

Honolulu, Hawaii

Feb 26, 2010

RE: H.B. No. 1019  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2010  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1019 entitled:

"A BILL FOR AN ACT RELATING TO THE PENAL CODE,"

begs leave to report as follows:

The purpose of this bill is to include in the offense of murder in the second degree, acts committed with the intent to cause serious bodily injury to another person or create the strong probability of causing death or serious bodily injury to another person, which result in the death of another person.

The Department of the Attorney General (AG), City and County of Honolulu's Department of the Prosecuting Attorney, Honolulu Police Department, County of Hawaii's Office of the Prosecuting Attorney, and County of Hawaii Police Department supported this bill. The Office of the Public Defender (PD) opposed this measure.

Your Committee recognizes the concern of the PD that the way Section 707-701.5(b), Hawaii Revised Statutes (HRS), is amended in the bill, it could be misinterpreted to punish as murder in the second degree the death of a third party to which the "intent to do bodily harm" was not directed, and notes that the AG agreed that it did not intend for this provision to be applied in that manner.



Accordingly, your Committee has amended the bill by:

- (1) Clarifying that for the offense of second degree murder involving acts committed with the intent to do serious bodily injury to another person that causes another person's death, the offense applies only where the victim is the person for whom the serious bodily injury was intended; and
- (2) Deleting from the offense of murder in the second degree, acts committed with the intent to create a strong probability of death or serious bodily injury to any person, and such acts cause the death of any person.

Your Committee has further amended this bill by adding a new part that:

- (1) Makes the use of a simulated firearm during the theft or taking of a motor vehicle, robbery the first degree;
- (2) Makes the use of a simulated firearm in a terroristic threatening case an offense of terroristic threatening in the first degree; and
- (3) Defines "simulated firearm" as "any object that:
  - (1) Substantially resembles a firearm;
  - (2) Can reasonably be perceived to be a firearm; or
  - (3) Is used or brandished as a firearm,"for these purposes.

Your Committee has further amended this bill by:

- (1) Changing the effective date to December 21, 2058, to encourage further discussion;
- (2) Inserting a savings clause; and
- (3) Making technical, nonsubstantive changes for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your



Committee is in accord with the intent and purpose of H.B. No. 1019, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1019, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,

  
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JON RIKI KARAMATSU, Chair



