

Journal of the House

SEVENTY-EIGHTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Wednesday, May 31, 2017, 10:00 a.m.

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

The roll was called with 124 members present.
Rep. Jacobs was excused on excused absence by the Speaker.

Prayer by Chaplain Brubaker:

Lord God,
We come before you today,
perhaps a bit weary but still grateful for another day.
Strength will wise as we wait upon You,
so we wait and ask that you please bring strength to our leaders
physically, emotionally, intellectually and relationally.
As they continue their discussions,
help them to be strong and take heart and wait for You.
Remind them often that the fruit of righteousness will be peace;
the effect of righteousness will be quietness and confidence forever.
And Lord, may they be encouraged to think often throughout the day that
“Those who hope in the Lord
will renew their strength.
They will soar on wings like eagles;
they will run and not grow weary,
they will walk and not be faint.”
I ask this in Your Son’s Name,
Amen.
(Isaiah 40:31)

The Pledge of Allegiance was led by Rep. Dierks.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to committees as indicated:
Appropriations: **HB 2429**, **HB 2430**.

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

On emergency motion of Rep. Ballard, **HR 6035**, by Reps. Ballard, Highberger, Sloan and Wilson, as follows, was introduced and adopted:

HOUSE RESOLUTION No. **HR 6035**—

by Representatives Ballard, Highberger, Sloan and Wilson

HR 6035—A RESOLUTION recognizing Chancellor Bernadette Gray-Little's dedicated service to the University of Kansas and the state of Kansas.

A RESOLUTION recognizing Chancellor Bernadette Gray-Little's dedicated service to the University of Kansas and the State of Kansas.

WHEREAS, The University of Kansas was founded in 1865 as the state university for the State of Kansas and is now recognized as one of the nation's top public institutions; and

WHEREAS, In 2009, Bernadette Gray-Little became the 17th chancellor of the University of Kansas; and

WHEREAS, After a remarkable eight-year term in which she guided KU to unprecedented success, elevated the university's national stature, and transformed how the university serves the state, the country, and the world, Chancellor Gray-Little will be stepping down this summer of 2017; and

WHEREAS, KU's mission is to lift students and society by educating leaders, building healthy communities, and making discoveries that change the world; and

WHEREAS, Chancellor Gray-Little advanced KU's mission to educate leaders by implementing new admissions standards, launching a new undergraduate curriculum, strengthening the university's scholarship offerings, prioritizing retention and graduation rates, increasing the size of the freshman class for five consecutive years, and reinvigorating the university's academic environment; and

WHEREAS, Chancellor Gray-Little has advanced KU's mission to build healthy communities by expanding the School of Medicine to a four-year program in Wichita, establishing a new School of Medicine program in Salina, doubling the number of students studying to be pharmacists with the expansion of the School of Pharmacy in Lawrence and the new division in Wichita, and by overseeing the University of Kansas Cancer Center's successful application for National Cancer Institute Designation; and

WHEREAS, Chancellor Gray-Little has advanced KU's mission to make discoveries by securing funding for the Foundation Distinguished Faculty Initiative, along with overseeing multiple all-time high annual awards of federal funding to KU for research; and

WHEREAS, Chancellor Gray-Little has demonstrated courage, compassion and foresight by leading university conversations on sexual assault, diversity and inclusion, campus safety, sustainability, and the living and working environment on campus; and

WHEREAS, Chancellor Gray-Little has overseen KU's efforts to invigorate the Kansas economy by creating new jobs, launching startup companies, fostering corporate partnerships, licensing new technologies, developing an engineering initiative to increase the number of engineering graduates, and cultivating an entrepreneurial mindset among faculty, staff and students; and

WHEREAS, Chancellor Gray-Little has led a physical transformation of KU's

campuses by securing support for Capitol Federal Hall, the Health Education Building, Self and Oswald Halls, the Central District Redevelopment Project, the DeBruce Center, and the Earth, Energy and Environment Center, as well as major renovations to Swarhout Recital Hall, the Spencer Museum of Art, and Jayhawk Boulevard; and

WHEREAS, Chancellor Gray-Little was instrumental to KU's record-setting Far Above campaign, which raised \$1.66 billion in private gifts to support scholarships, faculty research and other key initiatives; and

WHEREAS, While her term as chancellor would be considered historic based on her successes and achievements alone, Chancellor Gray-Little will also be remembered as the first woman and first African-American chancellor in KU's history; and

WHEREAS, In addition to her remarkable technical skills, Chancellor Gray-Little has led with dignity, grace and humility and, as such, has served as a role model and inspiration to students, staff, faculty and colleagues throughout the state: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That we commend Chancellor Bernadette Gray-Little's transformative leadership at the University of Kansas during the past eight years, thank her for her dedicated service to the University of Kansas, the State of Kansas and the entire field of higher education, and wish her, her husband, Shade Little, and their family happiness and health in the future; and

Be it further resolved: That the Chief Clerk of the House of Representatives shall send five enrolled copies of this resolution to Representative Ballard.

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

Chancellor Gray-Little:

It is our honor to welcome you to the Kansas House of Representatives today. We are pleased to recognize you for eight (8) years of outstanding service to the University of Kansas, the faculty, staff and students, as well as the community and the State of Kansas. You have made a positive difference at the University of Kansas.

Chancellor Gray-Little focused on recruiting throughout Kansas, the region and the nation, four year renewable scholarships, and quick admissions decisions. Many alumni report that "The change has been like night and day. Because of Bernadette's leadership, the Jayhawks are united in our determination to pursue the most promising students throughout Kansas and beyond."

Chancellor Gray-Little closed the ceremony with a farewell address to graduating seniors. She urged the Class of 2017 to "run toward the chaos. Run toward the situation where you can make a difference. Use the knowledge and the sense of civic responsibility you've developed at KU to improve those situations, help people and make this world a better place."

After leading KU since 2009, Chancellor Gray-Little is stepping down as Chancellor this summer. At graduation on May 14, 2017, Gray-Little offered an unusual public glimpse into her own college story.

"Like you, I, too, will soon be making a change as I step down as chancellor this summer, and like many of you, I'm feeling a combination of excitement and pride and happiness and sadness. You see, higher education changed my life."

Gray-Little remains focused on her public role until June 30. She will remain

available in Lawrence to advise her successor if needed, for the next academic year. However, it is important that the new chancellor knows this is his territory.

Chancellor Gray-Little possesses intelligence, patience, poise, grace and dignity. She clearly articulated her vision and her sincerity resonated with people. The University of Kansas will miss you. We will miss you.

The Chancellor and her husband, Shade Little, have three grandchildren, and eventually may return to their home state of North Carolina.

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

AFTERNOON SESSION

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

MESSAGES FROM THE SENATE

The Senate accedes to the request of the House for a conference on **Sub HB 2230** and has appointed Senators Tyson, Kerschen and Holland as conferees on the part of the Senate.

The Senate accedes to the request of the House for a conference on **HB 2067** and has appointed Senators Tyson, Kerschen and Holland as conferees on the part of the Senate.

Announcing passage of **HB 2186**, as amended by **S Sub for HB 2186**.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Hineman, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **HB 2092**, **HB 2313**.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2092** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee of the Whole amendments, as follows:

On page 14, following line 42, by inserting:

"Section 1. K.S.A. 2016 Supp. 21-6620 is hereby amended to read as follows: 21-6620. (a) (1) Except as provided in subsection (a)(2) and K.S.A. 2016 Supp. 21-6618 and 21-6622, and amendments thereto, if a defendant is convicted of the crime of capital murder and a sentence of death is not imposed pursuant to ~~subsection (e) of~~ K.S.A. 2016 Supp. 21-6617~~(e)~~, and amendments thereto, or requested pursuant to ~~subsection (a) or (b) of~~ K.S.A. 2016 Supp. 21-6617~~(a) or (b)~~, and amendments thereto, the defendant shall be sentenced to life without the possibility of parole.

