

JAN 17 2013

A BILL FOR AN ACT

RELATING TO THE PENAL CODE.

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

1 SECTION 1. The legislature finds that under the current
2 law, the killing of a person in an especially heinous,
3 atrocious, or cruel manner, manifesting exceptional depravity,
4 does not rise to the level of first degree murder. While a
5 conviction for second degree murder that involved a heinous,
6 atrocious, or cruel act may warrant enhanced sentencing, it
7 leaves the decision to pursue enhanced sentencing to the
8 discretion of the prosecutor or the court and requires an
9 entirely separate hearing after the trial.

10 Several other states automatically classify killing another
11 person under these types of circumstances as first degree
12 murder. Such a classification is intended to punish the
13 perpetrator and to deter others from committing these types of
14 horrible crimes.

15 The purpose of this Act is to elevate the murder of a
16 person that is heinous, atrocious, or cruel to first degree
17 murder in order to better reflect the severity of the crime.



1 SECTION 2. Section 707-701, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of murder in the first
4 degree if the person intentionally or knowingly causes the death
5 of:

- 6 (a) More than one person in the same or separate incident;
- 7 (b) A law enforcement officer, judge, or prosecutor
8 arising out of the performance of official duties;
- 9 (c) A person known by the defendant to be a witness in a
10 criminal prosecution and the killing is related to the
11 person's status as a witness;
- 12 (d) A person by a hired killer, in which event both the
13 person hired and the person responsible for hiring the
14 killer shall be punished under this section;
- 15 (e) A person while the defendant was imprisoned;
- 16 (f) A person from whom the defendant has been restrained,
17 by order of any court, including an ex parte order,
18 from contacting, threatening, or physically abusing
19 pursuant to chapter 586;
- 20 (g) A person who is being protected by a police officer
21 ordering the defendant to leave the premises of that



- 1 protected person pursuant to section 709-906(4),
2 during the effective period of that order; [ex]
- 3 (h) A person known by the defendant to be a witness in a
4 family court proceeding and the killing is related to
5 the person's status as a witness[-]; or
- 6 (i) A person in an especially heinous, atrocious, or cruel
7 manner, manifesting exceptional depravity. As used in
8 this subsection, "an especially heinous, atrocious, or
9 cruel manner, manifesting exceptional depravity" means
10 a conscienceless or pitiless crime which is
11 unnecessarily torturous to a victim."

12 SECTION 3. Section 706-657, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§706-657 Enhanced sentence for second degree murder.** The
15 court may sentence a person who has been convicted of murder in
16 the second degree to life imprisonment without possibility of
17 parole under section 706-656 if the court finds [~~that the murder~~
18 ~~was especially heinous, atrocious, or cruel, manifesting~~
19 ~~exceptional depravity or that~~] the person was previously
20 convicted of the offense of murder in the first degree or murder
21 in the second degree in this State or was previously convicted
22 in another jurisdiction of an offense that would constitute



1 murder in the first degree or murder in the second degree in
2 this State. As used in this section, the phrase [~~"especially~~
3 ~~heinous, atrocious, or cruel, manifesting exceptional depravity"~~
4 ~~means a conscienceless or pitiless crime which is unnecessarily~~
5 ~~torturous to a victim and]~~ "previously convicted" means a
6 sentence imposed at the same time or a sentence previously
7 imposed which has not been set aside, reversed, or vacated.

8 Hearings to determine the grounds for imposing an enhanced
9 sentence for second degree murder may be initiated by the
10 prosecutor or by the court on its own motion. The court shall
11 not impose an enhanced term unless the ground therefor has been
12 established at a hearing after the conviction of the defendant
13 and on written notice to the defendant of the ground proposed.
14 Subject to the provision of section 706-604, the defendant shall
15 have the right to hear and controvert the evidence against the
16 defendant and to offer evidence upon the issue.

17 The provisions pertaining to commutation in section 706-
18 656(2), shall apply to persons sentenced pursuant to this
19 section."

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

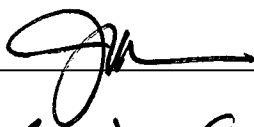


1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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

4

INTRODUCED BY:



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S.B. NO. 47

Report Title:

Penal Code; First Degree Murder

Description:

Amends section 707-701, HRS, to include intentionally or knowingly killing a person in an especially heinous, atrocious, or cruel manner, manifesting exceptional depravity, as murder in the first degree. Makes conforming amendments..

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