

SEPTEMBER 3, 2013

1

SPECIAL SESSION

# Journal of the Senate

FIRST DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Tuesday, September 3, 2013, 8:00 a.m.

Pursuant to the Governor's notification of August 6, 2013, the Senate convened for a Special Session of the Kansas Legislature with President Susan Wagle in the chair.

President Wagle introduced the Honorable Kris Kobach, Secretary of State, who delivered the following message:

**PROCLAMATION CALLING THE LEGISLATURE  
INTO SPECIAL SESSION TO PROTECT THE SAFETY  
OF THE CITIZENS OF KANSAS**

TO THE PEOPLE OF KANSAS, GREETINGS:

WHEREAS, Public Safety is one of the primary roles of state government; and

WHEREAS, K.S.A. 21-6620 through 21-6625, the "Hard 50" law, is an important tool used by Kansas prosecutors to protect the public from many of the most vicious murders; and

WHEREAS, Experts in the field believe the United States Supreme Court's ruling in *Alleyne v. United States* renders the "Hard 50" law unconstitutional and will, according to the Attorney General of Kansas "virtually guarantee" that dozens of violent offenders will receive significantly weaker sentences; and

WHEREAS, The Attorney General of Kansas has requested the Governor call a Special Session of the Legislature, and

WHEREAS, As Governor, I have a responsibility to the victims, their families, and their communities to see that justice is served and the citizens of Kansas are protected from violent criminals, now and in the future:

NOW, THEREFORE, I, Sam Brownback, GOVERNOR OF THE STATE OF KANSAS, by the authority vested in me by the Constitution of the State of Kansas, do hereby call the

***Legislature of the State of Kansas into Special Session to  
Protect the Safety of the Citizens of Kansas***

at the Capitol in Topeka, Kansas, on the 3rd day of September, 2013, at the hour of 8:00 o'clock a.m., to enact legislation by 5:00 o'clock p.m. on the 5th day of September 2013 to respond to the ruling of the United States Supreme Court in *Alleyne v. United States*.

DONE: At the Capitol in Topeka  
under the Great Seal of the  
State this 6th day of  
August, A.D. 2013

BY THE GOVERNOR: SAM BROWBACK

KRIS W. KOBACH  
*Secretary of State*

ERIC RUCKER  
*Assistant Secretary of State*

In accordance with the provision of the Constitution of the State of Kansas and the Proclamation as read, President Wagle called the 2013 Special Session of the Legislature to order.

The roll was called with forty senators present.

District	District
1 Dennis D. Pyle	21 Greg A. Smith
2 Marci Francisco	22 Tom Hawk
3 Tom Holland	23 Rob Olson
4 David Haley	24 Tom Arpke
5 Steve Fitzgerald	25 Michael O'Donnell
6 Pat Pettey	26 Dan Kerschen
7 KayWolf	27 Leslie D. "Les" Donovan, Sr.
8 Jim Denning	28 Mike Petersen
9 Julia Lynn	29 Oletha Faust-Goudeau
10 Mary Pilcher-Cook	30 Susan Wagle
11 Jeff Melcher	31 Carolyn McGinn
12 Caryn Tyson	32 Steve E. Abrams
13 Jacob LaTurner	33 Mitch Holmes
14 Forrest J. Knox	34 Terry Bruce
15 Jeff King	35 Jay Scott Emler
16 Ty Masterson	36 Elaine S. Bowers
17 Jeff Longbine	37 Pat Apple
18 Laura Kelly	38 Garrett Love
19 Anthony Hensley	39 Larry R. Powell
20 Vicki L. Schmidt	40 Ralph Ostmeyer

Invocation by Father Don Davidson:

Almighty God, we celebrate today that they have arrived. Our legislators, not expected until January, have arrived from every corner of our state. While there are only 40 in this honorable chamber, they speak for two million eight hundred eighty six thousand people from cities and towns, ranches and suburbs, farms and apartments who proudly know themselves to be Kansans.

Thank you Creator God for the gifts you have given them and for your grace in the conduct of this special session so that good work may be done. In Your Holy name we pray. Amen

**INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS**

Senators Wagle, Bruce and Hensley introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1701—

A RESOLUTION relating to the organization of the Senate.

*Be it resolved by the Senate of the State of Kansas:* That the Secretary of the Senate notify the House of Representatives that the Senate is organized with the following officers:

Susan Wagle, president,  
Jeff King, vice-president,  
Terry Bruce, majority leader,  
Anthony Hensley, minority leader,  
Corey Carnahan, secretary,  
Don Cackler, sergeant at arms,  
and awaits the pleasure of the House of Representatives.

