

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 1019, RELATING TO THE PENAL CODE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 23, 2010 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Karamatsu and Members of the Committee:

The Attorney General strongly supports this bill.

This is one of only five bills in the 2010 legislative package of the Hawaii Law Enforcement Coalition. The Coalition is composed of the Chiefs of Police of all four counties, the Prosecuting Attorneys of all four counties, the Attorney General, and the United States Attorney for the District of Hawaii. Every bill in the Coalition's legislative package has the unanimous support of every Coalition member.

This bill will amend section 707-701.5, Hawaii Revised Statutes, to include, within 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.

This amendment will address cases that have occurred under the current law, where defendants who brutally beat and kill another person have been able to convince juries to reduce murder charges to manslaughter by claiming that they only intended to cause bodily injury to the person, and did not know they would kill the person. "Serious bodily injury" includes bodily injury that creates a substantial risk of death; thus, individuals who act 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, and whose act results in the death of another person, should be guilty of murder in the second degree.

This amendment is based on the Illinois murder law; other states also take this approach.

We respectfully request passage of this measure.

**Testimony of the Office of the Public Defender, State of Hawaii,
to the House Committee on Judiciary**

February 22, 2010

H.B. No. 1019: RELATING TO THE PENAL CODE

Chair Karamatsu and Members of the Committee:

We oppose the passage of H.B. No. 1019. This bill would bring about a radical change in our Murder 2° law by imposing liability under that law for acts that the legislature does not intend to be prosecuted as Murder. First of all, the present law which defines murder as “intentionally or knowingly causing the death of another person” has been in existence since 1972 and has never presented a problem with regard to the prosecution of persons rightfully charged with this offense. The fact that a few individuals personally feel that more people should suffer the penalties of a murder conviction for acts that do not fall within the definition of the current law does not justify a wholesale change in the statute.

Moreover, the justification sheet for this bill includes a 2004 case in which a jury did not convict a defendant charged with attempted murder who allegedly set his neighbor afire with gasoline. The jury instead returned a verdict of Assault 1°. The prosecution had every opportunity to argue its case for attempted murder to the jury. The fact that one jury did not return a verdict to the prosecutor’s satisfaction should not result in a change of the long-standing murder law.

This bill would punish as murder any person who “with the intent to do serious bodily injury to any person, performs acts that cause the death of another person.” This is a very vague standard that extends the murder statute far beyond its current definition. Very easily, this proposal could be used to prosecute a person for murder if that person gets in a fight with someone resulting in serious bodily injury to the victim and, in doing so, causes a bystander or family member to have a fatal heart attack. In such a situation, it was never the intent of the person charged to cause the death of anyone. The offense of murder should never apply to that situation.

The bill would also punish as murder “intentionally or knowingly performing acts that create a strong probability of death to any person and such acts cause the death of another person.” This amendment to the murder statute would completely dilute the current standard of intentionally or knowingly causing a death to doing something which creates a strong probability of death. Virtually all intoxicated driving deaths would be prosecuted as murder. There is enough publicity warning about the dangers of drunk driving that one could argue that an intoxicated person who gets into the driver’s seat of his/her car is “creating a strong probability of death” to another person. Currently many such offenses are prosecuted under the manslaughter statute as “recklessly causing another’s death.” Such offenders should not be subject to punishment under the murder statute and equated to one who shoots another person to death with a malicious state of mind.

Thank for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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DOUGLAS S. CHIN
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THE HONORABLE JON RIKI KARAMATSU, CHAIR
HOUSE JUDICIARY COMMITTEE
Twenty-fifth State Legislature
Regular Session of 2010
State of Hawai'i

February 23, 2010

RE: H.B. 1019; RELATING TO THE PENAL CODE.

Chair Karamatsu and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following testimony in strong support of H.B. 1019.

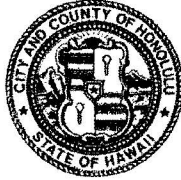
The purpose of this bill is to amend Hawaii Revised Statutes (HRS) section 707-701.5 related to murder in the second degree to include instances where the actor: 1) intentionally performs acts that cause the death of another person with the intent to do serious bodily injury; 2) intentionally or knowingly performs acts that create a strong probability of death to any person and such acts cause the death of another; or 3) intentionally or knowingly performing acts that create a strong probability of serious bodily injury to any person and such acts cause the death of another.

