

# Journal of the Senate

## SEVENTEENTH DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Wednesday, February 3, 2016, 2:30 p.m.

The Senate was called to order by President Susan Wagle.  
The roll was called with 40 senators present.  
Invocation by Reverend Cecil Washington, Jr.:

Heavenly Father, here we are at the middle of the week, referred to by many as “Hump Day.” For some of us today, it’s an uphill climb, just trying to get through. For some, it might be the toughest day of the week. For some, we may feel like we’re getting over the hump, and with smooth sailing, we’re anticipating the weekend. For some, the joy of Hump Day is that it’s only four days before the Super Bowl. But, like the camel in the GEICO Commercial, we could really get excited over Hump Day. There’s purpose in the difficult days that we face. Because all the humps, all the speed bumps...all the hills and even mountains are opportunities for our faith to grow, as we put our trust in You, to see us through. You used Paul as an example of this in 2 Corinthians 12:9-10. You told him that Your grace would be his sufficiency and that Your power would be perfected through his inability to handle his problems. Based on that, he made a profound declaration. Excited about his inabilities, he proceeded to brag on You; so that YOUR power would rest upon him. Lord, when the humps...the speed bumps...the difficulties of life come for us...when we are weak, remind us that because of You and Your loving grace, we can be strong...we can make it! For if we never had any problems, we wouldn’t know that You could solve them. If we never had a hill to overcome, we’d never know that You’d give us the strength to rise and climb. So, thank You for this day and for all the humps and bumps in life. Use them Father, to strengthen us...to make us better...to increase and add muscle to our character; that we may bring glory and honor to You. In the Precious Name of Jesus, Amen.

The Pledge of Allegiance was led by President Wagle.

### **POINT OF PERSONAL PRIVILEGE**

Senator Ostmeyer rose on a Point of Personal Privilege to introduced members of the Prairie Band Pottawatomie National Tribal Council. Guests introduced were: Lianna Onnen, Council Chairwoman, Joyce Guerrero, Vice Chair, Camilla Chouteau, Secretary, Hattie Mitchell, Treasurer, Carrie O’Toole, Council Member and Thomas Wabnum, Council Member.

The senators honored the guests with a standing ovation.

**INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS**

The following bills were introduced and read by title:

**SB 397**, AN ACT concerning the open records act; amending K.S.A. 2015 Supp. 45-221 and repealing the existing section, by Committee on Federal and State Affairs.

**SB 398**, AN ACT concerning governmental ethics; dealing with lobbying; amending K.S.A. 2015 Supp. 46-265 and repealing the existing section, by Committee on Federal and State Affairs.

**SB 399**, AN ACT concerning state governmental ethics; dealing with lobbyists; amending K.S.A. 46-237 and repealing the existing section, by Committee on Federal and State Affairs.

**SB 400**, AN ACT concerning elections; dealing with campaign finance; relating to the KanCare program, by Committee on Federal and State Affairs.

**SB 401**, AN ACT concerning telecommunications; relating to wireless communications, deployment of equipment; concerning municipalities and state entities, by Committee on Utilities.

**SB 402**, AN ACT concerning charitable healthcare providers; relating to continuing education credits for gratuitous care; amending K.S.A. 2015 Supp. 65-2809 and 75-6102 and repealing the existing sections, by Committee on Public Health and Welfare.

**SB 403**, AN ACT concerning municipalities; relating to traffic citations and limitations on revenue generation; amending K.S.A. 12-4112 and 20-301 and K.S.A. 2015 Supp. 12-189, 12-4104 and 12-4106 and repealing the existing sections, by Committee on Ways and Means.

**SB 404**, AN ACT concerning the disposition of state real property; authorizing the state board of regents to sell certain real property on behalf of Kansas state university located in Riley county, Kansas, by Committee on Ways and Means.

**SB 405**, AN ACT concerning vehicles; relating to travel trailers; amending K.S.A. 8-199 and K.S.A. 2015 Supp. 8-197 and 8-198 and repealing the existing sections, by Committee on Transportation.

**REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS**

The following bills were referred to Committees as indicated:

Assessment and Taxation: **SB 380**.

Judiciary: **SB 395**.

Public Health and Welfare: **SB 394**.

