



Senate Judiciary Committee
February 5, 2026
Senate Bill 398

Proponent Testimony of
Peter Conley, Deputy Capital Defender
BIDS Legislative Committee

Chair Warren, Vice-Chair Titus, Members of the Committee, and Legislative Staff:

My name is Peter Conley. I am a Deputy Capital Defender with the Kansas Death Penalty Defense Unit in Topeka.

Thank you for the opportunity to provide written proponent testimony regarding Senate Bill 398. The BIDS Legislative Committee supports this bill, as it clarifies the adoption of the *Daubert* standard currently codified under K.S.A. 60-456(b) and emphasizes the importance of judicial gatekeeping, a clear understanding of the burden of proof, and insurance that expert testimony is only admitted if it is grounded in reliable principles and methods.

While Kansas has been a *Daubert* state over 10 years, confusion in the courts still persists over how expert testimony is admitted. This bill importantly addresses that confusion to the benefit of litigants and citizens who deserve to have only reliable fields be presented before juries.

As you are aware, Senate Bill 398 does three important things:

- 1) It clarifies the burden of proof for admitting expert testimony. While the *Daubert* decision, and its progeny, are very clear about whose burden it is to demonstrate reliability, K.S.A. 60-456(b), as written, left doubt about that burden.
- 2) It mirrors Federal Rule of Evidence 702. The federal courts have evaluated the reliability of scientific or technical evidence under the *Daubert* framework since 1993. Aligning Kansas's evidentiary language with Rule 702 provides courts and litigants a well-developed body of law to persuasively rely upon.

- 3) It reinforces the trial court's gatekeeping role. The bill makes more clear that admission of an expert opinion is a question for the court, and not to be deferred to the jury. Jurors, while responsible for determining weight and credibility, are not in positions to weigh scientific reliability. The clarification protects jurors from being asked to evaluate opinions that should have never reached them to begin with.

The reliability of expert testimony is an issue that arises every day in courts across Kansas. Public Defenders are particularly concerned with ensuring that only vetted, scrutinized, and reliable opinions go before a jury deciding the liberty of citizens in Kansas. Senate Bill 398, as written, clarifies the burden of proof, aligns with Federal case law, and reinforces the role of the trial court as a gatekeeper of unreliable evidence. For these reasons, the BIDS Legislative Committee supports Senate Bill 398.

Thank you for the opportunity to provide testimony today.

Peter Conley
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Kansas Death Penalty Defense Unit