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March 14, 2025

Senator Kellie Warren, Chair
Senate Committee on Judiciary
Opposition Testimony – SB 116

Madam Chair Warren and members of the Senate Committee on Judiciary:

Thank you for giving me the opportunity to provide testimony in opposition to Senate Bill (SB) 116. Although the stated goal of the bill, transparency in criminal prosecution, is a laudable one, this bill would sow confusion as the majority of its provisions are already covered in existing caselaw, statutes, or rules of professional conduct. The additional element of a centrally kept registry of witness information would increase the risk of exposure of sensitive personal information to those who could wish them harm.

The redundancies in SB 116 with existing law include:

Requiring prosecutors to disclose witness information, including statements (K.S.A. 22-3201);

Criminal history of the witness (caselaw requiring exculpatory evidence, commonly referred to as *Brady* material as well as *Kansas Rule of Professional Conduct 3.8(d)* which imposes an ethical obligation on prosecutors to disclose exculpatory material);

The content of any cooperation agreements (this also falls under *Brady* material and *KRPC 3.8 (d)*);

Inconsistent statements, including recantations (this likewise falls under existing obligations found throughout caselaw and rules of professional conduct previously cited);

Requiring prosecutors, in a separate law, to do things they are already required to do under existing laws would create confusion and unnecessary litigation.

Further, juries are instructed under Pattern Instructions Kansas (PIK) 51.100 that “you should consider with *caution* the testimony of an informant who, in exchange for benefits from the State, acts as agent for the State in obtaining evidence against a defendant, if that testimony is not supported by other evidence.” (*emphasis added*) This has been the law in Kansas for decades.

Additionally, SB 116 holds all prosecutors responsible, if one prosecutor does not, for whatever reason, report a potential informant to the KBI for placement on the registry. SB 116 does not make clear when that duty to report is required. The definition of “jailhouse witness” includes vague statements such as “or is intended to provide testimony” and “or may in the future receive a benefit in connection with such testimony.” It would be one thing if a prosecutor used the testimony of a witness and gave that witness a benefit, but SB 116 goes far beyond that and imposes a burden to put a person on a registry if it is a *mere possibility* that they might ever testify or get a benefit.

Finally, requiring prosecutors to maintain a database of cooperating witnesses who gained their knowledge from being in custody alongside a defendant, and then also keeping a statewide database, has the potential to create real danger for these witnesses. I would urge the legislators to remember that these are people who have come forward, sometimes at great personal risk to themselves, to cooperate with authorities. Although the bill specifies that the database would not be subject to Kansas Open Records Act (KORA) and only available to prosecutors, its existence alone would be chilling to potential witnesses, and could be hacked, placing their lives at risk. Further, the database would become subject to KORA after ten years which removes the potential of risk to witness’ lives and makes the risk certain.

I appreciate your time and attention and urge you to oppose the passage of SB 116. I will stand for questions at the appropriate time. Thank you.

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