



Kansas County & District Attorneys Association

1200 SW 10th Avenue  
Topeka, KS 66604  
(785) 232-5822 Fax: (785) 234-2433  
www.kcdaa.org

February 6, 2020

Chairman Fred Patton Members of the House Committee on the Judiciary

Re: **Opposition to House Bill 2544**

Dear Chairman Patton and Committee Members:

Thank you for the opportunity to offer opponent testimony on HB2544. I am addressing you on behalf of the Johnson County District Attorney's Office and the Kansas County and District Attorney's Association. HB2544 fixes a problem that does not exist.

***Section 1(a) of HB2544 has no other purpose than to burden the State***

The complaint, which lists the potential witnesses, and K.S.A. 22-3212, which sets out the rules of discovery, already cover what HB2544 is proposing to codify. Under existing law, the State is already required 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)). And the district court already has the authority to require the State, pursuant to a motion by the defendant, to disclose material relevant to this bill.

***Section 1(b)(1) of HB2544 invades the province of the jury***

The second section, the gatekeeper section, invades the province of the jury. It would require that, prior to trial, the district court hold a hearing to determine whether a jailhouse witnesses' testimony is reliable. But the court's role in the criminal justice system is not to weigh the evidence. That role falls squarely on the trier of fact: the jury. The jury determines the weight and credit to given to the testimony of each witness. And in trials involving jailhouse informants, the court instructs the jury on PIK 51.100, which states, "[y]ou 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.”

***Section 1(c)(1) of HB2544 creates an unnecessary administrative headache***

The third section, the repository section, simply creates unnecessary red tape. In my nearly 20 years in criminal law, which includes 12 years as a public defender at the Kansas Appellate Defender Office, and 8 years as a prosecutor with the Johnson County District Attorney’s Office, I have handled well over 600 cases, and studied thousands of others. I can tell you that jailhouse witnesses are somewhat rare. A Westlaw search for “jailhouse informant” discloses 38 cases over the last 45 years. With the Kansas appellate courts handling over a thousand criminal cases a year, you are talking a very small number. Even if you multiply 38 cases tenfold, you are talking about 8/10ths of one percent of all cases: a figure that does not even reflect the rarity of two cases having the same jailhouse informant.

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.

Sincerely,

Shawn E. Minihan, and Jacob Gontesky

On Behalf of

District Attorneys Johnson County and Kansas County and District Attorney’s Association