

21-5402. Murder in the first degree. (a) Murder in the first degree is the killing of a human being committed:

- (1) Intentionally, and with premeditation; or
 - (2) in the commission of, attempt to commit, or flight from any inherently dangerous felony.
- (b) Murder in the first degree is an off-grid person felony.
- (c) As used in this section, an "inherently dangerous felony" means:
- (1) Any of the following felonies, whether such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as not to be an ingredient of the homicide alleged to be a violation of subsection (a)(2):
 - (A) Kidnapping, as defined in subsection (a) of K.S.A. 2016 Supp. 21-5408, and amendments thereto;
 - (B) aggravated kidnapping, as defined in subsection (b) of K.S.A. 2016 Supp. 21-5408, and amendments thereto;
 - (C) robbery, as defined in subsection (a) of K.S.A. 2016 Supp. 21-5420, and amendments thereto;
 - (D) aggravated robbery, as defined in subsection (b) of K.S.A. 2016 Supp. 21-5420, and amendments thereto;
 - (E) rape, as defined in K.S.A. 2016 Supp. 21-5503, and amendments thereto;
 - (F) aggravated criminal sodomy, as defined in subsection (b) of K.S.A. 2016 Supp. 21-5504, and amendments thereto;
 - (G) abuse of a child, as defined in K.S.A. 2016 Supp. 21-5602, and amendments thereto;
 - (H) felony theft of property, as defined in subsection (a)(1) or (a)(3) of K.S.A. 2016 Supp. 21-5801, and amendments thereto;
 - (I) burglary, as defined in subsection (a) of K.S.A. 2016 Supp. 21-5807, and amendments thereto;
 - (J) aggravated burglary, as defined in subsection (b) of K.S.A. 2016 Supp. 21-5807, and amendments thereto;
 - (K) arson, as defined in subsection (a) of K.S.A. 2016 Supp. 21-5812, and amendments thereto;
 - (L) aggravated arson, as defined in subsection (b) of K.S.A. 2016 Supp. 21-5812, and amendments thereto;
 - (M) treason, as defined in K.S.A. 2016 Supp. 21-5901, and amendments thereto;
 - (N) any felony offense as provided in K.S.A. 2016 Supp. 21-5703, 21-5705 or 21-5706, and amendments thereto;
 - (O) any felony offense as provided in subsection (a) or (b) of K.S.A. 2016 Supp. 21-6308, and amendments thereto;
 - (P) endangering the food supply, as defined in subsection (a) of K.S.A. 2016 Supp. 21-6317, and amendments thereto;
 - (Q) aggravated endangering the food supply, as defined in subsection (b) of K.S.A. 2016 Supp. 21-6317, and amendments thereto;
 - (R) fleeing or attempting to elude a police officer, as defined in subsection (b) of K.S.A. 8-1568, and amendments thereto;
 - (S) aggravated endangering a child, as defined in subsection (b)(1) of K.S.A. 2016 Supp. 21-5601, and amendments thereto;
 - (T) abandonment of a child, as defined in subsection (a) of K.S.A. 2016 Supp. 21-5605, and amendments thereto; or
 - (U) aggravated abandonment of a child, as defined in subsection (b) of K.S.A. 2016 Supp. 21-5605, and amendments thereto; and
 - (2) any of the following felonies, only when such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as to not be an ingredient of the homicide alleged to be a violation of subsection (a)(2):
 - (A) Murder in the first degree, as defined in subsection (a)(1);
 - (B) murder in the second degree, as defined in subsection (a)(1) of K.S.A. 2016 Supp. 21-5403, and amendments thereto;
 - (C) voluntary manslaughter, as defined in subsection (a)(1) of K.S.A. 2016 Supp. 21-5404, and amendments thereto;
 - (D) aggravated assault, as defined in subsection (b) of K.S.A. 2016 Supp. 21-5412, and amendments thereto;
 - (E) aggravated assault of a law enforcement officer, as defined in subsection (d) of K.S.A. 2016 Supp. 21-5412, and amendments thereto;
 - (F) aggravated battery, as defined in subsection (b)(1) of K.S.A. 2016 Supp. 21-5413, and amendments thereto; or
 - (G) aggravated battery against a law enforcement officer, as defined in subsection (d) of K.S.A. 2016 Supp. 21-5413, and amendments thereto.
- (d) Murder in the first degree as defined in subsection (a)(2) is an alternative method of proving murder in the first degree and is not a separate crime from murder in the first degree as defined in subsection (a)(1). The provisions of K.S.A. 2016 Supp. 21-5109, and amendments thereto, are not applicable to murder in the first degree as defined in subsection (a)(2). Murder in the first degree as defined in subsection (a)(2) is not a lesser included offense of murder in the first degree as defined in subsection (a)(1), and is not a lesser included offense of capital murder as defined in K.S.A. 2016 Supp. 21-5401, and amendments thereto. As set forth in subsection (b) of K.S.A. 2016 Supp. 21-5109, and amendments thereto, there are no lesser included offenses of murder in the first degree under subsection (a)(2).
- (e) The amendments to this section by this act establish a procedural rule for the conduct of criminal prosecutions and shall be construed and applied retroactively to all cases currently pending.

History: L. 2010, ch. 136, § 37; L. 2012, ch. 150, § 4; L. 2013, ch. 96, § 2; July 1.