On emergency motion of Senator Bruce **SR 1701** was adopted unanimously.

**MESSAGES FROM THE GOVERNOR**

As you know, on July 24, 2013, Attorney General Derek Schmidt formally requested that I call a special session of the Kansas Legislature for the purpose of repairing Kansas's "Hard 50" sentence in the wake of the June 17, 2013 decision of the United States Supreme Court in *Alleyne v. United States*.

There is broad and bipartisan consensus across all of our state's law enforcement and prosecutorial agencies urging me to adopt the recommendation of Attorney General Schmidt. Likewise, there is broad and bipartisan support among the leaders of this Legislature that a special session is necessary and is in the best interests of public safety.

As the Attorney General has written, the "Hard 50" sentence "is a vital public safety tool enacted by the Legislature more than a decade ago to remove the 'worst of the worst' killers from society for at least 50 years." Legal experts and prosecutors across Kansas agree and have advised me that the *Alleyne* decision renders our "Hard 50" sentence unconstitutional because under current law, it is imposed by a judge rather than by a jury.

Attorney General Schmidt has further advised that a relatively simple procedural fix allowing the jury to make the necessary factual findings, if adopted by the Legislature, will cure the constitutional defect. Until such a cure is enacted, however, all criminal defendants who would otherwise be eligible to receive the "Hard 50" sentence upon conviction will instead receive a maximum sentence of only 25 years. Due to the constitutional and statutory requirement that the state bring criminal defendants to trial in a speedy manner, this has created a situation where time is of the essence.

Enacting a Legislative cure during the 2014 regular session of the Kansas Legislature as would likely occur in the ordinary course of our legislative calendar will, in the words of Attorney General Schmidt, "virtually guarantee" an increase in "the number of convicted killers who will be eligible for parole after only 25 years instead of after 50 years." This fact led the Attorney General to opine that the current circumstance does in

fact rise to the level of an “extraordinary occasion” sufficient to justify this office exercising its authority to call the Legislature into special session pursuant to Article 1, Section 5 of the Kansas Constitution.

As such, in my considered judgment, in reliance upon the advice of the Attorney General of the State of Kansas and the bipartisan consensus of the law enforcement community across Kansas, I find that these circumstances present a real and present danger to the public safety of the citizens of Kansas and does, in fact, constitute an “extraordinary occasion” justifying a special session of the Legislature.

I am confident that the Legislature can and will act quickly, with resolve and narrow focus, to protect the safety of all Kansans by restoring to prosecutors the immediate ability to seek the “Hard 50” sentence for those criminals convicted of the “worst of the worst” kinds of crimes.

As of 8:00 A.M., September 3, 2013, pursuant to Article I, Section 5 of the Kansas Constitution, I hereby call the Kansas Legislature into special session.

Signed: SAM BROWNBACK

Date: September 3, 2013

*To the Senate of the State of Kansas:*

Submitted herewith for confirmation by the Senate are appointments made by me as the Governor of the State of Kansas, pursuant to law.

SAM BROWNBACK

Kansas Governor

*Member, University of Kansas Hospital Authority, Mark Jorgenson (R), Kansas City, pursuant to the authority vested in me by the KSA 76-3304 effective upon the date of confirmation by the Senate, to serve a four year term, to expire January 15, 2016.*

*Member, University of Kansas Hospital Authority, Daniel Thomas (R), Mission Hills, pursuant to the authority vested in me by the KSA 76-3304 effective upon the date of confirmation by the Senate, to serve a four year term, to expire January 15, 2016.*

*Member, Kansas Board of Regents, Helen Van Etten (R), Topeka, pursuant to the authority vested in me by the KSA 74-3202a effective upon the date of confirmation by the Senate, to serve a four year term, to expire June 30, 2017.*

*Member, Kansas Board of Regents, Shane Bangerter (U), Dodge City, pursuant to the authority vested in me by the KSA 74-3202a effective upon the date of confirmation by the Senate, to serve a four year term, to expire June 30, 2017.*

*Member, Kansas Board of Regents, Ann Brandau Murguia (D), Kansas City, pursuant to the authority vested in me by the KSA 74-3202a effective upon the date of confirmation by the Senate, to serve a four year term, to expire June 30, 2017.*

*Member, Kansas Human Rights Commission, David Brant (R), Wichita, pursuant to the authority vested in me by the KSA 44-1003 effective upon the date of confirmation by*

the Senate, to serve a four year term, to expire January 15, 2017.

