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## **California may curb use of unsupported jailhouse testimony**

A bill passed by the state Legislature earlier this month would prohibit convictions based solely on the testimony of jailhouse informants, who often have something to gain by lying.

By Carol J. Williams, Los Angeles Times

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No blood, fingerprints, weapon or other physical evidence was ever found to link Thomas L. Goldstein to the 1979 shotgun murder of John McGinest, a Long Beach neighbor he had never met.

Goldstein, then a 28-year-old draftsman, former Marine and part-time engineering student, had moved into a garage apartment near the murder scene just two days earlier and had only a couple of minor run-ins with the law — for drunkenness and disturbing the peace — that brought him to police attention.

Goldstein would nevertheless lose the next 25 years of his life to imprisonment on a wrongful conviction, secured by prosecutors who cut deals with a notorious jailhouse informant — aptly named Edward F. Fink — to testify that Goldstein had confessed to the murder.

Scandalous misuse of uncorroborated testimony by in-custody informants in the 1980s sent dozens to long prison terms for offenses that appellate courts later determined they never committed. But a bill passed by the state Legislature earlier this month and facing a Monday deadline for Gov. Jerry Brown to sign would prohibit future convictions based solely on the testimony of jailhouse informants, who often have something to gain by lying.

It's been a long struggle to get the law changed, and the California District Attorneys Assn. and other tough-on-crime groups remain opposed to the law, which would block convictions in cases without corroborating testimony by uncompromised witnesses or forensic evidence to tie the defendant to the crime.

Brown hasn't indicated whether he will sign it, a spokesman said last week. But he is known to be generally supportive of reforms proposed by a bipartisan task force three years ago that included a call for curbs on self-serving snitches.

The legal change was one of numerous recommendations for correcting flaws in the criminal justice system put forward in 2008 by the California Commission on the Fair Administration of Justice, whose members include prosecutors, public defenders, victims' rights advocates and law enforcement. Lawmakers had twice passed similar bills in recent years, but they were vetoed by then-Gov. Arnold Schwarzenegger.

A handful of California counties' prosecutors, Los Angeles County Dist. Atty. Steve Cooley first among them, have already taken steps to restrict the use of informants whose personal interests in getting reduced sentences or other favors could raise concerns about whether they are truthful.

"We have not had any problems obtaining convictions as a result of our policy and believe it has helped us to assure the reliability of witness testimony to avoid mistakes in criminal prosecutions," Cooley said when the new restriction won legislative approval. "When the wrong person is prosecuted, the guilty go free."

Resistance to the law change continues, though, among other prosecutors.

"We think that it is the traditional job of a judge or jury to evaluate uncorroborated witness testimony in any form," said Marty Vranicar, deputy chief executive officer of the California District Attorneys Assn., noting that judges already are required to caution jurors to consider the credibility of jailed sources.

The new law would mean prosecutors are "precluded from an entire class of evidence that would prevent us from possibly prosecuting some very serious crimes, especially crimes perpetrated in jails and prisons," Vranicar said.

Natasha Minsker, death penalty policy director for the American Civil Liberties Union of Northern California and a key advocate of the change, rejected the idea that prosecutors' hands would be tied in any way.

"False testimony by informants is the leading cause of wrongful conviction in death penalty cases," she said, referring to research by the Center on Wrongful Convictions at Northwestern University Law School in Chicago. "There is a real risk that informants getting paid for their testimony or getting a deal in their own cases will say things that get people sentenced to death."

She conceded that wrongful convictions in capital cases based on jailhouse informant testimony are rare in California but cited the 1983 death penalty issued to Oscar Lee Morris, which was revoked by the California Supreme Court in 1988, as one instance when an innocent's life was on the line. Morris was exonerated and freed a dozen years later when the state's chief witness recanted his testimony on his deathbed.

In November, the 1984 verdict on Skid Row Stabber Bobby Joe Maxwell was overturned because prosecutors had relied on a jailhouse snitch and career criminal who had testified in at least half a dozen trials.

That informant was one of at least 60 at work in Los Angeles County jails in the late 1980s who operated a cottage industry of falsified testimony that they traded to prosecutors to get breaks on their own sentences, according to a 1990 grand jury report.

"We know that when used properly, jailhouse informants can be a good investigative tool for

prosecutors, but they can also be destructive, crime-producing and corrupting," said Sen. Mark Leno (D-San Francisco), who introduced Senate Bill 687. He described it as "a common-sense safeguard to help prevent wrongful convictions based on false informant testimony."

Supporters of the new restriction contend that it was clearly necessary because of some prosecutors' efforts to keep the dubious weapon in their arsenal.

Pasadena attorney Ronald O. Kaye, who was among those who represented Goldstein in his successful petition for habeas corpus relief, said there needed to be a statewide law restricting the use of such informants.

"Thomas Goldstein waves a very large red flag to law enforcement and to prosecutors that not just will their case fall apart, but tragedy is likely to occur if they rely on these inherently unreliable sources," he said.

"I was in prison almost 25 years — most of my adult life. I missed out on everything," said Goldstein, now 62, who worked with civil rights groups to push the bill through the Legislature. "What the state took away from me was the right to make a choice about my life — marriage, kids, family stuff, and a career. I didn't have any of that."

After a federal appeals court struck down his conviction and Goldstein left prison in 2004, he sued Long Beach and Los Angeles County officials, alleging investigative and prosecutorial abuses, including failure to disclose what Fink got in return for his testimony that Goldstein had confessed to him.

The city of Long Beach settled with Goldstein last year, agreeing to pay him \$8 million for his wrongful conviction and lost liberty. The U.S. Supreme Court two years ago threw out his lawsuit against the district attorney's office, saying prosecutors enjoy broad immunity for their managerial mistakes.

Goldstein describes himself now as "kind of retired." He is taking a course in options trading and using his settlement money to hone his skills.

"I'm having fun doing that. But does it make up for the loss of all those years? No," he said. "For the several millions I got, no one would voluntarily do what I did."