



KANSAS STATE BOARD OF INDIGENTS' DEFENSE SERVICES

**House Judiciary Committee
February 13, 2023**

**House Bill 2293
Testimony of the BIDS Legislative Committee
Presented by Clayton J. Perkins
Proponent**

Chairman Patton and Members of the Committee:

HB 2293 provides for express disclosure requirement and further protections when the prosecution utilizes a jailhouse witness. This is an important step forward in providing a more reliable, transparent, and fundamentally fair criminal justice system for all Kansans. I would like to highlight a couple of ways HB 2293 does this.

First, HB 2293 makes the disclosure requirements upon the prosecution abundantly clear through subsection (a). This is important because certain constitutional disclosure requirements under *Brady v Maryland* may be otherwise overlooked. For example, an express cooperation agreement, such as a plea deal with the jailhouse witness, is typically disclosed. However, other benefits, such as the jailhouse witness requesting transfer to their preferred part of a jail, may be overlooked. This makes the disclosure requirements clear.

HB 2293 also helps the prosecution fulfill those disclosure requirements through subsection (c), which provides prosecutors with a centralized tracking system for identifying repeated jailhouse witnesses. Right now, prosecutors may not even know if a jailhouse witness they are relying upon has repeatedly provided unreliable testimony as a jailhouse witness in other cases in other counties. Subsection (c) provides a way for prosecutors to have access to that information, better assess the reliability of the jailhouse witnesses they seek to use, and fulfill their constitutionally mandated disclosure requirements.

HB 2293 further provides the additional safeguard, in select cases, of a pretrial reliability hearing described in subsection (b). Having the district court act as a gatekeeper in these instances is important because assessing the reliability of a jailhouse witness often involves reviewing evidence that would be inadmissible or highly prejudicial at a jury trial. For example, it may be fairly obvious that a jailhouse



witness got their information from simply reading a newspaper article about a particular case, rather than from a statement made by a defendant. However, that kind of assessment can only be made by reviewing those newspaper articles as evidence, something extremely prejudicial to the defense, and should be avoided at trial. The district court is in the best position to serve as a gatekeeper of this evidence as it already does in other similar situations such as when assessing the reliability of expert witnesses via K.S.A. 60-456, or the relevance and materiality of prior crimes or civil wrongs via K.S.A. 60-455.

Finally, I would like to suggest a friendly amendment to the category of cases qualifying for a pretrial hearing on Page 2, Lines 10-16, to include aggravated criminal sodomy, such as:

(b) (1) In a criminal prosecution for any murder, ~~or~~ rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2022 Supp. 21-5503, and amendments thereto, ***or aggravated criminal sodomy as defined by K.S.A. 21-3506, prior to its repeal, or K.S.A. 2022 Supp. 21-5504(b), and amendments thereto***, in which the prosecuting attorney intends to introduce the testimony of a jailhouse witness, upon motion of the defendant, the court shall conduct a pre-trial hearing to determine whether the jailhouse witness's testimony exhibits reliability and is admissible based on the following factors:

This would avoid a constitutional issue identified in *State v. Denney*, 278 Kan. 643 (2004) where it violated the Equal Protection Clause to limit statutory access to postconviction DNA testing to rape convictions, without including aggravated criminal sodomy.

Thank you for your time and consideration.

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