

SENATE BILL No. 364

By Committee on Judiciary

1-20

1 AN ACT concerning the rules of evidence; relating to testimony in the
2 form of opinion or inferences; requiring courts to allow certain persons
3 with specialized training to testify on the issue of impairment;
4 amending K.S.A. 2021 Supp. 60-456 and repealing the existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2021 Supp. 60-456 is hereby amended to read as
8 follows: 60-456. (a) If the witness is not testifying as an expert, the
9 testimony in the form of opinions or inferences is limited to such opinions
10 or inferences as the judge finds:

11 (1) Are rationally based on the perception of the witness;

12 (2) are helpful to a clearer understanding of the testimony of the
13 witness; and

14 (3) are not based on scientific, technical or other specialized
15 knowledge within the scope of subsection (b).

16 (b) (1) If scientific, technical or other specialized knowledge will help
17 the trier of fact to understand the evidence or to determine a fact in issue, a
18 witness who is qualified as an expert by knowledge, skill, experience,
19 training or education may testify thereto in the form of an opinion or
20 otherwise if:

21 ~~(1)~~(A) The testimony is based on sufficient facts or data;

22 ~~(2)~~(B) the testimony is the product of reliable principles and methods;
23 and

24 ~~(3)~~(C) the witness has reliably applied the principles and methods to
25 the facts of the case.

26 (2) *Notwithstanding any other provision of law, if qualified by*
27 *knowledge, skill, experience, training or education, a witness shall be*
28 *allowed to testify in the form of an opinion or otherwise solely on the issue*
29 *of impairment, but not on the issue of specific alcohol concentration level,*
30 *relating to the following:*

31 (A) *The results of any standardized field sobriety test, including, but*
32 *not limited to, the horizontal gaze nystagmus (HGN) test administered by*
33 *a person who has completed training in standardized field sobriety testing.*
34 *A witness who has completed training in standardized field sobriety testing*
35 *shall be qualified to give such testimony in any case in which such*
36 *testimony may be relevant; or*

1 (B) *whether a person was under the influence of one or more*
2 *impairing substances and the category of such impairing substance or*
3 *substances. A witness who has received training and holds a current*
4 *certification as a drug recognition expert shall be qualified to give such*
5 *testimony in any case in which such testimony may be relevant.*

6 (c) Unless the judge excludes the testimony, the judge shall be
7 deemed to have made the finding requisite to—*its such testimony's*
8 admission.

9 (d) Testimony in the form of opinions or inferences otherwise
10 admissible under this article is not objectionable because it embraces the
11 ultimate issue or issues to be decided by the trier of ~~the~~ fact.

12 Sec. 2. K.S.A. 2021 Supp. 60-456 is hereby repealed.

13 Sec. 3. This act shall take effect and be in force from and after its
14 publication in the statute book.