State of Connecticut

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Testimony of Christine Perra Rapillo, Chief Public Defender
.Raised Bill 1098 - AN ACT CONCERNING THE TESTIMONY OF JAILHOUSE WITNESSES
Committee on the Judiciary - March 25, 2019

The Division of Public Defender Services supports Senate Bill 1098, an Act Concerning the Testimony of Jailhouse Witnesses. This proposal would require the prosecutor to disclose, upon request of defense counsel, information regarding whether testimony from a jailhouse informant would be used at a trial. The prosecutor would provide specific, statutorily designated information relating to the reliability of the jail house informant witness to the defense and require the trial court to conduct a hearing to assess the credibility of a jail house informant witness before allowing the witness to testify. Finally, Raised Bill 1098 would have the prosecutors track the use of jailhouse informant witnesses and submit a report to the Office of Policy and Management's Criminal Justice division. This proposal is critical to ensure that criminal accused are able to effectively cross examine and challenge the credibility of testimony from incarcerated individuals who almost always have some benefit to gain from cooperating with the prosecution. Unreliable self-serving informant testimony on the part of so-called "jailhouse informants" undermines the integrity of the criminal justice system in at least two ways. First, if the accused is deprived of access to the fact that a cooperating witness obtains consideration for his/her cooperation in the form of a reduced sentence or dropped charges, that person is also deprived of

the opportunity to impeach the credibility of such a witness before the jury by demonstrating that such a witness has everything to gain, and nothing to lose, by giving the prosecuting authorities information. As a result, years of post-conviction litigation, and even re-trials occur. This creates injustice, not to mention unnecessary expense and delays in the system.

The recent case Turner v. Commissioner, 181 Conn. App. 743 (2018), showcases the injustice that can be done by failing to fully notify the defense of jailhouse informant information. At the time of the underlying criminal trial, the state's principal witness had been incarcerated. She originally claimed that Mr. Turner's codefendant had made inculpatory statements, but at Mr. Turner's trial, changed her story and attributed the inculpatory statements to Mr. Turner. This testimony was given only after the state paid for her plane fare to return to Connecticut to face an outstanding warrant, and made a commitment to her that her cooperation would be brought to the attention of the prosecutor in her pending criminal case. That agreement was never disclosed to the defense. At trial, when asked if she expected to receive consideration for her testimony, she said that she only got her plane fare paid, which was not true. That testimony went uncorrected by the state. She was then taken to the GA Courthouse where her case was resolved favorably to her. The jury never heard this evidence.

Our Appellate Court overturned the habeas courts' refusal to grant relief to Mr. Turner and ordered a new trial. The Appellate court emphasized that the suppression of such impeachment evidence amounted to a due process violation because the state has a duty to correct the record if it knows that a witness has testified falsely. The court ruled that there is a reasonable likelihood that the false testimony would have affected the jury and that the state had a duty to disclose even "informal" arrangements or agreements with witnesses.

It is noteworthy that the crime in this case occurred in June 2007, the petitioner was not charged until January 2008, and the Appellate Court ruling was issued in May 2018. The subsequent jury trial will begin next month. All of this delay, litigation, expense, and the possible injustice of a wrongful conviction could have been avoided under the requirements of S.B. 1098.

The pre-trial hearing required by the bill creates a procedure similar to the important gate-keeping function of our trial courts created by the Connecticut Supreme Court in State v. Porter, 241 Conn. 57 (1997), which adopted the federal rule relating to the admissibility of scientific evidence enunciated in Daubert v. Merrell Dow Pharmaceuticals, Inc. 509 U.S. 579 (1993). In Porter, the high court ruled that before scientific evidence can be deemed admissible in Connecticut courts, the trial judge must make a decision about its reliability. The judge must determine first, whether the evidence is scientifically valid; and second, whether the evidence is relevant.

S.B. 1098 would create a similar procedure for the admissibility of jail house witness testimony. Section 2 of the bill would require that our trial judges hold a pre-trial hearing to determine the reliability of a jailhouse witness' testimony. For example, under the Turner case, the trial judge would have been required to inquire about the existence of the witness' pending criminal charges, and to question her about her arrangements with the state concerning any consideration she had been promised or expected in exchange for her testimony. Then, that judge could make his or her own determination of the truthfulness of the witness, and inquire into any related issues that may be relevant.

In summary, the testimony of incentivized witnesses has been the cause of wrongful conviction, as well as prolonged post-conviction litigation and all the expenses and delays associated with such litigation. Justice requires that a criminal accused have access to full information about circumstances

surrounding any formal or informal agreements made between witnesses and prosecutors. S.B. 1098 will help level the playing field for our clients. We urge this Committee to favorably act upon it.