(2) (A) Except as provided in subsection (a)(2)(B), a defendant convicted of attempt to commit the crime of capital murder shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of

sentence. In addition, the defendant shall not be eligible for parole prior to serving 25 years' imprisonment, and such 25 years' imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

(B) The provisions of subsection (a)(2)(A) requiring the court to impose a mandatory minimum term of imprisonment of 25 years shall not apply if the court finds the defendant, because of the defendant's criminal history classification, ~~is~~ would be subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range ~~exceeds~~ would exceed 300 months if the sentence established for a severity level 1 crime was imposed. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established for a severity level 1 crime pursuant to the sentencing range. The defendant shall not be eligible for parole prior to serving such mandatory minimum term of imprisonment, and such mandatory minimum term of imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

(b) The provisions of this subsection shall apply only to the crime of murder in the first degree as described in ~~subsection (a)(2)~~ of K.S.A. 2016 Supp. 21-5402(a)(2), and amendments thereto, committed on or after July 1, 2014.

(1) Except as provided in subsection (b)(2), a defendant convicted of murder in the first degree as described in ~~subsection (a)(2)~~ of K.S.A. 2016 Supp. 21-5402(a)(2), and amendments thereto, shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, the defendant shall not be eligible for parole prior to serving 25 years' imprisonment, and such 25 years' imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

(2) The provisions of subsection (b)(1) requiring the court to impose a mandatory minimum term of imprisonment of 25 years shall not apply if the court finds the defendant, because of the defendant's criminal history classification, ~~is~~ would be subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range ~~exceeds~~ would exceed 300 months if the sentence established for a severity level 1 crime was imposed. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established for a severity level 1 crime pursuant to the sentencing range. The defendant shall not be eligible for parole prior to serving such mandatory minimum term of imprisonment, and such mandatory minimum term of imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

(c) The provisions of this subsection shall apply only to the crime of murder in the first degree based upon the finding of premeditated murder committed on or after July 1, 2014.

(1) (A) Except as provided in subsection (c)(1)(B), a defendant convicted of murder in the first degree based upon the finding of premeditated murder shall be sentenced pursuant to K.S.A. 2016 Supp. 21-6623, and amendments thereto, unless the sentencing judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose the sentence specified in subsection (c)(2).

(B) The provisions of subsection (c)(1)(A) requiring the court to impose the mandatory minimum term of imprisonment required by K.S.A. 2016 Supp. 21-6623, and amendments thereto, shall not apply if the court finds the defendant, because of the defendant's criminal history classification, ~~is~~ would be subject to presumptive

imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range ~~exceeds~~ would exceed 600 months if the sentence established for a severity level 1 crime was imposed. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established for a severity level 1 crime pursuant to the sentencing range. The defendant shall not be eligible for parole prior to serving such mandatory minimum term of imprisonment, and such mandatory minimum term of imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

(2) (A) If the sentencing judge does not impose the mandatory minimum term of imprisonment required by K.S.A. 2016 Supp. 21-6623, and amendments thereto, the judge shall state on the record at the time of sentencing the substantial and compelling reasons therefor, and, except as provided in subsection (c)(2)(B), the defendant shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, the defendant shall not be eligible for parole prior to serving 25 years' imprisonment, and such 25 years' imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

(B) The provisions of subsection (c)(2)(A) requiring the court to impose a mandatory minimum term of imprisonment of 25 years shall not apply if the court finds the defendant, because of the defendant's criminal history classification, ~~is~~ would be subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range ~~exceeds~~ would exceed 300 months if the sentence established for a severity level 1 crime was imposed. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established for a severity level 1 crime pursuant to the sentencing range. The defendant shall not be eligible for parole prior to serving such mandatory minimum term of imprisonment, and such mandatory minimum term of imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

(d) The provisions of this subsection shall apply only to the crime of murder in the first degree based upon the finding of premeditated murder committed on or after September 6, 2013, but prior to July 1, 2014.

(1) If a defendant is convicted of murder in the first degree based upon the finding of premeditated murder, upon reasonable notice by the prosecuting attorney, the court shall determine, in accordance with this subsection, whether the defendant shall be required to serve a mandatory minimum term of imprisonment of 50 years or sentenced as otherwise provided by law.

(2) The court shall conduct a separate proceeding following the determination of the defendant's guilt for the jury to determine whether one or more aggravating circumstances exist. Such proceeding shall be conducted by the court before a jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the proceeding, the court may conduct such proceeding before a jury which may have 12 or less jurors, but at no time less than six jurors. If the jury has been discharged prior to the proceeding, a new jury shall be impaneled. Any decision of the jury regarding the existence of an aggravating circumstance shall be beyond a reasonable doubt. Jury selection procedures, qualifications of jurors and

grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such jury. The jury at the proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the jury at the proceeding has been waived, such proceeding shall be conducted by the court.

(3) In the proceeding, evidence may be presented concerning any matter relating to any of the aggravating circumstances enumerated in K.S.A. 2016 Supp. 21-6624, and amendments thereto. Only such evidence of aggravating circumstances as the prosecuting attorney has made known to the defendant prior to the proceeding shall be admissible and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the time of the proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(4) At the conclusion of the evidentiary portion of the proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations. If the prosecuting attorney relies on ~~subsection (a)~~ of K.S.A. 2016 Supp. 21-6624(a), and amendments thereto, as an aggravating circumstance, and the court finds that one or more of the defendant's prior convictions satisfy such subsection, the jury shall be instructed that a certified journal entry of a prior conviction is presumed to prove the existence of such prior conviction or convictions beyond a reasonable doubt.

(5) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 2016 Supp. 21-6624, and amendments thereto, exist, the jury shall designate, in writing, signed by the foreman of the jury, the statutory aggravating circumstances which it found. If, after a reasonable time for deliberation, the jury is unable to reach a unanimous sentencing decision, the court shall dismiss the jury and the defendant shall be sentenced as provided by law. In nonjury cases, the court shall designate, in writing, the specific circumstance or circumstances which the court found beyond a reasonable doubt.

(6) If one or more of the aggravating circumstances enumerated in K.S.A. 2016 Supp. 21-6624, and amendments thereto, are found to exist beyond a reasonable doubt pursuant to this subsection, the defendant shall be sentenced pursuant to K.S.A. 2016 Supp. 21-6623, and amendments thereto, unless the sentencing judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose the sentence specified in this paragraph. If the sentencing judge does not impose the mandatory minimum term of imprisonment required by K.S.A. 2016 Supp. 21-6623, and amendments thereto, the judge shall state on the record at the time of sentencing the substantial and compelling reasons therefor, and the defendant shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, the defendant shall not be eligible for parole prior to serving 25 years' imprisonment, and such 25 years' imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

(e) The provisions of this subsection shall apply only to the crime of murder in the first degree based upon the finding of premeditated murder committed prior to September 6, 2013.

(1) If a defendant is convicted of murder in the first degree based upon the finding of premeditated murder, upon reasonable notice by the prosecuting attorney, the court

shall conduct a separate sentencing proceeding in accordance with this subsection to determine whether the defendant shall be required to serve a mandatory minimum term of imprisonment of 40 years or for crimes committed on and after July 1, 1999, a mandatory minimum term of imprisonment of 50 years or sentenced as otherwise provided by law.