Ways and Means: **SB 396**; **SCR 1608**.

**INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS**

Senators Tyson, Abrams, Bowers, Denning, Donovan, Fitzgerald, Haley, Hawk, Kelly, Longbine, Love, Petersen, Pettey, Powell, V. Schmidt, Wilborn and Wolf introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1758—

A RESOLUTION congratulating and commending Kristin Wright for being named the 2015-2016 Outstanding School Counselor of the Year.

WHEREAS, Kristin Wright was named the 2015-2016 Outstanding School

Counselor of the Year by the Kansas School Counselor Association in December 2015. The Outstanding Counselor of the Year is selected on several criteria: School counseling innovations, leadership and advocacy skills, effective school counseling programs and contributions to student advancement; and

WHEREAS, School counselors are professionals who assist all students in social and emotional development, academic achievement and career planning to promote success in school and in life. A few words from a helpful counselor can profoundly impact a student's life by helping improve the student's outlook on school, family and the future; and

WHEREAS, Kristin Wright is the School Counselor at Lincoln Elementary in the Clay County School District and has served as a school counselor for 14 years. Kristin earned a master's degree in counseling from Kansas State University in 2003 and is currently working toward her doctoral degree; and

WHEREAS, Kristin Wright is currently the state nominee for the American School Counselor Association's 2017 National School Counselor of the Year Award: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we congratulate and commend Kristin Wright for being named the 2015-2016 Outstanding School Counselor of the Year; and

*Be it further resolved:* That the Secretary of the Senate shall send three enrolled copies of this resolution to Kristin Wright.

On emergency motion of Senator Tyson **SR 1758** was adopted unanimously.

Guests introduced were Kristin Wright, Wes Wright, Della Simoneau, Larry Simoneau, Megan Wright, Justin Wright, Matt Weller, Sally Lee, Robert Moran, Kelly Hughes and Marvalee Collins.

The senators honored the guests with a standing ovation.

#### **COMMITTEE OF THE WHOLE**

On motion of Senator Bruce, the Senate resolved itself into Committee of the Whole, for consideration of bills on the calendar under the heading of General Orders with Senator Petersen in the chair.

On motion of Senator Petersen the following report was adopted:

**SB 19, SB 242** be amended by the adoption of the committee amendments, and the bills be passed as amended.

The committee report on **Sub SB 22** recommending **Sub SB 22** be adopted, and the substitute bill be passed.

The committee report on **Sub SB 182** be amended by adoption of the committee amendments recommending a substitute bill, be further amended by Senator Pilcher-Cook: on page 1, in line 7, by striking "2014" and inserting "2015";

On page 3, in line 11, by striking "2014" and inserting "2015";

On page 1, in the title, in line 2, by striking "2014" and inserting "2015"; in line 3, by striking "2014" and inserting "2015"

and **Sub SB 182** be passed as amended.

The committee report on **S Sub HB 2049** recommending **S Sub HB 2049** be adopted, be amended by adoption of the committee amendments recommending a substitute bill be further amended by motion of Senator King: on page 3, in line 16, by

striking all after "(1)"; by striking all in line 17; in line 18, by striking "(ii) subsection" and inserting "or";

And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly;

Also, on page 3, following line 33, by inserting:

"Sec. 3. K.S.A. 2015 Supp. 21-6804 is hereby amended to read as follows: 21-6804. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following sentencing guidelines grid shall be applicable to nondrug felony crimes:

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	45 41 38	38 36 34	34 32 30
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	25 23 21	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND
Presumptive Probation
Presumptive No Jail
Presumptive Imprisonment

(b) Sentences expressed in the sentencing guidelines grid for nondrug crimes represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to the sentencing court's discretion to enter a departure sentence. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to

all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. In the usual case it is recommended that the sentencing judge select the center of the range and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the:

- (A) Prison sentence;
- (B) maximum potential reduction to such sentence as a result of good time; and
- (C) period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the:

- (A) Prison sentence; and
- (B) duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence as provided in subsection (q).

