

SESSION OF 2013

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2387**

As Recommended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

HB 2387 would amend the law concerning felony murder to specify:

- Felony murder would be an alternative method of proving first degree murder;
- Current provisions allowing for prosecution of more than one crime and governing lesser included crimes would not apply to felony murder;
- Felony murder would not be a separate crime or a lesser included offense of first degree murder or capital murder; and
- Consistent with current law, felony murder would have no lesser included offenses.

The bill also would state these amendments establish a procedural rule for the conduct of criminal prosecutions and would be construed and applied retroactively to all cases currently pending.

**Background**

Pursuant to statute, first degree murder can be committed either intentionally and with premeditation or in the commission of, attempt to commit, or flight from any inherently dangerous felony (felony murder). This bill would

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\*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>

codify case law that states the two crimes are not separate and distinct, but rather different theories of proving first degree murder. Additionally, the bill would amend the law concerning first degree murder in response to a recent Kansas Supreme Court case, *State v. Cheever*, 295 Kan. 229 (2012), which held that felony murder is a lesser included crime of capital murder and, where facts support it, should be included in jury instructions on lesser included crimes in capital murder cases. The new language in the bill would specify felony murder is not a lesser included offense of first degree murder or felony murder. A lesser included crime is:

1. A lesser degree of the same crime, except that there are no lesser degrees of felony murder;
2. A crime where all elements of the lesser crime are identical to some of the elements of the crime charged;
3. An attempt to commit the crime charged; or
4. An attempt to commit a crime defined under paragraph 1 or 2.

In the House Committee on Corrections and Juvenile Justice, a representative of the Attorney General's Office, stating the Office opinion that the *Cheever* opinion misinterprets the law such that these amendments are necessary. A public defender in the Capital Appeals and Conflicts Office appeared to oppose the bill, referring to the U.S. Supreme Court case *Beck v. Alabama*, 447. U.S. 627 (1980), which held the death penalty may not be imposed after a jury verdict of guilt of a capital offense, when the jury was not permitted to consider a verdict of guilt of a lesser included non-capital offense when the evidence would have supported such a verdict.

The fiscal note prepared by the Division of the Budget for the bill indicates passage would have no impact on the Judicial Branch or the Board of Indigents Defense Services.