

HOUSE BILL No. 2366

By Committee on Judiciary

2-11

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to jailhouse witness testimony; requiring prosecutors to disclose their
3 intent to introduce testimony from a jailhouse witness and to forward
4 related information to the Kansas bureau of investigation.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. (a) (1) In any criminal prosecution, the prosecuting
8 attorney shall disclose its intent to introduce testimony of a jailhouse
9 witness regarding statements made by a suspect or defendant, while such
10 witness and suspect or defendant were both incarcerated, within the time
11 provided by K.S.A. 22-3212, and amendments thereto. The prosecuting
12 attorney shall provide to the defense:

13 (A) The criminal history of the jailhouse witness, including any
14 pending or dismissed criminal charges;

15 (B) the jailhouse witness's cooperation agreement and any benefit that
16 has been requested by, provided to, or will be provided in the future to the
17 jailhouse witness;

18 (C) the contents of any statement allegedly given by the suspect or
19 defendant to the jailhouse witness and the contents of any statement given
20 by the jailhouse witness to law enforcement regarding the statements
21 allegedly made by the suspect or defendant, including the time and place
22 such statements were given;

23 (D) any information regarding the jailhouse witness recanting
24 testimony or statements, including the time and place of the recantation,
25 the nature of the recantation and the names of the people present at the
26 recantation; and

27 (E) any information concerning other criminal cases in which the
28 testimony of the jailhouse witness was introduced or was intended to be
29 introduced by a prosecuting attorney regarding statements made by a
30 suspect or defendant, including any cooperation agreement and any benefit
31 that the jailhouse witness received in such case.

32 (2) The court may permit the prosecuting attorney to comply with the
33 provisions of this section after the time period provided in paragraph (1) if
34 the court finds that the jailhouse witness was not known or the information
35 described in paragraph (1) could not be discovered or obtained by the
36 prosecuting attorney exercising due diligence within such time period.

1 (3) If the court finds that disclosing the information described in
2 paragraph (1) is likely to cause bodily harm to the jailhouse witness, the
3 court may:

4 (A) Order that such evidence be viewed only by the defense counsel
5 and not by the defendant or others; or

6 (B) issue a protective order.

7 (b)(1) In a criminal prosecution for any murder or rape, as defined in
8 K.S.A. 21-3502, prior to its repeal, or K.S.A. 2020 Supp. 21-5503, and
9 amendments thereto, in which the prosecuting attorney intends to
10 introduce the testimony of a jailhouse witness, upon motion of the
11 defendant, the court shall conduct a pre-trial hearing to determine whether
12 the jailhouse witness's testimony exhibits reliability and is admissible
13 based on the following factors:

14 (A) The extent to which the jailhouse witness's testimony is
15 confirmed by other evidence;

16 (B) the specificity of the testimony;

17 (C) the extent to which the testimony contains details that would be
18 known only by the perpetrator of the offense;

19 (D) the extent to which the details of the testimony could be obtained
20 from a source other than the suspect or defendant; and

21 (E) the circumstances under which the jailhouse witness provided the
22 information to the prosecuting attorney or a law enforcement officer,
23 including whether the jailhouse witness was responding to leading
24 questions.

25 (2) If the prosecuting attorney fails to show by a preponderance of the
26 evidence that a jailhouse witness's testimony is reliable, the court shall
27 exclude the testimony at trial.

28 (c)(1) Each prosecuting attorney's office shall maintain a central
29 record containing information regarding:

30 (A) Any case in which testimony by a jailhouse witness is introduced
31 or is intended to be introduced by a prosecuting attorney regarding
32 statements made by a suspect or defendant and the substance of such
33 testimony; and

34 (B) any benefit that has been requested by, provided to, or will be
35 provided in the future to a jailhouse witness in connection with testimony
36 provided by such witness.

37 (2) Each prosecuting attorney's office shall forward the information
38 described in paragraph (1) to the Kansas bureau of investigation. The
39 bureau shall maintain a statewide database containing the information
40 forwarded pursuant to this section. Such database shall be accessible only
41 to prosecuting attorneys and shall otherwise remain confidential and not
42 subject to the open records act, K.S.A. 45-215 et seq., and amendments
43 thereto. The provision regarding confidentiality shall expire on July 1,

1 2026, unless the legislature reviews and reenacts such provision pursuant
2 to K.S.A. 45-229, and amendments thereto, prior to July 1, 2026.

3 (d) If a jailhouse witness receives any benefit in connection with
4 offering or providing testimony against a defendant, the prosecuting
5 attorney shall notify any victim connected to the criminal prosecution.

6 (e) If the testimony of a jailhouse witness is admitted into evidence,
7 the jury shall be instructed that such testimony was provided by a jailhouse
8 witness and informed of any benefit that has been requested by, provided
9 to, or will be provided in the future to the jailhouse witness in connection
10 with providing such testimony.

11 (f) As used in this section:

12 (1) "Benefit" means any plea bargain, bail consideration, reduction or
13 modification of sentence, or any other leniency, immunity, financial
14 payment, reward or amelioration of current or future conditions of
15 sentence that is requested, provided or will be provided in the future in
16 connection with, or in exchange for, testimony of a jailhouse witness.

17 (2) "Jailhouse witness" means a person who provides testimony, or is
18 intended to provide testimony during a criminal prosecution regarding
19 statements made by a suspect or defendant while both the witness and the
20 suspect or defendant were incarcerated, and who has requested, has been
21 offered, or may in the future receive a benefit in connection with such
22 testimony. "Jailhouse witness" does not mean a person who is a
23 confidential informant, an accomplice or a co-defendant.

24 (g) This section shall be a part of and supplemental to the Kansas
25 code of criminal procedure.

26 Sec. 2. This act shall take effect and be in force from and after its
27 publication in the statute book.