(g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or a violation of K.S.A. 2015 Supp. 21-5412(d), and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(i) (1) The sentence for the violation of the felony provision of K.S.A. 2015 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, K.S.A. 2015 Supp. 21-5414(b)(3), K.S.A. 2015 Supp. 21-5823(b)(3) and (b)(4), K.S.A. 2015 Supp. 21-6412 and K.S.A. 2015 Supp. 21-6416, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 2015 Supp. 21-6807, and amendments thereto.

(2) If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and K.S.A. 2015 Supp. 21-6807, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 2015 Supp. 21-5823, and amendments thereto.

(3) Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 2015 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, K.S.A. 2015 Supp. 21-5414(b)(3), K.S.A. 2015 Supp. 21-5823(b)(3) and (b)(4), K.S.A. 2015 Supp. 21-6412 and K.S.A. 2015 Supp. 21-6416, and

amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for felony violations of K.S.A. 2015 Supp. 8-1025 or K.S.A. 8-2,144 or K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources and facility capacity shall not be subject to review. Prior to imposing any sentence pursuant to this subsection, the court may consider assigning the defendant to a house arrest program pursuant to K.S.A. 2015 Supp. 21-6609, and amendments thereto.

(j) (1) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who:

(A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto; and

(ii) at the time of the conviction under subsection (j)(2)(A)(i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto, in this state or comparable felony under the laws of another state, the federal government or a foreign government; or

(B) (i) has been convicted of rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2015 Supp. 21-5503, and amendments thereto; and

(ii) at the time of the conviction under subsection (j)(2)(B)(i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

(3) Except as provided in subsection (j)(2)(B), the provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) (1) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(2) As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities:

(A) The commission of one or more person felonies; or

(B) the commission of felony violations of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009; and

(C) its members have a common name or common identifying sign or symbol; and

(D) its members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or

more person felonies or felony violations of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of K.S.A. 2015 Supp. 21-5807(a)(1), and amendments thereto, or any attempt or conspiracy, as defined in K.S.A. 2015 Supp. 21-5301 and 21-5302, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of K.S.A. 21-3715(a) or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A. 2015 Supp. 21-5807(a)(1) or (a)(2), or K.S.A. 2015 Supp. 21-5807(b), and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment.

(m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2015 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence as provided in subsection (q).

(n) The sentence for a violation of criminal deprivation of property, as defined in K.S.A. 2015 Supp. 21-5803, and amendments thereto, when such property is a motor vehicle, and when such person being sentenced has any combination of two or more prior convictions of K.S.A. 21-3705(b), prior to its repeal, or of criminal deprivation of property, as defined in K.S.A. 2015 Supp. 21-5803, and amendments thereto, when such property is a motor vehicle, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of theft of property as defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, or burglary as defined in K.S.A. 2015 Supp. 21-5807(a), and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, or burglary as defined in K.S.A. 2015 Supp. 21-5807(a), and amendments thereto; or the sentence for a felony violation of theft of property as defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2015 Supp. 21-5807, and amendments thereto; or the sentence for a felony violation of burglary as defined in K.S.A. 2015 Supp. 21-5807(a), and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2015 Supp. 21-5807, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

- (1) Substance abuse was an underlying factor in the commission of the crime;
- (2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and



(3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of K.S.A. 2015 Supp. 21-6824(f)(1), and amendments thereto, shall apply to a defendant sentenced under this subsection. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of theft of property as defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2015 Supp. 21-5807, and amendments thereto; or the sentence for a violation of burglary as defined in K.S.A. 2015 Supp. 21-5807(a), and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as defined in K.S.A. 2015 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2015 Supp. 21-5807, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

- (1) Substance abuse was an underlying factor in the commission of the crime;
- (2) substance abuse treatment with a possibility of an early release from imprisonment is likely to be more effective than a prison term in reducing the risk of offender recidivism; and
- (3) participation in an intensive substance abuse treatment program with the possibility of an early release from imprisonment will serve community safety interests by promoting offender reformation.

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(q) As used in this section, an "optional nonprison sentence" is a sentence which the court may impose, in lieu of the presumptive sentence, upon making the following findings on the record:

- (1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and
- (2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or
- (3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(r) The sentence for a violation of K.S.A. 2015 Supp. 21-5413(c)(2), and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(s) The sentence for a violation of K.S.A. 2015 Supp. 21-5512, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(t) (1) If the trier of fact makes a finding that an offender wore or used ballistic resistant material in the commission of, or attempt to commit, or flight from any felony, in addition to the sentence imposed pursuant to the Kansas sentencing guidelines act, the offender shall be sentenced to an additional 30 months' imprisonment.

