

HOUSE BILL No. 2544

By Committee on Judiciary

1-31

Proposed Amendments to HB 2544 - Jennings
House Judiciary
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February 11, 2020

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to jailhouse witness testimony.

3

4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a)(1) In any criminal prosecution, the prosecuting attorney
6 shall disclose its intent to introduce testimony of a jailhouse witness
7 regarding statements made by a suspect or defendant, while such witness
8 and suspect or defendant were both incarcerated, within the time provided
9 by K.S.A. 22-3212, and amendments thereto. The prosecuting attorney
10 shall provide to the defense:

11 (A) The criminal history of the jailhouse witness, including any
12 pending or dismissed criminal charges;

13 (B) the jailhouse witness's cooperation agreement and any benefit that
14 has been requested by, provided to, or will be provided in the future to the
15 jailhouse witness;

16 (C) the contents of any statement allegedly given by the suspect or
17 defendant to the jailhouse witness and the contents of any statement given
18 by the jailhouse witness to law enforcement regarding the statements
19 allegedly made by the suspect or defendant, including the time and place
20 such statements were given;

21 (D) any information regarding the jailhouse witness recanting
22 testimony or statements, including the time and place of the recantation,
23 the nature of the recantation and the names of the people present at the
24 recantation; and

25 (E) any information concerning other criminal cases in which the
26 testimony of the jailhouse witness was introduced or was intended to be
27 introduced by a prosecuting attorney regarding statements made by a
28 suspect or defendant, including any cooperation agreement and any benefit
29 that the jailhouse witness received in such case.

30 (2) The court may permit the prosecuting attorney to comply with the
31 provisions of this section after the time period provided in paragraph (1) if
32 the court finds that the jailhouse witness was not known or the information
33 described in paragraph (1) could not be discovered or obtained by the
34 prosecuting attorney exercising due diligence within such time period.

35 (3) If the court finds that disclosing the information described in
36 paragraph (1) is likely to cause bodily harm to the jailhouse witness, the

1 court may:

2 (A) Order that such evidence be viewed only by the defense counsel
3 and not by the defendant or others; or

4 (B) issue a protective order.

5 ~~(b)(1)~~ In a criminal prosecution for any murder or rape, as defined in
6 K.S.A. 21-3502, prior to its repeal, or K.S.A. 2019 Supp. 21-5503, and
7 amendments thereto, in which the prosecuting attorney intends to
8 introduce the testimony of a jailhouse witness, upon motion of the
9 defendant, the court shall conduct a pre-trial hearing to determine whether
10 the jailhouse witness's testimony ~~exhibits reliability and~~ is admissible
11 based on the following factors:

strike

12 (A) The extent to which the jailhouse witness's testimony is
13 confirmed by other evidence;

14 (B) the specificity of the testimony;

15 (C) the extent to which the testimony contains details that would be
16 known only by the perpetrator of the offense;

17 (D) the extent to which the details of the testimony could be obtained
18 from a source other than the suspect or defendant; and

19 (E) the circumstances under which the jailhouse witness provided the
20 information to the prosecuting attorney or a law enforcement officer,
21 including whether the jailhouse witness was responding to leading
22 questions.

23 ~~(2) If the prosecuting attorney fails to show by a preponderance of the
24 evidence that a jailhouse witness's testimony is reliable, the court shall
25 exclude the testimony at trial.~~

strike

26 ~~(c)(1) Each prosecuting attorney's office shall maintain a central
27 record containing information regarding:~~

28 ~~(A) Any case in which testimony by a jailhouse witness is introduced
29 or is intended to be introduced by a prosecuting attorney regarding
30 statements made by a suspect or defendant and the substance of such
31 testimony; and~~

32 ~~(B) any benefit that has been requested by, provided to, or that will be
33 provided in the future to a jailhouse witness in connection with testimony
34 provided by such witness.~~

strike subsection (c) and insert:
If a prosecutor intends to introduce the testimony of
a jailhouse witness, the defendant may require the
prosecuting attorney to ask the jailhouse witness
about any other cases in which the jailhouse
witness has testified or offered to testify. The
prosecutor shall provide the information obtained to
the defendant.

35 ~~(2) Each prosecuting attorney's office shall forward the information
36 described in paragraph (1) to the Kansas bureau of investigation. The
37 bureau shall maintain a statewide database containing the information
38 forwarded pursuant to this section. Such database shall be accessible only
39 to prosecuting attorneys and shall otherwise remain confidential and not
40 subject to the open records act, K.S.A. 45-215 et seq., and amendments
41 thereto. The provision regarding confidentiality shall expire on July 1,
42 2025, unless the legislature reviews and reenacts such provision pursuant
43 to K.S.A. 45-229, and amendments thereto, prior to July 1, 2025.~~

- 1 (d) If a jailhouse witness receives any benefit in connection with
2 offering or providing testimony against a defendant, the prosecuting
3 attorney shall notify any victim connected to the criminal prosecution.
- 4 (e) If the testimony of a jailhouse witness is admitted into evidence,
5 the jury shall be instructed that such testimony was provided by a jailhouse
6 witness and informed of any benefit that has been requested by, provided
7 to, or that will be provided in the future to the jailhouse witness in
8 connection with providing such testimony.
- 9 (f) As used in this section:
- 10 (1) "Benefit" means any plea bargain, bail consideration, reduction or
11 modification of sentence, or any other leniency, immunity, financial
12 payment, reward or amelioration of current or future conditions of
13 sentence that is requested, provided or will be provided in the future in
14 connection with, or in exchange for, testimony of a jailhouse witness.
- 15 (2) "Jailhouse witness" means a person who provides testimony, or is
16 intended to provide testimony during a criminal prosecution regarding
17 statements made by a suspect or defendant while both the witness and the
18 suspect or defendant were incarcerated, and who has requested, has been
19 offered, or may in the future receive a benefit in connection with such
20 testimony. "Jailhouse witness" does not mean a person who is a
21 confidential informant, an accomplice or a co-defendant.
- 22 (g) This section shall be a part of and supplemental to the Kansas
23 code of criminal procedure.
- 24 Sec. 2. This act shall take effect and be in force from and after its
25 publication in the statute book.