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MEMORANDUM

To: House Committee on Judiciary

From: Office of Revisor of Statutes

Date: March 16, 2021

Subject: Bill Brief on HB 2366

HB 2366 creates guidelines for introducing testimony of jailhouse witnesses in criminal prosecutions.

Section 1 requires a prosecuting attorney to disclose their intent to introduce jailhouse witness testimony. The prosecuting attorney shall provide the criminal history of the jailhouse witness, the jailhouse witness's cooperation agreement and any benefit that may result, the contents of statements allegedly made, any information regarding the jailhouse witness recanting, and any information on other criminal cases in which testimony of the jailhouse witness was introduced or intended to be introduced. The court may extend the time for the prosecutor to comply if the witness was not known or the information could not be discovered in time. If the court finds that disclosing the information is likely to cause bodily harm to the witness the court may order evidence be viewed only by defense counsel or issue a protective order.

In a criminal prosecution for murder or rape, on motion of the defendant, the court shall conduct a pre-trial hearing to determine whether the witness's testimony exhibits reliability and is admissible. Subsection (b) lists the factors the court shall consider, and if the prosecuting attorney fails to show by a preponderance of the evidence the testimony is reliable, the court shall exclude the testimony.

Each prosecuting attorney's office shall maintain a record containing information on any case in which testimony of a jailhouse witness is introduced or is intended to be introduced and any benefit associated with the testimony. The prosecuting attorney's office shall forward the information to the KBI. The KBI shall maintain a statewide database that is only available to prosecutors.

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If a jailhouse witness receives a benefit in connection with testimony, the prosecuting attorney shall notify any victim connected to the criminal prosecution. If such testimony is admitted into evidence, the jury shall be instructed that the testimony was provided by a jailhouse witness and informed of any benefit associated with the testimony. Subsection (f) provides definitions of “benefit” and “jailhouse witness”.