

**House Judiciary Committee
February 6, 2020**

**House Bill 2544
Testimony of the Kansas Association of Criminal Defense Lawyers
Presented by Clayton J. Perkins
Proponent**

Dear Chairman Patton and Members of the Committee:

Thank you for the opportunity to express support for HB 2544 on behalf of the Kansas Association of Criminal Defense Lawyers (KACDL). HB 2544 is an important step forward in providing a more reliable, transparent, and fundamentally fair criminal justice system for all Kansans. I would like to share with you a real world example of why this bill is so important.

In 2018, I represented a client on appeal from a retrial their conviction was overturned because it was based upon an involuntary confession. While awaiting retrial, the client was moved back to the local jail. Suddenly, a month before retrial, a jailhouse witness came forward claiming that my client had confessed to him. However, all of the information the jailhouse witness had about this “new” confession would have been available simply by reading the Kansas Supreme Court's decision in the case. That decision was available online, and a copy of the decision would have been sent to the client, so it was likely in his unguarded copies of legal files with him at the jail. The jailhouse witness had also offered to testify against several other people in order to obtain leniency.

What was described in the appellate record of the case was that the jailhouse witness was originally charged with severity level 3 aggravated arson for setting a house on fire with a person inside of it. The jailhouse witness was looking at a sentencing range of 107 to 96 months' imprisonment for that charge. In exchange for testifying against my client at the retrial, the jailhouse witness received a reduced charge of severity level 6 “simple” arson, with a sentence of 37 months. That was the only information that was available to cross-examine the jailhouse witness at trial.

What I only learned from reading news coverage of the jailhouse witness case while working on my client's appeal was horrifying. Those articles detailed that the jailhouse witness was alleged to have tried to burn down his father's home with his father sleeping inside. Not only that, he was alleged to have broken into a neighbor's property to steal the supplies for that aggravated arson, and then set up those items in order to

frame the neighbor for the arson. That information was not known by the defense attorney at my client's retrial, so it could not be used to cross-examine the jailhouse witness.

This brings me to two important realities of jailhouse witnesses and how HB 2544 will help our system. The first reality is that jailhouse witnesses can receive a startling amount of leniency from horrifying crimes in exchange for testifying. HB 2544 helps Kansas' criminal justice system by bringing sunlight to this reality. It does this by formalizing that prosecutors need to disclose these deals to both the defense attorneys who represent the people that the jailhouse witnesses are testifying against, and to the victims of the jailhouse witness' crimes.

The second reality is that while cross-examination is supposed to be the primary guard against an untruthful jailhouse witness, it only works if the defense has complete information on the jailhouse witness to raise those reliability issues. When benefits or other discrediting evidence is turned over late, incompletely, or not at all, the defense cannot expose the jailhouse witness's motivation to lie to the jury. HB 2544 will help make sure that information is disclosed in a timely manner so that juries can hear it.

Thank you for your time and consideration.

Sincerely,

Clayton J. Perkins
Legislative Committee, on behalf of the
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