

JAN 18 2013

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## A BILL FOR AN ACT

RELATING TO MURDER OF MULTIPLE PERSONS.

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

1           SECTION 1. Chapter 706, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§706-           Capital punishment; murder of multiple persons.

5           (1) Upon conviction of a defendant for murder in the first  
6 degree of more than           persons in the same or separate  
7 incident under section 707-701(1)(a), the court shall conduct a  
8 separate sentencing proceeding to determine whether the  
9 defendant shall be sentenced to death or to life imprisonment  
10 without possibility of parole; provided that no defendant shall  
11 be sentenced to death under this section who:

12           (a) Is under the age of eighteen years; or

13           (b) As a result of a physical or mental disease, disorder,  
14 or defect lacks capacity to understand the proceedings  
15 against the defendant or to assist in the defendant's  
16 own defense, so long as the incapacity endures.

17 The proceeding shall be conducted by the trial judge before the  
18 trial jury as soon as practicable. If trial by jury was waived



1 or if the defendant pleaded guilty, the sentencing proceeding  
2 shall be conducted before a jury empaneled for that purpose,  
3 unless waived by the defendant.

4 (2) In the proceeding, evidence shall be presented  
5 regarding any of the aggravating circumstances listed in  
6 subsection (4) and the mitigating circumstances listed in  
7 subsection (5), and evidence may be presented as to any other  
8 matter that the court deems relevant to the sentence. Any  
9 evidence that the court deems to have probative value may be  
10 received; provided that this subsection shall not be construed  
11 to authorize the introduction of any evidence secured in  
12 violation of the Constitution of the United States or of the  
13 State. The defendant and the State shall be permitted to  
14 present arguments for or against the sentence of death.

15 (3) After hearing all of the evidence, the jury shall  
16 deliberate and recommend to the court whether the defendant  
17 should be sentenced to death or to life imprisonment without the  
18 possibility of parole. A recommendation of death shall require  
19 a unanimous vote of the entire membership of the jury and shall  
20 be based on a written finding that there are insufficient  
21 mitigating circumstances to overcome the circumstances of the  
22 offense, such that:



1        (a) The jury finds that there exists at least one  
2        aggravating circumstance under subsection (4) that  
3        justifies the death penalty; and

4        (b) The jury finds that there are no mitigating  
5        circumstances or there are insufficient mitigating  
6        circumstances considered as a whole, as listed in  
7        subsection (5), to outweigh each aggravating  
8        circumstance considered separately.

9        (4) In making its recommendation, the jury shall consider  
10       the following as aggravating circumstances:

11       (a) The defendant knowingly created a substantial risk of  
12       death to a person other than the victims or the  
13       defendant;

14       (b) The offense was committed through the use of any  
15       explosive or firearm;

16       (c) The offense was committed while the defendant was  
17       engaged in the commission of, or an attempt to commit,  
18       or flight after committing or attempting to commit,  
19       any felony;

20       (d) The offense was committed for the defendant's  
21       pecuniary or other personal gain or as a murder for  
22       hire;



1        (e) The defendant has a prior conviction for murder in any  
2                    degree; and

3        (f) The offense was committed for the purpose of  
4                    preventing a witness from testifying, a person from  
5                    providing evidence, or a person from participating in  
6                    any legal proceedings or official investigation.

7        (5) In making its recommendation, the jury shall consider  
8 the following mitigating circumstances, if they apply:

9        (a) The defendant has no significant history of prior  
10                   criminal activity;

11       (b) The offense was committed while the defendant was  
12                   under the influence of extreme mental or emotional  
13                   disturbance;

14       (c) The defendant acted against the defendant's will,  
15                   under extreme duress, or under the substantial  
16                   domination of another person, a finding of which shall  
17                   eliminate the possible imposition of the death  
18                   penalty;

19       (d) At the time the offense was committed, the capacity of  
20                   the defendant to appreciate the wrongfulness of the  
21                   defendant's conduct or to conform the defendant's  
22                   conduct to the requirements of law was substantially



1           impaired by something other than the defendant's  
2           voluntary and knowing ingestion of intoxicating  
3           substances;

4           (e) The age of the defendant at the time of committing the  
5           offense; and

6           (f) The defendant was an accomplice in the offense  
7           committed by another person and the defendant's  
8           participation was relatively minor, a finding of which  
9           shall eliminate the possible imposition of the death  
10           penalty.

11           (6) The court may enter a sentence of death only upon the  
12           recommendation of the jury but shall have full discretion to not  
13           impose such a sentence. The court shall set forth in writing  
14           its findings upon which a sentence of death is based, including  
15           the finding required of the jury in subsection (3). If the  
16           court does not make the findings required to impose the death  
17           sentence, the court shall impose a sentence of life imprisonment  
18           without the possibility of parole.

