

HOUSE BILL No. 2293

By Committee on Judiciary

2-6

Proposed Amendments to HB 2293 - reliability and jury instruction
House Judiciary Committee
Prepared by the Office of Revisor of Statutes
February 20, 2023

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to jailhouse witness testimony; requiring prosecutors to disclose their
3 intent to introduce testimony from a jailhouse witness and to forward
4 related information to the Kansas bureau of investigation.

5
6 WHEREAS, The provisions of this act shall be known as the Pete
7 Coones memorial act.

8 Now, therefore:
9 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

21 (C) the contents of any statement allegedly given by the suspect or
22 defendant to the jailhouse witness and the contents of any statement given
23 by the jailhouse witness to law enforcement regarding the statements
24 allegedly made by the suspect or defendant, including the time and place
25 such statements were given;

26 (D) any information regarding the jailhouse witness recanting
27 testimony or statements, including the time and place of the recantation,
28 the nature of the recantation and the names of the people present at the
29 recantation; and

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

35 (2) The court may permit the prosecuting attorney to comply with the
36 provisions of this section after the time period provided in paragraph (1) if

1 the court finds that the jailhouse witness was not known or the information
2 described in paragraph (1) could not be discovered or obtained by the
3 prosecuting attorney exercising due diligence within such time period.

4 (3) If the court finds that disclosing the information described in
5 paragraph (1) is likely to cause bodily harm to the jailhouse witness, the
6 court may:

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

9 (B) issue a protective order.

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

17 (A) ~~The extent to which the jailhouse witness's testimony is~~
18 ~~confirmed by other evidence;~~

19 (B) ~~the specificity of the testimony;~~

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

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

24 (E) ~~the circumstances under which the jailhouse witness provided the~~
25 ~~information to the prosecuting attorney or a law enforcement officer,~~
26 ~~including, but not limited to, whether the jailhouse witness was responding~~
27 ~~to leading questions.~~

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

31 (c) (1) Each prosecuting attorney's office shall maintain a central
32 record containing information regarding:

33 (A) Any case in which testimony by a jailhouse witness is introduced
34 or is intended to be introduced by a prosecuting attorney regarding
35 statements made by a suspect or defendant and the substance of such
36 testimony; and

37 (B) any benefit that has been requested by, provided to or will be
38 provided in the future to a jailhouse witness in connection with testimony
39 provided by such witness.

40 (2) Each prosecuting attorney's office shall forward the information
41 described in paragraph (1) to the Kansas bureau of investigation. The
42 bureau shall maintain a statewide database containing the information
43 forwarded pursuant to this section. Such database shall be accessible only

strike subsection (b)

1 to prosecuting attorneys and shall otherwise remain confidential and not
2 subject to the open records act, K.S.A. 45-215 et seq., and amendments
3 thereto. The provision regarding confidentiality shall expire on July 1,
4 2028, unless the legislature reviews and acts to continue such provision
5 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2028.

6 (d) If a jailhouse witness receives any benefit in connection with
7 offering or providing testimony against a defendant, the prosecuting
8 attorney shall notify any victim connected to the criminal prosecution.

9 ~~(e) If the testimony of a jailhouse witness is admitted into evidence,
10 the jury shall be instructed that such testimony was provided by a jailhouse
11 witness and informed of any benefit that has been requested by, provided
12 to or will be provided in the future to the jailhouse witness in connection
13 with providing such testimony.~~

strike subsection (e)

14 (f) As used in this section:

15 (1) "Benefit" means any plea bargain, bail consideration, reduction or
16 modification of sentence, or any other leniency, immunity, financial
17 payment, reward or amelioration of current or future conditions of
18 sentence that is requested, provided or will be provided in the future in
19 connection with, or in exchange for, testimony of a jailhouse witness.

Redesignate subsections

20 (2) "Jailhouse witness" means a person who provides testimony, or is
21 intended to provide testimony during a criminal prosecution regarding
22 statements made by a suspect or defendant while both the witness and the
23 suspect or defendant were incarcerated, and who has requested, has been
24 offered or may in the future receive a benefit in connection with such
25 testimony. "Jailhouse witness" does not mean a person who is a
26 confidential informant, an accomplice or a co-defendant.

27 (g) This section shall be a part of and supplemental to the Kansas
28 code of criminal procedure.

29 Sec. 2. This act shall take effect and be in force from and after its
30 publication in the statute book.