



Kansas County & District Attorneys Association

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February 2, 2022

To: Kansas Senate Judiciary Committee
From: Darrin C. Devinney, Butler County Attorney
President, Kansas County and District Attorney's Association

Re: Testimony in opposition of House Bill 2366

Chair Warren and members of the Senate Judiciary Committee

Thank you for the opportunity to testify on behalf of the Kansas County and District Attorney's Association (KCDA) in opposition of HB 2366.

HB 2366, at its heart, appears to compromise the integrity of our judicial system and current statutory protections that have been in place for years. This proposed legislation requires the prosecution to disclose all criminal history of a "jailhouse witness," regardless of whether the crimes are related to veracity or are juvenile adjudications. Presently, prosecutors are required to disclose any witness' criminal history as it pertains to credibility and such criminal history may be admissible at trial. See K.S.A. 60-420, 60-421, and 60-422. HB 2366 expands the requirements of disclosure of criminal history to include all criminal history, with the implication being that any "jailhouse witness" needs additional background research completed simply because they are incarcerated. Witnesses who observe criminal activity that are not incarcerated would not be subject to these other requirements. As such, by virtue of incarceration, HB 2366 would infer that due to incarceration, the character and veracity of an individual is inherently suspicious and subject to a super-review beyond another person who may be out of jail on bond. Under present law, if any agreements have been made with any witness for leniency in any fashion are determined, there is a legal obligation for prosecutors to disclose the information. Once again, the incarcerated status of the witness is not a factor in the application of this duty.

Also troubling is that HB 2366(b) requires an additional pre-trial hearing for criminal prosecutions for murder and rape but excuses a specific hearing for all other crimes. All defendants, regardless of the crimes for which they are charged, should enjoy any and all constitutional protections and safeguards throughout the judicial process. Singling out these two crimes seems to delineate two very specific offenses and leaves out the vast majority of offenses under our criminal statutes. K.S.A. 60-407 provides that every person is qualified to be a witness, no person has a privilege to refuse to be a witness, no person is disqualified to testify to any matter, no person has a privilege to disclose any matter or to produce any object or writing, no person has a privilege that another shall not be a witness, and all relevant evidence is admissible. These protections assist the trier of fact in achieving the truth of what occurred for the protection of victims, the judicial system, and the defendant who stands accused. Through the present protections of due process, a witness and their various motivations for testifying are ferreted out through principles of discovery, direct examination, cross-examination, and the jury itself. Any agreements for witness benefits from testifying are required to be disclosed to a defendant under our existing statutory and ethical obligations as prosecutors.

HB 2366 also requires the establishment of a database for all records of “jailhouse witness” agreements to be maintained by the Kansas Bureau of Investigation to be accessible to prosecutors and requires additional notification to any victim connected to the criminal prosecution. This raises some concerns for incidents in which an inmate is victimized by another inmate while incarcerated. Releasing this information within a dynamic like this subjects the witness within a prison to be named and identified while possibly still in a neighboring cell to the accused.

In summary, HB 2366 seems to attempt to cure an issue that does not develop because protections are already in place. Disclosure of agreements made with any witness are required to be provided to defendants and the multiple levels of determining the credibility of a witness as they testify are constitutionally protected. These rights apply to all criminal prosecutions, not just a select few. Expanding the scope of disclosure of any agreements beyond what is presently in place could lead to serious disruptions that do not protect the forthcoming witness. Subsequently, fewer disclosures by witnesses and increased risks that our judicial process fails to obtain a full understanding of the facts of a case would result.

We ask that you please join us in opposition to HB 2366.

Sincerely,

Darrin C. Devinney
Butler County Attorney
President, Kansas County and District Attorney’s Association