

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2293

As Amended by Senate Committee on Judiciary

Brief*

HB 2293, as amended, would create law in the Kansas Code of Criminal Procedure (Code) regarding jailhouse witness testimony.

[*Note:* The bill would contain a whereas clause designating its provisions as the Pete Coones Memorial Act.]

Disclosure Requirements

The bill would require, in any criminal prosecution, the prosecuting attorney (prosecutor) to disclose any intent to introduce testimony of a jailhouse witness, as defined by the bill, regarding statements made by a suspect or defendant, while the jailhouse witness and suspect or defendant were both incarcerated, within the time provided by the section of the Code governing discovery.

The bill would also require the prosecutor to disclose to the defense:

- The criminal history of the jailhouse witness, including pending or dismissed criminal charges;
- The jailhouse witness's cooperation agreement and any benefit, as defined by the bill, that has been requested by, provided to, or will be provided in the future to the witness;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- The contents of any statement allegedly given by the suspect or defendant to the jailhouse witness and the contents of any statement given by the witness to law enforcement regarding the statements allegedly made by the suspect or defendant, including the time and place such statements were given;
- Any information regarding the jailhouse witness recanting testimony or statements, including the time and place of recantation, the nature of the recantation, and the names of the people present at the recantation; and
- Any information regarding other criminal cases in which the testimony of the jailhouse witness was introduced or was intended to be introduced by a prosecutor regarding statements made by a suspect or defendant, including any cooperation agreement and any benefit the witness received in such case.

The court could allow the prosecutor to comply with these disclosure requirements after the time limit described above if the court finds the jailhouse witness was not known or the information the bill requires to be disclosed could not be discovered or obtained by the prosecutor exercising due diligence within such time period.

If the court finds that disclosure of the above information is likely to cause bodily harm to the jailhouse witness, the bill would allow the court to order that the evidence be viewed only by defense counsel and not by the defendant or others, or issue a protective order.

Database

The bill would require each prosecutor's office to maintain a central record containing information regarding

cases in which jailhouse witness testimony is introduced or is intended to be introduced by a prosecutor regarding statements made by a suspect or defendant, the substance of such testimony, and any benefit requested by, provided to, or to be provided in the future to such witness in connection with testimony provided by the witness.

The bill would require the prosecutor's office to forward this information to the Kansas Bureau of Investigation (KBI), which would be required to maintain a statewide database of such information. The database would be accessible only to prosecutors and its records would otherwise remain confidential and not subject to disclosure under the Kansas Open Records Act (KORA), and this confidentiality provision would not be subject to expiration or review under KORA.

Victim Notification

If a jailhouse witness receives any benefit in connection with offering or providing testimony against a defendant, the bill would require the prosecutor to notify any victim connected to the criminal prosecution.

Background

The bill was introduced by the House Committee on Judiciary at the request of a representative of the Innocence Project.

House Committee on Judiciary

In the House Committee hearing on February 13, 2023, representatives of the Board of Indigents' Defense Services (BIDS), the Innocence Project, and the Executive Director of the Midwest Innocence Project provided **proponent** testimony, generally stating the bill is an important step in preventing wrongful convictions and creates critical safeguards for the use of jailhouse witnesses in court.

A representative of Americans for Prosperity provided written-only proponent testimony.

On February 15, 2023, **opponent** testimony was provided by a representative of the Kansas County & District Attorneys Association (KCDAA), generally stating the bill proposes requirements already imposed by current statutes, case law, rules of professional conduct, and court rules. No other testimony was provided.

The House Committee adopted an amendment to remove provisions related to pretrial hearings in criminal prosecutions for murder or rape in which the prosecutor intended to introduce the testimony of a jailhouse witness and jury instructions involving the use of such testimony.

Senate Committee on Judiciary

In the Senate Committee hearing on March 14, 2023, **proponent** testimony was provided by representatives of BIDS and the Midwest Innocence Project who generally stated the bill would provide transparency and enhance reliability regarding testimony of jailhouse witnesses. Written-only proponent testimony was provided by a representative of Americans for Prosperity.

Opponent testimony was provided by a representative of the KCDAA, who provided substantially similar testimony as in the House Committee hearing. Written-only opponent testimony was provided by the Sedgwick County District Attorney.

The Senate Committee amended the bill to remove legislative review of the confidentiality provision under KORA with respect to records held by the database that would be created by the bill.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KBI estimates enactment of the bill would result in additional expenditures of \$182,180 from the State General Fund in FY 2024, incidental costs for security requirements of the system, and negligible costs for prosecuting attorneys who wish to access the system who are not already active users of the Kansas Criminal Justice Information System (KCJIS). The KBI estimates the initial cost for the database would be \$165,000 for licensing with an additional cost of \$12,410 for training and installation, and \$4,770 for maintenance, for a total of \$182,180 that is scalable according to number of concurrent users needed for the database.

The Office of Judicial Administration states the bill's enactment could have a fiscal effect on Judicial Branch operations because the bill's provisions could extend the length of certain cases, and the fiscal effect cannot be estimated until there has been an opportunity for the Judicial Branch to operate under the bill's provisions. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Criminal prosecutions; jailhouse witness testimony; disclosures; database; Pete Coones Memorial Act; Kansas Open Records Act