

Journal of the Senate

FORTY-FOURTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Monday, March 14, 2005—2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-six senators present.
Senators Allen, Barone, Brownlee and Wagle were excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Besides the death or serious injury or sickness of a loved one, perhaps nothing gives people more of a sense of grief and helplessness than to watch their home or business go up in flames. Our hearts go out, O God, to the people of Fort Scott who had this depressing experience recently.

In the book of Hebrews Your writer has words of encouragement for times like these. He reminds us that believers have a hope which is an anchor for the soul. (Hebrews 6:17-19a)

When things are going wrong
And nothing's going right,
And the light at tunnel's end
Is totally out of sight.

When no one understands,
Including family and friends,
And there seems to be no one
On whom we can depend.

Lord, help us to remember
When we're left out in the cold
That You have a blessed HOPE:
An anchor for our soul.

When we're much discouraged,
We know You can console,
For You can give us HOPE:
Your anchor for our soul.

And once more You'll lift us up,
And we'll regain control.
Thank You, Lord, for HOPE,
Your anchor for our soul.

I pray in the Name of Jesus Christ,
AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 295, An act concerning taxation; relating to retailers' sales tax in Neosho county; amending K.S.A. 2004 Supp. 12-187, 12-189 and 12-192 and repealing the existing sections, by Committee on Ways and Means.

SB 296, An act concerning docket fees; relating to compensation for certain judicial personnel; amending K.S.A. 75-3120f and 75-3120h and K.S.A. 2004 Supp. 20-367, 21-4619, 22-2410, 28-172a, 60-2001, 61-2704, 61-4001, 75-3120g and 75-3120k and repealing the existing sections; also repealing K.S.A. 2003 Supp. 21-4619 as amended by section 59 of the 2004 session laws of Kansas, by Committee on Ways and Means.

SB 297, An act concerning alcoholic liquor; amending K.S.A. 2004 Supp. 41-719 and 41-2645 and repealing the existing sections, by Committee on Federal and State Affairs.

SB 298, An act concerning alcoholic beverages; relating to the regulation thereof; amending K.S.A. 41-208, 41-301, 41-302, 41-710, 41-712, 41-714 and 41-2704 and K.S.A. 2004 Supp. 19-101a, 41-303, 41-347 and 41-719 and repealing the existing sections; also repealing K.S.A. 2004 Supp. 19-101k, by Committee on Federal and State Affairs.

MESSAGE FROM THE HOUSE

Announcing passage of **SB 104, SB 113, as amended; SB 114, SB 219.**

Announcing passage of **SB 43, as amended; SB 57, SB 101, SB 105, SB 115.**

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senator Umbarger introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1830—

A RESOLUTION congratulating and commending Brad Harris.

WHEREAS, Brad Harris of St. Paul has been selected as one of the top youth volunteers in Kansas for 2005 in the 10th annual Prudential Spirit of Community Awards. As a distinguished finalist he will receive an engraved bronze medallion; and

WHEREAS, The Prudential Spirit of Community Awards, created by Prudential Financial in partnership with the National Association of Secondary School Principals, constitute America's largest youth recognition program based exclusively on volunteerism. The awards are designed to emphasize the importance our nation places on service to others, and to encourage young Americans of all backgrounds to contribute to their communities; and

WHEREAS, Students like Brad represent the best of America's youth and are role models to their peers and communities. Brad, a member of the Neosho County 4-H in Erie and a senior at St. Paul High School, helps organize and run the Sunbelt Special Rodeo and the Kansas High School Special Rodeo for mentally handicapped individuals. Brad recruits volunteers, sets up events, brings his own horses for participants to use, matches horses to riders, selects teams, helps participants, and takes part in the final events: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend Brad Harris upon being selected as a 2005 Prudential Spirit of Community Award Distinguished Finalist for the State of Kansas; and

Be it further resolved: That the Secretary of the Senate provide an enrolled copy of this resolution to Brad Harris plus two copies for his parents, Mr. and Mrs. Joe Harris, all addressed to 9605 Queen Road, St. Paul, KS 66771-3044 and a copy to Felix Diskin, Principal, St. Paul High School, 1st and Washington, St. Paul, KS 66771.

On emergency motion of Senator Umbarger **SR 1830** was adopted unanimously.

President Morris and members of the Senate welcomed Brad and his mother with a standing ovation.

REPORT ON ENGROSSED BILLS

SB 62 reported correctly engrossed March 11, 2005.

REPORTS OF STANDING COMMITTEES

Committee on **Commerce** recommends **HB 2157**, as amended by House Committee, be passed.

Committee on **Judiciary** recommends **HB 2387**, as amended by House Committee, be amended on page 2, after line 2, by inserting the following:

“Sec. 3. K.S.A. 2004 Supp. 19-4444 is hereby amended to read as follows: 19-4444. (a) *Except as provided by subsection (b), the agency shall approve all expenditures to be made by and claims to be paid on behalf of such agency and the law enforcement department and shall certify the same to the board of county commissioners of the county to be allowed from the funds provided for the operation of such agency and department, except that*

(b) (1) If a person is stopped by or is in the custody of a law enforcement officer, as defined in K.S.A. 22-2202, and amendments thereto, who is an employee of the state and such person is injured by the officer while acting within the scope of such officer's authority, costs incurred for medical care and treatment of the person shall be paid by the state if such care and treatment is required due to the injury and a determination has been made that the person has no other resources. When such medical expenses have been paid by the state, the state may seek reimbursement of such expenses from the prisoner. If the state determines that the prisoner is covered under a current individual or group accident and health insurance policy, medical service plan contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization contract, then the state may require the prisoner or the provider rendering health care services to the prisoner to submit a claim for such health care services rendered in accordance with the prisoner's policy or contract.

