

As Amended by House Committee

Session of 2012

Substitute for SENATE BILL No. 307

By Committee on Judiciary

2-13

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to lesser included crimes; murder in the first degree; **relating to time**
3 **limitations at trial**; amending K.S.A. **22-3402 and K.S.A.** 2011 Supp.
4 21-5109 and repealing the existing ~~section~~ **sections**.

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

7 Section 1. K.S.A. 2011 Supp. 21-5109 is hereby amended to read as
8 follows: 21-5109. (a) When the same conduct of a defendant may
9 establish the commission of more than one crime under the laws of this
10 state, the defendant may be prosecuted for each of such crimes. Each of
11 such crimes may be alleged as a separate count in a single complaint,
12 information or indictment.

13 (b) Upon prosecution for a crime, the defendant may be convicted of
14 either the crime charged or a lesser included crime, but not both. A lesser
15 included crime is:

16 (1) A lesser degree of the same crime, *except that there are no lesser*
17 *degrees of murder in the first degree under subsection (a)(2) of K.S.A.*
18 *2011 Supp. 21-5402, and amendments thereto;*

19 (2) a crime where all elements of the lesser crime are identical to
20 some of the elements of the crime charged;

21 (3) an attempt to commit the crime charged; or

22 (4) an attempt to commit a crime defined under paragraph (1) or (2).

23 (c) Whenever charges are filed against a person, accusing the person
24 of a crime which includes another crime of which the person has been
25 convicted, the conviction of the lesser included crime shall not bar
26 prosecution or conviction of the crime charged if the crime charged was
27 not consummated at the time of conviction of the lesser included crime,
28 but the conviction of the lesser included crime shall be annulled upon the
29 filing of such charges. Evidence of the person's plea or any admission or
30 statement made by the person in connection therewith in any of the
31 proceedings which resulted in the person's conviction of the lesser
32 included crime shall not be admissible at the trial of the crime charged. If
33 the person is convicted of the crime charged, or of a lesser included crime,
34 the person so convicted shall receive credit against any prison sentence
35 imposed or fine to be paid for the period of confinement actually served or
36 the amount of any fine actually paid under the sentence imposed for the

1 annulled conviction.

2 (d) Unless otherwise provided by law, when crimes differ only in that
3 one is defined to prohibit a designated kind of conduct generally and the
4 other to prohibit a specific instance of such conduct, the defendant:

5 (1) May not be convicted of the two crimes based upon the same
6 conduct; and

7 (2) shall be sentenced according to the terms of the more specific
8 crime.

9 (e) *Except as provided further, the amendments to subsection (b)(1)*
10 *by this act shall be applied retroactively to any charge or conviction under*
11 *subsection (b) of K.S.A. 21-3401, prior to its repeal, in any legal challenge*
12 *or proceeding that comes before a district court or an appellate court. In*
13 *cases where the charge was first degree murder under subsection (b) of*
14 *K.S.A. 21-3401, prior to its repeal, or under subsection (a)(2) of K.S.A.*
15 *2011 Supp. 21-5402, and amendments thereto, the judge instructed the*
16 *jury on a lesser included crime and the defendant was convicted of a*
17 *lesser included crime in lieu of the crime charged between July 1, 2011,*
18 *and July 1, 2012, the retroactivity provision of this section shall not be*
19 *used as the basis for setting aside, reversing or vacating such conviction.*

20 **Sec. 2. K.S.A. 22-3402 is hereby amended to read as follows: 22-**
21 **3402. ~~(1)~~ (a) If any person charged with a crime and held in jail solely**
22 **by reason thereof shall not be brought to trial within 90 days after**
23 **such person's arraignment on the charge, such person shall be entitled**
24 **to be discharged from further liability to be tried for the crime**
25 **charged, unless the delay shall happen as a result of the application or**
26 **fault of the defendant; or a continuance shall be ordered by the court**
27 **under subsection ~~(5)~~(e).**

28 ~~(2)~~(b) **If any person charged with a crime and held to answer on**
29 **an appearance bond shall not be brought to trial within 180 days after**
30 **arraignment on the charge, such person shall be entitled to be**
31 **discharged from further liability to be tried for the crime charged,**
32 **unless the delay shall happen as a result of the application or fault of**
33 **the defendant, or a continuance shall be ordered by the court under**
34 **subsection ~~(5)~~(e).**

35 ~~(3)~~(c) **If any trial scheduled within the time limitation prescribed**
36 **by subsection ~~(1) or (2)~~(a) or (b) is delayed by the application of or at**
37 **the request of the defendant, the trial shall be rescheduled within 90**
38 **days of the original trial deadline.**

