

Journal of the House

FORTY-SEVENTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Thursday, March 23, 2017, 11:00 a.m.

The House met pursuant to adjournment with Speaker pro tem Schwab in the chair.

The roll was called with 125 members present.

Prayer by Chaplain Brubaker:

Lord God,
We come to You today with hearts of gratitude
for all You do to watch over and provide for us each day.
Thank You for the many blessings You have given us.
Along with these blessings come a great responsibility
to live and lead by example.
To do this, Your grace and guidance is greatly needed.
Help these leaders to trust not in their own understanding,
but to trust and acknowledge You in all their ways.
If they do this, You will make the way known to them.
The decisions to be made require wisdom and insight
beyond human understanding and ability.
So today, I pray for divine wisdom and discernment
as they work together in making difficult decisions.
In Christ's Name I pray, Amen.

The Pledge of Allegiance was led by Rep. Brim.

INTRODUCTION OF GUESTS

There being no objection, the following remarks of Rep. Markley are spread upon the Journal:

Today I stand before you to honor the Blue Valley Northwest High School 2017 State Champion "We the People" team. This is the 6th state win in a row for the Huskies and the 8th in the last nine years. They will represent Kansas next month in the 30th annual national competition in Washington, DC.

The 'We the People' competition requires in-depth knowledge of the Declaration of Independence, the Constitution, the Bill of Rights and issues relating to the founding documents. In Kansas, this program is sponsored by the Center for Civic Education and Kansas State University.

The following is an example of the type of questions these students research and

debate. This is from the ‘We People High School National Hearing Questions for 2016-2017. Unit 2, Question 3:’

In a speech to his fellow Virginians in 1775 Patrick Henry noted, “I have but one lamp by which my feet are guided, and that is the lamp of experience.”

Question #1- What lessons from history and experiences led the colonists to develop and structure their legislatures and their relationships to their executives and judiciaries the way they did in their new constitutions?

Question #2- To what extent, if at all, did both the Federalists and the Anti-Federalists use the “lamp of experience” in their arguments over the legislative branch during the ratification debates?

Colleagues, take a look, maybe you see yourself in one of these young people. They are the students who care passionately about civics, history, public service and public policy. They are the kids who spend hours and hours researching historical and philosophical foundations of the American political system. They are our future leaders. Students, take a look at the esteemed men and women seated before you on the floor of the Kansas House of Representatives. If you so choose, you too could be a State Representative one day...for better or worse, this could be your future.

My friends, please join me in acknowledging the hard work and accomplishments of these young men and women.

Rep. Markley presented the “We the People” team with a framed House certificate.

INTRODUCTION OF GUESTS

There being no objection, the following remarks of Rep. Phelps are spread upon the Journal:

Good morning. This morning, I stand before you to honor Gerard Wellbrock, well known in the Hays area as “The Voice of the Fort Hays State University Tigers.” He is accompanied by his wife Tammy, who is the Executive Director of the Hays Area Chamber of Commerce and his son, Garrett, who is paging for me today.

Gerard has been with KAYS (Eagle Radio) since 1992. He Previously worked for KKAN/KQMA in Phillipsburg.

Gerard will be honored this June in North Carolina for being named the 2016 Kansas Sportscaster of the Year by the National Sports Media Association. He is in his 15th season as play-by-play voice of the Fort Hays State Tigers. He did play-by-play for Hays High and TMP-Marian for 10 years prior to that. Gerard also serves as Sports Director for Eagle Radio in Hays, overseeing the sports operations of five radio stations.

Awards Gerard has received include: recipient of the Kansas Association of Broadcasters Hod Humiston Award for contributions to sports broadcasting; 6-time First Place winner for play-by-play from the Kansas Association of Broadcasters; 3-time winner of the Kansas State High School Activities Association Oscar Stauffer Award for excellence in high school sports broadcasting and Young Alumni Award recipient from Fort Hays State University in 2004. He has served on the board of CASA, is a member of the Jaycees, an annual bell ringer for the Salvation Army and is an instructor in sportscasting at Fort Hays State University.

Rep. Phelps presented Mr. Wellbrock, with a framed House certificate.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to committees as indicated:

General Government Budget: **HB 2407, HB 2409.**

K-12 Education Budget: **HB 2410.**

Taxation: **HB 2408.**

CHANGE OF REFERENCE

Speaker pro tem Schwab announced the withdrawal of **SB 48, SB 61** from Committee on Agriculture and referral to Committee on Appropriations.

