

HOUSE BILL No. 2293

By Committee on Judiciary

2-6

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to jailhouse witness testimony; requiring prosecutors to disclose their
3 intent to introduce testimony from a jailhouse witness and to forward
4 related information to the Kansas bureau of investigation; **providing**
5 **for confidentiality of such information; amending K.S.A. 45-229 and**
6 **repealing the existing section.**
7

8 WHEREAS, The provisions of **section 1** of this act shall be known as
9 the Pete Coones memorial act.

10 Now, therefore:

11 *Be it enacted by the Legislature of the State of Kansas:*

12 **New** Section 1. (a) (1) In any criminal prosecution, the prosecuting
13 attorney shall disclose its intent to introduce testimony of a jailhouse
14 witness regarding statements made by a suspect or defendant while such
15 witness and suspect or defendant were both incarcerated within the time
16 provided by K.S.A. 22-3212, and amendments thereto. The prosecuting
17 attorney shall provide to the defense:

18 (A) The criminal history of the jailhouse witness, including any
19 pending or dismissed criminal charges;

20 (B) the jailhouse witness's cooperation agreement and any benefit that
21 has been requested by, provided to or will be provided in the future to the
22 jailhouse witness;

23 (C) the contents of any statement allegedly given by the suspect or
24 defendant to the jailhouse witness and the contents of any statement given
25 by the jailhouse witness to law enforcement regarding the statements
26 allegedly made by the suspect or defendant, including the time and place
27 such statements were given;

28 (D) any information regarding the jailhouse witness recanting
29 testimony or statements, including the time and place of the recantation,
30 the nature of the recantation and the names of the people present at the
31 recantation; and

32 (E) any information concerning other criminal cases in which the
33 testimony of the jailhouse witness was introduced or was intended to be
34 introduced by a prosecuting attorney regarding statements made by a

1 suspect or defendant, including any cooperation agreement and any benefit
2 that the jailhouse witness received in such case.

3 (2) The court may permit the prosecuting attorney to comply with the
4 provisions of this section after the time period provided in paragraph (1) if
5 the court finds that the jailhouse witness was not known or the information
6 described in paragraph (1) could not be discovered or obtained by the
7 prosecuting attorney exercising due diligence within such time period.

8 (3) If the court finds that disclosing the information described in
9 paragraph (1) is likely to cause bodily harm to the jailhouse witness, the
10 court may:

11 (A) Order that such evidence be viewed only by the defense counsel
12 and not by the defendant or others; and

13 (B) issue a protective order.

14 ~~(b)(1) In a criminal prosecution for any murder or rape, as defined in~~
15 ~~K.S.A. 21-3502, prior to its repeal, or K.S.A. 2022 Supp. 21-5503, and~~
16 ~~amendments thereto, in which the prosecuting attorney intends to~~
17 ~~introduce the testimony of a jailhouse witness, upon motion of the~~
18 ~~defendant, the court shall conduct a pre-trial hearing to determine whether~~
19 ~~the jailhouse witness's testimony exhibits reliability and is admissible~~
20 ~~based on the following factors:~~

21 ~~(A) The extent to which the jailhouse witness's testimony is~~
22 ~~confirmed by other evidence;~~

23 ~~(B) the specificity of the testimony;~~

24 ~~(C) the extent to which the testimony contains details that would be~~
25 ~~known only by the perpetrator of the offense;~~

26 ~~(D) the extent to which the details of the testimony could be obtained~~
27 ~~from a source other than the suspect or defendant; and~~

28 ~~(E) the circumstances under which the jailhouse witness provided the~~
29 ~~information to the prosecuting attorney or a law enforcement officer,~~
30 ~~including, but not limited to, whether the jailhouse witness was responding~~
31 ~~to leading questions.~~

32 (2) If the prosecuting attorney fails to show by a preponderance of the
33 evidence that a jailhouse witness's testimony is reliable, the court shall
34 exclude the testimony at trial.

35 (e) (1) Each prosecuting attorney's office shall maintain a central
36 record containing information regarding:

37 (A) Any case in which testimony by a jailhouse witness is introduced
38 or is intended to be introduced by a prosecuting attorney regarding
39 statements made by a suspect or defendant and the substance of such
40 testimony; and

41 (B) any benefit that has been requested by, provided to or will be
42 provided in the future to a jailhouse witness in connection with testimony
43 provided by such witness.