(2) The sentencing proceeding shall be conducted by the court before a jury as soon as practicable. If the trial jury has been discharged prior to sentencing, a new jury shall be impaneled. Any decision to impose a mandatory minimum term of imprisonment of 40 or 50 years shall be by a unanimous jury. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such jury. The jury at the sentencing proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the jury at the sentencing proceeding has been waived, such proceeding shall be conducted by the court.

(3) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 2016 Supp. 21-6624, and amendments thereto, or for crimes committed prior to July 1, 2011, K.S.A. 21-4636, prior to its repeal, and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the prosecuting attorney has made known to the defendant prior to the sentencing proceeding shall be admissible and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. Only such evidence of mitigating circumstances subject to discovery pursuant to K.S.A. 22-3212, and amendments thereto, that the defendant has made known to the prosecuting attorney prior to the sentencing proceeding shall be admissible. No testimony by the defendant at the time of sentencing shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(4) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations. If the prosecuting attorney relies on ~~subsection (a) of~~ K.S.A. 2016 Supp. 21-6624(a), and amendments thereto, or for crimes committed prior to July 1, 2011, ~~subsection (a) of~~ K.S.A. 21-4636(a), prior to its repeal, as an aggravating circumstance, and the court finds that one or more of the defendant's prior convictions satisfy such subsection, the jury shall be instructed that a certified journal entry of a prior conviction is presumed to prove the existence of such prior conviction or convictions beyond a reasonable doubt.

(5) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 2016 Supp. 21-6624, and amendments thereto, or for crimes committed prior to July 1, 2011, K.S.A. 21-4636, prior to its repeal, exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced pursuant to K.S.A. 2016 Supp. 21-6623, and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The sentencing jury shall designate, in writing, signed by the foreman of the jury, the

statutory aggravating circumstances which it found. The trier of fact may make the findings required by this subsection for the purpose of determining whether to sentence a defendant pursuant to K.S.A. 2016 Supp. 21-6623, and amendments thereto, notwithstanding contrary findings made by the jury or court pursuant to ~~subsection (e)~~ of K.S.A. 2016 Supp. 21-6617(e), and amendments thereto, for the purpose of determining whether to sentence such defendant to death. If, after a reasonable time for deliberation, the jury is unable to reach a unanimous sentencing decision, the court shall dismiss the jury and the defendant shall be sentenced as provided by law. In nonjury cases, the court shall designate in writing the specific circumstance or circumstances which the court found beyond a reasonable doubt.

(f) The amendments to subsection (e) by chapter 1 of the 2013 Session Laws of Kansas (Special Session):

(1) Establish a procedural rule for sentencing proceedings, and as such shall be construed and applied retroactively to all crimes committed prior to the effective date of this act, except as provided further in this subsection; (2) shall not apply to cases in which the defendant's conviction and sentence were final prior to June 17, 2013, unless the conviction or sentence has been vacated in a collateral proceeding, including, but not limited to, K.S.A. 22-3504 or 60-1507, and amendments thereto; and (3) shall apply only in sentencing proceedings otherwise authorized by law.

(g) Notwithstanding the provisions of subsection (h), for all cases on appeal on or after September 6, 2013, if a sentence imposed under this section, prior to amendment by chapter 1 of the 2013 Session Laws of Kansas (Special Session), or under K.S.A. 21-4635, prior to its repeal, is vacated for any reason other than sufficiency of the evidence as to all aggravating circumstances, resentencing shall be required under this section, as amended by chapter 1 of the 2013 Session Laws of Kansas (Special Session), unless the prosecuting attorney chooses not to pursue such a sentence.

(h) In the event any sentence imposed under this section is held to be unconstitutional, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall sentence such person to the maximum term of imprisonment otherwise provided by law.

(i) If any provision or provisions of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or provisions or application, and to this end the provisions of this section are severable.

Sec. 2. K.S.A. 2016 Supp. 21-6622 is hereby amended to read as follows: 21-6622. (a) If, under K.S.A. 2016 Supp. 21-6617, and amendments thereto, the county or district attorney has filed a notice of intent to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death and the defendant is convicted of the crime of capital murder, the defendant's counsel or the warden of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is a person with intellectual disability. If the court determines that there is not sufficient reason to believe that the defendant is a person with intellectual disability, the court shall so find and the defendant shall be sentenced in accordance with K.S.A. 2016 Supp. 21-6617, 21-6619, 21-6624, 21-6625, 21-6628 and 21-6629, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is a person with intellectual disability, the court shall conduct a hearing to determine whether the

defendant is a person with intellectual disability.

(b) If a defendant is convicted of the crime of capital murder and a sentence of death is not imposed, or if a defendant is convicted of the crime of murder in the first degree based upon the finding of premeditated murder, the defendant's counsel or the warden of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is a person with intellectual disability. If the court determines that there is not sufficient reason to believe that the defendant is a person with intellectual disability, the court shall so find and the defendant shall be sentenced in accordance with K.S.A. 2016 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is a person with intellectual disability, the court shall conduct a hearing to determine whether the defendant is a person with intellectual disability.

(c) At the hearing, the court shall determine whether the defendant is a person with intellectual disability. The court shall order a psychiatric or psychological examination of the defendant. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the defendant and report their findings in writing to the judge within 14 days after the order of examination is issued. The defendant shall have the right to present evidence and cross-examine any witnesses at the hearing. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.

(d) If, at the conclusion of a hearing pursuant to subsection (a), the court determines that the defendant is not a person with intellectual disability, the defendant shall be sentenced in accordance with K.S.A. 2016 Supp. 21-6617, 21-6619, 21-6624, 21-6625, 21-6628 and 21-6629, and amendments thereto.

(e) If, at the conclusion of a hearing pursuant to subsection (b), the court determines that the defendant is not a person with intellectual disability, the defendant shall be sentenced in accordance with K.S.A. 2016 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto.

(f) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is a person with intellectual disability, the court shall sentence the defendant as otherwise provided by law, and no sentence of death, life without the possibility of parole, or mandatory term of imprisonment pursuant to K.S.A. 2016 Supp. 21-6623, 21-6624 and 21-6625, and amendments thereto, shall be imposed hereunder.

(g) Unless otherwise ordered by the court for good cause shown, the provisions of subsection (b) shall not apply if it has been determined, pursuant to a hearing granted under the provisions of subsection (a), that the defendant is not a person with intellectual disability.

(h) As used in this section, "intellectual disability" means having significantly subaverage general intellectual functioning, as defined by K.S.A. 76-12b01, and amendments thereto, to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law.

Sec. 3. K.S.A. 2016 Supp. 21-6623 is hereby amended to read as follows: 21-6623.

When it is provided by law that a person shall be sentenced pursuant to this section, such person shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of sentence. Except as otherwise provided in this section, in addition, a person sentenced pursuant to this section shall not be eligible for parole prior to serving 40 years' imprisonment, and such 40 years' imprisonment shall not be reduced by the application of good time credits. For crimes committed ~~on and~~ or after July 1, 1999, a person sentenced pursuant to this section shall not be eligible for parole prior to serving 50 years' imprisonment, and such 50 years' imprisonment shall not be reduced by the application of good time credits. For crimes committed on or after July 1, 2006, a mandatory minimum term of imprisonment of 50 years shall not apply if the court finds that the defendant, because of the defendant's criminal history classification, ~~is~~ would be subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range ~~exceeds would exceed~~ 600 months if the sentence established for a severity level 1 crime was imposed. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established for a severity level 1 crime pursuant to the sentencing range, the defendant shall not be eligible for parole prior to serving such mandatory minimum term of imprisonment, and such mandatory minimum term of imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted. Upon sentencing a defendant pursuant to this section, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced pursuant to K.S.A. 2016 Supp. 21-6623, and amendments thereto.