Also, the withdrawal of **HB 2360, HB 2361** from Committee on Appropriations and referral to Committee on General Government Budget.

MESSAGES FROM THE SENATE

The Senate nonconcur in House amendments to **SB 14**, requests a conference and has appointed Senators Longbine, Billinger and Rogers as conferees on the part of the Senate.

The Senate nonconcur in House amendments to **SB 20**, requests a conference and has appointed Senators Longbine, Billinger and Rogers as conferees on the part of the Senate.

The Senate nonconcur in House amendments to **H Sub for SB 51**, requests a conference and has appointed Senators Schmidt, Bollier and Kelly as conferees on the part of the Senate.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Hineman, the House acceded to the request of the Senate for a conference on **SB 14**.

Speaker pro tem Schwab thereupon appointed Reps. Vickrey, Dove and Neighbor as conferees on the part of the House.

On motion of Rep. Hineman, the House acceded to the request of the Senate for a conference on **SB 20**.

Speaker pro tem Schwab thereupon appointed Reps. Kelly, Powell and Finney as conferees on the part of the House.

On motion of Rep. Hineman, the House acceded to the request of the Senate for a conference on **H Sub for SB 51**.

Speaker pro tem Schwab thereupon appointed Reps. Hawkins, Concannon and Wilson as conferees on the part of the House.

CONSENT CALENDAR

No objection was made to **SB 63** appearing on the Consent Calendar for the first day.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

HB 2232, AN ACT concerning adult care homes; relating to electronic monitoring, was considered on final action.

On roll call, the vote was: Yeas 124; Nays 1; Present but not voting: 0; Absent or not

voting: 0.

Yeas: Alcalá, Alford, Arnberger, Aurand, Awerkamp, Baker, Ballard, Barker, Becker, Bishop, Blex, Brim, Burroughs, Campbell, Carlin, Carmichael, B. Carpenter, Claeys, Clark, Clayton, Concannon, Corbet, Cox, Crum, S., Curtis, E. Davis, Deere, DeGraaf, Dierks, Dietrich, Dove, Elliott, Ellis, Eplee, Esau, Finch, Finney, Francis, Frownfelter, Gallagher, Garber, Gartner, Good, Hawkins, Helgerson, Henderson, Hibbard, Highberger, Highland, Hineman, Hodge, Hoffman, Holscher, Houser, Huebert, Humphries, Jacobs, Jennings, Johnson, K. Jones, Judd-Jenkins, Karleskint, Kelly, Kessinger, Koesten, Kuether, Lakin, Landwehr, Lewis, Lusk, Lusker, Markley, Mason, Mastroni, Miller, Murnan, Neighbor, Ohaebosim, Orr, Osterman, Ousley, Parker, F. Patton, Phelps, Phillips, Pittman, R. Powell, Proehl, Rafie, Rahjes, Ralph, Resman, Rooker, Ruiz, Ryckman, Sawyer, Schreiber, Schroeder, Schwab, Seiwert, Sloan, Smith, A., Smith, E., Stogsdill, Sutton, S. Swanson, Tarwater, Terrell, Thimesch, Thompson, Trimmer, Vickrey, Victors, Ward, Waymaster, Weber, C., Weigel, Wheeler, Whipple, Whitmer, K. Williams, Wilson, Winn, Wolfe Moore.

Nays: Delperdang.

Present but not voting: None.

Absent or not voting: None.

The bill passed, as amended.

HB 2289, AN ACT concerning retirement and pensions; relating to the Kansas public employees retirement system and systems thereunder; participating service credit; amending K.S.A. 74-4913 and 74-4956 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 124; Nays 1; Present but not voting: 0; Absent or not voting: 0.