(2) The sentence imposed pursuant to subsection (t)(1) shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(3) As used in this subsection, "ballistic resistant material" means: (A) Any commercially produced material designed with the purpose of providing ballistic and trauma protection, including, but not limited to, bulletproof vests and kevlar vests; and (B) any homemade or fabricated substance or item designed with the purpose of providing ballistic and trauma protection.

(u) The sentence for a violation of K.S.A. 2015 Supp. 21-6107, and amendments thereto, or any attempt or conspiracy, as defined in K.S.A. 2015 Supp. 21-5301 and 21-5302, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2015 Supp. 21-6107, and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(v) The sentence for a third or subsequent violation of K.S.A. 8-1568, and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(w) The sentence for aggravated criminal damage to property as defined in K.S.A. 2015 Supp. 21-5813(b), and amendments thereto, when such person being sentenced has a prior conviction for any nonperson felony shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(x) The sentence for a violation of K.S.A. 2015 Supp. 21-5807(a)(1), and amendments thereto, shall be presumptive imprisonment if the offense under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such sentence shall not be considered a departure and shall not be subject to appeal.;

Also on page 3, in line 34, by striking "and" and inserting a comma; also in line 34, after "21-5807" by inserting "and 21-6804";

And by renumbering sections accordingly;

On page 1, in the title, in line 3, by striking the first "and" and inserting a comma; also in line 3, after "21-5807" by inserting "and 21-6804"

**S Sub HB 2049** be further amended by motion of Smith: on page 3, in line 32, by

striking all after "(e)"; in line 33, by striking all before the period and inserting "This section shall not apply to any person entering into or remaining in a retail or commercial premises at any time that it is open to the public after having received a personal communication from the owner or manager of such premises not to enter such premises pursuant to K.S.A. 2015 Supp. 21-5808, and amendments thereto, except when such person is entering into or remaining in such premises with the intent to commit a person felony or sexually motivated crime therein" and **S Sub HB 2049** be passed as amended.

A motion by Senator Haley to amend **S Sub HB 2049** failed and the following amendment was rejected.

I move to amend **S Sub HB 2049**, on page 2, in line 13, by striking all after "(A)"; in line 14, by striking all before the semicolon and inserting "Marijuana infraction punishable by a \$50 fine"; in line 15, by striking "A" and inserting "B"; in line 20, by striking "drug severity level 5 felony" and inserting "class A nonperson misdemeanor";

On page 3, following line 33, by inserting:

"Sec. 3. K.S.A. 2015 Supp. 21-5102 is hereby amended to read as follows: 21-5102. A crime is an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized or, in the case of a traffic infraction ~~or~~, a cigarette or tobacco infraction or a marijuana infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors, traffic infractions ~~and~~, cigarette or tobacco infractions and marijuana infractions.

(a) A felony is a crime punishable by death or by imprisonment in any state correctional institution or a crime which is defined as a felony by law.

(b) A traffic infraction is a violation of any of the statutory provisions listed in ~~subsection (c)~~ of K.S.A. 8-2118 (c), and amendments thereto.

(c) A cigarette or tobacco infraction is a violation of K.S.A. 2015 Supp. 21-6109 through 21-6114 and 21-6116 and ~~subsection (m) or (n)~~ of K.S.A. 79-3321 (m) or (n), and amendments thereto.

(d) A marijuana infraction is a violation of K.S.A. 2015 Supp. 21-5706(c)(3), and amendments thereto.

(e) All other crimes are misdemeanors.";

Also on page 3, in line 34, after "Supp." by inserting "21-5102,";

And by renumbering sections accordingly;

On page 1, in the title, in line 3, after "Supp." by inserting "21-5102,"

Upon the showing of five hands, a roll call vote was requested.

On roll call, the vote was: Yeas 5; Nays 31; Present and Passing 4; Absent or Not Voting 0.

Yeas: Faust-Goudeau, Francisco, Haley, Hawk, Pettey.

