

HOUSE BILL No. 2338

By Committee on Corrections and Juvenile Justice

2-12

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to murder in the first degree; inherently dangerous felony; amending
3 K.S.A. 2014 Supp. 21-5402 and repealing the existing section.

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

6 Section 1. K.S.A. 2014 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. 2014 Supp.
19 21-5408(a), and amendments thereto;

20 (B) aggravated kidnapping, as defined in ~~subsection (b) of~~ K.S.A.
21 2014 Supp. 21-5408(b), and amendments thereto;

22 (C) robbery, as defined in ~~subsection (a) of~~ K.S.A. 2014 Supp. 21-
23 5420(a), and amendments thereto;

24 (D) aggravated robbery, as defined in ~~subsection (b) of~~ K.S.A. 2014
25 Supp. 21-5420(b), and amendments thereto;

26 (E) rape, as defined in K.S.A. 2014 Supp. 21-5503, and amendments
27 thereto;

28 (F) aggravated criminal sodomy, as defined in ~~subsection (b) of~~
29 K.S.A. 2014 Supp. 21-5504(b), and amendments thereto;

30 (G) abuse of a child, as defined in K.S.A. 2014 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. 2014 Supp. 21-5801(a)(1) or (a)(3), and amendments thereto;

34 (I) burglary, as defined in ~~subsection (a) of~~ K.S.A. 2014 Supp. 21-
35 5807(a), and amendments thereto;

36 (J) aggravated burglary, as defined in ~~subsection (b) of~~ K.S.A. 2014

1 Supp. 21-5807(b), and amendments thereto;

2 (K) arson, as defined in ~~subsection (a)~~ of K.S.A. 2014 Supp. 21-
3 5812(a), and amendments thereto;

4 (L) aggravated arson, as defined in ~~subsection (b)~~ of K.S.A. 2014
5 Supp. 21-5812(b), and amendments thereto;

6 (M) treason, as defined in K.S.A. 2014 Supp. 21-5901, and
7 amendments thereto;

8 (N) any felony offense as provided in K.S.A. 2014 Supp. 21-5703,
9 21-5705 or 21-5706, and amendments thereto, *except that this section*
10 *shall not apply to a felony offense as provided in K.S.A. 2014 Supp. 21-*
11 *5703, 21-5705 or 21-5706, and amendments thereto, where the controlled*
12 *substance involved is marijuana;*

13 (O) any felony offense as provided in ~~subsection (a) or (b)~~ of K.S.A.
14 2014 Supp. 21-6308(a) or (b), and amendments thereto;

15 (P) endangering the food supply, as defined in ~~subsection (a)~~ of
16 K.S.A. 2014 Supp. 21-6317(a), and amendments thereto;

17 (Q) aggravated endangering the food supply, as defined in ~~subsection~~
18 ~~(b)~~ of K.S.A. 2014 Supp. 21-6317(b), and amendments thereto;

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

21 (S) aggravated endangering a child, as defined in ~~subsection (b)(1)~~ of
22 K.S.A. 2014 Supp. 21-5601(b)(1), and amendments thereto;

23 (T) abandonment of a child, as defined in ~~subsection (a)~~ of K.S.A.
24 2014 Supp. 21-5605(a), and amendments thereto; or

25 (U) aggravated abandonment of a child, as defined in ~~subsection (b)~~
26 ~~of~~ K.S.A. 2014 Supp. 21-5605(b), and amendments thereto; and

27 (2) any of the following felonies, only when such felony is so distinct
28 from the homicide alleged to be a violation of subsection (a)(2) as to not
29 be an ingredient of the homicide alleged to be a violation of subsection (a)
30 (2):

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

32 (B) murder in the second degree, as defined in ~~subsection (a)(1)~~ of
33 K.S.A. 2014 Supp. 21-5403(a)(1), and amendments thereto;

34 (C) voluntary manslaughter, as defined in ~~subsection (a)(1)~~ of K.S.A.
35 2014 Supp. 21-5404(a)(1), and amendments thereto;

36 (D) aggravated assault, as defined in ~~subsection (b)~~ of K.S.A. 2014
37 Supp. 21-5412(b), and amendments thereto;

38 (E) aggravated assault of a law enforcement officer, as defined in
39 ~~subsection (d)~~ of K.S.A. 2014 Supp. 21-5412(d), and amendments thereto;

40 (F) aggravated battery, as defined in ~~subsection (b)(1)~~ of K.S.A. 2014
41 Supp. 21-5413(b)(1), and amendments thereto; or

42 (G) aggravated battery against a law enforcement officer, as defined
43 in ~~subsection (d)~~ of K.S.A. 2014 Supp. 21-5413(d), and amendments

1 thereto.

2 (d) Murder in the first degree as defined in subsection (a)(2) is an
3 alternative method of proving murder in the first degree and is not a
4 separate crime from murder in the first degree as defined in subsection (a)
5 (1). The provisions of K.S.A. 2014 Supp. 21-5109, and amendments
6 thereto, are not applicable to murder in the first degree as defined in
7 subsection (a)(2). Murder in the first degree as defined in subsection (a)(2)
8 is not a lesser included offense of murder in the first degree as defined in
9 subsection (a)(1), and is not a lesser included offense of capital murder as
10 defined in K.S.A. 2014 Supp. 21-5401, and amendments thereto. As set
11 forth in ~~subsection (b) of K.S.A. 2014 Supp. 21-5109(b)~~, and amendments
12 thereto, there are no lesser included offenses of murder in the first degree
13 under subsection (a)(2).

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

17 Sec. 2. K.S.A. 2014 Supp. 21-5402 is hereby repealed.

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