

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:35 a.m. on March 19, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Others attending:

See attached list.

The Chairman called for final action on **HB 2165 - Establishing recklessness as a standard in unlawfully hosting minors in a person's residence.**

Senator Vratil moved, Senator Lynn seconded, to recommend HB 2165 favorably for passage. Motion carried.

The Chairman called for final action on **HB 2201 - Conditions on licensee if delinquent in child support.**

Senator Lynn moved, Senator Schodorf seconded, to recommend HB 2201 favorably for passage. Motion carried.

The Chairman called for final action on **HB 2250 - Rules of evidence; admissibility of prior acts or offenses of sexual misconduct.** Jason Thompson, staff revisor, reviewed the bill.

Senator Vratil stated his concerns on **HB 2250** based on the testimony heard from Professor Concannon during the hearing on March 9.

Senator Bruce moved, Senator Vratil seconded, to amend HB 2250 by keeping the contents intact and inserting a portion of Senator Bruce's draft proposed during the hearing on March 9.

Following discussion the Committee desires a new draft containing the proposed changes and will continue final action on **HB 2250** tomorrow. Senator Bruce withdrew his motion.

The Chairman recognized Senator Haley. Senator Haley reviewed a proposed substitute draft containing language amended from **SB 17 - Videotaping felony interrogations** and his desire to use **HB 2099** as a vehicle for the bill. (Attachment 1)

Senator Haley moved, Senator Kelly seconded, to strike the language in HB 2099 and insert the proposed substitute draft for SB 17 as Senate Substitute for HB 2099. Motion carried.

Senator Bruce moved, Senator Lynn seconded, to amend Senate Sub HB 2099 in Section 7 (e) by striking the language "and habeas corpus". Motion carried.

Senator Bruce moved, Senator Donovan seconded, to amend Senate Sub HB 2099 in Section 7 (d) by striking the language "and because of the absence of any recording of the interrogation in the case before them, they should weigh evidence of the defendant's alleged statement with great caution and care". Motion carried.

Senator Haley moved, Senator Schodorf seconded, to recommend Senate Sub HB 2099 as amended, favorably for passage. Motion failed.

The Committee returned to final action on **HB 2250 - Rules of evidence; admissibility of prior acts or offenses of sexual misconduct.**

Jason Thompson, staff revisor, distributed a balloon amendment reflecting the language proposed earlier by

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:35 a.m. on March 19, 2009, in Room 545-N of the Capitol.

Senator Bruce. (Attachment 2)

Senator Schodorf moved, Senator Vratil seconded, to amend **HB 2250** as reflected in the distributed balloon. Motion carried.

Senator Vratil moved, Senator Schodorf seconded, to amend **HB 2250** on page 1, line 31, by adding “and probative”. Motion carried.

Senator Bruce moved, Senator Kelly seconded, directing the revisor to add standard severability language to the bill. Motion carried.

Senator Schodorf moved, Senator Pilcher-Cook seconded, to recommend **HB 2250** as amended, favorably for passage. Motion carried.

The next meeting is scheduled for March 20, 2009.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/19/09

NAME	REPRESENTING
Ed Klump	KACP & KPOA
Kathy Demmon	Strategic Commdys
Janet DeWard	KACN
AM. H. J.	SKIL
Jamie Corkhill	SRS
Tavis DeBoer	SRS
Genevieve Nichols	Rebecca Rice Law
LAW WASH	Judicial Branch
Ben Dambrowski	Senator Owen
Donna Owens	Senator Owens
KRIS AILSLIEGER	KSAG

PROPOSED Substitute for SENATE BILL NO. 17

By

AN ACT concerning crimes, punishment and criminal procedure;
relating to evidence and videotaping of felony interrogations.

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

Section 1. (a) As used in this section:

(1) "Custodial interrogation" retains the meaning prescribed to it by the United States and Kansas Constitutions.

(2) "Place of detention" means a building under the control of a law enforcement unit, a courthouse holding facility for defendants in the custody of a jail or prison, a city or county jail or work release facility, a state prison, or a state security hospital or a facility operated by the department of social and rehabilitation services for the purposes provided for under K.S.A. 59-29a02 et seq., and amendments thereto.

(3) "Video recording" means to capture the visual and audio components of an event in a manner that allows the event to be observed through that medium.

(b) (1) Effective July 1, 2009, except as provided in subsection (c), if a place of detention is equipped with one or more rooms capable of making a video recording, a video recording shall be made of a custodial interrogation conducted in such place of detention when the interrogation concerns an off-grid felony, a nondrug severity level 1 through 5 felony or a drug severity level 1 felony crime. The recording shall include the advice of rights. The recording shall not end until the interrogation is concluded. If the defendant elects to make or

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sign a written statement during the course of a custodial interrogation, the making and signing of the writing shall be recorded.

