

SESSION OF 2012

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

As Recommended by Senate Committee on  
Judiciary

**Brief\***

Sub. for SB 307 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.

**Background**

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.

SB 307 was introduced by the Senate Judiciary Committee at the request of the Kansas County and District

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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>

Attorneys Association (KCDAA). 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.

The fiscal note on the bill 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*.