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MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 7, 2022
Subject: Bill Brief for HB 2366

HB 2366 creates guidelines for introducing testimony of jailhouse witnesses in criminal prosecutions.

The bill would add a new section of law to the Kansas code of criminal procedure. Subsection (a) requires prosecutors to disclose their intent to introduce testimony of a jailhouse witness regarding statements made by a suspect or defendant, while such witness and suspect or defendant were both incarcerated. The prosecuting attorney shall provide to the defense the criminal history of the jailhouse witness, the jailhouse witness's cooperation agreement and any benefit that may result, the contents of statements allegedly made, any information regarding the jailhouse witness recanting, and any information on other criminal cases in which testimony of the jailhouse witness was introduced or intended to be introduced. The court may extend the time for the prosecutor to comply if the witness was not known or the information could not be discovered within the statutory time period. If the court finds that disclosing the information is likely to cause bodily harm to the witness, the court may order that such evidence be viewed only by the defense counsel or issue a protective order.

Subsection (b) provides that in a criminal prosecution for murder or rape in which the prosecuting attorney intends to introduce the testimony of a jailhouse witness, on motion of the defendant, the court shall conduct a pre-trial hearing to determine whether the witness's testimony exhibits reliability and is admissible. The subsection also lists the factors the court shall consider, and provides that if the prosecuting attorney fails to show by a preponderance of the evidence the testimony is reliable, the court shall exclude the testimony at trial.

Subsection (c) requires each prosecuting attorney's office to maintain a record containing information on any case in which testimony of a jailhouse witness is introduced or is intended to be introduced and any benefit associated with the testimony. The prosecuting attorney's office shall forward the information to the KBI. The KBI shall maintain a statewide database of such information that is only available to prosecutors and is otherwise confidential.

Subsection (d) provides that if a jailhouse witness receives any benefit in connection with testimony, the prosecuting attorney shall notify any victim connected to the criminal prosecution. Subsection (e) provides that if the testimony of a jailhouse witness is admitted into evidence, the jury shall be instructed that such testimony was provided by a jailhouse witness and informed of any benefit associated with providing such testimony. Finally, subsection (f) provides definitions of "benefit" and "jailhouse witness".