Sec. 4. K.S.A. 2016 Supp. 21-6627 is hereby amended to read as follows: 21-6627. (a) (1) Except as provided in subsection (b) or (d), a defendant who is 18 years of age or older and is convicted of the following crimes committed on or after July 1, 2006, shall be sentenced to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 25 years unless the court determines that the defendant should be sentenced as determined in subsection (a)(2):

(A) Aggravated human trafficking, as defined in ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-5426 ~~(b)~~, and amendments thereto, if the victim is less than 14 years of age;

(B) rape, as defined in ~~subsection (a)(3) of~~ K.S.A. 2016 Supp. 21-5503 ~~(a)(3)~~, and amendments thereto;

(C) aggravated indecent liberties with a child, as defined in ~~subsection (b)(3) of~~ K.S.A. 2016 Supp. 21-5506 ~~(b)(3)~~, and amendments thereto;

(D) aggravated criminal sodomy, as defined in ~~subsection (b)(1) or (b)(2) of~~ K.S.A. 2016 Supp. 21-5504 ~~(b)(1) or (b)(2)~~, and amendments thereto;

(E) commercial sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto, if the victim is less than 14 years of age;

(F) sexual exploitation of a child, as defined in ~~subsection (a)(1) or (a)(4) of~~ K.S.A. 2016 Supp. 21-5510 ~~(a)(1) or (a)(4)~~, and amendments thereto, if the child is less than 14 years of age; and

(G) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 2016 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of an offense defined in subsections (a)(1)(A) through (a)(1)(F).

(2) The provision of subsection (a)(1) requiring a mandatory minimum term of imprisonment of not less than 25 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to K.S.A. 2016 Supp. 21-6626, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, ~~is~~ would be subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range ~~exceeds~~ would exceed 300 months if the sentence established for a severity level 1 crime was imposed. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established for a severity level 1 crime pursuant to the sentencing range.

(b) (1) On and after July 1, 2006, if a defendant who is 18 years of age or older is convicted of a crime listed in subsection (a)(1) and such defendant has previously been convicted of a crime listed in subsection (a)(1), a crime in effect at any time prior to July 1, 2011, which is substantially the same as a crime listed in subsection (a)(1) or a crime under a law of another jurisdiction which is substantially the same as a crime listed in subsection (a)(1), the court shall sentence the defendant to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 40 years. The provisions of this paragraph shall not apply to a crime committed under K.S.A. 2016 Supp. 21-5507, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as K.S.A. 2016 Supp. 21-5507, and amendments thereto.

(2) The provision of subsection (b)(1) requiring a mandatory minimum term of imprisonment of not less than 40 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to K.S.A. 2016 Supp. 21-6626, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, ~~is~~ would be subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range ~~exceeds~~ would exceed 480 months if the sentence established for a severity level 1 crime was imposed. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established for a severity level 1 crime pursuant to the sentencing range.

(c) When a person is sentenced pursuant to subsection (a) or (b), such person shall be sentenced to a mandatory minimum term of imprisonment of not less than 25 years, 40 years or be sentenced as determined in subsection (a)(2) or subsection (b)(2), whichever is applicable, and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, a person sentenced pursuant to this section shall not be eligible for parole prior to serving such mandatory term of imprisonment, and such imprisonment shall not be reduced by the application of good time credits. Except as provided in subsection (d), no other sentence shall be permitted.

(d) (1) On or after July 1, 2006, for a first time conviction of an offense listed in subsection (a)(1), the sentencing judge shall impose the mandatory minimum term of imprisonment provided by subsection (a), unless the judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose a departure. If the sentencing judge departs from such mandatory minimum term of imprisonment, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. The departure sentence shall be the sentence pursuant to the revised Kansas sentencing guidelines act, article 68 of

chapter 21 of the Kansas Statutes Annotated, and amendments thereto, and, subject to the provisions of K.S.A. 2016 Supp. 21-6818, and amendments thereto, no sentence of a mandatory minimum term of imprisonment shall be imposed hereunder.

(2) As used in this subsection, "mitigating circumstances" shall include, but are not limited to, the following:

- (A) The defendant has no significant history of prior criminal activity;
 - (B) the crime was committed while the defendant was under the influence of extreme mental or emotional disturbances;
 - (C) the victim was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor;
 - (D) the defendant acted under extreme distress or under the substantial domination of another person;
 - (E) the capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired; and
 - (F) the age of the defendant at the time of the crime.
- (e) The provisions of K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2016 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, shall not apply to any defendant sentenced pursuant to this section.

Sec. 5. K.S.A. 2016 Supp. 21-6810 is hereby amended to read as follows: 21-6810. (a) Criminal history categories contained in the sentencing guidelines grids are based on the following types of prior convictions: Person felony adult convictions, nonperson felony adult convictions, person felony juvenile adjudications, nonperson felony juvenile adjudications, person misdemeanor adult convictions, nonperson class A misdemeanor adult convictions, person misdemeanor juvenile adjudications, nonperson class A misdemeanor juvenile adjudications, select class B nonperson misdemeanor adult convictions, select class B nonperson misdemeanor juvenile adjudications and convictions and adjudications for violations of municipal ordinances or county resolutions which are comparable to any crime classified under the state law of Kansas as a person misdemeanor, select nonperson class B misdemeanor or nonperson class A misdemeanor. A prior conviction is any conviction, other than another count in the current case, which was brought in the same information or complaint or which was joined for trial with other counts in the current case pursuant to K.S.A. 22-3203, and amendments thereto, which occurred prior to sentencing in the current case, regardless of whether the offense that led to the prior conviction occurred before or after the current offense or the conviction in the current case.

(b) A class B nonperson select misdemeanor is a special classification established for weapons violations. Such classification shall be considered and scored in determining an offender's criminal history classification.

(c) Except as otherwise provided, all convictions, whether sentenced consecutively or concurrently, shall be counted separately in the offender's criminal history.

(d) Except as provided in K.S.A. 2016 Supp. 21-6815, and amendments thereto, the following are applicable to determining an offender's criminal history classification:

- (1) Only verified convictions will be considered and scored.
- (2) All prior adult felony convictions, including expungements, will be considered and scored. Prior adult felony convictions for offenses that were committed before July 1, 1993, shall be scored as a person or nonperson crime using a comparable offense

under the Kansas criminal code in effect on the date the current crime of conviction was committed.

(3) There will be no decay factor applicable for:

(A) Adult convictions;

~~(B) a juvenile adjudication for an offense which would constitute a nondrug severity level 1 through 4 person felony if committed by an adult. Prior juvenile adjudications for offenses that were committed before July 1, 1993, shall be scored as a person or nonperson crime using a comparable offense under the Kansas criminal code in effect on the date the current crime of conviction was committed;~~

~~(C) a juvenile adjudication for an offense committed before July 1, 1993, which would have been a class A, B or C felony, if committed by an adult. Prior juvenile adjudications for offenses that were committed before July 1, 1993, shall be scored as a person or nonperson crime using a comparable offense under the Kansas criminal code in effect on the date the current crime of conviction was committed;~~ or

~~(D)(C) a juvenile adjudication for an offense committed on or after July 1, 1993, which would be an off-grid felony, or a nondrug severity level 1 through 4 felony, if committed by an adult.~~

(4) Except as otherwise provided, a juvenile adjudication will decay if the current crime of conviction is committed after the offender reaches the age of 25, and the juvenile adjudication is for an offense:

(A) Committed before July 1, 1993, which would have been a class D or E felony, if committed by an adult;

(B) committed on or after July 1, 1993, which would be a nondrug severity level 5 through 10, ~~a non-grid felony, a nongrid~~ felony or any drug felony, if committed by an adult; or

(C) which would be a misdemeanor, if committed by an adult.

