

February 13, 2023

The Honorable Fred Patton, Chairperson
House Committee on Judiciary
300 SW 10th Avenue, Room 582-N
Topeka, Kansas 66612

Dear Representative Patton:

SUBJECT: Fiscal Note for HB 2293 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2293 is respectfully submitted to your committee.

HB 2293 would enact the Pete Coones Memorial Act. The bill would specify in any criminal prosecution, the prosecuting attorney would have to disclose their intent to introduce testimony of a jailhouse witness regarding statements made by a suspect or defendant while the witness and suspect or defendant were both incarcerated. The prosecuting attorney would be required to provide the defense the following:

1. The criminal history of the jailhouse witness, including any pending or dismissed criminal charges;
2. The jailhouse witness's cooperation agreement and any benefit that has been requested by, provided to, or would be provided in the future to the jailhouse witness;
3. 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 jailhouse witness to law enforcement regarding the statements allegedly made by the suspect or defendant, including the time and place statements were given;
4. Any information regarding the jailhouse witness recanting testimony or statements, including the time and place of the recantation, the nature of the recantation, and the names of the people present at the recantation; and
5. Any information concerning other criminal cases in which the testimony of the jailhouse witness was introduced or was intended to be introduced by a prosecuting attorney

regarding statements made by a suspect or defendant, including any cooperation agreement and any benefit that the jailhouse witness received in such case.

The court could allow a prosecutor an extension of the time for compliance if the jailhouse witness was not known or the information could not be discovered or obtained by the prosecution exercising due diligence within such time period.

The court could issue protective measures if it finds the jailhouse witness could be in danger of physical harm. In prosecutions for murder or rape, if the prosecutor intends to use the testimony of jailhouse witnesses regarding statements of a suspect or defendant, and the defendant requests a pre-trial hearing, the court would be required to conduct such hearing to determine the reliability and admissibility of the jailhouse witness's testimony. The bill outlines the factors for the court to consider. If the prosecutor fails to show the reliability of a jailhouse witness by a preponderance of the evidence, the court would be required to exclude the testimony at trial.

Prosecutors would be required to maintain a central record of any case in which testimony by a jailhouse witness is introduced or would be intended to be introduced by the prosecution regarding statements made by a suspect or defendant and the substance of such testimony and any benefit that has been requested by, provided to, or would be provided to a jailhouse witness in connection with testimony provided by the witness.

Prosecutors would have to forward information specified in the bill to the Kansas Bureau of Investigation (KBI). HB 2293 would require the KBI to maintain a statewide database that would not be subject to the Kansas Open Records Act and would be accessible only to prosecutors. This provision would expire on July 1, 2028. Prosecutors would have to notify victims of any benefits provided to a jailhouse witness in connection with their testimony. If jailhouse witness testimony is admitted into evidence, the bill would require the court to instruct the jury of that fact and of benefits provided to the witness in connection with providing testimony.

The KBI estimates additional expenditures of \$182,180 from the State General Fund in FY 2024 if the bill were enacted. The agency states it would leverage the existing security infrastructure of the Kansas Criminal Justice Information System (KCJIS) incurring incidental costs for security requirements of the system. The agency indicates prosecuting attorneys accessing the system may incur negligible costs if they are not already active users of KCJIS. The KBI would be able to expand on existing record management systems into the KCJIS infrastructure in order to fulfill the requirements of the bill.

Based on an estimate of no more than 600 prosecuting attorneys in the state, and possible low usage of the database, the KBI further estimates that no more than 50 concurrent users would be active in the system at any given time. At this level of licensing, 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. The KBI states the \$182,180 cost could be scaled depending on the 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 due to additional hearings and additional factors for the court to consider. The Office states a fiscal effect cannot be estimated until the Judicial Branch has had an opportunity to operate under the bill's provisions. Any fiscal effect associated with HB 2293 is not reflected in *The FY 2024 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt". The signature is fluid and cursive, with a distinct flourish at the end.

Adam Proffitt
Director of the Budget

cc: Vicki Jacobsen, Judiciary
Paul Weisgerber, Kansas Bureau of Investigation
Jay Hall, Kansas Association of Counties