

SPECIAL SESSION

Journal of the House

FIRST DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Tuesday, September 3, 2013, 8:00 a.m.

Pursuant to the Governor's proclamation of August 6, 2013, the House met in special session at 8:00 a.m.

The following proclamation of the governor was read by Eric Rucker, Assistant Secretary of State.

**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 murderers; 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 BROWNBACK
Governor of Kansas
KRIS W. KOBACH
Secretary of State
ERIC K. RUCKER
Assistant Secretary of State

OATH OF OFFICE

Representative-elect S. Mike Kiegerl took and subscribed to the the following oath of office, which was administered by Erna K. Loomis, Notary Public, State of Kansas.

STATE OF KANSAS, COUNTY OF JOHNSON, SS:

I do solemnly swear, or affirm, that I will support the Constitution of the United States, and the Constitution of the State of Kansas, and will faithfully discharge the duties of the office of member of the House of Representatives, so help me God.

Subscribed and sworn to, or affirmed, before me this 31st day of July, 2013.

ERNA K. LOOMIS
Notary Public-State of Kansas

Speaker Merrick called the House to order.

The roll was called with 122 members present.

Reps. Carpenter, Hedke and Hermanson was excused on excused absence by the Speaker.

Prayer by Chaplain Brubaker:

God in Heaven,
with our leaders being called back into a special session
to deal with certain issues,
I am reminded of the record in the Old Testament
when the King of Israel summoned the leaders
to discuss a very serious issue.
The words of advice given to those leaders from
Your prophet, Isaiah were:
“In repentance and rest is your salvation;
In quietness and trust is your strength.”
I pray this advice for our leaders today that
they will recognize that You, O God,
can bring wisdom, strength, and resolution.
Grant them this, I pray, Amen.

The Pledge of Allegiance was led by Rep. Boldra.

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

On emergency motion of Rep. Davis, **HR 6001**, by Reps. Merrick and Davis, as follows, was introduced and adopted:

HOUSE RESOLUTION No. HR 6001—

A RESOLUTION relating to the organization of the House of Representatives.

Be it resolved by the House of Representatives of the State of Kansas: That the Chief Clerk of the House of Representatives notify the Senate that 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.

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

On emergency motion of Rep. Davis, **HR 6002**, by Reps. Merrick and Davis, as follows, was introduced and adopted:

HOUSE RESOLUTION No. HR 6002—

A RESOLUTION relating to assignment of seats of the House of Representatives.

Be it resolved by the House of Representatives of the State of Kansas: That the members of the 2013 special session of the legislature shall occupy the same seats assigned pursuant to 2013 House Resolution No. 6002 with the following exceptions: Kiegerl, seat No. 81; Estes, seat No. 124.

The House stood at ease until the sound of the gavel.

Speaker Merrick called the House to order.

Upon unanimous consent, the House referred back to the regular order of business, Introduction of Bills and Concurrent Resolutions.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

HB 2001, AN ACT concerning crimes; enacting the Kansas protection against voter suppression act; amending the crime of perjury; amending K.S.A. 2012 Supp. 21-5903, as amended by section 1 of chapter 3 of the 2013 Session Laws of Kansas, and 25-2309 and repealing the existing sections, by Representative Ward.

HB 2002, AN ACT concerning crimes, punishment and criminal procedure; relating to sentencing of certain persons to mandatory minimum term of imprisonment of 40 or 50 years; amending K.S.A. 2012 Supp. 21-6620 and 21-6624 and repealing the existing sections, by Committee on Judiciary.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Rep. Davis, **HCR 5001**, by Reps. Merrick and Davis, as follows, was introduced and adopted:

HOUSE CONCURRENT RESOLUTION NO. 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.

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That a committee of two members from the Senate and three members from the House of Representatives be appointed to wait upon the governor, and inform the governor that the two houses of the legislature are duly organized and are ready to receive any communications the governor may have to present.

In accordance with **HCR 5001**, Speaker Merrick appointed Reps. Meigs, Proehl and Grant to wait upon the Governor

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

Speaker Merrick announced the referral of the following bills to committees as indicated:

Elections: **HB 2001**.

Judiciary: **HB 2002**.

On motion of Rep. Vickrey, the House recessed until 2:00 p.m.

AFTERNOON SESSION

The House met pursuant to recess with Speaker Merrick in the chair.

MESSAGE FROM THE GOVERNOR

Governor Brownback's Message Regarding the Special Session for Repairing Kansas' "Hard 50" Sentence

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.

MESSAGE FROM THE SENATE

Announcing adoption of **SR 1701**.

REPORTS OF STANDING COMMITTEES

Committee on **Judiciary** recommends **HB 2002** be amended on page 1, in line 34, by striking “may” and inserting “shall”;

On page 2, in line 24, by striking “sufficient” and inserting “presumed”; in line 25, by striking “aggravating circumstance” and inserting “prior conviction or convictions”;

On page 3, in line 21, by striking “If any person who served on the trial jury is”; by striking all in lines 22 through 29; in line 30, by striking “defendant’s sentence.”; in line 31, by striking “may” and inserting “shall”;

On page 4, in line 27, by striking “sufficient” and inserting “presumed”; also in line 27, by striking “aggravating”; in line 28, by striking “circumstance” and inserting “prior conviction or convictions”; and the bill be passed as amended.

