
14 EXERCISE OF DUE DILIGENCE WITHIN THAT PERIOD. UPON GOOD CAUSE  
15 SHOWN, THE COURT MAY SET A REASONABLE COMPLIANCE PERIOD UNDER  
16 THE CIRCUMSTANCES OR MAY CONTINUE THE PROCEEDINGS ON ITS OWN  
17 MOTION TO ALLOW FOR A REASONABLE COMPLIANCE PERIOD.

18 (3) IF THE COURT FINDS THAT DISCLOSING THE EVIDENCE IN  
19 SUBSECTION (1) OF THIS SECTION WOULD RESULT IN THE POSSIBILITY OF  
20 BODILY HARM TO THE JAILHOUSE WITNESS, THE COURT MAY ISSUE A  
21 PROTECTIVE ORDER PURSUANT TO THE PROVISIONS OF RULE 16 (III)(D) OF  
22 THE COLORADO RULES OF CRIMINAL PROCEDURE.

23 **16-10-504. Pre-trial reliability hearing for murder and sexual**  
24 **assault cases.** (1) IN ANY CRIMINAL PROSECUTION OF A DEFENDANT FOR  
25 A HOMICIDE OFFENSE IN PART 1 OF ARTICLE 3 OF TITLE 18 OR A SEXUAL  
26 ASSAULT OFFENSE IN PART 4 OF ARTICLE 3 OF TITLE 18 IN WHICH THE  
27 DISTRICT ATTORNEY INTENDS TO INTRODUCE THE TESTIMONY OF A

1 JAILHOUSE WITNESS, UPON A MOTION OF THE DEFENDANT, THE COURT  
2 SHALL CONDUCT A PRE-TRIAL HEARING TO DETERMINE WHETHER THE  
3 JAILHOUSE WITNESS'S TESTIMONY IS RELIABLE AND THEREFORE  
4 ADMISSIBLE BASED UPON THE MATERIAL AND INFORMATION DISCLOSED  
5 PURSUANT TO SECTION 16-10-503, AS WELL AS THE FOLLOWING FACTORS:

6 (a) THE EXTENT TO WHICH THE JAILHOUSE WITNESS'S TESTIMONY  
7 IS CONFIRMED BY OTHER EVIDENCE;

8 (b) THE SPECIFICITY OF THE TESTIMONY;

9 (c) THE EXTENT TO WHICH THE TESTIMONY CONTAINS DETAILS  
10 KNOWN ONLY BY THE PERPETRATOR;

11 (d) THE EXTENT TO WHICH THE DETAILS OF THE TESTIMONY COULD  
12 BE OBTAINED FROM A SOURCE OTHER THAN THE DEFENDANT; AND

13 (e) THE CIRCUMSTANCES UNDER WHICH THE JAILHOUSE WITNESS  
14 INITIALLY PROVIDED THE INFORMATION TO THE POLICE OR THE  
15 PROSECUTOR, INCLUDING WHETHER THE JAILHOUSE WITNESS WAS  
16 RESPONDING TO LEADING QUESTIONS.

17 (2) THE DISTRICT ATTORNEY MUST SHOW BY A PREPONDERANCE  
18 OF THE EVIDENCE THAT THE JAILHOUSE WITNESS'S TESTIMONY IS RELIABLE  
19 IN ORDER FOR THE COURT TO ALLOW THE TESTIMONY TO BE HEARD AT  
20 TRIAL BASED ON THE FACTORS IN SUBSECTION (1) OF THIS SECTION.

21 **16-10-505. Jury instruction.** IF A JAILHOUSE WITNESS'S  
22 TESTIMONY IS ADMITTED INTO EVIDENCE, THE COURT SHALL INSTRUCT  
23 JURORS TO CONSIDER THE MATERIAL AND INFORMATION DISCLOSED  
24 PURSUANT TO SECTION 16-10-503 (1) AND THE FACTORS ENUMERATED IN  
25 SECTION 16-10-504 (1) WHEN ASSESSING THE JAILHOUSE WITNESS'S  
26 TESTIMONY.

27 **16-10-506. Victim notification.** IF A JAILHOUSE WITNESS

1 RECEIVES A BENEFIT RELATED TO A PENDING CHARGE, A CONVICTION, OR  
2 A SENTENCE FOR A CRIME COMMITTED BY THE JAILHOUSE WITNESS, THE  
3 PROSECUTOR SHALL COMPLY WITH THE REQUIREMENTS OF SECTION  
4 24-4.1-302.5 IF THE JAILHOUSE WITNESS HAS HIS OR HER OWN PENDING OR  
5 CLOSED CASE PURSUANT TO SECTION 24-4.1-302 (1).

6 **SECTION 2. Appropriation.** (1) For the 2020-21 state fiscal  
7 year, \$16,860 is appropriated to the department of public safety for use  
8 by the division of criminal justice. This appropriation is from the general  
9 fund. To implement this act, the division may use this appropriation for  
10 the purchase of information technology services.

11 (2) For the 2020-21 state fiscal year, \$16,860 is appropriated to  
12 the office of the governor for use by the office of information technology.  
13 This appropriation is from reappropriated funds received from the  
14 department of public safety under subsection (1) of this section. To  
15 implement this act, the office may use this appropriation to provide  
16 information technology services for the department of public safety.

17 **SECTION 3. Act subject to petition - effective date.** This act  
18 takes effect at 12:01 a.m. on the day following the expiration of the  
19 ninety-day period after final adjournment of the general assembly (August  
20 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a  
21 referendum petition is filed pursuant to section 1 (3) of article V of the  
22 state constitution against this act or an item, section, or part of this act  
23 within such period, then the act, item, section, or part will not take effect  
24 unless approved by the people at the general election to be held in  
25 November 2020 and, in such case, will take effect on the date of the  
26 official declaration of the vote thereon by the governor.