

SESSION OF 2009

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2250

As Amended by Senate Committee on
Judiciary

Brief*

HB 2250, as amended, would amend the rules of evidence regarding the admission of prior acts or offenses in cases where a defendant is accused of a sex offense or of another criminal offense.

In a criminal action where a defendant is accused of a crime other than a sex offense as specified in the bill, evidence of a prior crime would be admissible to show the mode of operation is so similar that it is reasonable for a finder of fact to conclude the same individual committed both acts.

In a criminal action where a defendant is accused of a sex offense as specified in the bill, evidence of a prior act or sexual misconduct would be admissible if it is relevant and probative, *i.e.*, tending to prove or actually proving a fact. If the prosecution would intend to offer evidence under this rule, the prosecuting attorney must disclose the evidence to the defendant, including statements of witnesses at least 10 days prior to trial or at a later time when allowed by the court for good cause. This rule would not be construed to limit the admission or consideration of evidence under any other rule or to limit the admissibility of evidence of other crimes or civil wrongs in another criminal action.

Acts or offenses of sexual misconduct would be defined to include the following:

- Any conduct prescribed by Article 35 of the Kansas statutes;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- The sexual gratification component of aggravated trafficking;
- Exposing another to a life-threatening communicable disease;
- Incest;
- Aggravated incest;
- Contact, without consent, of any part of the defendant's body or an object and the genitals, mouth, or anus of the victim;
- Contact, without consent, between the genitals, mouth, or anus of the defendant and any part of the victim's body;
- Deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain to the victim;
- Attempts or conspiracy to engage in the conduct described above; and
- Any federal or other state conviction or violation of a city ordinance or county resolution that would constitute an offense described above.

The bill includes a severability clause which would preserve the other provisions of the bill in the event a provision or application of the provision is held to be invalid.

The effective date of the bill would be publication in the *Kansas Register*.

Background

The case of *State of Kansas v. John Prine No. 93,345* decided by the Kansas Supreme Court on January 16, 2009, prompted the draft of HB 2250. Under the *Prine* decision, the Court held that before a district judge admits evidence of prior bad acts to prove plan or modus operandi under K.S.A. 60-455, the evidence must be so strikingly similar in pattern or so distinct in method of operation to the current allegations as to be a signature.

Senator Terry Bruce and Representative Raj Goyle appeared in support of the bill in the House Committee. An Assistant Solicitor General, Kris Ailsieger, also spoke in favor of the bill. There was no opposition to the bill in the House Committee.

Ann Swegle, Deputy District Attorney, Eighteenth Judicial District, and also representing the Kansas County and District Attorneys Association, submitted neutral written comments on the bill.

The House Judiciary Committee amended the bill to:

- Include the provision under which evidence could not be limited regarding prior bad acts;
- Insert the sexual gratification provision;
- Insert the provision regarding exposing another person to a life-threatening communicable disease;
- Add incest to the list of proscribed conduct;
- Add aggravated incest to the list of proscribed conduct;
- Add federal or other state, city, or county offenses to the list of sexual misconduct;

- Add the sexual gratification component of aggravated trafficking;
- Change the effective date to publication in the *Kansas Register*; and
- Make certain technical and clarifying changes.

Senator Terry Bruce and Representative Raj Goyle appeared in support of the bill in the Senate Committee. Kris Ailslieger, Assistant Solicitor General; and Christine Ladner, Chief Deputy Shawnee County District Attorney on behalf of the Kansas County and District Attorneys Association also spoke in favor of the bill.

Tom Barte, Kansas Association of Criminal Defense Lawyers appeared before the Senate Committee in opposition to the bill.

The Senate Committee amended the bill to:

- Clarify that in a criminal action where a defendant is accused of a crime other than a sex offense as specified in the bill, evidence of a prior crime would be admissible to show the mode of operation is so similar that it is reasonable for a finder of fact to conclude the same individual committed both acts;
- Clarify that in a criminal action where a defendant is accused of a sex offense as specified in the bill, evidence of a prior act or sexual misconduct would be admissible if it is relevant and probative, *i.e.*, tending to prove or actually proving a fact; and
- Add a severability clause to the bill.

The fiscal note on the original bill indicated that HB 2250 has the potential for increasing litigation in the courts because of the new violation created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal

effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources. Any fiscal effect resulting from the enactment of this bill has not been included in *The FY 2010 Governor's Budget Report*.