19           (7) The judgment of conviction and sentence of death shall  
20           be subject to automatic review by the supreme court within sixty  
21           days after certification by the sentencing court of the entire  
22           record, unless time is extended by the supreme court for an



1 additional period, not to exceed thirty days, for good cause  
2 shown. The review by the supreme court shall take priority over  
3 all other cases before the supreme court and shall be heard in  
4 accordance with rules adopted by the supreme court. The supreme  
5 court shall determine whether the sentence was imposed under the  
6 influence of passion, prejudice, or any other arbitrary factor,  
7 whether the evidence supports the finding of a statutory  
8 aggravating circumstance, and whether the sentence is  
9 disproportionate as compared to other cases of a similar nature.  
10 If the sentence is affirmed, the supreme court's findings shall  
11 include a reference to other cases of a similar nature that the  
12 court considered in affirming the sentence.

13 (8) A defendant sentenced to death under this section  
14 shall be executed by the administration of lethal injection at a  
15 place and time to be determined by the sentencing court, which  
16 may delegate the decision to the director of public safety;  
17 provided that the death penalty shall be stayed, if imposed on a  
18 pregnant woman, until after the woman has given birth.

19 (9) In the event the death penalty in this section is held  
20 to be unconstitutional by the supreme court or the United States  
21 Supreme Court, the court having jurisdiction over a person  
22 previously sentenced to death shall cause the person to be



1 brought before the court, and the court shall sentence the  
2 person to life imprisonment without possibility of parole.

3 (10) As part of the sentence imposed under this section,  
4 the court shall order the director of public safety and the  
5 Hawaii paroling authority to prepare an application for the  
6 governor to commute a sentence of death to life imprisonment  
7 without the possibility of parole."

8 SECTION 2. Section 704-400, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "§704-400 **Physical or mental disease, disorder, or defect**  
11 **excluding penal responsibility[-]; premeditated murder of**  
12 **multiple persons excepted.** (1) [A] Subject to subsection (2),  
13 a person is not responsible, under this Code, for conduct if at  
14 the time of the conduct as a result of physical or mental  
15 disease, disorder, or defect the person lacks substantial  
16 capacity either to appreciate the wrongfulness of the person's  
17 conduct or to conform the person's conduct to the requirements  
18 of law.

19 (2) Subsection (1) shall not apply to a defendant charged  
20 with murder in the first degree of more than persons in  
21 the same or separate incident under section 707-701(1)(a), if



1 the offense was committed with deliberate premeditated malice  
2 aforethought.

3 [~~2~~] (3) As used in this chapter, the terms "physical or  
4 mental disease, disorder, or defect" do not include an  
5 abnormality manifested only by repeated penal or otherwise anti-  
6 social conduct."

7 SECTION 3. Section 706-656, Hawaii Revised Statutes, is  
8 amended by amending subsection (1) to read as follows:

9 "(1) [~~Persons~~] Except as provided in section 706-  
10 persons convicted of first degree murder or first degree  
11 attempted murder shall be sentenced to life imprisonment without  
12 possibility of parole.

13 As part of such sentence the court shall order the director  
14 of public safety and the Hawaii paroling authority to prepare an  
15 application for the governor to commute the sentence to life  
16 imprisonment with parole at the end of twenty years of  
17 imprisonment; provided that persons who are repeat offenders  
18 under section 706-606.5 shall serve at least the applicable  
19 mandatory minimum term of imprisonment."

20 SECTION 4. Section 707-701, Hawaii Revised Statutes, is  
21 amended by amending subsection (2) to read as follows:





1           "(2) Murder in the first degree is a felony for which the  
2 defendant shall be sentenced [~~to imprisonment~~] as provided in  
3 section 706-         or 706-656[-], as applicable."

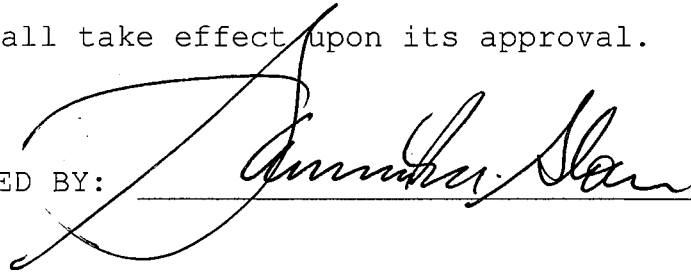
4           SECTION 5. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun before its effective date.

7           SECTION 6. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9           SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

A large, stylized handwritten signature in black ink, appearing to read "Amador Star", is written over a horizontal line that serves as a signature line.

**Report Title:**

Capital Punishment; Murder of Multiple Persons; Physical or Mental Disease, Disorder, or Defect

**Description:**

Provides for a sentence of death or life imprisonment without possibility of parole upon conviction of a defendant for the murder of multiple persons. Prohibits defendants committing premeditated murder of multiple persons from asserting a defense that excludes penal responsibility due to a physical or mental disease, disorder, or defect.

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