Yeas: Alcalá, Alford, Arnberger, Aurand, Awerkamp, Baker, Ballard, Barker, Becker, Bishop, Blex, Brim, Burroughs, Campbell, Carlin, Carmichael, B. Carpenter, Claeys, Clark, Clayton, Concannon, Corbet, Cox, Crum, S., Curtis, E. Davis, Deere, DeGraaf, Delperdang, Dierks, Dietrich, Dove, Elliott, Ellis, Eplee, Esau, Finch, Finney, Francis, Frownfelter, Gallagher, Garber, Gartner, Good, Hawkins, Helgerson, Henderson, Hibbard, Highberger, Highland, Hineman, Hodge, Hoffman, Holscher, Houser, Huebert, Humphries, Jacobs, Jennings, Johnson, K. Jones, Judd-Jenkins, Karleskint, Kelly, Kessinger, Koesten, Kuether, Lakin, Lewis, Lusk, Lusker, Markley, Mason, Mastroni, Miller, Murnan, Neighbor, Ohaebosim, Orr, Osterman, Ousley, Parker, F. Patton, Phelps, Phillips, Pittman, R. Powell, Proehl, Rafie, Rahjes, Ralph, Resman, Rooker, Ruiz, Ryckman, Sawyer, Schreiber, Schroeder, Schwab, Seiwert, Sloan, Smith, A., Smith, E., Stogsdill, Sutton, S. Swanson, Tarwater, Terrell, Thimesch, Thompson, Trimmer, Vickrey, Victors, Ward, Waymaster, Weber, C., Weigel, Wheeler, Whipple, Whitmer, K. Williams, Wilson, Winn, Wolfe Moore.

Nays: Landwehr.

Present but not voting: None.

Absent or not voting: None.

The bill passed, as amended.

HB 2313, AN ACT concerning the Kansas lottery; dealing with lottery ticket vending machines and revenues derived therefrom; repealing the lottery sunset; amending K.S.A. 74-8719 and K.S.A. 2016 Supp. 74-8702 and 74-8711 and repealing the existing

sections; also repealing K.S.A. 2016 Supp. 74-8723, was considered on final action.

On roll call, the vote was: Yeas 100; Nays 25; Present but not voting: 0; Absent or not voting: 0.

Yeas: Alcalá, Alford, Arnberger, Aurand, Ballard, Barker, Becker, Bishop, Brim, Burroughs, Campbell, Carlin, Claeys, Clark, Clayton, Concannon, Corbet, Cox, Crum, S., Curtis, E. Davis, Deere, Dierks, Dietrich, Dove, Elliott, Eplee, Finch, Finney, Frownfelter, Gallagher, Gartner, Good, Hawkins, Henderson, Hibbard, Highberger, Highland, Hineman, Hodge, Holscher, Houser, Humphries, Jennings, Johnson, Judd-Jenkins, Karleskint, Kelly, Kessinger, Koesten, Kuether, Lewis, Lusk, Lusker, Markley, Mastroni, Miller, Murnan, Neighbor, Ohaebosim, Orr, Osterman, Ousley, Parker, F. Patton, Phelps, Phillips, Pittman, Proehl, Rahjes, Ralph, Resman, Rooker, Ruiz, Ryckman, Sawyer, Schreiber, Schwab, Seiwert, Sloan, Smith, A., Stogsdill, Sutton, S. Swanson, Tarwater, Terrell, Thimesch, Thompson, Trimmer, Victors, Ward, Waymaster, Weber, C., Weigel, Wheeler, Whipple, K. Williams, Wilson, Winn, Wolfe Moore.

Nays: Awerkamp, Baker, Blex, Carmichael, B. Carpenter, DeGraaf, Delperdang, Ellis, Esau, Francis, Garber, Helgerson, Hoffman, Huebert, Jacobs, K. Jones, Lakin, Landwehr, Mason, R. Powell, Rafie, Schroeder, Smith, E., Vickrey, Whitmer.

Present but not voting: None.

Absent or not voting: None.

The bill passed, as amended.

EXPLANATIONS OF VOTE

MR. SPEAKER: I do not support **HB 2313**. I oppose the expansion of gambling, aka the Kansas Lottery. I am not in favor of Vending Machines that produce false hopes and disappointments at the expense of the people. I am not in favor of a government that is called to protect the people then uses its power to exploit the people in their weaknesses or in their addictions to fund “moral causes.” Expanding the scope and accessibility to the addictive properties of gambling all in the name of “state revenue” is wrong and should be against the law. – TREVOR JACOBS, RANDY GARBER, KEVIN JONES

MR. SPEAKER: It is with great reluctance that I vote “No” on **HB 2313**. Clubhouses are important, and some are located in my district. The bill brings necessary funding to this worthwhile program; but I cannot agree to the expansion of gambling, particularly vending machine gambling, as the price of funding Clubhouses. I therefore reluctantly vote “No” on **HB 2313**. – JOHN CARMICHAEL

SB 68, AN ACT concerning health and healthcare; relating to hospitals; enacting the Kansas lay caregiver act, was considered on final action.