(5) A juvenile adjudication will not be considered and scored if:

(A) The current crime of conviction is committed at least five years after the date of the prior adjudication;

(B) the offender has no new adjudications or convictions during such five-year period; and

(C) the juvenile adjudication is for an offense that would be a nondrug severity level 5 through 10 felony, drug felony, nongrid felony or misdemeanor, if committed by an adult.

~~(6)~~ All person misdemeanors, class A nonperson misdemeanors and class B select nonperson misdemeanors, and all municipal ordinance and county resolution violations comparable to such misdemeanors, shall be considered and scored. Prior misdemeanors for offenses that were committed before July 1, 1993, shall be scored as a person or nonperson crime using a comparable offense under the Kansas criminal code in effect on the date the current crime of conviction was committed.

~~(7)~~ Unless otherwise provided by law, unclassified felonies and misdemeanors, shall be considered and scored as nonperson crimes for the purpose of determining criminal history.

~~(8)~~ Prior convictions of a crime defined by a statute ~~which that~~ has since been repealed shall be scored using the classification assigned at the time of such conviction.

~~(9)~~ Prior convictions of a crime defined by a statute ~~which that~~ has since been determined unconstitutional by an appellate court shall not be used for criminal history

scoring purposes.

~~(9)~~(10) Prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored.

(e) The amendments made to this section by ~~this act~~ section 1 of chapter 5 of the 2015 Session Laws of Kansas are procedural in nature and shall be construed and applied retroactively.";

On page 17, following line 21, by inserting:

"Sec. 7. K.S.A. 2016 Supp. 22-3001 is hereby amended to read as follows: 22-3001. (a) A majority of the district judges in any judicial district may order a grand jury to be summoned in any county in the district when it is determined to be in the public interest.

(b) The district or county attorney in such attorney's county may petition the chief judge or the chief judge's designee in such district court to order a grand jury to be summoned in the designated county in the district to consider any alleged felony law violation, including any alleged misdemeanor law violation which arises as part of the same criminal conduct or investigation. The attorney general in any judicial district may petition the chief judge or the chief judge's designee in such judicial district to order a grand jury to be summoned in the designated county in the district to consider any alleged felony law violation, including any alleged misdemeanor law violation which arises as part of the same criminal conduct or investigation, if authorized by the district or county attorney in such judicial district or if jurisdiction is otherwise authorized by law. The chief judge or the chief judge's designee in the district court of the county shall then consider the petition and, if it is found that the petition is in proper form, as set forth in this subsection, shall order a grand jury to be summoned within 15 days after receipt of such petition.

(c) (1) A grand jury shall be summoned in any county within 60 days after a petition praying therefor is presented to the district court, bearing the signatures of a number of electors equal to 100 plus 2% of the total number of votes cast for governor in the county in the last preceding election.

(2) The petition, upon its face, shall state the name, address and phone number of the person filing the petition, the subject matter of the prospective grand jury, a reasonably specific identification of areas to be inquired into and sufficient general allegations to warrant a finding that such inquiry may lead to information which, if true, would warrant a true bill of indictment.

(3)(A) The petition shall be in substantially the following form:

The undersigned qualified electors of the county of _____ and state of Kansas hereby request that the district court of _____ county, Kansas, within 60 days after the filing of this petition, cause a grand jury to be summoned in the county to investigate alleged violations of law and to perform such other duties as may be authorized by law.

(B) (i) The signatures to the petition need not all be affixed to one paper, but each paper to which signatures are affixed shall have substantially the foregoing form written or printed at the top thereof. Each signer shall add to such signer's signature such signer's place of residence, giving the street and number or rural route number, if any. One of the signers of each paper shall verify upon oath that each signature appearing on

the paper is the genuine signature of the person whose name it purports to be and that such signer believes that the statements in the petition are true.

(ii) The petition shall be filed in the office of the clerk of the district court who shall forthwith transmit it to the county election officer, who shall determine whether the persons whose signatures are affixed to the petition are qualified electors of the county. Thereupon, the county election officer shall return the petition to the clerk of the district court, together with such election officer's certificate stating the number of qualified electors of the county whose signatures appear on the petition and the aggregate number of votes cast for all candidates for governor in the county in the last preceding election.

(iii) The judge or judges of the district court of the county shall then consider the petition and, if it is found that the petition is in proper form and bears the signatures of the required number of electors, a grand jury shall be ordered to be summoned. If a grand jury is not summoned because of a finding that the petition, substantially in the form required by this subsection on its face, is not in proper form, the person who filed the petition and whose name, address and phone number appear on the face of each petition shall have the right to appeal the decision to not summon a grand jury as a final judgment pursuant to K.S.A. 22-3601, and amendments thereto.

(4) After a grand jury is summoned pursuant to this subsection, but before it begins deliberations, the judge or judges of the district court of the county in which the petition is presented shall provide instructions to the grand jury regarding its conduct and deliberations, which instructions shall include, but not be limited to, the following:

(A) You have been impaneled as a grand jury pursuant to a citizens' petition filed in this court, signed by (insert number) qualified electors of this county, stating (insert the subject matter described in the petition, including a reasonably specific identification of the areas to be inquired into and the allegations sufficient to warrant a finding that the grand jury's inquiry may lead to information which, if true, would warrant a true bill of indictment). You are charged with making inquiry with regard to this subject matter and determining whether the facts support allegations warranting a true bill of indictment.

(B) The person filing the citizens' petition filed in this court must be the first witness you call for the purpose of presenting evidence and testimony as to the subject matter and allegations of the petition.

(C) You may, with the approval of this court, employ special counsel and investigators, and incur such other expense for services and supplies as you and this court deem necessary. Any special counsel or investigator you employ shall be selected by a majority vote of your grand jury. You may make such selection only after hearing testimony from the person who filed the citizens' petition. You may utilize the services of any special counsel or investigator you employ instead of, or in addition to, the services of the prosecuting attorney.

(D) If any witness duly summoned to appear and testify before you fails or refuses to obey, compulsory process will be issued by this court to enforce the witness' attendance.

(E) If any witness appearing before you refuses to testify or to answer any questions asked in the course of the witness' examination, you shall communicate that fact to this court in writing, together with a statement regarding the question the witness refuses to answer. This court will determine and inform you of whether the witness is bound to answer or not. However, no witness appearing before you can be compelled to

make any statement which will incriminate such witness.

(F) Any person may file a written request with the prosecuting attorney or with the foreman of the grand jury and request to testify or retestify in an inquiry before a grand jury or to appear before a grand jury. Any written request shall include a summary of such person's written testimony.

(G) At the conclusion of your inquiry and determination, you will return either a no bill of indictment or a true bill of indictment.