Nays: Abrams, Arpke, Baumgardner, Bowers, Bruce, Denning, Donovan, Fitzgerald, Holmes, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, Olson, Ostmeyer, Petersen, Pilcher-Cook, Powell, Pyle, V. Schmidt, Smith, Tyson, Wagle, Wilborn, Wolf.

Present and Passing: Hensley, Holland, Kelly, O'Donnell.

A motion by Haley to amend **S Sub HB 2049** failed.

## EXPLANATION OF VOTE

Mr. Vice President: I vote "AYE" on this amendment; my amendment offered to align marijuana possession infractions with what I consider "common sense." Rather than fine a possessor of marijuana up to \$1,000 and risk jail, this amendment would allow for a fine of up to \$50 with no jail time for a 1st, 2nd or 3rd such "offense." I would so hope that most of you might recognize Mr. Chair, that many, many of our constituents believe marijuana is NOT as harmful as many currently legal substances (such as tobacco and alcohol) or even as dangerous, if "abused," as prescription opiates and, accordingly, that marijuana should NOT be criminalized to the extent that it is in our State. For example, in a well-publicized referendum, the people in Kansas' largest city, Wichita, overwhelmingly voted to do exactly what this amendment does. Clogging our courts and our prisons and overtaxing people for simple marijuana possession is a continuing crime in and of itself. To not support this amendment only aids and abets that crime. I Vote "Aye" for policies of parity; for only the dwindling time that pot itself remains "illegal" at all. — DAVID HALEY

Vice President Jeff King assumed the chair.

## FINAL ACTION ON CONSENT CALENDAR

**SB 313** having appeared on the Consent Calendar for the required two full legislative days without objection from any member, were considered on final action.

**SB 313**, AN ACT concerning the legislative division of post audit; relating to information technology audits; amending K.S.A. 2015 Supp. 46-1135 and repealing the existing section.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

Yeas: Abrams, Arpke, Baumgardner, Bowers, Bruce, Denning, Donovan, Faust-Goudeau, Fitzgerald, Francisco, Haley, Hawk, Hensley, Holland, Holmes, Kelly, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pettey, Pilcher-Cook, Powell, Pyle, V. Schmidt, Smith, Tyson, Wagle, Wilborn, Wolf.

The bill passed.

## FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Bruce an emergency was declared by a 2/3 constitutional majority, and **SB 19; Sub SB 22, Sub SB 182; SB 242 and S Sub HB 2049** were advanced to final action.

**SB 19**, AN ACT concerning administrative procedure; relating to the Kansas administrative procedure act; Kansas judicial review act; amending K.S.A. 77-502, 77-545, 77-546, 77-548 and 77-613 and K.S.A. 2015 Supp. 77-519, 77-521 and 77-531 and repealing the existing sections.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

Yeas: Abrams, Arpke, Baumgardner, Bowers, Bruce, Denning, Donovan, Faust-Goudeau, Fitzgerald, Francisco, Haley, Hawk, Hensley, Holland, Holmes, Kelly, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pettey, Pilcher-Cook, Powell, Pyle, V. Schmidt,

Smith, Tyson, Wagle, Wilborn, Wolf.

The bill passed, as amended.

**Sub SB 22**, AN ACT concerning courts; relating to municipal court; notice; amending K.S.A. 2015 Supp. 12-4516, 21-6614, 22-2410 and 22-3609 and repealing the existing sections; also repealing K.S.A. 2015 Supp. 12-4516d and 21-6614f.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

Yeas: Abrams, Arpke, Baumgardner, Bowers, Bruce, Denning, Donovan, Faust-Goudeau, Fitzgerald, Francisco, Haley, Hawk, Hensley, Holland, Holmes, Kelly, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pettey, Pilcher-Cook, Powell, Pyle, V. Schmidt, Smith, Tyson, Wagle, Wilborn, Wolf.

The bill passed.