On roll call, the vote was: Yeas 125; Nays 0; Present but not voting: 0; Absent or not voting: 0.

Yeas: Alcalá, Alford, Arnberger, Aurand, Awerkamp, Baker, Ballard, Barker, Becker, Bishop, Blex, Brim, Burroughs, Campbell, Carlin, Carmichael, B. Carpenter, Claeys, Clark, Clayton, Concannon, Corbet, Cox, Crum, S., Curtis, E. Davis, Deere, DeGraaf, Delperdang, Dierks, Dietrich, Dove, Elliott, Ellis, Eplee, Esau, Finch, Finney, Francis, Frownfelter, Gallagher, Garber, Gartner, Good, Hawkins, Helgerson, Henderson, Hibbard, Highberger, Highland, Hineman, Hodge, Hoffman, Holscher, Houser, Huebert, Humphries, Jacobs, Jennings, Johnson, K. Jones, Judd-Jenkins, Karleskint, Kelly, Kessinger, Koesten, Kuether, Lakin, Landwehr, Lewis, Lusk, Lusker, Markley, Mason,

Mastroni, Miller, Murnan, Neighbor, Ohaebosim, Orr, Osterman, Ousley, Parker, F. Patton, Phelps, Phillips, Pittman, R. Powell, Proehl, Rafie, Rahjes, Ralph, Resman, Rooker, Ruiz, Ryckman, Sawyer, Schreiber, Schroeder, Schwab, Seiwert, Sloan, Smith, A., Smith, E., Stogsdill, Sutton, S. Swanson, Tarwater, Terrell, Thimesch, Thompson, Trimmer, Vickrey, Victors, Ward, Waymaster, Weber, C., Weigel, Wheeler, Whipple, Whitmer, K. Williams, Wilson, Winn, Wolfe Moore.

Nays: None.

Present but not voting: None.

Absent or not voting: None.

The bill passed.

On motion of Rep. Hineman, the House resolved into the Committee of the Whole, with Rep. Hoffman in the chair.

COMMITTEE OF THE WHOLE

On motion of Rep. Hoffman, Committee of the Whole report, as follows, was adopted:

Recommended that **SB 154**, **SB 110** be passed.

On motion of Rep. Whitmer to refer **SB 26** to Committee on Federal and State Affairs the motion did not prevail; and the bill be passed.

Committee report to **HB 2353** be adopted; on motion of Rep. Davis, **HB 2353** be amended as amended by House Committee, on page 1, in line 14, by striking "Has a mission to employ" and inserting "Employs"; and the bill be passed as amended.

Committee report to **HB 2356** be adopted; on motion of Rep. Frownfelter to amend **HB 2356**, the motion did not prevail.

Also, on motion of Rep. Curtis to amend **HB 2356**, Rep. Mason requested a ruling on the amendment being germane to the bill. The Rules Chair ruled the amendment was germane. The motion of Rep. Curtis to amend, did not prevail; and the bill be passed as amended.

REPORTS OF STANDING COMMITTEES

Committee on **Children and Seniors** recommends **SB 126**, as amended by Senate Committee of the Whole, be amended by substituting a new bill to be designated as "House Substitute for SENATE BILL NO. 126," as follows:

"House Substitute for SENATE BILL NO. 126

By Committee on Children and Seniors

"AN ACT establishing the foster care task force.";

And the substitute bill be passed.

(**H Sub for SB 126** was thereupon introduced and read by title.)

Committee on **Federal and State Affairs** recommends **HR 6016** be adopted.

Committee on **Financial Institutions and Pensions** recommends **SB 21**, as amended by Senate Committee, be amended by substituting a new bill to be designated as "House Substitute for SENATE BILL NO. 21," as follows:

"House Substitute for SENATE BILL NO. 21

By Committee on Financial Institutions and Pensions

"AN ACT concerning retirement and pensions; relating to the Kansas public employees retirement system; employment after retirement; amending K.S.A. 2016 Supp. 74-4914 and 74-4937 and repealing the existing sections; also repealing K.S.A. 2016 Supp. 74-4914f.";

And the substitute bill be passed.

