

SESSION OF 2025

## **SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2131**

As Amended by House Committee of the Whole

### **Brief\***

HB 2131, as amended, would create law in the Kansas Code of Criminal Procedure (Code) regarding jailhouse witness testimony.

The bill would contain a whereas clause designating its provisions as the Pete Coones Memorial Act.

### ***Disclosure Requirements***

The bill would require, in any criminal prosecution, the prosecuting attorney (prosecutor) to disclose any intent to introduce testimony of a jailhouse witness, as defined by the bill, regarding statements made by a suspect or defendant while the jailhouse witness and suspect or defendant were both incarcerated, within the time provided by the section of the Code governing discovery.

The bill would also require the prosecutor to disclose to the defense:

- The criminal history of the jailhouse witness, including pending or dismissed criminal charges;
- The jailhouse witness's cooperation agreement and any benefit, as defined by the bill, that has been requested by, provided to, or will be provided in the future to the witness;

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <https://klrd.gov/>

- The contents of any statement allegedly given by the suspect or defendant to the jailhouse witness, and the contents of any statement given by the witness to law enforcement regarding the statements allegedly made by the suspect or defendant, including the time and place such statements were given;
- Any information regarding the jailhouse witness recanting testimony or statements, including the time and place of recantation, the nature of the recantation, and the names of the people present at the recantation; and
- Any information regarding other criminal cases in which the testimony of the jailhouse witness was introduced or was intended to be introduced by a prosecutor regarding statements made by a suspect or defendant, including any cooperation agreement and any benefit the witness received in such case.

The court could allow the prosecutor to comply with these disclosure requirements after the time limit described above if the court finds the jailhouse witness was not known or the information the bill requires to be disclosed could not be discovered or obtained by the prosecutor exercising due diligence within such time period.

If the court finds that disclosure of the above information is likely to lead to bodily harm to the jailhouse witness, the bill would allow the court to order that the evidence be viewed only by defense counsel and not by the defendant or others, or issue a protective order.

### ***Database***

The bill would require each prosecutor's office to maintain a central record containing information regarding

cases in which jailhouse witness testimony is introduced or is intended to be introduced by a prosecutor regarding statements made by a suspect or defendant, the substance of such testimony, and any benefit requested by, provided to, or to be provided in the future to such witness in connection with testimony provided by the witness.

The bill would require the prosecutor's office to forward this information to the Kansas Bureau of Investigation (KBI), which would be required to maintain a statewide database of such information. The database would be accessible only to prosecutors and would otherwise remain confidential and not subject to the Kansas Open Records Act. The bill would provide that this confidentiality provision would never expire nor be subject to review.

### ***Victim Notification***

If a jailhouse witness receives any benefit in connection with offering or providing testimony against a defendant, the bill would require the prosecutor to notify any victim connected to the criminal prosecution.

### ***Definitions***

The bill would define the terms "benefit" and "jailhouse witness."

"Benefit" would mean any plea bargain, bail consideration, reduction or modification of sentence, or any other leniency, immunity, financial payment, reward, or amelioration of current or future conditions of sentence that is requested, provided, or will be provided in the future in connection with, or in exchange for, testimony of a jailhouse witness.

"Jailhouse witness" would mean a person who provides testimony or a person with whom the prosecuting attorney

has entered into an agreement providing for such person's possible testimony during a criminal prosecution regarding statements made by a suspect or defendant while both the witness and the suspect or defendant were incarcerated and who has requested or has been offered a benefit or possible benefit in connection with such testimony.

The definition of "jailhouse witness" would specifically exclude a person who is a confidential informant, an accomplice, or a co-defendant.

## **Background**

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Lewis.

### ***House Committee on Judiciary***

In the House Committee hearing, **proponent** testimony was provided by representatives of the Innocence Project and the Midwest Innocence Project and by three private citizens, generally stating the bill is an important step in preventing wrongful convictions and creating critical safeguards for the use of jailhouse witnesses in court.

Written-only proponent testimony was provided by a representative of the Board of Indigents' Defense Services and a private citizen.

**Opponent** testimony was provided by a representative of the Office of the Attorney General and by the District Attorneys of Johnson, Sedgwick, and Shawnee counties and the Finney County Attorney, all on behalf of the Kansas County and District Attorneys Association. The opponents generally stated the bill proposes requirements already imposed by current statutes, case law, rules of professional conduct, and court rules.

Written-only opponent testimony was provided by the Leavenworth County Attorney, representing the Kansas County and District Attorneys Association, and by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association.

No other testimony was provided.

The House Committee adopted an amendment to clarify the definition of “jailhouse witness” to include:

- Persons who the prosecutor has, at some point during the litigation, intended to call as a witness; and
- Persons who are offered a possible benefit for their testimony.

### ***House Committee of the Whole***

The House Committee of the Whole amended the bill to modify the definition of “jailhouse witness” and to make the confidentiality of records contained in the database permanent.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KBI estimates enactment of the bill would result in additional expenditures of \$185,180 from the State General Fund in FY 2026 and \$32,320 in FY 2027 for system maintenance.

KBI states it would leverage the existing security infrastructure of Kansas Criminal Justice Information System, incurring incidental costs to upgrade the system. The KBI estimates the initial cost for the database would be \$165,000 for licensing with an additional cost of \$14,410 for training

and installation, and \$5,770 for maintenance, for a total of \$185,180 that is scalable according to number of concurrent users needed for the database, with additional maintenance costs of \$32,320 annually.

The Office of Judicial Administration states the bill's enactment could have a fiscal effect on Judicial Branch operations because the bill's provisions could extend the length of certain cases, and that the fiscal effect cannot be estimated until there has been an opportunity for the Judicial Branch to operate under the bill's provisions.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2026 Governor's Budget Report*.

Criminal prosecutions; jailhouse witness testimony; disclosures; database; Pete Coones Memorial Act