



Kansas County & District Attorneys Association

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To: Chairman Fred Patton Members of the House Committee on the Judiciary

Re: House Bill 2293 – Opponent Testimony

From: Chris McMullin, KCDA A President

Chairman Patton and Committee Members:

Thank you for the opportunity to offer testimony in opposition to HB 2293 on behalf of the KCDA A. Close examination of the changes proposed in HB 2293 reveals a list of discovery requirements already imposed upon the prosecution by statute, case law, rules of professional conduct and court rules. Not only are the statutory changes proposed by HB 2293 unnecessary, but the codification runs the risk of causing confusion between well-established precedent, infusing a lack of unpredictability as the new statute and its language is challenged and further interpreted by the courts. Our concerns include the following:

- The State is already required to endorse witnesses. K.S.A. 22-3212, which sets out the rules of discovery, already covers what HB 2293 is proposing to codify.
- The State is already required by ethical rule 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)). Decades of Kansas and U.S. Supreme Court caselaw support the proposition that the State must disclose exculpatory evidence independent of statute or rule.
- The district court already has the authority to require the State, pursuant to a motion by the defendant as set forth in the bill, to disclose the material listed.

- It usurps the exclusive role of the jury as the trier of fact in determining the weight and credit of the testimony of each witness. This measure would put the court in the shoes of the jury prior to trial holding a hearing to determine whether an incarcerated witnesses' testimony is reliable.
- The courts are currently required to instruct juries in trials involving jailhouse informants pursuant PIK 51.100 which states in pertinent part: "you 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." (*emphasis added*). This has been the law of the State (and interpreted by the courts) for decades.
- HB 2393 would also create a repository of individuals who have testified as incarcerated informants by the Kansas Bureau of Investigation (KBI). Prosecutors would be obligated to report such witnesses to the KBI. All indications are that the number of such witnesses is so small as to make the expenditure of state funds for this purpose questionable. 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.

Thank you for taking the concerns of the KCDA into consideration as you contemplate the merits of this measure. I would be remiss if I did not advise the committee that we are in active discussions with the proponents of this bill in hope of finding a satisfactory resolution.

I would be happy to answer any questions.