Compared to other jurisdictions, such as Illinois, Hawaii has a very weak murder offense. The current law in Hawaii applies only to person who intentionally or knowingly cause the death of another person. Thus, when a murder defendant kills or almost kills someone by physical assault they can often escape a murder conviction by successfully arguing to a jury that their intent was not to kill, but just to injure the victim. We believe this loophole leads to unjust results. The current definition of serious bodily injury in HRS section 707-700 already includes injury which creates a substantial risk of death and we believe Hawaii's murder offense should be expanded to include causing the death of another with the intent to cause serious bodily injury or by intentionally or knowingly committing acts that create a strong probability of death or serious bodily injury to another person and which does result in such death.

For this reason, we strongly support the passage of H.B. 1019 and thank you for this opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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MAYOR

LOUIS M. KEALOHA
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DELBERT T. TATSUYAMA
RANDAL K. MACADANGDANG
DEPUTY CHIEFS

OUR REFERENCE RR-NTK

February 23, 2010

The Honorable Jon Riki Karamatsu, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members:

Subject: House Bill No. 1019, Relating to the Penal Code


I am Richard C. Robinson, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 1019, Relating to Penal Code. Passage of this bill would allow the current murder statute to be more accurately applied. It would also aid in cases where suspects beat the victim to death and then claim that they did not intend to kill the victim. This change will provide better protection for our community and increase the public's confidence in our judicial process.

The Honolulu Police Department urges you to support House Bill No. 1019, Relating to the Penal Code.

Thank you for the opportunity to testify.

Sincerely,


ROR RICHARD C. ROBINSON, Captain
Criminal Investigation Division

APPROVED:


ROR LOUIS M. KEALOHA
Chief of Police

Serving and Protecting With Aloha

JAY T. KIMURA
PROSECUTING ATTORNEY

CHARLENE Y. IBOSHI
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Testimony In Support of HB 1019
Relating to The Penal Code

Hearing before House Judiciary Committee
February 23, 2010
2:00 p.m.
House Conference Room 325

Submitted by Jay T. Kimura, Prosecuting Attorney

TO: Chair Riki Karamatsu and Committee Members:

We support House Bill 1019.

The Office of the Prosecuting Attorney for the County of Hawaii is in support of HB 1019 to change the statute of Murder.

The current murder 2nd statute should be amended to address the situation where a person intends to cause serious bodily injury to another person or create the strong probability of causing death or serious bodily injury.

The amended murder statute would increase the probability that defendants who engage in behavior in which they intend to cause serious bodily or death will be charged appropriately and have their cases presented to a judge or jury.

This amendment to the murder statute would allow a judge or jury to consider the interplay between the defendant's intent and acts of a defendant in determining the person's guilt when there has been a death.

This amendment would strengthen public safety and provide additional deterrence of criminal act.

Thank you for the opportunity to testify on this bill.

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai`i

POLICE DEPARTMENT

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February 22, 2010

The Honorable Jon Riki Karamatsu
Chair and Members
Committee on Judiciary
State Capitol
415 South Beretania Street, Conference Room 325
Honolulu, Hawai`i 96813

Re: HOUSE BILL 1019, RELATING TO THE PENAL CODE

Dear Representative Karamatsu and Members:


The Hawai`i Police Department supports the passage of House Bill No. 1019, Relating to the Penal Code, that amends the offense of Murder in the Second Degree.

The purpose of this bill is to amend the offense of Murder in the Second Degree, to include in the offense acts committed with 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 passage of this bill will provide for the appropriate punishment of defendants who were previously convicted of lesser criminal offenses based on existing criminal statutes. It is intended to provide a greater deterrent to such violence and promote public safety for all.

For these reasons, we urge this committee to support this legislation. Thank you for allowing the Hawai`i Police Department to testify on HB 1019.

Sincerely,


HARRY S. KUBOJIRI
POLICE CHIEF