(2) Effective July 1, 2010, except as provided in subsection (c), a video recording shall be made of a custodial interrogation conducted in any place of detention when the interrogation concerns an off-grid felony, a nondrug severity level 1 through 5 felony or a drug severity level 1 felony crime. The recording shall include the advice of rights. The recording shall not end until the interrogation is concluded. If the defendant elects to make or sign a written statement during the course of a custodial interrogation, the making and signing of the writing shall be recorded.

(c) A video recording of a statement under subsection (b) is not required if the oral, written or sign language statement was made:

(1) During an interrogation that was not recorded as required by subsection (b) because video recording was not feasible;

(2) spontaneously and not in response to a question;

(3) voluntarily, whether or not the result of an interrogation, and the statement has a bearing on the credibility of the accused as a witness;

(4) after questioning that is routinely asked during the processing of the arrest of a suspect;

(5) in an interrogation outside the state of Kansas;

(6) at a time when the interrogators are unaware that an offense covered by subsection (b) has occurred; or

(7) at a time when the person being interrogated is not a suspect for the offense to which the statement relates while the person is being interrogated for an offense other than an offense specified in subsection (b).

(d) If the court finds by a preponderance of the evidence that the defendant was subjected to an interrogation in violation of this section, the defendant shall be entitled to a jury instruction on the failure to record the interrogation. If the defendant requests such an instruction, the court shall instruct the jury that it is the law of Kansas to make a video recording of a custodial interrogation of a person suspected of committing the offense charged and because of the absence of any recording of the interrogation in the case before them, they should weigh evidence of the defendant's alleged statement with great caution and care.

(e) Every video recording required under this section shall be preserved until the defendant's conviction for an offense relating to the statement is final and all direct and habeas corpus appeals are exhausted, or until the prosecution of offenses related to the recorded statement is barred by law, whichever occurs later.

(f) Every video recording of any statement as required by this section shall be confidential and exempt from the Kansas open records act in accordance with K.S.A. 45-221, and amendments

thereto.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

03/19/09 - RS - JThompson

As Amended by House Committee

Session of 2009

HOUSE BILL No. 2250

By Committee on Judiciary

2-4

Senate Judiciary
3-19-09
Attachment 2

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

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

15 Section 1. K.S.A. 60-455 is hereby amended to read as follows: 60-
16 455. (a) Subject to K.S.A. 60-447, and amendments thereto, evidence that
17 a person committed a crime or civil wrong on a specified occasion, is
18 inadmissible to prove ~~his or her~~ such person's disposition to commit crime
19 or civil wrong as the basis for an inference that the person committed
20 another crime or civil wrong on another specified occasion ~~but, subject~~
21 to K.S.A. 60-445 and 60-448, and amendments thereto, such evidence is
22 admissible when relevant to prove some other material fact including
23 motive, opportunity, intent, preparation, plan, knowledge, identity or ab-
24 sence of mistake or accident.

(b) Subject

25 (b) ~~In~~ **Except as provided in K.S.A. 60-445, and amendments**
26 **thereto, in a criminal action in which the defendant is accused of a sexual**
27 **sex offense under ~~article 35~~ articles 34, 35 or 36 of chapter 21 of the**
28 **Kansas Statutes Annotated, and amendments thereto, evidence of the de-**
29 **fendant's commission of another act or offense of sexual misconduct is**
30 **admissible, and may be considered for its bearing on any matter to which**
31 **it is relevant.**

Insert (c) from 9rs 0635
as subsection (c)
+ re-letter remaining

32 (c) In a criminal action in which the prosecution intends to offer ev-
33 idence under this rule, the prosecuting attorney shall disclose the evidence
34 to the defendant, including statements of witnesses ~~or a summary of the~~
35 ~~substance of any testimony that is expected to be offered,~~ at least ~~15~~ 10
36 days before the scheduled date of trial or at such later time as the court
37 may allow for good cause.

38 (d) This rule shall not be construed to limit the admission or consid-
39 eration of evidence under any other rule or to limit the admissibility
40 of the evidence of other crimes or civil wrongs in a criminal action
41 under a criminal statute other than in articles 34, 35 or 36 of chap-
42 ter 21 of the Kansas Statutes Annotated, and amendments thereto.

43 (e) As used in this section, an "act or offense of sexual misconduct"

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SENATE BILL NO. _____

By

AN ACT concerning evidence; relating to other crimes or civil wrongs; amending K.S.A. 60-455 and repealing the existing section.

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

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

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

in any criminal action other than a criminal action in which the defendant is accused of a sex offense under article 34, 35 or 36 of chap 21 of the K.S. act,

X (c) Subject to K.S.A. 60-445 and 60-448, and amendments thereto, such evidence is admissible to show the modus operandi or general method used by a defendant to perpetrate similar but totally unrelated crimes when the method of committing the prior acts is so similar to that utilized in the current case before the court that it is reasonable to conclude the same individual committed both acts.

article 34, 35 or 36 of chap 21 of the K.S. act,

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

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.