1 (2) Each prosecuting attorney's office shall forward the information
2 described in paragraph (1) to the Kansas bureau of investigation. The
3 bureau shall maintain a statewide database containing the information
4 forwarded pursuant to this section. Such database shall be accessible only
5 to prosecuting attorneys and shall otherwise remain confidential and not
6 subject to the open records act, K.S.A. 45-215 et seq., and amendments
7 thereto. The provision regarding confidentiality shall ~~expire on July 1,~~
8 ~~2028, unless the legislature reviews and acts to continue such provision~~
9 ***not be subject to expiration or review*** pursuant to K.S.A. 45-229, and
10 amendments thereto, ~~prior to July 1, 2028.~~

11 ~~(d)~~(c) If a jailhouse witness receives any benefit in connection with
12 offering or providing testimony against a defendant, the prosecuting
13 attorney shall notify any victim connected to the criminal prosecution.

14 ~~(e)~~ If the testimony of a jailhouse witness is admitted into evidence,
15 the jury shall be instructed that such testimony was provided by a jailhouse
16 witness and informed of any benefit that has been requested by, provided
17 to or will be provided in the future to the jailhouse witness in connection
18 with providing such testimony.

19 ~~(f)~~(d) As used in this section:

20 (1) "Benefit" means any plea bargain, bail consideration, reduction or
21 modification of sentence, or any other leniency, immunity, financial
22 payment, reward or amelioration of current or future conditions of
23 sentence that is requested, provided or will be provided in the future in
24 connection with, or in exchange for, testimony of a jailhouse witness.

25 (2) "Jailhouse witness" means a person who provides testimony, or is
26 intended to provide testimony during a criminal prosecution regarding
27 statements made by a suspect or defendant while both the witness and the
28 suspect or defendant were incarcerated, and who has requested, has been
29 offered or may in the future receive a benefit in connection with such
30 testimony. "Jailhouse witness" does not mean a person who is a
31 confidential informant, an accomplice or a co-defendant.

32 ~~(g)~~(e) This section shall be a part of and supplemental to the Kansas
33 code of criminal procedure.

34 ***Sec. 2. K.S.A. 45-229 is hereby amended to read as follows: 45-229.***

35 ***(a) It is the intent of the legislature that exceptions to disclosure under***
36 ***the open records act shall be created or maintained only if:***

37 ***(1) The public record is of a sensitive or personal nature***
38 ***concerning individuals;***

39 ***(2) the public record is necessary for the effective and efficient***
40 ***administration of a governmental program; or***

41 ***(3) the public record affects confidential information.***

42 ***The maintenance or creation of an exception to disclosure must be***
43 ***compelled as measured by these criteria. Further, the legislature finds***

1 *that the public has a right to have access to public records unless the*
2 *criteria in this section for restricting such access to a public record are*
3 *met and the criteria are considered during legislative review in*
4 *connection with the particular exception to disclosure to be significant*
5 *enough to override the strong public policy of open government. To*
6 *strengthen the policy of open government, the legislature shall consider*
7 *the criteria in this section before enacting an exception to disclosure.*

8 *(b) Subject to the provisions of subsections (g) and (h), any new*
9 *exception to disclosure or substantial amendment of an existing*
10 *exception shall expire on July 1 of the fifth year after enactment of the*
11 *new exception or substantial amendment, unless the legislature acts to*
12 *continue the exception. A law that enacts a new exception or*
13 *substantially amends an existing exception shall state that the exception*
14 *expires at the end of five years and that the exception shall be reviewed*
15 *by the legislature before the scheduled date.*

16 *(c) For purposes of this section, an exception is substantially*
17 *amended if the amendment expands the scope of the exception to*
18 *include more records or information. An exception is not substantially*
19 *amended if the amendment narrows the scope of the exception.*

20 *(d) This section is not intended to repeal an exception that has been*
21 *amended following legislative review before the scheduled repeal of the*
22 *exception if the exception is not substantially amended as a result of the*
23 *review.*

24 *(e) In the year before the expiration of an exception, the revisor of*
25 *statutes shall certify to the president of the senate and the speaker of the*
26 *house of representatives, by July 15, the language and statutory citation*
27 *of each exception that will expire in the following year that meets the*
28 *criteria of an exception as defined in this section. Any exception that is*
29 *not identified and certified to the president of the senate and the speaker*
30 *of the house of representatives is not subject to legislative review and*
31 *shall not expire. If the revisor of statutes fails to certify an exception that*
32 *the revisor subsequently determines should have been certified, the*
33 *revisor shall include the exception in the following year's certification*
34 *after that determination.*

35 *(f) "Exception" means any provision of law that creates an*
36 *exception to disclosure or limits disclosure under the open records act*
37 *pursuant to K.S.A. 45-221, and amendments thereto, or pursuant to any*
38 *other provision of law.*

39 *(g) A provision of law that creates or amends an exception to*
40 *disclosure under the open records law shall not be subject to review and*
41 *expiration under this act if such provision:*