(d) The grand jury shall consist of 15 members and shall be drawn, qualified and summoned in the same manner as petit jurors for the district court. Twelve members thereof shall constitute a quorum. The judge or judges ordering the grand jury shall direct that a sufficient number of legally qualified persons be summoned for service as grand jurors. In the case of grand juries impaneled pursuant to subsection (c), the judge or judges ordering the grand jury shall allow the person that filed the petition under the provisions of subsection (c)(2), and such person's attorney, to witness the instructions to the grand jury regarding its conduct and deliberations pursuant to subsection (c)(4).";

On page 23, following line 18, by inserting:

"Sec. 9. K.S.A. 2016 Supp. 25-3601 is hereby amended to read as follows: 25-3601. (a) Subject to the provisions of subsection (d), if a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of K.S.A. 25-3601 et seq., and amendments thereto, shall apply. The sufficiency of each signature and the number thereof on any such petition shall be determined in accordance with the provisions of K.S.A. 25-3601 ~~to~~ through 25-3607, ~~inclusive~~; and amendments thereto, by the county election officer or such other official as designated in the applicable statute. Except as provided herein, a copy of any petition requesting an election in any political or taxing subdivision of the state shall be submitted to the office of the county attorney of the county or district attorney of the district in which all or the greater portion of the political or taxing subdivision is located. If a county counselor has been appointed in the county or district, the petition shall be submitted to the county counselor. The petition shall be submitted either by hand-delivery or by certified mail, return receipt requested. Such petition shall contain the question to be submitted at the election. Within five business days following submission of the petition, the county counselor, county attorney or district attorney shall furnish a written advisory opinion as to the legality of the form of the question contained on the petition. There shall be a rebuttable presumption that the form of any question approved by the county counselor, county attorney or district attorney complies with the requirements of this act. If such opinion is not furnished within five days of submission of the question, the form of the question shall be deemed in compliance with the requirements of this act.

If the advisory opinion states that the form of the question contained in the petition does not comply with the requirements of this act, such advisory opinion shall also state specific grounds to support such determination.

Nothing in this subsection shall be construed as prohibiting the circulation of a petition for signatures or the filing of such petition with the county election officer prior to obtaining the advisory opinion required by this subsection.

(b) Any person challenging the validity of the form of a question shall have the burden of proving in the district court that the form of the question is invalid.

(c) The form of any question in a petition requesting an election on or protesting an ordinance, or resolution, adopted by the governing body of any county, city, school district or other municipality shall be presumed to be valid and in compliance with the requirements of K.S.A. 25-3601 et seq., and amendments thereto, if such petition states the title, number and exact language of the ordinance, or resolution, and the title of such petition states:

"Shall the following ordinance, or resolution, become effective?"

(d) When any other statute imposes specific requirements which are different from the requirements imposed by K.S.A. 25-3601 et seq., and amendments thereto, the provisions of the specific statute shall control. The county election officer or other official with whom the petition is required to be filed in accordance with the applicable statute shall give to persons requesting information regarding the filing of petitions a copy of K.S.A. 25-620 and article 36 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto.

(e) Any action challenging the validity of the form of a question in a petition shall be filed in the district court within 20 days after such petition has been filed with the county election officer.

The court shall render an opinion in any action filed to challenge the validity of the form of a question in a petition within 20 days after the date such action is filed with the court.

(f) The provisions of K.S.A. 25-3601 et seq., and amendments thereto, shall not apply to recall petitions as described in K.S.A. 25-4301 et seq., and amendments thereto, or a grand jury petition as described in K.S.A. 22-3001(c), and amendments thereto.";

Also on page 23, in line 21, before "22-2302" by inserting "21-6620, 21-6622, 21-6623, 21-6627, 21-6810,"; also in line 21, by striking "and" and inserting ", 22-3001,"; also in line 21, after "22-3716" by inserting "and 25-3601";

And by renumbering sections accordingly;

On page 1, in the title, in line 2, before "warrants" by inserting "sentencing; mandatory minimum terms of imprisonment; persons with intellectual disabilities convicted of capital murder; criminal history classification of juvenile adjudications,"; in line 3, by striking "conditions of probation, revocation;" and inserting "sufficiency of grand jury petitions; right to appeal; revocation of nonprison sanctions,"; in line 5, before "22-2302" by inserting "21-6620 , 21-6622, 21-6623, 21-6627, 21-6810,"; also in line 5, by striking "and" and inserting ", 22-3001,"; also in line 5, after "22-3716" by inserting "and 25-3601";

And your committee on conference recommends the adoption of this report.

RICHARD E. WILBORN

JULIA LYNN

DAVID HALEY

Conferees on part of Senate

RUSS JENNINGS

JOHN R. WHITMER

DENNIS "BOOG" HIGHBERGER

Conferees on part of House

On motion of Rep. Whitmer, the conference committee report on **HB 2092** was adopted.

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

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, 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: Jacobs.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2313** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee amendments, as follows:

On page 4, following line 28, by inserting:

"No more than two lottery ticket vending machines may be located at each Kansas lottery retailer selling location.";

On page 9, in line 5, by striking all after "(k)"; by striking all in line 6; in line 7, by striking all before the period and inserting "'Facility owner licensee" shall have the same meaning as that term is defined in K.S.A. 74-8802, and amendments thereto.

(l) "Racetrack gaming facility manager" shall have the same meaning as that term is defined in K.S.A. 74-8702, and amendments thereto.

(m) "Lottery gaming facility manager" shall have the same meaning as that term is defined in K.S.A. 74-8702, and amendments thereto.

(n) "Prize" shall have the same meaning as that term is defined in K.S.A. 74-8702, and amendments thereto, and any winnings from parimutuel wagering as provided by the Kansas parimutuel racing act, K.S.A. 74-8801 et seq., and amendments thereto";

Also on page 9, by striking all in lines 8 through 35; in line 40, by striking all after "director"; in line 41, by striking all before "may";

On page 10, in line 1, by striking all after "or"; in line 2, by striking "vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 10, by striking all after "a"; in line 11, by striking "vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility

owner licensee"; in line 14, by striking all before "with" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 16, by striking "third party vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 18, after "debts" by inserting "by a lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 29, by striking "third party vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 31, by striking "third party vendor, as agent of the state," and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 35, by striking "third party"; in line 36, by striking "vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 38, by striking "third party vendor is acting strictly as agent for the state and" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 41, by striking "third party vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 42, by striking "third party vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee";

On page 11, in line 3, by striking "third party vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee";

On page 12, in line 6, after "(5)" by inserting "transfers to the community crisis stabilization centers fund and clubhouse model program fund of the Kansas department for aging and disability services pursuant to subsection (e);

(6) ";

Also on page 12, in line 7, after the stricken material by inserting "and"; in line 8, by striking the semicolon; by striking all in lines 9 through 11; in line 12, by striking all before the period; in line 20, by striking "(4)" and inserting "(5)"; in line 27, by striking all after the first comma; by striking all in lines 28 through 43;

On page 13, in line 1, by striking all before the period and inserting "during fiscal year 2018 through fiscal year 2022, on or before the 10th day of each month, the director of the lottery shall certify to the director of accounts and reports all net profits from the sale of lottery tickets and shares via lottery ticket vending machines. Of such certified amount, the director of accounts and reports shall transfer 75% from the lottery operating fund to the community crisis stabilization centers fund of the Kansas department for aging and disability services and 25% from the lottery operating fund to the clubhouse model program fund of the Kansas department for aging and disability services";

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

Also on page 13, following line 27, by inserting:

"Sec. 8. K.S.A. 2016 Supp. 75-5173 is hereby amended to read as follows: 75-5173. As used in this act:

(a) "Act" means the Kansas charitable gaming act.

(b) "Administrator" means the administrator of charitable gaming designated by the secretary pursuant to K.S.A. 2016 Supp. 75-5186, and amendments thereto.

(c) "Bingo" or "games of bingo" means the games of call bingo and instant bingo.

(d) "Bingo face" or "face" means a piece of paper which is marked off into 25 squares arranged in five horizontal rows of five squares each and five vertical rows of

five squares each, with each square being designated by a number, letter or combination of numbers and letters. Only the center square shall be designated with the word "free." No two bingo faces in the same game shall be identical. Faces shall be disposable and shall not be reused after the game in which a player has used such face.