39 ~~(4)~~(d) **After any trial date has been set within the time limitation**
40 **prescribed by subsection ~~(1) or (2)~~(a), (b) or (c), if the defendant fails**
41 **to appear for the trial or any pretrial hearing, and a bench warrant is**
42 **ordered, the trial shall be rescheduled within 90 days after the**
43 **defendant has been surrendered appeared in court after apprehension or**

1 *surrender on such warrant. However, if the defendant was subject to*
2 **the 180-day deadline prescribed by subsection ~~(2)~~(b) and more than 90**
3 **days of the original time limitation remain, then the original time**
4 **limitation remains in effect.**

5 ~~(5)~~(e) *For those situations not otherwise covered by subsections (a),*
6 *(b) or (c), the time for trial may be extended ~~beyond the limitations of~~*
7 *~~subsections (1) and (2)~~ for any of the following reasons:*

8 ~~(a)~~(1) **The defendant is incompetent to stand trial. If the**
9 **defendant is subsequently found to be competent to stand trial, the**
10 **trial shall be scheduled as soon as practicable and in any event within 90**
11 **days of such finding;**

12 ~~(b)~~(2) **A proceeding to determine the defendant's competency to**
13 **stand trial is pending ~~and a determination thereof may not be completed~~**
14 **~~within the time limitations fixed for trial by this section.~~ If the defendant**
15 **is subsequently found to be competent to stand trial, the trial shall be**
16 **scheduled as soon as practicable and in any event within 90 days of such**
17 **finding. However, if the defendant was subject to the 180-day deadline**
18 **prescribed by subsection (b) and more than 90 days of the original time**
19 **limitation remain, then the original time limitation remains in effect. The**
20 **time that a decision is pending on competency shall never be counted**
21 **against the state;**

22 ~~(c)~~(3) **There is material evidence which is unavailable; that**
23 **reasonable efforts have been made to procure such evidence; and that**
24 **there are reasonable grounds to believe that such evidence can be**
25 **obtained and trial commenced within the next succeeding 90 days. Not**
26 **more than one continuance may be granted the state on this ground,**
27 **unless for good cause shown, where the original continuance was for**
28 **less than 90 days, and the trial is commenced within 120 days from the**
29 **original trial date;**

30 ~~(d)~~(4) **Because of other cases pending for trial, the court does not**
31 **have sufficient time to commence the trial of the case within the time**
32 **fixed for trial by this section. Not more than one continuance of not**
33 **more than 30 days may be ordered upon this ground.**

34 ~~(e)~~(f) **In the event a mistrial is declared, a motion for new trial is**
35 **granted or a conviction is reversed on appeal to the supreme court or**
36 **court of appeals, the time limitations provided for herein shall**
37 **commence to run from the date the mistrial is declared, the date a new**
38 **trial is ordered or the date the mandate of the supreme court or court**
39 **of appeals is filed in the district court.**

40 (g) *If a delay is initially attributed to the defendant, but is*
41 *subsequently charged to the state for any reason, such delay shall not be*
42 *considered against the state under subsections (a), (b) or (c) and shall not*
43 *be used as a ground for dismissing a case or for reversing a conviction*

1 *unless not considering such delay would result in a violation of the*
2 *constitutional right to a speedy trial or there is prosecutorial misconduct*
3 *related to such delay.*

4 *(h) When a scheduled trial is scheduled within the period allowed by*
5 *subsections (a), (b) or (c) and is delayed because a party has made or*
6 *filed a motion, or because the court raises a concern on its own, the time*
7 *elapsing from the date of the making or filing of the motion, or the court's*
8 *raising a concern, until the matter is resolved by court order shall not be*
9 *considered when determining if a violation under subsections (a), (b) or*
10 *(c) has occurred. If the resolution of such motion or concern by court*
11 *order occurs at a time when less than 30 days remains under the*
12 *provisions of subsections (a), (b) or (c), the time in which the defendant*
13 *shall be brought to trial is extended 30 days from the date of the court*
14 *order.*

15 *(i) If the state requests and is granted a delay for any reason*
16 *provided in this statute, the time elapsing because of the order granting*
17 *the delay shall not be subsequently counted against the state if an*
18 *appellate court later determines that the district court erred by granting*
19 *the state's request unless not considering such delay would result in a*
20 *violation of the constitutional right to a speedy trial or there is*
21 *prosecutorial misconduct related to such delay.*

22 ~~Sec. 2. 3.~~ **K.S.A. 22-3402 and K.S.A. 2011 Supp. 21-5109** ~~is~~**are**
23 hereby repealed.

24 ~~Sec. 3-4.~~ This act shall take effect and be in force from and after its
25 publication in the statute book.