*Member, Kansas Human Rights Commission, Michael Kane (D), Kansas City, pursuant to the authority vested in me by the KSA 44-1003 effective upon the date of confirmation by the Senate, to serve a four year term, to expire January 15, 2017.*

*Member, Kansas Human Rights Commission, Eric Laverentz (R), Overland Park, pursuant to the authority vested in me by the KSA 11-1003 effective upon the date of confirmation by the Senate, to serve a four year term, to expire January 15, 2017.*

*Member, Kansas Lottery Commission, James Washington (R), Basehor, pursuant to the authority vested in me by the KSA 74-8709 effective upon the date of confirmation by the Senate, to serve a four year term, to expire March 15, 2016.*

*Member, Kansas Lottery Commission, Thomas Roberts (D), Kansas City, pursuant to the authority vested in me by the KSA 74-8709 effective upon the date of confirmation by the Senate, to serve a four year term, to expire March 15, 2017.*

*Member, State Banking Board, Kurt Knutson (R), Overland Park, pursuant to the authority vested in me by the KSA 74-3004 effective upon the date of confirmation by the Senate, to serve a three year term to expire March 15, 2016.*

*Member, Public Employee Relations Board, Mark McGivern (R), Topeka, pursuant to the authority vested in me by the KSA 75-4323 effective upon the date of confirmation by the Senate, to serve a four year term, to expire March 15, 2017.*

*Chief Hearing Officer, Kansas Court of Tax Appeals, Arlen Siegfried (R), Olathe, pursuant to the authority vested in me by the KSA 74-2433 effective upon the date of confirmation by the Senate, to serve a four year term, to expire January 15, 2017.*

*Secretary, Kansas Department of Administration, James Clark (R), Lawrence, pursuant to the authority vested in me by the KSA 75-3702a effective upon the date of confirmation by the Senate, to serve at the pleasure of the governor, to succeed Dennis Taylor.*

*Securities Commissioner, Kansas Securities Commission, Joshua Ney (R), Lawrence, pursuant to the authority vested in me by the KSA 75-6301 effective upon the date of confirmation by the Senate, to serve at the pleasure of the governor.*

*Brigadier General, Kansas National Guard, Colonel Robert Windham (R), Junction City, pursuant to the authority vested in me by the KSA 75-6301 effective upon the date of confirmation by the Senate, to serve at the pleasure of the governor.*

*Judge, Kansas Court of Tax Appeals, Ronald Mason (R), Hutchinson, pursuant to the authority vested in me by the KSA 75-6301 effective upon the date of confirmation by the Senate, to serve a four year term, expiring January 15, 2017.*

*Member, University of Kansas Hospital Authority, Elizabeth King (R), Wichita, pursuant to the authority vested in me by the KSA 76-3304 effective upon the date of confirmation by the Senate, to serve a four year term, to expire March 15, 2014, to fill the unexpired term due to the resignation of Alex Ammar.*

*Judge, Kansas Court of Appeals, Caleb Stegall, Lawrence, pursuant to the authority vested in me by **HB 2019** effective upon the date of confirmation by the Senate.*

#### **REFERENCE OF APPOINTMENTS**

President Wagle referred the appointment of Caleb Stegall to the Committee on **Judiciary** and the appointments of James Clark, Dr. Elizabeth King, Ronald Mason, Joshua Ney, Robert Windham to the Committee on **Confirmation Oversight**.

#### **COMMUNICATIONS FROM STATE OFFICERS**

OFFICE OF THE SENATE PRESIDENT  
July 29, 2013

Pursuant to KSA 74-99b04, Senate President Susan Wagle appointed Mr. David Murfin to the Kansas Bioscience Authority for a three year term.

KANSAS EMPLOYEES RETIREMENT SYSTEM  
June 28, 2013

Alan D. Conroy, Executive Director, submitted a copy of the Annual Report of the Kansas Public Employees Retirement System (KPERs) regarding KPERs investment in Sudan.

President Wagle announced that the above report is on file in the office of the Secretary of the Senate and is available for review at any time.

On motion of Senator Bruce, the Senate recessed until 4:30 p.m.

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The Senate met pursuant to recess with Senator Wagle in the chair.

