

February 5, 2020

The Honorable Fred Patton, Chairperson
House Committee on Judiciary
Statehouse, Room 519C-N
Topeka, Kansas 66612

Dear Representative Patton:

SUBJECT: Fiscal Note for HB 2544 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2544 is respectfully submitted to your committee.

HB 2544 would create a new process through which a prosecutor must disclose the intent to offer testimony of a jailhouse witness regarding statements made by a suspect or defendant. The prosecutor would provide to the defense the following: the criminal history of the jailhouse witness, including any pending or dismissed criminal charges; any cooperation agreement; the substance of any statement given; information about any recantation by the witness of prior testimony or statements; and information from other criminal cases when the witness testified. Late disclosure would be permitted under certain circumstances specified in the bill.

The court could order protective measures if the court determines that the disclosure would result in bodily harm to the witness. In a homicide or rape prosecution, the court would conduct a hearing, upon motion of the defense, to determine whether the jailhouse witness's testimony exhibits reliability and is admissible based on the following factors: the extent to which the jailhouse witness's testimony is confirmed by other evidence; the specificity of the testimony; the extent to which the testimony contains details that would be known only by the perpetrator of the offense; the extent to which the details of the testimony could be obtained from a source other than the suspect or defendant; and the circumstances under which the jailhouse witness provided the information to the prosecuting attorney or a law enforcement officer, including whether the jailhouse witness was responding to leading questions.

Each prosecuting attorney would be required to maintain a central record containing all testimony provided by a jailhouse witness and any benefit that has been requested by, provided to, or that would be provided in the future to a jailhouse witness in connection with testimony provided by the jailhouse witness.

Each prosecuting attorney would be required to forward the intent to offer witness testimony, criminal history information, cooperation agreements, and the substance of the

testimony to the Kansas Bureau of Investigation (KBI). The KBI would maintain a statewide database of the forwarded information that would be accessible only to prosecuting attorneys and would remain confidential and would not be subject to the Kansas Open Records Act. The provision regarding confidentiality would expire on July 1, 2025, unless the Legislature renews the provision.

The Office of Judicial Administration states enactment of the bill would require the court to hold pre-trial hearings and the Office estimates that courts would have more motions to consider and would make additional rulings; however, a fiscal effect cannot be estimated until the Judicial Branch has had an opportunity to operate under the bill's provisions.

The KBI states because of the confidentiality requirements of the bill, the agency estimates that a higher level of security would be required for the database required by the bill. The KBI would leverage the existing secure infrastructure of the Kansas Criminal Justice Information System (KCJIS), incurring incidental costs for the resulting security requirement of the system. The agency states prosecuting attorneys accessing the system may incur minimal costs, if they are not already active users of the KCJIS.

According to the KBI, the agency would be able to expand an existing record management system into the KCJIS infrastructure in order to fulfill the requirements of the bill. Based on an estimate of no more than 600 prosecuting attorneys in the state, and the probable low activity in the system, it is estimated that no more than 50 concurrent users would be active in the system at one time.

To fulfill the database requirements of the bill, the KBI estimates additional expenditures of \$182,180 from the State General Fund in FY 2021. Of that amount, \$165,000 would be for concurrent user licensing, \$12,410 for training and installation, and \$4,770 for maintenance for the first year. For future fiscal years, the agency estimates on-going expenditures of \$29,520. Any fiscal effect associated with HB 2544 is not reflected in *The FY 2021 Governor's Budget Report*.

The Kansas Association of Counties states enactment of the bill could require some counties to hire additional staff for record-keeping. The Association further states that the bill also adds additional steps for a prosecuting attorney, which may require hiring additional staff.

Sincerely,



Larry L. Campbell
Director of the Budget

cc: Mary Rinehart, Judiciary
Paul Weisgerber, KBI
Jay Hall, Association of Counties
Willie Prescott, Office of the Attorney General