(**H Sub for SB 21** was thereupon introduced and read by title.)

Committee on **Judiciary** recommends **HB 2306** be amended on page 3, following line 37, by inserting:

"(l) For the purposes of this section, if the person is indigent and without counsel, the court shall appoint counsel to assist such person.";

On page 6, following line 43, by inserting:

"(j) For the purposes of this section, if the person is indigent and without counsel, the court shall appoint counsel to assist such person."; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 40**, as amended by Senate Committee, be amended by substituting a new bill to be designated as "House Substitute for SENATE BILL NO. 40," as follows:

"House Substitute for SENATE BILL NO. 40

By Committee on Judiciary

"AN ACT concerning human trafficking and related crimes; creating the crimes of unlawful use of communication facility, promoting travel for child exploitation, internet trading in child pornography and aggravated internet trading in child pornography; relating to training for commercial driver's license applicants; sexual exploitation of a child; buying sexual relations; commercial sexual exploitation of a child; offender registration; expungement of juvenile adjudications; victim compensation; amending K.S.A. 2016 Supp. 12-4120, 21-5426, 21-5510, 21-6421, 21-6422, 22-4902, 22-4906, 38-2312, 74-7305 and 75-759 and repealing the existing sections.";

And the substitute bill be passed.

(**H Sub for SB 40** was thereupon introduced and read by title.)

Committee on **Judiciary** recommends **SB 112**, as amended by Senate Committee, be amended on page 1, following line 6, by inserting:

"New Section 1. (a) All law enforcement agencies in this state shall adopt a detailed, written policy requiring electronic recording of any custodial interrogation conducted at a place of detention.

(b) All local law enforcement agencies in this state shall collaborate with the county or district attorney in the appropriate jurisdiction regarding the contents of written policies required by this section.

(c) Policies adopted pursuant to this section shall be made available to all officers of such agency and shall be available for public inspection during normal business

hours.

(d) Policies adopted pursuant to this section shall be implemented by all Kansas law enforcement agencies on or before July 1, 2018.

(e) Policies adopted pursuant to this section shall include the following:

(1) A requirement that an electronic recording shall be made of an entire custodial interrogation at a place of detention when the interrogation concerns a homicide or a felony sex offense;

(2) a requirement that if the defendant elects to make or sign a written statement during the course of a custodial interrogation concerning a homicide or a felony sex offense, the making and signing of the statement shall be electronically recorded;

(3) a statement of exceptions to the requirement to electronically record custodial interrogations, including, but not limited to:

(A) An equipment malfunction preventing electronic recording of the interrogation in its entirety, and replacement equipment is not immediately available;

(B) the officer, in good faith, fails to record the interrogation because the officer inadvertently fails to operate the recording equipment properly, or without the officer's knowledge the recording equipment malfunctions or stops recording;

(C) the suspect affirmatively asserts the desire to speak with officers without being recorded;

(D) multiple interrogations are taking place, exceeding the available electronic recording capacity;

(E) the statement is made spontaneously and not in response to an interrogation question;

(F) the statement is made during questioning that is routinely asked during the processing of an arrest of a suspect;

(G) the statement is made at a time when the officer is unaware of the suspect's involvement in an offense covered by the policy;

(H) exigent circumstances make recording impractical;

(I) at the time of the interrogation, the officer, in good faith, is unaware of the type of offense involved; and

(J) the recording is damaged or destroyed, without bad faith on the part of any person or entity in control of the recording; and

(4) requirements pertaining to the retention and storage requirements of the electronic recording.

(f) (1) During trial, the officer may be questioned pursuant to the rules of evidence regarding any violation of the policies adopted pursuant to this section.

(2) Lack of an electronic recording shall not be the sole basis for suppression of the interrogation or confession.

(g) Every electronic 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. 45-229, and amendments thereto. The provisions of this subsection shall expire on July 1, 2022, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2022.

(h) The following words and phrases, as used in this section, are defined as follows:

(1) "Custodial interrogation" means questioning of a person to whom warnings given pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), are required to be given;

(2) "place of detention" means a fixed location under the control of a Kansas law

enforcement agency where individuals are questioned about alleged crimes; and

(3) "electronic recording" means audio or audiovisual recording. An audiovisual recording is preferred.