**SB 182**, AN ACT concerning the department of health and environment; relating to the elimination of inspector general; amending K.S.A. 2015 Supp. 75-2973 and repealing the existing section; also repealing K.S.A. 2015 Supp. 75-7427.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

Yeas: Abrams, Arpke, Baumgardner, Bowers, Bruce, Denning, Donovan, Faust-Goudeau, Fitzgerald, Francisco, Haley, Hawk, Hensley, Holland, Holmes, Kelly, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pettey, Pilcher-Cook, Powell, Pyle, V. Schmidt, Smith, Tyson, Wagle, Wilborn, Wolf.

The bill passed, as amended.

**SB 242**, AN ACT concerning public officers and employees; relating to drug screening programs; adding Kansas commission on veterans affairs office employees to list of safety sensitive positions; amending K.S.A. 2015 Supp. 75-4362 and repealing the existing section.

On roll call, the vote was: Yeas 40; Nays 0; Present and Passing 0; Absent or Not Voting 0.

Yeas: Abrams, Arpke, Baumgardner, Bowers, Bruce, Denning, Donovan, Faust-Goudeau, Fitzgerald, Francisco, Haley, Hawk, Hensley, Holland, Holmes, Kelly, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pettey, Pilcher-Cook, Powell, Pyle, V. Schmidt, Smith, Tyson, Wagle, Wilborn, Wolf.

The bill passed, as amended.

**S Sub HB 2049**, AN ACT concerning crimes, punishment and criminal procedure; relating to possession of controlled substances; burglary; amending K.S.A. 2015 Supp. 21-5706, 21-5807 and 21-6804 and repealing the existing sections.

On roll call, the vote was: Yeas 38; Nays 1; Present and Passing 1; Absent or Not Voting 0.

Yeas: Abrams, Arpke, Baumgardner, Bowers, Bruce, Denning, Donovan, Fitzgerald, Francisco, Hawk, Hensley, Holland, Holmes, Kelly, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pettey, Pilcher-Cook, Powell, Pyle, V. Schmidt, Smith, Tyson, Wagle, Wilborn, Wolf.

Nays: Haley.

Present and Passing: Faust-Goudeau.  
The bill passed, as amended.

#### EXPLANATION OF VOTE

Mr. Vice President: I vote "NO" on Senate Substitute for HB 2049, which purports to ease the debate on marijuana penalties in our State AND now includes new language regarding repeat burglar convictions too. When our Great State matures to the level of growing national public opinion, marijuana will be decriminalized and, perhaps, regulated and taxed, for the benefit of the health and well-being of our society as a whole. Voting FOR this watered down, pre-text at ameliorating a drug law that is economically discriminatory and doesn't work in the first place is pussy-footing around with the core issue and by here voting "NO," I, simply, chose not to play this Senate's games with this serious issue and the growing common sense of multiple constituencies. The Kansas House overwhelmingly supported better consensus in the original HB 2049; before the Senate committee stripped good provisions out AND, audaciously, added an additional negative bed space impacting measure on the totally unrelated issue of repeat burglary. When marijuana is no longer demonized in Kansas, or America, as common sense increasingly dictates, perhaps many will look back on these words and my name as prophetic; maybe even courageous. But, neither is true. Both are, at this time in history, what any person of average intellect and strength should do. I proudly vote "NO" on this shell game masquerading as law contained in **S Sub HB 2049**.

– DAVID HALEY

#### REPORTS OF STANDING COMMITTEES

Committee on **Education** recommends **SB 312** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Committee on **Federal and State Affairs** recommends **SB 225** be passed.

Also recommends **SB 243** be amended on page 2, in line 15, by striking "2014" and inserting "2015";

On page 4, in line 28, by striking "2014" and inserting "2015"; in line 31, by striking "2016" and inserting "2017";

On page 1, in the title, in line 3, by striking "2014" and inserting "2015"; and the bill be passed as amended.

#### CHANGE OF REFERENCE

The Vice President withdrew **SB 394** from the Committee on **Public Health and Welfare**, and referred the bill to the Committee on **Judiciary**.

The Vice President withdrew **SB 382** from the Committee on **Financial Institutions and Insurance**, and referred the bill to the Committee on **Transportation**.

FEBRUARY 3, 2016

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On motion of Senator Bruce, the Senate adjourned until 2:30 p.m., Thursday, February 4, 2016.

ROSE MARIE GLATT, CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks*.  
COREY CARNAHAN, *Secretary of the Senate*.

