



**Senate Judiciary Committee**  
**February 17, 2025**  
**Senate Bill 203**  
**Testimony of the BIDS Legislative Committee**  
**Presented by Lindsie Ford and Emily Brandt**  
**Opponent**

Chairperson Warren and Members of the Committee:

Sometimes, victim witnesses do not wish to cooperate in the prosecution of their alleged perpetrator. The BIDS Legislative Committee recognizes that these witnesses may be critical to a prosecutor's case, and we further recognize the re-traumatization that arresting a victim witness can have. So, we can understand the request to be able to issue a show cause notice to appear to victim witnesses as another tool to seek their cooperation in prosecutions. But SB 203 goes far beyond that request.

Because SB 203 (1) exempts victim and material witnesses from being appointed counsel for contempt proceedings; (2) expands the definition of "unavailable as a witness;" and (3) prioritizes a prosecutor's ability to present a case over an accused's fundamental right to a fair trial, the BIDS Legislative Committee respectfully asks this committee to not pass SB 203.

**Exempting Victim and Material Witnesses from Appointed Counsel Violates Due Process**

SB 203 specifically exempts material witnesses under § (a)(2) from being appointed counsel. SB 203 would allow prosecutors to seek to hold victims, or any material witness, in contempt—in custody—for the duration of a criminal trial without representation on the contempt charges. This bill contemplates incarcerating victim witnesses without due process. In cases with serious charges or complex facts, this incarceration could go on for months.

Additionally troubling, as drafted, SB 203 would expand the definition of "unavailable as a witness" to include a witness who "has failed to appear as directed after service pursuant to K.S.A. 22-2805(a)(2)." This change would allow prosecutors to secure convictions without the complaining witness ever stepping foot in a courtroom.

Under the Sixth Amendment to the Federal Constitution, an accused "shall enjoy the right to be confronted with the witnesses against him." As echoed in § 10 of the Kansas Constitution, this is a bedrock procedural guarantee in all criminal prosecutions. However, this is a procedural protection that Kansas courts have unfortunately chosen to limit in certain circumstances. The Kansas Supreme Court has said that no such right exists at a preliminary hearing. This bill now seeks to deny that right even further, at a time most critical: a criminal trial.

## **Expanding the Definition of “Unavailable Witness” Violates the Confrontation Clause**

By expanding the definition of what constitutes an unavailable witness, prosecutors can now seek to admit prior testimony, taken without the right to confrontation, and admit it at trial if a witness does not show up, for any reason. The circumstances around testimony taken at preliminary hearings are considerably more lax than those afforded to a defendant during a criminal trial. Basic evidentiary rules are relaxed and witnesses are not required to even appear in person to provide testimony. The current limitations to unavailability require that the prosecution has put forth a sufficient effort to secure the testimony of a victim or material witness. These protections provide a clear balance to the relaxed rights of a defendant at the preliminary hearing.

Allowing prosecutors to seek to declare a witness as unavailable simply because a witness did not appear at trial would allow them to admit that witness's prior testimony without the witness ever having appeared in a courtroom to face the accused. As one of the most basic foundational elements of a fair trial, this right must be protected at every level.

## **Allowing Prosecutors to Delay Criminal Trials Violates Fundamental Fairness**

Finally, the proposed change to K.S.A. 22-2805(a)(2) could result in unfairly delaying criminal trials. It will allow prosecutors “multiple bites at the apple” to secure the presence of their key fact witness without regard for the right of the defendant to a speedy trial. It contemplates scenarios where the victim witness is served a subpoena but they don’t appear. The trial would then be continued. Presumably, then, the prosecution could issue a notice to appear, which the victim witness could also ignore. The trial could then be continued a second time until the victim witness was arrested and forced to cooperate. Or until the prosecution can have that witness declared unavailable and then secure a conviction in violation of the defendant’s right to confrontation.

The BIDS Legislative Committee recognizes the difficulty of being a victim witness in a criminal trial, but criminal trials must be conducted with the rights of the defendant taking priority over the prosecution’s ability to present its case.

For all of the above reasons, the BIDS Legislative Committee requests this committee not pass SB 203. Thank you for your time and consideration.

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