



STATE OF KANSAS  
Tenth Judicial District

## OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY

Chair Stephen Owens  
House Committee on Corrections and Juvenile Justice  
Re: House Bill 2630

February 6, 2024

Dear Chair Owens:

Thank you for the opportunity to submit my written testimony in support of House Bill 2630. My name is Will Hurst, and I am an Assistant District Attorney in Johnson County. I have been prosecuting since 2007 and been with the Johnson County District Attorney's Office since 2011. I have supervised our Domestic Violence Unit since 2019. I have personally handled hundreds of domestic violence cases during my career.

Under current Kansas law, prosecutors are typically prohibited from entering any evidence at trial of "prior bad acts" committed by the criminal defendant. For example, if a criminal defendant is charged with DUI, the State cannot simply admit evidence that the defendant had previously committed several other DUI's.

At least seven states have passed laws which permit the admission of evidence to show the Defendant has a "propensity" to commit domestic violence.<sup>1</sup> Kansas should follow

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<sup>1</sup>**Alaska** - ALASKA R EVID 404(b)(4) ("In a prosecution for a crime involving domestic violence or of interfering with a report of a crime involving domestic violence, evidence of other crimes involving domestic violence by the defendant against the same or another person... is admissible.");

**California** - CAL. EVID. CODE § 1109 (excepting "evidence of the defendant's commission of other domestic violence" from the state's ban on character evidence),

**Colorado** - COLO REV. STAT. ANN. § 18-6-801 5 (authorizing admission of "evidence of any other acts of domestic violence between the defendant and the victim named in the information, and between the defendant and other persons... as provided in subsection (3) of this section"),

**Illinois** - 725 ILL. COMP. STAT. ANN. 5/115-7.4 ("[E]vidence of the defendant's commission of another offense or offenses of domestic violence is admissible, and may be considered for its bearing on any matter to which it is relevant"),

**Michigan** - MICH COMP. LAWS ANN § 768.27b ("[E]vidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant"),

**Minnesota** - MINN STAT ANN. § 634 20 ("Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible [[unless overly prejudicial, confusing, or misleading]."),

**Missouri** - MO ANN STAT § 565.079(13) ("Evidence of similar criminal convictions of domestic violence... within five years of the offense at issue, shall be admissible for the purposes of showing a past history of domestic violence.")

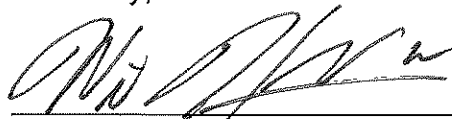
suit by passing House Bill 2630. The prosecution of domestic violence crime is an extremely difficult task. Several studies have shown that a domestic violence victim will refuse to cooperate with the prosecution of their case 80% of the time.<sup>2</sup> Since the United States Supreme Court severely limited the admission of out of court statements by witnesses in its decision in *Crawford v. Washington* in 2004, domestic violence conviction rates plummeted nationwide.<sup>3</sup> Without propensity statutes, "[W]e will continue to see cases where perpetrators of this violence will beat their intimate partners, even kill them, and go on to beat or kill the *next* intimate partner."<sup>4</sup> The Colorado legislature correctly noted that "evidence of similar transactions can be helpful and is necessary in some situations in prosecuting crimes involving domestic violence."<sup>5</sup>

I can personally attest that when speaking with juries after trial, they frequently mention how difficult it can be to reach a verdict in domestic violence cases. Many times, they are presented with two conflicting versions as to what occurred. Independent witnesses or audio/video evidence of the crime is rare, as most domestic violence occurs within the privacy of the home. Frequently a jury will throw up its collective hands and say, "we just didn't know who to believe" and find the defendant not guilty. Informing the jury that the defendant has a propensity for domestic violence will assist them not only in weighing the credibility of witnesses, but in reaching an appropriate verdict in the case.

I would also point out that the admission of any propensity evidence will still be subject to judicial scrutiny. The State will be required to file a motion prior to trial seeking the admission of such evidence. The trial court judge is required to scrutinize the evidence before allowing its admission, including whether the evidence is unfairly prejudicial to the defendant. A defendant will have an opportunity to argue that the evidence should not be presented at trial.

The passage of House Bill 2630 will be a significant step in protecting victims of domestic violence and ensuring that their abusers are held accountable. Thank you for the opportunity to address the committee. I look forward to appearing to testify in support of the bill. If you have any questions or concerns, feel free to contact at 913-715-3072.

Sincerely,



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William F. Hurst IV  
Assistant District Attorney  
Johnson County District Attorney's Office

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<sup>2</sup> Joan Meier, Davis/Hammon, *Domestic Violence, and the Supreme Court The Case for Cautious Optimism*, 105 MICH. L. REV. FIRST IMPRESSIONS 22-27 (2015) See also Andrew R Klein, *Practical Implications of Current Domestic Violence Research Part II. Prosecution 2-92*, National Institute of Justice (2009).

<sup>3</sup> Sarah Veele, *Domestic Violence in Washington State. 1999-2010*, Washington St. Ctr for Ct Rch 1-23.

<sup>4</sup> Cal. Assemb. Comm Pub Safety, supra note 108, at 3-4.

<sup>5</sup> Colo. Rev. Stat. Ann. § 18-6-801.5