42 *(1) Is required by federal law;*

43 *(2) applies solely to the legislature or to the state court system;*

1 (3) *has been reviewed and continued in existence twice by the*
2 *legislature;*~~or~~

3 (4) *has been reviewed and continued in existence by the legislature*
4 *during the 2013 legislative session and thereafter; or*

5 (5) *is contained in the following statute: section 1(b).*

6 (h) (1) *The legislature shall review the exception before its*
7 *scheduled expiration and consider as part of the review process the*
8 *following:*

9 (A) *What specific records are affected by the exception;*

10 (B) *whom does the exception uniquely affect, as opposed to the*
11 *general public;*

12 (C) *what is the identifiable public purpose or goal of the exception;*

13 (D) *whether the information contained in the records may be*
14 *obtained readily by alternative means and how it may be obtained;*

15 (2) *an exception may be created or maintained only if it serves an*
16 *identifiable public purpose and may be no broader than is necessary to*
17 *meet the public purpose it serves. An identifiable public purpose is*
18 *served if the legislature finds that the purpose is sufficiently compelling*
19 *to override the strong public policy of open government and cannot be*
20 *accomplished without the exception and if the exception:*

21 (A) *Allows the effective and efficient administration of a*
22 *governmental program that would be significantly impaired without the*
23 *exception;*

24 (B) *protects information of a sensitive personal nature concerning*
25 *individuals, the release of such information would be defamatory to*
26 *such individuals or cause unwarranted damage to the good name or*
27 *reputation of such individuals or would jeopardize the safety of such*
28 *individuals. Only information that would identify the individuals may be*
29 *excepted under this paragraph; or*

30 (C) *protects information of a confidential nature concerning*
31 *entities, including, but not limited to, a formula, pattern, device,*
32 *combination of devices, or compilation of information that is used to*
33 *protect or further a business advantage over those who do not know or*
34 *use it, if the disclosure of such information would injure the affected*
35 *entity in the marketplace.*

36 (3) *Records made before the date of the expiration of an exception*
37 *shall be subject to disclosure as otherwise provided by law. In deciding*
38 *whether the records shall be made public, the legislature shall consider*
39 *whether the damage or loss to persons or entities uniquely affected by*
40 *the exception of the type specified in paragraph (2)(B) or (2)(C) would*
41 *occur if the records were made public.*

42 (i) (1) *Exceptions contained in the following statutes as continued*
43 *in existence in section 2 of chapter 126 of the 2005 Session Laws of*

1 *Kansas and that have been reviewed and continued in existence twice by*
2 *the legislature as provided in subsection (g) are hereby continued in*
3 *existence: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 12-189,*
4 *12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-*
5 *1312e, 17-2227, 17-5832, 17-7511, 17-76,139, 19-4321, 21-2511, 22-*
6 *3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-4161,*
7 *25-4165, 31-405, 34-251, 38-2212, 39-709b, 39-719e, 39-934, 39-1434,*
8 *39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21, 40-409,*
9 *40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b, 40-*
10 *3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635, 44-*
11 *714, 44-817, 44-1005, 44-1019, 45-221(a)(1) through (43), 46-256, 46-*
12 *259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427,*
13 *55-1,102, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-*
14 *3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-*
15 *1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-*
16 *1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-*
17 *1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-*
18 *2839a, 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-*
19 *4922, 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010,*
20 *65-67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-*
21 *1,203, 66-1220a, 66-2010, 72-2232, 72-3438, 72-6116, 72-6267, 72-9934,*
22 *73-1228, 74-2424, 74-2433f, 74-32,419, 74-4905, 74-4909, 74-50,131, 74-*
23 *5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-8705, 74-8804, 74-9805,*
24 *75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133,*
25 *75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-12b11,*
26 *76-12c03, 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-3420, 79-*
27 *3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.*

28 (2) *Exceptions contained in the following statutes as certified by the*
29 *revisor of statutes to the president of the senate and the speaker of the*
30 *house of representatives pursuant to subsection (e) and that have been*
31 *reviewed during the 2015 legislative session and continued in existence*
32 *by the legislature as provided in subsection (g) are hereby continued in*
33 *existence: 17-2036, 40-5301, 45-221(a)(45), (46) and (49), 48-16a10, 58-*
34 *4616, 60-3351, 72-3415, 74-50,217 and 75-53,105.*

35 (j) (1) *Exceptions contained in the following statutes as continued*
36 *in existence in section 1 of chapter 87 of the 2006 Session Laws of*
37 *Kansas and that have been reviewed and continued in existence twice by*
38 *the legislature as provided in subsection (g) are hereby continued in*
39 *existence: 1-501, 9-1303, 12-4516a, 39-970, 65-525, 65-5117, 65-6016,*
40 *65-6017 and 74-7508.*

