

# Journal of the Senate

FORTY-FIRST DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Wednesday, March 10, 2004—2:30 p.m.

The Senate was called to order by President Dave Kerr.  
The roll was called with thirty-nine senators present.  
Senator Corbin was excused.  
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Whoever said, "When I am right no one remembers; When I am wrong no one forgets" could have been a legislator.

When we vote the way  
The public wants,  
You can bet we get  
Not much response.

But if we vote against  
What they expect,  
Hundreds will want  
To wring our neck.

All the pressure  
And the way folks scold,  
And the stuff that bores  
Start to take their toll.

So we have to pause  
And cogitate  
About why we wanted  
To legislate.

Most of us wanted  
To help make  
The place we live  
A better state.

To help needy folks  
To meet their needs  
And to reveal the ones  
Consumed by greed.

Help us recall our vision, Lord,  
Help us never to lose sight  
Of the stars we sought through difficulty  
The stars which still are burning bright.

I pray in the name of the Christ,

AMEN

## REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:  
Assessment and Taxation: **HB 2599**.  
Federal and State Affairs: **HB 2732**.

## COMMUNICATIONS FROM STATE OFFICERS

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

March 10, 2004

Pursuant to K.S.A. 39-1806, which requires an independent, professional review of the rate structures, including recommendations to the Legislature, for the delivery of community services to Kansans with developmental disabilities, was submitted by Janet Schalansky, Secretary.

In 2003, the Department of Social and Rehabilitation Services contracted with the Public Consulting Group, Inc. to conduct the independent rate review. The report included recommendations regarding rate adjustments.

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

#### MESSAGE FROM THE HOUSE

Announcing passage of **HB 2487**.  
Also, passage of **SB 323**.

#### INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

**HB 2487** was thereupon introduced and read by title.

#### REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **SB 407** be passed.

Committee on **Financial Institutions and Insurance** recommends **HB 2580**, as amended by House Committee; **HB 2781** be passed.

Also, **SB 534** be amended on page 6, in line 40, by striking "licensee" and inserting "branch broker or supervising broker";

On page 7, in line 4, by striking "licensee" where it appears for the second time and inserting "branch broker or supervising broker"; in line 11, following "state" where it appears for the first time by inserting ", the jurisdiction of the Kansas real estate commission"; in line 15, by striking "it" and inserting "such foreign licensee"; in line 20, by striking "licensee" and inserting "branch broker or supervising broker"; in line 23, by striking "licensee" where it appears for the second time and inserting "branch broker or supervising broker"; in line 24, by striking "licensee" where it appears for the second time and inserting "branch broker or supervising broker"; in line 27, by striking "licensee" where it appears for the second time and inserting "branch broker or supervising broker"; in line 29, by striking "by its li-"; in line 30, by striking "censees"; following line 33, by inserting:

"(d) The provisions of this section shall be a part of and supplemental to the Kansas real estate brokers' and salespersons' license act."; and the bill be passed as amended.

Committee on Judiciary recommends **HB 2553**; **HB 2556**, **HB 2618**, both as amended by House Committee, be passed.

Committee on **Ways and Means** recommends **SB 552**, **SB 556** be passed.

#### REPORT ON ENROLLED BILLS

**SR 1823**, **SR 1824**, **SR 1825** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on March 9, 2004.

#### COMMITTEE OF THE WHOLE

On motion of Senator Oleen, the Senate resolved itself into Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Jackson in the chair.

On motion of Senator Jackson the following report was adopted:

Recommended **SB 487**, **SB 527** be passed.

**SB 529** be amended by adoption of the committee amendments, and the bill be passed as amended.

**SB 432** be amended by adoption of the committee amendments.

Senator Haley moved to amend **SB 432**, as amended by Senate Committee, on page 7, after line 12, by inserting the following:

"Sec. 3. K.S.A. 2003 Supp. 21-4716 is hereby amended to read as follows: 21-4716. (a) Except as provided in subsection (b), the sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines for crimes committed on or after July 1, 1993, unless the judge finds substantial and compelling reasons to impose a departure. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) Subject to the provisions of subsection (b) of K.S.A. 21-4718, and amendments thereto, any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be submitted to a jury and proved beyond a reasonable doubt.

(c) (1) Subject to the provisions of ~~subsection (b)(3)~~ *subparagraph (3)*, the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor is not sufficient as a complete defense.

(C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.

(D) The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(2) Subject to the provisions of ~~subsection (b)(3)~~ *subparagraph (3)*, the following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

(A) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.

(B) The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense.

(C) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim or the offense was motivated by the defendant's belief or perception, entirely or in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim whether or not the defendant's belief or perception was correct.

(D) The offense involved a fiduciary relationship which existed between the defendant and the victim.

(E) The defendant, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age to commit or assist in avoiding detection or apprehension for commission of any person felony or any attempt, conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto to commit any person felony regardless of whether the defendant knew the age of the individual under 16 years of age.

(F) The defendant's current crime of conviction is a crime of extreme sexual violence and the defendant is a predatory sex offender. As used in this subsection:

(i) "Crime of extreme sexual violence" is a felony limited to the following:

(a) A crime involving a nonconsensual act of sexual intercourse or sodomy with any person;

(b) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is 14 or more years of age but less than 16 years of age and with whom a relationship has been established or promoted for the primary purpose of victimization; or

(c) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is less than 14 years of age.

(ii) "Predatory sex offender" is an offender who has been convicted of a crime of extreme sexual violence as the current crime of conviction and who:

(a) Has one or more prior convictions of any crimes of extreme sexual violence. Any prior conviction used to establish the defendant as a predatory sex offender pursuant to this subsection shall also be counted in determining the criminal history category; or

(b) suffers from a mental condition or personality disorder which makes the offender likely to engage in additional acts constituting crimes of extreme sexual violence.

(iii) "Mental condition or personality disorder" means an emotional, mental or physical illness, disease, abnormality, disorder, pathology or condition which motivates the person, affects the predisposition or desires of the person, or interferes with the capacity of the person to control impulses to commit crimes of extreme sexual violence.

(G) The defendant was incarcerated during the commission of the offense.

(H) *The defendant, at the time of the commission of the crime, was in a position of authority over the victim. As used in this section, "position of authority" shall include, but not be limited to, a uniformed or properly identified state, county or city law enforcement officer.*

In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the crime severity scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(c) (d) In determining aggravating or mitigating circumstances, the court shall consider:

- (1) Any evidence received during the proceeding;
- (2) the presentence report;
- (3) written briefs and oral arguments of either the state or counsel for the defendant; and
- (4) any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable.”;

And by renumbering the remaining sections accordingly;

Also on page 7, in line 13, before “are” by inserting “and 21-4716”;

On page 1, in the title, in line 10, after “concerning” by inserting “criminal procedure; relating to sentencing; relating to”; in line 12, before “and” by inserting “and 21-4716”

The motion failed and the amendment was rejected.

The Committee recommended **SB 432** be passed as amended.

**SB 542** be amended by adoption of the committee amendments, be further amended by motion of Senator Allen, as amended by Senate Committee, on page 1, in line 24, after “policy” by inserting “covering individuals residing”, and **SB 542** be passed as further amended.

On motion of Senator Oleen the Senate adjourned until 2:30 p.m., Thursday, March 11, 2004.

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

PAT SAVILLE, *Secretary of the Senate.*

