

As Amended by Senate Committee

As Amended by House Committee

Session of 2009

HOUSE BILL No. 2250

By Committee on Judiciary

2-4

12 AN ACT concerning the rules of evidence; relating to admissibility of
13 prior acts or offenses of sexual misconduct; amending K.S.A. 60-455
14 and repealing the existing section.
15

16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 60-455 is hereby amended to read as follows: 60-
18 455. (a) Subject to K.S.A. 60-447, *and amendments thereto*, evidence that
19 a person committed a crime or civil wrong on a specified occasion, is
20 inadmissible to prove ~~his or her~~ *such person's* disposition to commit crime
21 or civil wrong as the basis for an inference that the person committed
22 another crime or civil wrong on another specified occasion ~~but, subject,~~

23 **(b) Subject** to K.S.A. 60-445 and 60-448, *and amendments thereto*,
24 such evidence is admissible when relevant to prove some other material
25 fact including motive, opportunity, intent, preparation, plan, knowledge,
26 identity or absence of mistake or accident.

27 **(c) Subject to K.S.A. 60-445 and 60-448, and amendments**
28 **thereto, in any criminal action other than a criminal action in which**
29 **the defendant is accused of a sex offense under articles 34, 35 or 36**
30 **of chapter 21 of the Kansas Statutes Annotated, and amendments**
31 **thereto, such evidence is admissible to show the modus operandi or**
32 **general method used by a defendant to perpetrate similar but to-**
33 **tally unrelated crimes when the method of committing the prior acts**
34 **is so similar to that utilized in the current case before the court that**
35 **it is reasonable to conclude the same individual committed both**
36 **acts.**

37 **(b) (d) ~~It~~ Except as provided in K.S.A. 60-445, and amendments**
38 **thereto, in a criminal action in which the defendant is accused of a ~~sexual~~**
39 **sex offense under ~~article 35~~ articles 34, 35 or 36 of chapter 21 of the**
40 **Kansas Statutes Annotated, and amendments thereto, evidence of the de-**
41 **fendant's commission of another act or offense of sexual misconduct is**
42 **admissible, and may be considered for its bearing on any matter to which**
43 **it is relevant and probative.**

- 1 (c) ~~(e)~~ In a criminal action in which the prosecution intends to offer
 2 evidence under this rule, the prosecuting attorney shall disclose the evi-
 3 dence to the defendant, including statements of witnesses ~~or a summary~~
 4 ~~of the substance of any testimony that is expected to be offered~~, at least
 5 ~~15~~ **10** days before the scheduled date of trial or at such later time as the
 6 court may allow for good cause.
- 7 (d) ~~(f)~~ This rule shall not be construed to limit the admission or con-
 8 sideration of evidence under any other rule **or to limit the admissibility**
 9 **of the evidence of other crimes or civil wrongs in a criminal action**
 10 **under a criminal statute other than in articles 34, 35 or 36 of chap-**
 11 **ter 21 of the Kansas Statutes Annotated, and amendments thereto.**
- 12 (e) ~~(g)~~ As used in this section, an “act or offense of sexual misconduct”
 13 includes:
- 14 (1) Any conduct proscribed by article 35 of chapter 21 of the Kansas
 15 Statutes Annotated, and amendments thereto;
- 16 (2) **the sexual gratification component of aggravated traffick-**
 17 **ing, as described in subsection (a)(1)(B) and (a)(2) of K.S.A. 21-**
 18 **3447, and amendments thereto;**
- 19 (3) **exposing another to a life threatening communicable dis-**
 20 **ease, as described in subsection (a)(1) of K.S.A. 21-3435, and**
 21 **amendments thereto;**
- 22 (4) **incest, as described in K.S.A. 21-3602, and amendments**
 23 **thereto;**
- 24 (5) **aggravated incest, as described in K.S.A. 21-3603, and**
 25 **amendments thereto;**
- 26 ~~(2)~~ (6) ~~contact, without consent, between any part of the defendant’s~~
 27 ~~body or an object and the genitals and, mouth or anus of another person~~
 28 **the victim;**
- 29 ~~(3)~~ (7) ~~contact, without consent, between the genitals and, mouth or~~
 30 ~~anus of the defendant and any part of another person’s~~ **the victim’s** body;
- 31 ~~(4)~~ (8) ~~deriving sexual pleasure or gratification from the infliction of~~
 32 ~~death, bodily injury or physical pain to another person~~ **the victim;**
- 33 ~~(5)~~ (9) ~~an attempt, solicitation or conspiracy to engage in conduct~~
 34 ~~described in paragraphs (1) through (4) (8); or~~
- 35 ~~(6)~~ (10) ~~any federal or other state conviction of an offense, or any~~
 36 **violation of a city ordinance or county resolution, that would con-**
 37 **stitute an offense under article 35 of chapter 21 of the Kansas Statutes**
 38 **Annotated, and amendments thereto, the sexual gratification compo-**
 39 **nent of aggravated trafficking, as described in subsection (a)(1)(B)**
 40 **and (a)(2) of K.S.A. 21-3447, and amendments thereto; incest, as**
 41 **described in K.S.A. 21-3602, and amendments thereto; or aggra-**
 42 **vated incest, as described in K.S.A. 21-3603, and amendments**
 43 **thereto, or involved conduct described in paragraphs (2) through (5) (6)**

1 through (9).

2 *(h) If any provision of this section or the application thereof to*
3 *any person or circumstances is held invalid, the invalidity does not*
4 *affect other provisions or applications of this section which can be*
5 *given effect without the invalid provisions or application. To this*
6 *end the provisions of this section are severable.*

7 Sec. 2. K.S.A. 60-455 is hereby repealed.

8 Sec. 3. This act shall take effect and be in force from and after its
9 publication in the ~~statute book~~ **Kansas register**.