41 (2) *Exceptions contained in the following statutes as certified by the*
42 *revisor of statutes to the president of the senate and the speaker of the*
43 *house of representatives pursuant to subsection (e) during 2015 and that*

1 *have been reviewed during the 2016 legislative session are hereby*
2 *continued in existence: 12-5611, 22-4906, 22-4909, 38-2310, 38-2311,*
3 *38-2326, 40-955, 44-1132, 45-221(a)(10)(F) and (a)(50), 60-3333, 65-*
4 *4a05, 65-445(g), 65-6154, 71-218, 75-457, 75-712c, 75-723 and 75-7c06.*

5 *(k) Exceptions contained in the following statutes as certified by the*
6 *revisor of statutes to the president of the senate and the speaker of the*
7 *house of representatives pursuant to subsection (e) and that have been*
8 *reviewed during the 2014 legislative session and continued in existence*
9 *by the legislature as provided in subsection (g) are hereby continued in*
10 *existence: 1-205, 2-2204, 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-*
11 *17,150, 12-2001, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-*
12 *2905, 41-2906, 44-706, 44-1518, 45-221(a)(44), (45), (46), (47) and (48),*
13 *50-6a11, 65-1,243, 65-16,104, 65-3239, 74-50,184, 74-8134, 74-99b06,*
14 *77-503a and 82a-2210.*

15 *(l) Exceptions contained in the following statutes as certified by the*
16 *revisor of statutes to the president of the senate and the speaker of the*
17 *house of representatives pursuant to subsection (e) during 2016 and that*
18 *have been reviewed during the 2017 legislative session are hereby*
19 *continued in existence: 12-5711, 21-2511, 22-4909, 38-2313, 45-221(a)*
20 *(51) and (52), 65-516, 65-1505, 74-2012, 74-5607, 74-8745, 74-8752, 74-*
21 *8772, 75-7d01, 75-7d05, 75-5133, 75-7427 and 79-3234.*

22 *(m) Exceptions contained in the following statutes as certified by*
23 *the revisor of statutes to the president of the senate and the speaker of*
24 *the house of representatives pursuant to subsection (e) during 2012 and*
25 *that have been reviewed during the 2013 legislative session and*
26 *continued in existence by the legislature as provided in subsection (g)*
27 *are hereby continued in existence: 12-5811, 40-222, 40-223j, 40-5007a,*
28 *40-5009a, 40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-*
29 *8268, 75-712 and 75-5366.*

30 *(n) Exceptions contained in the following statutes as certified by the*
31 *revisor of statutes to the president of the senate and the speaker of the*
32 *house of representatives pursuant to subsection (e) and that have been*
33 *reviewed during the 2018 legislative session are hereby continued in*
34 *existence: 9-513c(c)(2), 39-709, 45-221(a)(26), (53) and (54), 65-6832,*
35 *65-6834, 75-7c06 and 75-7c20.*

36 *(o) Exceptions contained in the following statutes as certified by the*
37 *revisor of statutes to the president of the senate and the speaker of the*
38 *house of representatives pursuant to subsection (e) that have been*
39 *reviewed during the 2019 legislative session are hereby continued in*
40 *existence: 21-2511(h)(2), 21-5905(a)(7), 22-2302(b) and (c), 22-2502(d)*
41 *and (e), 40-222(k)(7), 44-714(e), 45-221(a)(55), 46-1106(g) regarding*
42 *46-1106(i), 65-2836(i), 65-2839a(c), 65-2842(d), 65-28a05(n), article*
43 *6(d) of 65-6230, 72-6314(a) and 74-7047(b).*

1 *(p) Exceptions contained in the following statutes as certified by the*
2 *revisor of statutes to the president of the senate and the speaker of the*
3 *house of representatives pursuant to subsection (e) that have been*
4 *reviewed during the 2020 legislative session are hereby continued in*
5 *existence: 38-2310(c), 40-409(j)(2), 40-6007(a), 45-221(a)(52), 46-1129,*
6 *59-29a22(b)(10) and 65-6747.*

7 *(q) Exceptions contained in the following statutes as certified by the*
8 *revisor of statutes to the president of the senate and the speaker of the*
9 *house of representatives pursuant to subsection (e) that have been*
10 *reviewed during the 2021 legislative session are hereby continued in*
11 *existence: 22-2302(c)(4)(J) and (c)(6)(B), 22-2502(e)(4)(J) and (e)(6)(B)*
12 *and 65-6111(d)(4).*

13 **Sec. 3. K.S.A. 45-229 is hereby repealed.**

14 **Sec. ~~2~~ 4.** This act shall take effect and be in force from and after its
15 publication in the statute book.