(i) This section shall take effect on and after July 1, 2017.

Sec. 2. On and after July 1, 2017, K.S.A. 2016 Supp. 21-5414 is hereby amended to read as follows: 21-5414. (a) Domestic battery is:

(1) Knowingly or recklessly causing bodily harm by to a person with whom the offender is involved or has been involved in a dating relationship or a family or household member against a family or household member; or

(2) knowingly causing physical contact with a person with whom the offender is involved or has been involved in a dating relationship or a family or household member by a family or household member, when done in a rude, insulting or angry manner.

(b) Aggravated domestic battery is:

(1) Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck or chest of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner; or

(2) knowingly impeding the normal breathing or circulation of the blood by blocking the nose or mouth of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner.

~~(b)(c)(1)~~ Domestic battery is:

~~(+)(A)~~ Except as provided in subsection ~~(b)(2)(c)(1)(B)~~ or ~~(b)(3)(c)(1)(C)~~, a class B person misdemeanor and the offender shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the offender to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program;

~~(-)(B)~~ except as provided in subsection ~~(b)(3)(c)(1)(C)~~, a class A person misdemeanor, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a second time and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days imprisonment before the offender is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court or department of corrections; and

~~(-)(C)~~ a person felony, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a third or subsequent time, and the offender shall be sentenced to not less than 90 days nor more than one year's

imprisonment and fined not less than \$1,000 nor more than \$7,500. The offender convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the offender has served at least 90 days imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court or department of corrections. If the offender does not undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, the offender shall serve not less than 180 days nor more than one year's imprisonment. The 90 days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program.

(2) Aggravated domestic battery is a severity level 7, person felony.

~~(e)(d)~~ As used in this section:

(1) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since the termination of the relationship, if applicable; and

(2) "family or household member" means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. "Family or household member" also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

~~(2)(e)~~ For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under ~~this section subsection (c)(1):~~

~~(A)(1)~~ "Conviction" includes being convicted of a violation of K.S.A. 21-3412a, prior to its repeal, this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

~~(B)(2)~~ "conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

~~(C)(3)~~ only convictions occurring in the immediately preceding five years including prior to July 1, 2001, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

~~(D)(4)~~ it is irrelevant whether an offense occurred before or after conviction for a previous offense.

~~(d)~~(f) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of ~~this section subsection (a) or (b)~~ or an ordinance of any city or resolution of any county which prohibits the acts that ~~this section subsection (a) or (b)~~ prohibits only twice during any five-year period.";

Also on page 1, in line 7, before "K.S.A" by inserting "On and after July 1, 2017,";

On page 3, following line 10, by inserting:

"Sec. 5. On and after July 1, 2017, K.S.A. 2016 Supp. 22-2410 is hereby amended to read as follows: 22-2410. (a) (1) Any person who has been arrested in this state may petition the district court for the expungement of such arrest record.

(2) (A) If a person has been arrested in this state as a result of mistaken identity or as a result of another person using the identifying information of the named person, and the charge against the named person is dismissed or not prosecuted, the prosecuting attorney or other judicial officer who ordered the dismissal or declined to prosecute shall provide notice to the court of such action and petition the district court for the expungement of such arrest record, and the court shall order the arrest record and subsequent court proceedings, if any, expunged and purged from all applicable state and federal systems pursuant to subsection (d).

(B) For purposes of this section, the term "mistaken identity" means the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime. "Mistaken identity" shall not include any situation in which an arrestee intentionally provides false information to law enforcement officials in an attempt to conceal such person's identity.

(b) (1) When a petition for expungement is filed pursuant to subsection (a)(1), the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(2) When a petition for expungement is filed pursuant to subsection (a)(1) or (a)(2), the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order.

