

SENATE BILL No. 307

By Committee on Judiciary

1-19

1 AN ACT concerning criminal procedure; relating to jury instructions;
2 lesser included crimes; murder in the first degree; amending K.S.A.
3 2011 Supp. 22-3414 and repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2011 Supp. 22-3414 is hereby amended to read as
7 follows: 22-3414. (†) (a) The prosecuting attorney shall state the case and
8 offer evidence in support of the prosecution. The defendant may make an
9 opening statement prior to the prosecution's offer of evidence, or may
10 make such statement and offer evidence in support of such statement after
11 the prosecution rests.

12 (‡) (b) The parties may then respectively offer rebutting testimony
13 only, unless the court, for good cause, permits them to offer evidence upon
14 their original case.

15 (⊕) (c) (1) At the close of the evidence or at such earlier time during
16 the trial as the judge reasonably directs, any party may file written requests
17 that the court instruct the jury on the law as set forth in the requests. The
18 judge shall instruct the jury at the close of the evidence before argument
19 and the judge, in the judge's discretion, after the opening statements, may
20 instruct the jury on such matters as in the judge's opinion will assist the
21 jury in considering the evidence as it is presented.

22 (A) *Except as provided further*, in cases where there is some evidence
23 which would reasonably justify a conviction of some lesser included crime
24 as provided in subsection (b) of K.S.A. 2011 Supp. 21-5109, and
25 amendments thereto, the judge shall instruct the jury as to the crime
26 charged and any such lesser included crime.

27 (B) *In cases where the charge is murder in the first degree under*
28 *subsection (a)(2) of K.S.A. 2011 Supp. 21-5402, and amendments thereto,*
29 *instructions on any lesser included crime or crimes shall not be required*
30 *unless the evidence of the underlying felony or felonies is weak or*
31 *inconclusive. Except as provided further, the provisions of this subsection*
32 *shall be applied retroactively to any charge or conviction under subsection*
33 *(b) of K.S.A. 21-3401, prior to its repeal, in any legal challenge or*
34 *proceeding that comes before a district court or an appellate court. In*
35 *cases where the charge was first degree murder under subsection (b) of*
36 *K.S.A. 21-3401, prior to its repeal, or under subsection (a)(2) of K.S.A.*

1 2011 Supp. 21-5402, and amendments thereto, the judge instructed the
2 jury on a lesser included crime and the defendant was convicted of a
3 lesser included crime in lieu of the crime charged between July 1, 2011,
4 and July 1, 2012, the retroactivity provision of this subsection shall not be
5 used as the basis for setting aside, reversing or vacating such conviction.

6 (2) The court shall pass upon the objections to the instructions and
7 shall either give each instruction as requested or proposed or refuse to do
8 so, or give the requested instruction with modification. All instructions
9 given or requested must be filed as a part of the record of the case.

10 (3) The court reporter shall record all objections to the instructions
11 given or refused by the court, together with modifications made, and the
12 rulings of the court.

13 (4) No party may assign as error the giving or failure to give an
14 instruction, including a lesser included crime instruction, unless the party
15 objects thereto before the jury retires to consider its verdict stating
16 distinctly the matter to which the party objects and the grounds of the
17 objection unless the instruction or the failure to give an instruction is
18 clearly erroneous. Opportunity shall be given to make the objections out of
19 the hearing of the jury.

20 (4) (d) When the jury has been instructed, unless the case is submitted
21 to the jury on either side or on both sides without argument, the
22 prosecuting attorney may commence and may conclude the argument. If
23 there is more than one defendant, the court shall determine their relative
24 order in presentation of evidence and argument. In arguing the case,
25 comment may be made upon the law of the case as given in the
26 instructions, as well as upon the evidence.

27 Sec. 2. K.S.A. 2011 Supp. 22-3414 is hereby repealed.

28 Sec. 3. This act shall take effect and be in force from and after its
29 publication in the statute book.

30
31