

SESSION OF 2012

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 307**

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

Sub. for SB 307, as amended, 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.

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 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.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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 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.

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 305

SB 305 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. A representative of the Kansas Association of Criminal Defense Lawyers spoke in opposition to the bill. The Committee amended the bill to remove a provision that would have made the bill retroactive. The Committee recommended the bill be passed as amended.

The fiscal note on SB 305, as introduced, states that enactment of the bill would have no fiscal effect.