

## 2023 Kansas Statutes

- 21-5402. Murder in the first degree.** (a) Murder in the first degree is the killing of a human being committed:
- (1) Intentionally, and with premeditation; or
  - (2) in the commission of, attempt to commit, or flight from any inherently dangerous felony.
- (b) Murder in the first degree is an off-grid person felony.
- (c) As used in this section, an "inherently dangerous felony" means:
- (1) Any of the following felonies, whether such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as not to be an ingredient of the homicide alleged to be a violation of subsection (a)(2):
    - (A) Kidnapping, as defined in K.S.A. 21-5408(a), and amendments thereto;
    - (B) aggravated kidnapping, as defined in K.S.A. 21-5408(b), and amendments thereto;
    - (C) robbery, as defined in K.S.A. 21-5420(a), and amendments thereto;
    - (D) aggravated robbery, as defined in K.S.A. 21-5420(b), and amendments thereto;
    - (E) rape, as defined in K.S.A. 21-5503, and amendments thereto;
    - (F) aggravated criminal sodomy, as defined in K.S.A. 21-5504(b), and amendments thereto;
    - (G) abuse of a child, as defined in K.S.A. 21-5602, and amendments thereto;
    - (H) felony theft of property, as defined in K.S.A. 21-5801(a)(1) or (a)(3), and amendments thereto;
    - (I) burglary, as defined in K.S.A. 21-5807(a), and amendments thereto;
    - (J) aggravated burglary, as defined in K.S.A. 21-5807(b), and amendments thereto;
    - (K) arson, as defined in K.S.A. 21-5812(a), and amendments thereto;
    - (L) aggravated arson, as defined in K.S.A. 21-5812(b), and amendments thereto;
    - (M) treason, as defined in K.S.A. 21-5901, and amendments thereto;
    - (N) any felony offense as provided in K.S.A. 21-5703, 21-5705 or 21-5706, and amendments thereto;
    - (O) any felony offense as provided in K.S.A. 21-6308(a) or (b), and amendments thereto;
    - (P) endangering the food supply, as defined in K.S.A. 21-6317(a), and amendments thereto;
    - (Q) aggravated endangering the food supply, as defined in K.S.A. 21-6317(b), and amendments thereto;
    - (R) fleeing or attempting to elude a police officer, as defined in K.S.A. 8-1568(b), and amendments thereto;
    - (S) aggravated endangering a child, as defined in K.S.A. 21-5601(b)(1), and amendments thereto;
    - (T) abandonment of a child, as defined in K.S.A. 21-5605(a), and amendments thereto;
    - (U) aggravated abandonment of a child, as defined in K.S.A. 21-5605(b), and amendments thereto; or
    - (V) mistreatment of a dependent adult or mistreatment of an elder person, as defined in K.S.A. 21-5417, and amendments thereto; and
  - (2) any of the following felonies, only when such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as to not be an ingredient of the homicide alleged to be a violation of subsection (a)(2):
    - (A) Murder in the first degree, as defined in subsection (a)(1);
    - (B) murder in the second degree, as defined in K.S.A. 21-5403(a)(1), and amendments thereto;
    - (C) voluntary manslaughter, as defined in K.S.A. 21-5404(a)(1), and amendments thereto;
    - (D) aggravated assault, as defined in K.S.A. 21-5412(b), and amendments thereto;
    - (E) aggravated assault of a law enforcement officer, as defined in K.S.A. 21-5412(d), and amendments thereto;
    - (F) aggravated battery, as defined in K.S.A. 21-5413(b)(1), and amendments thereto; or

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

(d) Murder in the first degree as defined in subsection (a)(2) is an alternative method of proving murder in the first degree and is not a separate crime from murder in the first degree as defined in subsection (a)(1). The provisions of K.S.A. 21-5109, and amendments thereto, are not applicable to murder in the first degree as defined in subsection (a)(2). Murder in the first degree as defined in subsection (a)(2) is not a lesser included offense of murder in the first degree as defined in subsection (a)(1), and is not a lesser included offense of capital murder as defined in K.S.A. 21-5401, and amendments thereto. As set forth in subsection (b) of K.S.A. 21-5109, and amendments thereto, there are no lesser included offenses of murder in the first degree under subsection (a)(2).

(e) The amendments to this section by chapter 96 of the 2013 Session Laws of Kansas establish a procedural rule for the conduct of criminal prosecutions and shall be construed and applied retroactively to all cases currently pending.

**History:** L. 2010, ch. 136, § 37; L. 2012, ch. 150, § 4; L. 2013, ch. 96, § 2; L. 2018, ch. 112, § 2; July 1.