

March 1, 2021

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

Dear Representative Patton:

SUBJECT: Fiscal Note for HB 2366 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2366 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.

If the court determines that the disclosure of information would result in bodily harm to the witness, the court could order protective measures or order the evidence be viewed by only the defense counsel. In a murder or rape prosecution, the court would conduct a pre-trial hearing, upon motion of the defendant, 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, 2026, unless the Legislature renews the provision. If a jailhouse witness receives any benefit in connection with offering or providing testimony against a defendant, the prosecuting attorney would notify any victims connected to the criminal prosecution. Finally, a jury would be instructed that the witness was incarcerated and be informed of any benefit given to the witness.

Estimated State Fiscal Effect				
	FY 2021 SGF	FY 2021 All Funds	FY 2022 SGF	FY 2022 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$182,180	\$182,180
FTE Pos.	--	--	--	--

The Office of Judicial Administration states enactment of the bill would require the court to hold pre-trial hearings and estimates that courts would have more motions to consider and would make additional rulings, which could increase the length of cases and increase the time spent by district court judicial personnel in researching and hearing cases. However, a fiscal effect cannot be estimated.

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 outlined in 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 records management system into the KCJIS infrastructure 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.

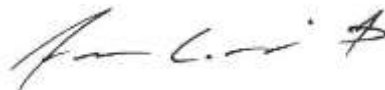
To fulfill the database requirements of the bill, the KBI estimates additional expenditures of \$182,180 from the State General Fund in FY 2022. Of that amount, \$165,000 would be for concurrent user licensing, \$12,410 for training and installation, and \$4,770 for maintenance for the first year. For future fiscal years, the agency estimates on-going expenditures for system maintenance of \$29,520.

The Office of Attorney General states that the bill would increase case load and expenditures. The amount of the increase would depend on where the cases are located, and the number of additional hearings required to comply with the bill. It is estimated that cases would take between five to twenty-five hours per case plus travel expenses. However, a precise fiscal effect cannot be estimated.

The Department of Corrections indicates that enactment of the bill would not have a fiscal effect on the agency. Any fiscal effect associated with HB 2366 is not reflected in *The FY 2022 Governor's Budget Report*.

The Kansas Association of Counties states enactment of the bill could increase monitoring at jails for safety. Since the level of monitoring and the number of jailhouse witnesses that would need to be monitored is unknown, a fiscal effect cannot be estimated. The League of Kansas Municipalities states that the bill would not have a fiscal effect on cities.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Bobbi Mariani, Insurance
Debbie Thomas, Judiciary
Willie Prescott, Office of the Attorney General
Randy Bowman, Corrections
Scott Schultz, Sentencing Commission
Wendi Stark, League of Municipalities
Jay Hall, Association of Counties
Paul Weisgerber, KBI