

HOUSE BILL No. 2387

By Committee on Federal and State Affairs

2-28

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to felony murder; capital murder; amending K.S.A. 2012 Supp. 21-
3 5402 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2012 Supp. 21-5402 is hereby amended to read as
7 follows: 21-5402. (a) Murder in the first degree is the killing of a human
8 being committed:

9 (1) Intentionally, and with premeditation; or

10 (2) in the commission of, attempt to commit, or flight from any
11 inherently dangerous felony.

12 (b) Murder in the first degree is an off-grid person felony.

13 (c) As used in this section, an "inherently dangerous felony" means:

14 (1) Any of the following felonies, whether such felony is so distinct
15 from the homicide alleged to be a violation of subsection (a)(2) as not to
16 be an ingredient of the homicide alleged to be a violation of subsection (a)
17 (2):

18 (A) Kidnapping, as defined in subsection (a) of K.S.A. 2012 Supp.
19 21-5408, and amendments thereto;

20 (B) aggravated kidnapping, as defined in subsection (b) of K.S.A.
21 2012 Supp. 21-5408, and amendments thereto;

22 (C) robbery, as defined in subsection (a) of K.S.A. 2012 Supp. 21-
23 5420, and amendments thereto;

24 (D) aggravated robbery, as defined in subsection (b) of K.S.A. 2012
25 Supp. 21-5420, and amendments thereto;

26 (E) rape, as defined in K.S.A. 2012 Supp. 21-5503, and amendments
27 thereto;

28 (F) aggravated criminal sodomy, as defined in subsection (b) of
29 K.S.A. 2012 Supp. 21-5504, and amendments thereto;

30 (G) abuse of a child, as defined in K.S.A. 2012 Supp. 21-5602, and
31 amendments thereto;

32 (H) felony theft of property, as defined in subsection (a)(1) or (a)(3)
33 of K.S.A. 2012 Supp. 21-5801, and amendments thereto;

34 (I) burglary, as defined in subsection (a) of K.S.A. 2012 Supp. 21-
35 5807, and amendments thereto;

36 (J) aggravated burglary, as defined in subsection (b) of K.S.A. 2012

1 Supp. 21-5807, and amendments thereto;

2 (K) arson, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5812,
3 and amendments thereto;

4 (L) aggravated arson, as defined in subsection (b) of K.S.A. 2012
5 Supp. 21-5812, and amendments thereto;

6 (M) treason, as defined in K.S.A. 2012 Supp. 21-5901, and
7 amendments thereto;

8 (N) any felony offense as provided in K.S.A. 2012 Supp. 21-5703,
9 21-5705 or 21-5706, and amendments thereto;

10 (O) any felony offense as provided in subsection (a) or (b) of K.S.A.
11 2012 Supp. 21-6308, and amendments thereto;

12 (P) endangering the food supply, as defined in subsection (a) of
13 K.S.A. 2012 Supp. 21-6317, and amendments thereto;

14 (Q) aggravated endangering the food supply, as defined in subsection
15 (b) of K.S.A. 2012 Supp. 21-6317, and amendments thereto;

16 (R) fleeing or attempting to elude a police officer, as defined in
17 subsection (b) of K.S.A. 8-1568, and amendments thereto;

18 (S) aggravated endangering a child, as defined in subsection (b)(1) of
19 K.S.A. 2012 Supp. 21-5601, and amendments thereto;

20 (T) abandonment of a child, as defined in subsection (a) of K.S.A.
21 2012 Supp. 21-5605, and amendments thereto; or

22 (U) aggravated abandonment of a child, as defined in subsection (b)
23 of K.S.A. 2012 Supp. 21-5605, and amendments thereto; and

24 (2) any of the following felonies, only when such felony is so distinct
25 from the homicide alleged to be a violation of subsection (a)(2) as to not
26 be an ingredient of the homicide alleged to be a violation of subsection (a)
27 (2):

28 (A) Murder in the first degree, as defined in subsection (a)(1);

29 (B) murder in the second degree, as defined in subsection (a)(1) of
30 K.S.A. 2012 Supp. 21-5403, and amendments thereto;

31 (C) voluntary manslaughter, as defined in subsection (a)(1) of K.S.A.
32 2012 Supp. 21-5404, and amendments thereto;

33 (D) aggravated assault, as defined in subsection (b) of K.S.A. 2012
34 Supp. 21-5412, and amendments thereto;

35 (E) aggravated assault of a law enforcement officer, as defined in
36 subsection (d) of K.S.A. 2012 Supp. 21-5412, and amendments thereto;

37 (F) aggravated battery, as defined in subsection (b)(1) of K.S.A. 2012
38 Supp. 21-5413, and amendments thereto; or

39 (G) aggravated battery against a law enforcement officer, as defined
40 in subsection (d) of K.S.A. 2012 Supp. 21-5413, and amendments thereto.

41 (d) *Murder in the first degree as defined in subsection (a)(2) is an*
42 *alternative method of proving murder in the first degree and is not a*
43 *separate crime from murder in the first degree as defined in subsection (a)*

1 *(1). The provisions of K.S.A. 21-5109, and amendments thereto, are not*
2 *applicable to murder in the first degree as defined in subsection (a)(2).*
3 *Murder in the first degree as defined in subsection (a)(2) is not a lesser*
4 *included offense of murder in the first degree as defined in subsection (a)*
5 *(1), and is not a lesser included offense of capital murder as defined in*
6 *K.S.A. 21-5401, and amendments thereto. As set forth in subsection (b) of*
7 *K.S.A. 21-5109, and amendments thereto, there are no lesser included*
8 *offenses of murder in the first degree under subsection (a)(2).*

9 *(e) The amendments to this section by this act establish a procedural*
10 *rule for the conduct of criminal prosecutions and shall be construed and*
11 *applied retroactively to all cases currently pending.*

12 Sec. 2. K.S.A. 2012 Supp. 21-5402 is hereby repealed.

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