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Testimony Regarding HB2293
Submitted by Marc Bennett, District Attorney, Eighteenth Judicial District
and on behalf of the Kansas County and District Attorneys Association

Honorable Chairwoman Warren and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding House Bill 2293. I join the Kansas County and District Attorneys Association in expressing concerns about the need for this bill and also to offer some helpful and necessary revisions in the event you choose to pursue this policy.

As a starting point, the general concept behind HB2293 is that prosecutors should disclose any evidence a defendant could use to impeach or discredit a “jailhouse witness.” This is nothing new. It is already a duty we assume when we call any witness to the stand. This stems from our broader constitutional discovery obligations most often attributed to *Brady v. Maryland*, 373 U.S. 83 (1963), and later clarified in *Giglio v. U.S.*, 405 U.S. 150 (1972), and any number of Kansas Supreme Court cases.

As passed by the House, this bill largely codifies existing case law but then goes further in both subtle and not-so-subtle ways to expand our discovery and record-keeping obligations in ways that are both confusing and potentially dangerous. While I share the concerns noted by my fellow opponent conferees, I would particularly draw your attention to two concerns: (1) the repeated references to *requests* for benefits and (2) the codified ability for the confidentiality provisions for the KBI database to sunset.

First, witnesses of all kinds make requests before testifying. The requests can vary from matters of safety or convenience (“Can I appear remotely?” or “I don’t want him to see my face”) to requests for help with other legal matters (“Can you help me out with my kid’s speeding ticket?” or “I’d like immunity from everything in my past”). Whether we agree to those requests or how we negotiate those conversations can vary widely. This bill would seem to require the State to chronicle the details and potential back-and-forth of every requested benefit, including those denied and including those from “intended” witnesses who never actually testify. This is unduly onerous and far exceeds the tenets of *Brady* and *Giglio* or even common sense. When determining the credibility of a witness, what matters is whether a benefit has been given or promised. We currently disclose actual or promised witness benefits and will continue to do so whether this bill is passed or not.

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Second, this bill creates a centralized database of jailhouse witnesses. I will leave it to the proponents to justify that effort. What I cannot abide is the bill's explicit willingness to allow the confidentiality of that database to sunset at some point in the future in subsection (b)(2). Under no circumstances should a list of people who have "snitched" be compiled with any intention that it could someday be readily available to the public through a KORA request or some other routine process. Particularly if the bill continues to include "intended" witnesses who never actually testify publically. That would have a tremendously stifling effect on any witness feeling safe to come forward. Perhaps that is the intention of the bill. Whether it is or is not, the greater concern is the unnecessary risk to broader public safety. While I am sure nobody wishes ill of jailhouse witnesses, what if you share the name of someone on that list? To be clear, jailhouse informants are not favored by the criminal element, and I do not believe we can expect those who seek retribution to use sufficient due diligence in identifying their target. If some future legislature wishes to affirmatively make this list available to the public, so be it. But to design a statute that defaults to such a policy is inherently dangerous.

On a final much less serious note, I would suggest clarification is needed in subsection (c). Which victim must be notified? The victim of the case against defendant or the victim of the jailhouse witness? While there are others, simple points of confusion like this speak to why this attempt to codify rights already afforded by the federal and state constitution is both unnecessary and unwise.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

Marc Bennett
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