

JAN 26 2011

A BILL FOR AN ACT

RELATING TO THE PENAL CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 707-701.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[§]~~§707-701.5~~[§]~~ **Murder in the second degree.**

4 (1) Except as provided in section 707-701, a person commits the
5 offense of murder in the second degree if the person
6 [intentionally]:

7 (a) Intentionally or knowingly causes the death of another
8 person~~[.]~~; or

9 (b) With the intent to do serious bodily injury to any
10 person, performs acts that cause the death of that
11 person; or

12 (c) Intentionally or knowingly performs acts that create a
13 strong probability of death to any person, and such
14 acts cause the death of another person; or

15 (d) Intentionally or knowingly performs acts that create a
16 strong probability of serious bodily injury to any
17 person, and such acts cause the death of another
18 person.

S.B. NO. 1229

1 (2) Murder in the second degree is a felony for which the
2 defendant shall be sentenced to imprisonment as provided in
3 section 706-656."

4 SECTION 2. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: S.S.T.

9

BY REQUEST

Report Title:

Criminal Homicide

Description:

Includes 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.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO THE PENAL CODE.

PURPOSE: 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, and which result in the death of that person.

MEANS: Amend section 707-701.5, Hawaii Revised Statutes.

JUSTIFICATION: Section 707-700, Hawaii Revised Statutes, defines "serious bodily injury" as "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." This bill provides that 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 that other person, should be guilty of murder in the second degree. An individual, who intentionally commits such acts against another person and by such acts causes that person's death, should be held responsible for committing murder. Such an individual should not be allowed to avoid responsibility for the victim's death by arguing that the individual only intended to cause serious bodily injury, and not death. The following are a few case examples that illustrate the importance of the provisions of this bill.

In 1987, Alexander "Boy" Carvalho brutally beat his wife to death. The beating lasted

for an hour and a half. In addition to punching and kicking her, he beat her with a piece of 2x4 lumber and a large Maglite flashlight. He also jumped onto her body from a raised platform. When he got tired, he took three breaks from the beating. He only stopped when his wife's nephew shot off a rifle to chase him away. He broke forty-four bones in her body. He broke her nose, her arms, and several of her ribs, which punctured her lungs. In the hospital, his wife bled to death after running the blood bank dry of twelve gallons of fluid. Carvalho argued that he never intended to kill her. Despite the brutality of the beating, Carvalho was acquitted of murder and convicted of the lesser offense of manslaughter. After serving only eight years in prison for his wife's death, Carvalho was paroled. Within one year, Carvalho was prosecuted for battering his new girlfriend. Like many domestic violence victims, she recanted the allegations at trial.

In 1995, 17-year-old Emanuelu Tunoa and two others viciously beat another 17-year-old boy to death. The victim had wanted to leave the gang, and was repeatedly punched and kicked to the head. He died a few days later of bleeding in his brain. The defendants claimed that they did not intend to kill the victim and had planned on remaining friends after he left the gang. Although prosecuted for murder, all three defendants were convicted of lesser charges. Tunoa was convicted of assault in the second degree, a class C felony, and sentenced to four years in prison. After his release, Tunoa murdered another man with shotgun blasts to his chest, face, and back. Tunoa was convicted of this murder in 2005.

In 2008, Glenn Keohokapu, Jr. killed 19-year-old Steven Wilcox by stabbing him in the heart. Keohokapu was engaged in an argument with his wife outside of a bar.

Wilcox approached him to intervene. While others stepped in to try to keep Keohokapu and Wilcox apart, Keohokapu obtained a knife and stabbed the teenager. Although he was charged with murder, Keohokapu was convicted of the lesser offense of manslaughter.

With the proposed amendment in this bill, the outcome in the trials of these cases, and the many other cases like them, could have been different.

Impact on the public: The amendment to the murder in the second degree statute will result in individuals being appropriately punished for their crimes and will provide greater deterrence, foster public confidence, and promote public safety.

Impact on the department and other agencies: The amendment will clarify the application of the offense of murder in the second degree for prosecutors, public defenders, and the Judiciary.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Judiciary, county police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE: Upon approval.