(e) "Call bingo" means a game in which: (1) Each player pays a charge; (2) a prize or prizes are awarded to the winner or winners; (3) each player receives one or more cards or faces; and (4) each player covers the squares on each card or face as the operator of such game announces a number, letter or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically from a receptacle in which have been placed objects bearing numbers, letters or combinations of numbers and letters corresponding to the system used for designating the squares. The winner of each game is the player or players first covering properly a predetermined and announced pattern of squares upon the card or face being used by such player or players.

"Call bingo" shall include any regular, special, mini and progressive game of bingo.

(f) "Charitable gaming" means bingo, including call bingo, and instant bingo and charitable raffles.

(g) "Charitable raffle" means a raffle conducted by a nonprofit religious, charitable, fraternal, educational or veterans' organization.

(h) "Department" means the department of revenue.

(i) "Director" means the director of taxation.

(j) "Distributor" means any person or entity that sells or distributes instant bingo tickets, bingo cards or bingo faces.

(k) "Electronic gaming device" means a device that, as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value.

(l) "Instant bingo" means a game: (1) In which each player pays a charge; (2) in which a prize or prizes are awarded to the winner or winners; (3) in which each player receives one or more disposable pull-tab or break-open tickets which accord a player an opportunity to win something of value by opening or detaching the paper covering from the back of the ticket to reveal a set of numbers, letters, symbols or configurations, or any combination thereof; (4) which is conducted by a licensee under this act; (5) ~~the conduct of which must be in the presence of the players~~ which may be dispensed by an instant bingo vending machine; and (6) which does not utilize any dice, normal playing cards, instant ticket with a removable latex covering or slot machines.

Winners of instant bingo shall be determined either: (1) By a combination of letters, numbers or symbols determined and posted prior to the sale of instant bingo tickets; (2) by matching a letter, number or symbol under a tab of an instant bingo ticket with the winning letter, number or symbol in a designated call game of bingo during the same session; or (3) by matching a letter, number or symbol under a tab of an instant bingo ticket with one or more letters, numbers or symbols announced in, or as a continuation of, a designated call game of bingo during the same session.

"Instant bingo" ~~shall not~~ may include any bingo game utilizing electronically generated or computer-generated tickets from an instant bingo vending machine.

(m) (1) "Instant bingo vending machine" means a machine or electronic device owned or leased by a licensee, with no more than two such machines located at each

licensee's premises where bingo is conducted, the purposes of which are to:

(A) Dispense a printed instant bingo ticket after the purchaser inserts cash or other form of consideration into the machine; and

(B) allow purchasers to manually check the winning status of the instant bingo ticket.

(2) "Instant bingo vending machine" shall not:

(A) Provide a visual or audio representation of an electronic gaming machine;

(B) visually or functionally have the same characteristics of an electronic gaming machine;

(C) automatically determine or display the winning status of any dispensed instant bingo ticket;

(D) extend or arrange credit for the purchase of an instant bingo ticket;

(E) dispense any winnings;

(F) dispense any prize;

(G) dispense any evidence of a prize other than the instant bingo ticket;

(H) provide free instant bingo tickets or any other item that can be redeemed for cash; or

(I) dispense any other form of a prize to a purchaser.

(n) "Lessor" means the owner, co-owner, lessor or sublessor of premises upon which a licensee is permitted to manage, operate or conduct games of bingo.

(o) "Licensee" means any nonprofit organization holding a license to manage, operate or conduct games of bingo or charitable raffles pursuant to K.S.A. 2016 Supp. 75-5171 through 75-5188, and amendments thereto. A license shall be required for each affiliated organization of any state or national nonprofit religious, charitable, fraternal, educational or veteran's organization.

(p) "Mini bingo" means a game of call bingo in which the prizes awarded are not less than 50% of the gross receipts derived from the sale of cards or faces for participation in the game.

(q) "Net proceeds" means the gross receipts received by the licensee from charges imposed on players for participation in games of bingo or raffles and any admission fees or charges less amounts actually paid as prizes in games of bingo or raffles and any tax payable by the licensee.

(r) "Nonprofit religious organization" means any organization, church, body of communicants, or group, gathered in common membership for mutual support and edification in piety, worship, and religious observances, or a society of individuals united for religious purposes at a definite place and of which no part of the net earnings inures to the benefit of any private shareholder or individual member of such organization, and which religious organization maintains an established place of worship within this state and has a regular schedule of services or meetings at least on a weekly basis and has been determined by the administrator to be organized and created as a bona fide religious organization and which has been exempted from the payment of federal income taxes as provided by section 501(c)(3) or section 501(d) of the federal internal revenue code of 1986, as amended, or determined to be organized and operated as a bona fide nonprofit religious organization by the administrator.

(s) "Nonprofit charitable organization" means any organization which is organized and operated for:

(1) The relief of poverty, distress, or other condition of public concern within this

state;

(2) financially supporting the activities of a charitable organization as defined in paragraph (1); or

(3) conferring direct benefits on the community at large; and of which no part of the net earnings inures to the benefit of any private shareholder or individual member of such organization and has been determined by the administrator to be organized and operated as a bona fide charitable organization and which has been exempted from the payment of federal income taxes as provided by sections 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6) and 501(c)(7) of the federal internal revenue code of 1986, as amended, or determined to be organized and operated as a bona fide nonprofit charitable organization by the administrator.

~~(s)~~(t) "Nonprofit fraternal organization" means any organization within this state which exists for the common benefit, brotherhood, or other interests of its members and is authorized by its written constitution, charter, articles of incorporation or bylaws to engage in a fraternal, civic or service purpose within this state and has been determined by the administrator to be organized and operated as a bona fide fraternal organization and which has been exempted from the payment of federal income taxes as provided by section 501(c)(8) or section 501(c)(10) of the federal internal revenue code of 1986, as amended, or determined to be organized and operated as a bona fide nonprofit fraternal organization by the administrator.

~~(r)~~(u) "Nonprofit educational organization" means any public or private elementary or secondary school or institution of higher education which has been determined by the administrator to be organized and operated as a bona fide educational organization and which has been exempted from the payment of federal income taxes as provided by section 501(c)(3) of the federal internal revenue code of 1986, as amended, or determined to be organized and operated as a bona fide nonprofit educational organization by the administrator.

~~(q)~~(v) "Nonprofit veterans' organization" means any organization within this state or any branch, lodge or chapter of a national or state organization within this state, the membership of which consists exclusively of individuals who qualify for membership because they were or are members of the armed services or forces of the United States, or an auxiliary unit or society of such a nonprofit veterans' organization, the membership of which consists exclusively of individuals who were or are members of the armed services or forces of the United States, or are cadets, or are spouses, widows or widowers of individuals who were or are members of the armed services or forces of the United States, and of which no part of the net earnings inures to the benefit of any private shareholder or individual member of such organization, and has been determined by the administrator to be organized and operated as a bona fide veterans' organization and which has been exempted from the payment of federal income taxes as provided by section 501(c)(4) or 501(c)(19) of the federal internal revenue code of 1986, as amended, or determined to be organized and operated as a bona fide nonprofit veterans' organization by the administrator.

~~(p)~~(w) "Person" means any natural person, corporation, partnership, trust or association.

~~(o)~~(x) "Premises" means any room, hall, building, enclosure or outdoor area used for the management, operation or conduct of a game of bingo by a licensee.

~~(n)~~(y) "Progressive bingo" means a game of call bingo in which either the

established prize amount or number of bingo balls or objects called, or both, may be increased from one session to the next scheduled session if no player completes the required pattern within the specified number of bingo balls or objects drawn. The player's opportunity to win shall increase as the prize amount increases.