(3) (A) Except as otherwise provided by law, a petition for expungement pursuant to subsection (a)(1) shall be accompanied by a docket fee in the amount of \$176. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after July 1, 2015, through June 30, 2017, the supreme court may impose an additional charge, not to exceed \$19 per docket fee, to fund the costs of non-judicial personnel. ~~The petition shall state:~~

(1) The petitioner's full name;

(2) the full name of the petitioner at the time of arrest, if different than the

petitioner's current name;

- ~~(3) the petitioner's sex, race and date of birth;~~
- ~~(4) the crime for which the petitioner was arrested;~~
- ~~(5) the date of the petitioner's arrest; and~~
- ~~(6) the identity of the arresting law enforcement agency.~~

~~(B) No surcharge or fee shall be imposed to any person filing a petition pursuant to this section subsection (a)(1), who was arrested as a result of being a victim of identity theft under K.S.A. 21-4018, prior to its repeal, or K.S.A. 2016 Supp. 21-6107(a), and amendments thereto, or who has had criminal charges dismissed because a court has found that there was no probable cause for the arrest, the petitioner was found not guilty in court proceedings or the charges have been dismissed. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.~~

~~(4) The petition filed pursuant to subsection (a)(1) or (a)(2) shall state:~~

~~(A) The petitioner's full name;~~

~~(B) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;~~

~~(C) the petitioner's sex, race and date of birth;~~

~~(D) the crime for which the petitioner was arrested;~~

~~(E) the date of the petitioner's arrest; and~~

~~(F) the identity of the arresting law enforcement agency.~~

(c) At the hearing on a petition for expungement pursuant to subsection (a)(1), the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding: (1) The arrest occurred because of mistaken identity;

(2) a court has found that there was no probable cause for the arrest;

(3) the petitioner was found not guilty in court proceedings; or

(4) the expungement would be in the best interests of justice and: (A) Charges have been dismissed; or (B) no charges have been or are likely to be filed.

(d)(1) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, on a petition for expungement pursuant to subsection (a)(1), the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received. If an order of expungement is entered, the petitioner pursuant to subsection (a)(1) shall be treated as not having been arrested.

(2) When the court has ordered expungement of arrest records on a petition for expungement pursuant to subsection (a)(2), the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (a)(2). The order shall also direct the Kansas bureau of investigation to purge the arrest information from the criminal justice information system central repository and all applicable state and federal databases. The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation, which shall carry out

the order and shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency that may have a record of the arrest. If an order of expungement is entered, the person eligible for mandatory expungement pursuant to subsection (a)(2) shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interests of public welfare, the records should be available for any of the following purposes:

(1) In any application for employment as a detective with a private detective agency, as defined in K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services;

(2) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(6) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(7) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(8) in any other circumstances which the court deems appropriate.

(f) The court shall make all expunged records and related information in such court's possession, created prior to, on and after July 1, 2011, available to the Kansas bureau of investigation for the purposes of:

(1) Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

(2) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(g) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

(h) Whenever a ~~petitioner's~~ person's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

(i) The docket fee collected at the time the petition for expungement is filed pursuant to subsection (a)(1) shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.";

Also on page 3, in line 11, by striking "21-5709 and"; also in line 11, by striking "are" and inserting "is"; following line 12, by inserting:

"Sec. 7. On and after July 1, 2017, K.S.A. 2016 Supp. 21-5414, 21-5709 and 22-2410 are hereby repealed.";

Also on page 3, in line 14, by striking "statute book" and inserting "Kansas register";

And by renumbering sections accordingly;

On page 1, in the title, in line 2, after "to" by inserting "evidence; videotaping of certain felony, custodial interrogations; domestic battery; creating the crime of aggravated domestic battery;"; in line 3, after the first semicolon, by inserting "expungement; arrest records;"; also in line 3, after "Supp." by inserting "21-5414, "; by striking "and" and inserting a comma; after "21-5807" by inserting "and 22-2410"; and the bill be passed as amended.

COMMITTEE ASSIGNMENT CHANGES

Speaker pro tem Schwab announced the appointment of Rep. Frownfelter to replace Rep. Wolfe Moore on Committee on Taxation on March 23, 2017.

Also, the appointment of Rep. Carmichael to replace Rep. Henderson on Committee on Federal and State Affairs on March 24, 2017.

REPORT ON ENGROSSED BILLS

HB 2232, HB 2289, HB 2313 reported correctly engrossed March 22, 2017.

On motion of Rep. Hineman, the House adjourned until 11:00 a.m., Friday, March 24, 2017.

BECKIE HENDRICKS, JENNY HAUGH, JULIA WERNER, *Journal Clerks.*

SUSAN W. KANNARR, *Chief Clerk.*

