

Substitute for SENATE BILL NO. 307

By Committee on Judiciary

AN ACT concerning crimes, punishment and criminal procedure; relating to lesser included crimes; murder in the first degree; amending K.S.A. 2011 Supp. 21-5109 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2011 Supp. 21-5109 is hereby amended to read as follows: 21-5109. (a) When the same conduct of a defendant may establish the commission of more than one crime under the laws of this state, the defendant may be prosecuted for each of such crimes. Each of such crimes may be alleged as a separate count in a single complaint, information or indictment.

(b) Upon prosecution for a crime, the defendant may be convicted of either the crime charged or a lesser included crime, but not both. A lesser included crime is:

(1) A lesser degree of the same crime, except that there are no lesser degrees of murder in the first degree under subsection (a)(2) of K.S.A. 2011 Supp. 21-5402, and amendments thereto;

(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).

(c) Whenever charges are filed against a person, accusing the person of a crime which includes another crime of which the person has been convicted, the conviction of the lesser included crime shall not bar prosecution or conviction of the crime charged if the crime charged was not consummated at the time of conviction of the lesser included crime, but the conviction

of the lesser included crime shall be annulled upon the filing of such charges. Evidence of the person's plea or any admission or statement made by the person in connection therewith in any of the proceedings which resulted in the person's conviction of the lesser included crime shall not be admissible at the trial of the crime charged. If the person is convicted of the crime charged, or of a lesser included crime, the person so convicted shall receive credit against any prison sentence imposed or fine to be paid for the period of confinement actually served or the amount of any fine actually paid under the sentence imposed for the annulled conviction.

(d) Unless otherwise provided by law, when crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct, the defendant:

- (1) May not be convicted of the two crimes based upon the same conduct; and
- (2) shall be sentenced according to the terms of the more specific crime.

(e) Except as provided further, the amendments to subsection (b)(1) by this act shall be applied retroactively to any charge or conviction under subsection (b) of K.S.A. 21-3401, prior to its repeal, in any legal challenge or proceeding that comes before a district court or an appellate court. In cases where the charge was first degree murder under subsection (b) of K.S.A. 21-3401, prior to its repeal, or under subsection (a)(2) of K.S.A. 2011 Supp. 21-5402, and amendments thereto, the judge instructed the jury on a lesser included crime and the defendant was convicted of a lesser included crime in lieu of the crime charged between July 1, 2011, and July 1, 2012, the retroactivity provision of this section shall not be used as the basis for setting aside, reversing or vacating such conviction.

Sec. 2. K.S.A. 2011 Supp. 21-5109 is hereby repealed.

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