~~(y)~~(z) "Raffle" means a game of chance in which each participant buys a ticket or tickets from a nonprofit organization with each ticket providing an equal chance to win a prize and the winner being determined by a random drawing.

~~(z)~~(aa) "Reusable bingo card" means a reusable card which is marked off into 25 squares arranged in five horizontal rows of five squares each and five vertical rows of five squares each, with each square being designated by a number, letter or combination of numbers and letters. Only the center square shall be designated with the word "free." No two cards in the same game shall be identical.

(aa)(bb) "Secretary" means the secretary of revenue or the secretary's designee.

~~(bb)~~(cc) "Session" means a day on which a licensee conducts games of bingo." Also on page 13, in line 28, by striking "and 75-6203"; in line 29, after "74-8723," by inserting "75-5173,";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking "the Kansas lottery" and inserting "gaming"; in line 2, before "repealing" by inserting "dealing with instant bingo vending machines,;" in line 3, after the first semicolon by inserting "concerning certain"; also in line 3, by striking "with third party vendors"; in line 4, by striking "and 75-6203"; in line 5, by striking the first "and" and inserting a comma; also in line 5, after "74-8711" by inserting "and 75-5173";

And your committee on conference recommends the adoption of this report.

BUD ESTES
 ROB OLSON
 OLETHA FAUST-GOUDEAU
Conferees on part of Senate

JOHN E. BARKER
 RONALD L. HIGHLAND
 LOUIS E. RUIZ
Conferees on part of House

On motion of Rep. Barker to adopt the conference committee report to **HB 2313**, Rep. Carmichael rose on a point of order, stating the conference committee report is in violation of Joint Rule 3(f) of the Joint Rules of the Senate and House of Representatives.

The ruling from the chair was that the conference committee report was in order. Rep. Carmichael challenged the ruling of the chair. The ruling of the chair was sustained.

Also, Rep. Helgeson offered a substitute motion to not adopt the conference committee report to **HB 2313**, and a new conference committee be appointed. The motion prevailed.

Speaker pro tem Schwab thereupon appointed Reps. Barker, Highland and Ruiz as second conferees.

REPORT ON ENROLLED RESOLUTIONS

HCR 5015 reported correctly enrolled and properly signed on May 31, 2017.

On motion of Rep. Hineman, the House adjourned until 10:00 a.m., Thursday, June 1, 2017.

**In the House Of Representatives
Of The State Of Kansas**

Protest of Representative Jim Ward
Substitute for House Bill 2410
May 31, 2017

Mr. Speaker:

Pursuant to Article 2, Section 10, of the Constitution of the State of Kansas I lodge this protest against Substitute for House Bill No. 2410. On May 16, 2017, the House Committee on K-12 Budget passed out Substitute for House Bill 2410, a bill dealing with the Kansas school funding formula and appropriating money to K-12 education. The bill was heard, debated and amended by the House Committee of the Whole on May 24, 2017 and recommended favorably for passage. Final action was taken by the full House on May 25, 2017, and the bill was passed and forwarded to the Senate for its consideration.

The Kansas Constitution in Article 6, Section 6, subsection (b) provides “The legislature shall make suitable provision for the finance of the educational interests of the state.” Over the last 30 years the Kansas Supreme Court has heard several lawsuits challenging the legislature’s failure to meet this constitutional obligation. The Court has identified two basic constitutional requirements in school finance cases, equitable distribution of funds calculated to meet each child’s educational needs and adequate funding so that schools can meet the demands placed upon them.

The Court’s most recent decision in *Gannon v. State of Kansas, et. al.*, ____ Kan. ____, Docket No. 113,267, March 2, 2017, found that “Under the facts of this case, the state’s public education financing system provided by the legislature for grades K-12, through its structure and implementation, is not reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), and as presently codified in K.S.A. 2016 Supp. 72-1127.”

The Court further directed that “Once a new financing system is enacted, the State will have to satisfactorily demonstrate to this court by June 30, 2017, that its proposed remedy is reasonably calculated to address the constitutional violations identified, as well as comports with previously identified constitutional mandates such as equity.”

Substitute for HB 2410 is an attempt to meet the legislature’s constitutional duty and the Court’s decision. Unfortunately, it fails in several significant areas.

1. Adequate funding. HB 2410 provides only \$286 million in new money in the

next two school years to K-12. This means the per pupil amount will only grow from \$4,006 to \$4,190 over that same period, that is \$210 less than 2009, the last year funding was deemed constitutional. In the best-case scenario, Substitute for HB 2410 doesn't even get to \$4,400 in school year 2022-2023.

The Kansas State Board of Education has recommended \$893 million in new money over the same period. The cost studies commissioned by the legislature estimate need for \$1.4 billion of new money. By whatever measurement used, it is clear Substitute for HB 2410 is woefully inadequate in funding our schools putting us in clear violation of Kansas Constitution.

2. Substitute for House Bill 2410 creates a situation where 40 of the 287 school districts in Kansas lose money totaling of \$7.4 million. It is not reasonable to believe these schools will increase achievement with decreased resources, nor is there any evidence showing these 40 districts are all performing at or above the constitutional standards without additional funds.
3. Substitute for HB 2410 adds \$2,593,452 in one-time money for school districts with extraordinary declining enrollment. There is no cost-based reasoning for this funding making it difficult to defend based on equity
4. Districts with less than 10% at-risk students can calculate their at-risk student population at 10%. This will provide \$2 million in additional money a year to only two districts. There is no cost-based reasoning for this funding making it difficult to defend based on equity. The rationale is to pay for children struggling but who don't meet the definition of at-risk. Many other districts have more children struggling than those that receive free lunches and they are not receiving additional funding.
5. Prior Local Option Budget authorization is grandfathered in this bill providing 44 districts an extra \$30 million funding due to an additional 3% of LOB authority. There is no cost-based reasoning for this funding making it difficult to defend based on equity.
6. Declining Enrollment Levy is allowed for two districts. These districts will be able to raise \$3.7 million from increases in their LOB above 31%. Low valuation districts are not able to access these funds and resulting an inequity.
7. Ancillary Levy allows districts to acquire additional money to defray the costs associated with commencing the operation of new facilities. It benefits primarily five districts with \$24 million additional local funding that is not equalized.
8. LOB equalization changes create inequity by changing the assessed valuation per pupil (AVPP) from calculating on current year to using prior year numbers, then after FY 2019 changes again to an average of the prior three years. This method will delay equalization to districts with declining AVPP and allows some districts with increasing AVPP to retain unwarranted equalization money.

9. Capital Outlay Equalization changes operate in the same manner as LOB equalization and will result in the same inequality.
10. Expansion of Capital Outlay Fund Usage to include utility expenses is dis-equalizing. It moves operating expenses (utilities) to Capital Outlay and is very harmful to less wealthy districts who cannot raise property taxes to cover these additional expenses.
11. Miscellaneous Problems:
 - a. Tax Credit for Low Income Students Scholarship (TCLISS) Program Act contributes nothing to adequacy problems but drains resources away from state general funds needed to meet constitution responsibilities.
 - b. Virtual Schools continue despite having little or no data showing contribution to the outcomes necessary to meet constitutional responsibilities.

I therefore lodge this protest with the Chief Clerk of the Kansas House of Representatives for publication in the Journal of the House of Representatives pursuant to Article 2, Section 10 of the Constitution of the State of Kansas.

Jim Ward
Kansas House of Representatives
District 86

BECKIE HENDRICKS, JENNY HAUGH, JULIA WERNER, *Journal Clerks.*
SUSAN W. KANNARR, *Chief Clerk.*