(2) All other costs incurred by the agency or department for medical care and treatment of prisoners held within the county shall be paid from the county general fund when a determination has been made that the prisoner has no other resources. When medical expenses have been paid out of the county general fund of any county in this state adopting the provisions of K.S.A. 19-4424 et seq., and amendments thereto, for a prisoner held within such county, the county may seek reimbursement of such expenses from the prisoner. If the county determines that a prisoner of the county jail is covered under a current individual or group accident and health insurance policy, medical service plan contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization contract, then the county may require the prisoner of such county jail or the provider rendering health care services to the prisoner to submit a claim for such health care services rendered in accordance with the prisoner's policy or contract.

Sec. 4. K.S.A. 2004 Supp. 19-1910 is hereby amended to read as follows: 19-1910. (a) When a prisoner is committed to a county jail in a criminal action, the board of county commissioners shall allow the sheriff reasonable charges for maintaining such prisoner.

(b) (1) If a person is stopped by or is in the custody of a law enforcement officer, as defined in K.S.A. 22-2202, and amendments thereto, who is an employee of the state and such person is injured by the officer while acting within the scope of such officer's authority, costs incurred for medical care and treatment of the person shall be paid by the state if such care and treatment is required due to the injury and a determination has been made that the person has no other resources. When such medical expenses have been paid by the state, the state may seek reimbursement of such expenses from the prisoner. If the state determines that the prisoner is covered under a current individual or group accident and health insurance policy, medical service plan contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization contract, then the state may require the prisoner or the provider rendering health care services to the prisoner to submit a claim for such health care services rendered in accordance with the prisoner's policy or contract.

(2) All other costs incurred by the county for medical care and treatment of prisoners held within the county shall be paid from the county general fund when a determination has been made that the prisoner has no other resources. When medical expenses have been paid out of the county general fund of any county in this state for a prisoner held within

such county, the county may seek reimbursement of such expenses from the prisoner. If the county determines that a prisoner of the county jail is covered under a current individual or group accident and health insurance policy, medical service plan contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization contract, then the county may require the prisoner of such county jail or the provider rendering health care services to the prisoner to submit a claim for such health care services rendered in accordance with the prisoner's policy or contract.

(b) (c) When a prisoner is delivered to a county jail pursuant to K.S.A. 75-5217, and amendments thereto, the costs of holding such prisoner shall be paid as provided in K.S.A. 19-1930, and amendments thereto.

Sec. 5. K.S.A. 2004 Supp. 21-4603d is hereby amended to read as follows: 21-4603d. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567, and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502, and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape, as defined in K.S.A. 21-3809, and amendments thereto, or aggravated escape, as defined in K.S.A. 21-3810, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been determined to be arson under K.S.A. 21-3718 or 21-3719, and amendments thereto, if the defendant is convicted of such crime; ~~or~~ repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction; *or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county.* Such repayment of the amount of any such costs and expenses incurred by a *county*, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited prior to use by the *county*, law enforcement agency, fire district, fire department or fire company;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 2004 Supp. 22-4529, and amendments thereto, unless waived by the court;

(10) order the defendant to pay a domestic violence special program fee authorized by K.S.A. 2004 Supp. 20-369, and amendments thereto;

(11) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10); or

(12) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 2004 Supp. 60-4301 et seq., and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to K.S.A. 75-719, and amendments thereto, to collect the restitution on behalf of the victim. The administrative judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502, and amendments thereto.

(d) In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. Any such reimbursement to the county shall be paid only after any order for restitution has been paid in full. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

(e) In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole, conditional release or postrelease supervision.

(f) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 2004 Supp. 21-4729, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 2004 Supp. 21-4729, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.

(h) The court in committing a defendant to the custody of the secretary of corrections shall fix a term of confinement within the limits provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

(i) In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

(j) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

(k) An application for or acceptance of probation or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(l) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing

guidelines grid for drug crimes, or for an offense which is classified in gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes and such offense does not meet the requirements of K.S.A. 2004 Supp. 21-4729, and amendments thereto, and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611 and amendments thereto.

(m) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not apply.

(n) Except as provided by subsection (f) of K.S.A. 21-4705, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 2004 Supp. 21-4729, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2004 Supp. 75-52,144, and amendments thereto, including but not limited to, an approved after-care plan. If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to revocation of probation and the defendant shall serve the underlying prison sentence as established in K.S.A. 21-4705, and amendments thereto. For those offenders who are convicted on or after the effective date of this act, upon completion of the underlying prison sentence, the defendant shall not be subject to a period of postrelease supervision. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.”;

And by renumbering the remaining sections accordingly;

Also on page 2, in line 3, after “Supp.” by inserting “19-1910.”; also in line 3, after “19-1935” by inserting “, 19-4444, 21-4603d”;

In the title, in line 10, after “concerning” by inserting “persons who have committed or who have been alleged to have committed criminal acts.”; in line 11, before “amending” by inserting “payment of certain expenses.”; also in line 11, after “Supp.” by inserting “19-1910.”; also in line 11, after “19-1935” by inserting “, 19-4444, 21-4603d”; and the bill be passed as amended.

Committee on **Ways and Means** recommends **SB 293** be passed.

Also, **SB 243** be amended on page 3, in line 3, after “association” by inserting “and the national commission on correctional health care”; in line 4, by striking “the association’s” and inserting “those associations.”; in line 9, by striking “identified by the American correctional association” and inserting “adopted by the secretary”;

On page 5, in line 17, by striking all before the period; also in line 17, after the period by inserting “The private operator shall be liable for all expenses incurred by the state and its subdivisions in responding to any emergency or serious event. Such expenses shall be consistent with the department’s policies and procedures concerning such emergency or serious event.”; and the bill be passed as amended.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Tuesday, March 15, 2005.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*

