



STATE OF KANSAS

Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY

March 14, 2025

Senate Judiciary Committee

Attn: Chair Kellie Warren and Members of the Senate Committee on the Judiciary

State Capitol, Room 346-S

Topeka, Kansas 66612

Re: Senate Bill 116 – Opponent Testimony

From: Steve Howe, Johnson County District Attorney

Chair Kellie Warren and Committee Members:

Thank you for the opportunity to offer testimony in opposition to SB116. Close examination of the changes proposed in SB116 reveals a list of discovery requirements already imposed upon the prosecution by statute, case law, rules of professional conduct and court rules. Not only are the statutory changes proposed by SB116 unnecessary, but the codification runs the risk of causing confusion between well-established precedent, infusing a lack of unpredictability as the new statute and its language is challenged and further interpreted by the courts. Our concerns include the following:

- The State is already required to endorse witnesses. K.S.A. 22-3212, which sets out the rules of discovery, already covers what SB116 is proposing to codify.
- The State is already required by ethical rule to disclose all exculpatory evidence to the defendant, including evidence that would tend to negate the guilt of the accused or mitigate the offense (KRPC 3.8(d)). Decades of Kansas and U.S. Supreme Court caselaw support the proposition that the State must disclose exculpatory evidence independent of statute or rule.

- The district court already has the authority to require the State, pursuant to a motion by the defendant as set forth in the bill, to disclose the material listed.
- The language in Section (a)(1) and (d)(1) tries to define when prosecutors where obligated to turn over this information. The language is overly broad, and subsections are conflicting in its scope. Section (a)(1) limits its scope to situations where its intent to introduce testimony of the jailhouse witness. However (d)(1) defines jailhouse witness as one who “has requested, has been offered or may receive a benefit in connection with such testimony.” This section does not require its use in order to produce said witness name and statement and placement on the registry.
- The courts are currently required to instruct juries in trials involving jailhouse informants pursuant to PIK 51.100 which states in pertinent part: “you should consider with *caution* the testimony of an informant who, in exchange for benefits from the State, acts as an 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 of the State (and interpreted by the courts) for decades.
- SB116 would also create a repository of individuals who have testified as incarcerated informants by the Kansas Bureau of Investigation (KBI). Prosecutors would be obligated to report such witnesses to the KBI. All indications are that the number of such witnesses is so small as to make the expenditure of state funds for this purpose questionable. Without evidence that jailhouse witness testimony is a problem in Kansas, the legislature should not require Kansas prosecutors and the KBI to expend significant resources to create and maintain a database on jailhouse informants. My jurisdiction is on the border with the State of Missouri. How would I know of the actions or agreements entered into by Missouri prosecutors, who have no legal responsibility to supply this information to Kansas prosecutors?

The proponents have cited the Pete Coones case as the reason why these changes are needed. However, nothing in this bill will have prevented his situation from occurring. If an individual chooses to violate their ethical and statutory duty, there is no law that can prevent that conduct from occurring. As unfortunate as his case is, the protections and guidance under the law already exist and this bill is unnecessary, poorly constructed and costly. I ask that you reject this bill for the reasons cited above. I thank you for your time and am willing to answer any questions you may have regarding SB 116.

Sincerely,



Stephen M. Howe
Johnson County District Attorney