#### **INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS**

The following bill was introduced and read by title:

**SB 1**, AN ACT concerning crimes; enacting the Kansas protection against voter suppression act; amending the crime of perjury; amending KSA 2012 Supp. 21-5903 and repealing the existing sections, by Senator Faust-Goudeau.

#### **REPORTS OF STANDING COMMITTEES**

Committee on **Confirmation Oversight** begs leave to submit the following report:

The following appointments were referred to and considered by the committee and your committee recommends that the Senate approve and consent to such appointments:

By the Governor:

Kansas Board of Regents: K.S.A. 74-3202a

Helen Van Etten, term expires June 30, 2017

Daniel S. Bangerter, term expires June 30, 2017  
 Ann Brandau Murguia, term expires June 30, 2017  
 University of Kansas Hospital Authority: K.S.A. 2012 Supp. 76-3304  
 Dr. Daniel Thomas, term expires March 15, 2016  
 Mark Jorgenson, term expires March 15, 2016  
 Dr. Elizabeth King, term expires March 15, 2014  
 Kansas Human Rights Commission: K.S.A. 44-1003  
 David Brant, term expires January 15, 2017  
 Michael Kane, term expires January 15, 2017  
 Eric Laverentz, term expires January 15, 2017  
 Kansas Lottery Commission: K.S.A. 74-8709  
 James Washington, term expires March 15, 2016  
 Thomas Roberts, term expires March 15, 2017  
 State Court of Tax Appeals, Judge: K.S.A. 2012 Supp. 74-2433  
 Ronald Mason, term expires January 15, 2017  
 State Court of Tax Appeals, Chief Hearing Officer: K.S.A. 2012 Supp. 74-2433  
 Arlen Siegfried, term expires January 15, 2017  
 State Banking Board: K.S.A. 74-3004  
 Kurt Knutson, term expires March 15, 2016  
 Public Employee Relations Board: K.S.A. 2012 Supp. 75-4323  
 Mark McGivern, term expires March 15, 2017  
 Department of Administration, Secretary: K.S.A. 2012 Supp. 75-3702a  
 James Clark, serves at the pleasure of the Governor  
 Kansas National Guard, Brigadier General: K.S.A. 2012 Supp. 48-208  
 Colonel Robert Windham, serves at the pleasure of the Governor  
 Kansas Securities Commissioner, K.S.A. 2012 Supp. 75-6301  
 Joshua Ney, serves at the pleasure of the Governor

#### **MESSAGE FROM THE HOUSE**

Announcing adoption of **HR 6001**, a resolution relating to the organization of the House of Representatives. The House is organized with the following officers:

Ray Merrick, Speaker,  
 Peggy Mast, Speaker pro tem,  
 Gene Vickrey, Majority leader,  
 Paul Davis, Minority leader,  
 Susan Kannarr, Chief clerk,  
 Mike Lietz, Sergeant at arms,  
 and awaits the pleasure of the Senate.

Announcing adoption of **HCR 5001**, a concurrent resolution relating to a committee to wait upon the Governor and advise him the 2013 special session of the Legislature is duly organized and ready to receive communications. Appointing Representatives Proehl, Meigs and Grant as members of the committee.

President Wagle appointed Senators King and Haley as members of the committee.

#### **INTRODUCTION OF CONCURRENT RESOLUTION**

**HCR 5001**, A CONCURRENT RESOLUTION relating to a committee to inform the governor that the two houses of the legislature are duly organized and ready to receive

communications, was introduced and read by title.

On emergency motion of Senator Bruce, **HCR 5001** was adopted by voice vote.

#### **REPORTS OF STANDING COMMITTEES**

Committee on **Judiciary** begs leave to submit the following report: that the Senate approve and consent to such appointment:

By the Governor:  
Kansas Court of Appeals, Judge: § 1 of Chapter 1 of the 2013 Session Laws of Kansas  
Caleb Stegall

On motion of Senator Bruce, the Senate recessed until the sound of the gavel.

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The Senate met pursuant to recess with Senator Wagle in the chair.

#### **MESSAGE FROM THE HOUSE**

Announcing passage of **HB 2002**.

#### **REFERENCE OF BILLS**

The following bill was referred to committee as indicated:

Judiciary: **HB 2002**.

#### **REPORT ON ENROLLED BILLS**

**SR 1701** reported correctly enrolled and properly signed and presented to the Secretary of the Senate on September 3, 2013.

On motion of Senator Bruce, the Senate adjourned until 9:00 a.m., Wednesday, September 4, 2013.