

SESSION OF 2012

**CONFERENCE COMMITTEE REPORT BRIEF  
SUBSTITUTE FOR SENATE BILL NO. 307**

As Agreed to March 28, 2012

**Brief\***

Sub. for SB 307 would amend statutes related to lesser included crimes, speedy trial, intimidation of a witness, and the statute of limitations for sexually violent crimes.

***Lesser Included Crimes and Felony Murder***

The bill would amend the statute governing convictions for lesser included crimes to establish there are no lesser degrees of first-degree murder under KSA 2011 Supp. 21-5402(a)(2) [felony murder]. This provision would apply retroactively in felony murder cases except in cases where an instruction for a lesser included crime was given and the defendant was convicted of a lesser included crime between July 1, 2011, and July 1, 2012.

***Speedy Trial***

Additionally, the bill would make several amendments to the speedy trial statute in the Kansas Code of Criminal Procedure.

If a trial date is set and the defendant fails to appear for trial or a pretrial hearing, and a bench warrant is issued, the trial deadline of 90 days would be computed from the

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/klrd>

defendant's appearance in court after apprehension or surrender. Currently, the computation is made from the date of surrender.

If a defendant is the subject of a competency proceeding, is found competent to stand trial, and was subject to the 180-day deadline pursuant to an appearance bond, and more than 90 days of the original time limitation remain, then the original time limitation would remain in effect. A delay while a decision is pending on competency would not be counted against the state in the speedy trial computation.

The bill would clarify that in addition to the existing 90-day deadline for trial after a defendant is found competent, trial is to be scheduled as soon as practicable.

If a motion for a new trial is granted, the speedy trial computation would begin on the date a new trial is ordered.

A delay requested by the defendant or by the defendant's attorney after consulting with the defendant would be charged against the defendant regardless of the reason for the request, unless there is prosecutorial misconduct related to the delay.

A delay initially charged to the defendant but subsequently charged to the state would not be considered against the state in the speedy trial computation, unless this would violate the defendant's constitutional right to a speedy trial or there is prosecutorial misconduct related to such delay. Also, such delay could not be used as a ground for dismissing a case or reversing a conviction.

A delay due to the filing and resolution of a motion, or due to a concern raised by the court, would not be included in the speedy trial computation. If resolution occurs less than 30 days before the speedy trial deadline, the deadline would be extended 30 days from the date of the court order.

A continuance granted to the state for any reason under the statute would not be counted against the state if an appellate court later determines that the district court erred in granting the continuance, unless this would violate the defendant's constitutional right to a speedy trial or there is prosecutorial misconduct related to such delay.

### ***Intimidation of a Witness***

The bill would amend the crimes of intimidation of a witness and aggravated intimidation of a witness to include preventing or dissuading, or attempting to prevent or dissuade, any witness, victim, or person acting on behalf of a victim from making any report of victimization to the Secretary of the Department of Social and Rehabilitation Services, any agent or representative of the Secretary, or any mandatory reporter pursuant to KSA 2011 Supp. 38-2223.

### ***Statute of Limitations—Sexually Violent Crimes***

The bill would amend the statute governing the time within which prosecution for a crime must be commenced to state that when the offense charged is a sexually violent crime, as defined by state law, and the victim was under 18 at the time of the offense, the time would start to run the day after the victim's 18th birthday. Additionally, it would clarify that the prohibition of prosecution after a victim turns 28 would only apply to the subsection in which it appears, rather than the entire statute.

### **Conference Committee Action**

The Conference Committee agreed to the House version of Sub. for SB 307, but with the addition of language in the speedy trial section charging a delay requested by the defendant or defendant's attorney (after consultation) to the defendant unless it is related to prosecutorial misconduct.

The Committee then modified and inserted the text of SB 306, regarding intimidation of a witness. Finally, the Committee inserted the text of the Senate version of HB 2494, regarding the statute of limitations for sexually violent crimes.

## **Background**

SB 307 was introduced by the Senate Judiciary Committee at the request of the Kansas County and District Attorneys Association (KCDAA) and originally addressed only the felony murder issue.

KSA 2011 Supp. 21-5402 establishes that first-degree murder may be committed in two manners. The second manner, in subsection (a)(2), is commonly referred to as "felony murder" and is defined as the killing of a human being "in the commission of, attempt to commit, or flight from any inherently dangerous felony."

"Lesser included crimes" are defined in KSA 2011 Supp. 21-5109 and include a "lesser degree of the same crime." The statute states that a defendant may be convicted of either the crime charged or a lesser included crime, but not both.

In the Senate Judiciary Committee, representatives of the KCDAA spoke in support of the bill, explaining the bill was needed in light of the Kansas Supreme Court's decision in *State v. Berry*, 292 Kan. 493 (2011). The KCDAA also suggested the Committee adopt a substitute bill designed to accomplish the same purpose by amending a different statute than the statute addressed by the original bill. The Committee recommended the substitute bill be passed.

In the House Committee on Corrections and Juvenile Justice, representatives of the KCDAA spoke in support of the bill. A representative of the Kansas Association of Criminal Defense Attorneys testified in opposition. The House

Committee amended the bill by modifying and adding language from SB 305 regarding to speedy trial computation. The House Committee recommended the bill be passed as amended.

The fiscal note on SB 307, as introduced, states the Office of Judicial Administration believes passage could result in additional criminal appeals, but more likely would result in additional issues on appeals. While this may increase the amount of time spent by appellate court personnel on those cases, an accurate estimate of the fiscal effect cannot be provided until such cases are actually presented to the appellate courts. The Board of Indigents' Defense Services estimates the bill would cause an increase of ten appellate cases each year, at \$1,500 each, for a total increase of \$15,000 from the State General Fund. Any fiscal effect associated with the bill is not reflected in *The FY 2013 Governor's Budget Report*.

### ***Background of SB 306***

SB 306 was introduced by the Senate Judiciary Committee at the request of the Kansas County and District Attorneys Association (KCDAA). In the Senate Judiciary Committee, a representative of the KCDAA spoke in support of the bill. The Committee recommended the bill be passed.

In the House Committee on Corrections and Juvenile Justice, a representative of the KCDAA spoke in support of the bill. The House Committee amended the bill to make the language more consistent and to make the bill effective upon publication in the *Kansas Register*. The Committee recommended the bill be passed as amended.

The fiscal note on the bill states enactment of the bill would have no fiscal effect on the Judicial Branch.

### ***Background of HB 2494***

In the House Committee on Corrections and Juvenile Justice, representatives of the Attorney General's Office, the Lawrence Police Department, the Kansas Association of Chiefs of Police, Kansas Sheriffs' Association, and Kansas Peace Officers Association, in addition to private citizens, offered testimony in support of the bill. No opponents appeared at the hearing.

In the Senate Committee on Judiciary, representatives of the Attorney General's Office and the Bonner Springs Police Department appeared in support of the bill. No opponents offered testimony. The Committee amended the bill to clarify that it applies to a "sexually violent crime," which is defined in state law, rather than a "sexually violent offense."

The fiscal note for HB 2494, as introduced, indicates passage would have no fiscal effect on the court system and the effect on prison admissions and bed needs would be negligible.

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Lesser included crimes; felony murder; speedy trial; intimidation of a witness; Social and Rehabilitation Services; mandatory reporters; statute of limitations; sexually violent crimes.