On motion of Rep. Vickrey, the House recessed until 3:30 p.m.

 LATE AFTERNOON SESSION

The House met pursuant to recess with Speaker Merrick in the chair.

The House stood at ease until the sound of the gavel.

Speaker Merrick called the House to order.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

HB 2003, AN ACT concerning appropriations for the fiscal years ending June 30, 2014, and June 30, 2015; relating to the Kansas department for aging and disability services, by Representatives Ballard, Carlin, Grant, Henry and Lane.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to committee as indicated:

Calendar and Printing: **HB 2003**.

INTRODUCTION OF ORIGINAL MOTIONS

On emergency motion of Rep. Vickrey, to advance **HB 2002** to Final Action on Bills and Concurrent Resolutions, subject to amendment, debate and roll call, roll call was taken.

On roll call, the vote was: Yeas 122; Nays 0; Present but not voting: 0; Absent or not voting: 3.

Yeas: Alcalá, Alford, Ballard, Barker, Becker, Bideau, Boldra, Bollier, Bradford, Bridges, Bruchman, Brunk, Burroughs, C-Lovelady, Campbell, Carlin, Carlson, Cassidy, Christmann, Claeys, Clayton, Concannon, Corbet, Crum, Davis, DeGraaf, Dierks, Dillmore, Doll, Dove, Edmonds, Edwards, Esau, Estes, Ewy, Finch, Finney, Frownfelter, Gandhi, Garber, Goico, Gonzalez, Grant, Grosserode, Hawkins, Henderson, Henry, Hibbard, Highland, Hildabrand, Hill, Hineman, Hoffman, Houser, Houston, Howell, Huebert, Hutton, Jennings, Johnson, Jones, Kahrs, Kelley, Kelly, Kiegerl, Kinzer, Kleeb, Kuether, Lane, Lunn, Lusk, Macheers, Mast, McPherson, Meier, Meigs, Menghini, Merrick, Montgomery, Moxley, O'Brien, Osterman, Pauls, Peck, Perry, Peterson, Petty, Phillips, Powell, Proehl, Read, Rhoades, Rooker, Rothlisberg, Rubin, Ruiz, Jr. Ryckman, Sr. Ryckman, Sawyer, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Sloan, Sloop, Suellentrop, Sutton, Swanson, Thimesch, Tietze, Todd, Trimmer, Vickrey, Victors, Ward, Waymaster, Weigel, Whipple, Wilson, Winn, Wolfe Moore.

Nays: None.

Present but not voting: None.

Absent or not voting: Carpenter, Hedke, Hermanson.

The motion prevailed and **HB 2002** was advanced to Final Action on Bills and Concurrent Resolutions, subject to amendment, debate and roll call.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

Committee report to **HB 2002** was adopted;

On motion of Rep. Whipple to amend **HB 2002**, the motion was withdrawn.

On motion of Rep. Ward to amend **HB 2002**, Rep. Kinzer requested a ruling on the amendment being germane to the bill. The Rules Chair ruled the amendment not germane.

HB 2002, AN ACT concerning crimes, punishment and criminal procedure; relating to sentencing of certain persons to mandatory minimum term of imprisonment of 40 or 50 years; amending K.S.A. 2012 Supp. 21-6620 and 21-6624 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 122; Nays 0; Present but not voting: 0; Absent or not voting: 3.

Yeas: Alcalá, Alford, Ballard, Barker, Becker, Bideau, Boldra, Bollier, Bradford, Bridges, Bruchman, Brunk, Burroughs, C-Lovelady, Campbell, Carlin, Carlson, Cassidy, Christmann, Claeys, Clayton, Concannon, Corbet, Crum, Davis, DeGraaf, Dierks, Dillmore, Doll, Dove, Edmonds, Edwards, Esau, Estes, Ewy, Finch, Finney, Frownfelter, Gandhi, Garber, Goico, Gonzalez, Grant, Grosserode, Hawkins, Henderson, Henry, Hibbard, Highland, Hildabrand, Hill, Hineman, Hoffman, Houser, Houston, Howell, Huebert, Hutton, Jennings, Johnson, Jones, Kahrs, Kelley, Kelly, Kiegerl, Kinzer, Kleeb, Kuether, Lane, Lunn, Lusk, Macheers, Mast, McPherson, Meier, Meigs, Menghini, Merrick, Montgomery, Moxley, O'Brien, Osterman, Pauls, Peck, Perry, Peterson, Petty, Phillips, Powell, Proehl, Read, Rhoades, Rooker, Rothlisberg, Rubin, Ruiz, Jr. Ryckman, Sr. Ryckman, Sawyer, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Sloan, Sloop, Suellentrop, Sutton, Swanson, Thimesch, Tietze, Todd, Trimmer, Vickrey, Victors, Ward, Waymaster, Weigel, Whipple, Wilson, Winn, Wolfe Moore.

Nays: None.

Present but not voting: None.

Absent or not voting: Carpenter, Hedke, Hermanson.

The bill passed, as amended.

On motion of Rep. Vickrey, the House adjourned until 8:00 a.m., Wednesday, September 4, 2013.

CHARLENE SWANSON, *Journal Clerk.*

SUSAN W. KANNARR, *Chief Clerk.*

