
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 in Hawaii, 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 to better reflect the severity of the crime.



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1 SECTION 2. Section 706-657, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§706-657 Enhanced sentence for second degree murder. The
4 court may sentence a person who was eighteen years of age or
5 over at the time of the offense and who has been convicted of
6 murder in the second degree to life imprisonment without the
7 possibility of parole under section 706-656 if the court finds
8 that [~~the murder was especially heinous, atrocious, or cruel,~~
9 ~~manifesting exceptional depravity or that~~] the person was
10 previously convicted of the offense of murder in the first
11 degree or murder in the second degree in this State or was
12 previously convicted in another jurisdiction of an offense that
13 would constitute murder in the first degree or murder in the
14 second degree in this State. As used in this section, the
15 phrase [~~"especially heinous, atrocious, or cruel, manifesting~~
16 ~~exceptional depravity"~~ means a conscienceless or pitiless crime
17 ~~which is unnecessarily torturous to a victim and~~ "previously
18 convicted" means a sentence imposed at the same time or a
19 sentence previously imposed which has not been set aside,
20 reversed, or vacated.



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

10 The provisions pertaining to commutation in section 706-
11 656(2), shall apply to persons sentenced pursuant to this
12 section."

13 SECTION 3. Section 707-701, Hawaii Revised Statutes, is
14 amended by amending subsection (1) to read as follows:

15 "(1) A person commits the offense of murder in the first
16 degree if the person intentionally or knowingly causes the death
17 of:

- 18 (a) More than one person in the same or separate incident;
- 19 (b) A law enforcement officer, judge, or prosecutor
- 20 arising out of the performance of official duties;



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- 1 (c) A person known by the defendant to be a witness in a
2 criminal prosecution and the killing is related to the
3 person's status as a witness;
- 4 (d) A person by a hired killer, in which event both the
5 person hired and the person responsible for hiring the
6 killer shall be punished under this section;
- 7 (e) A person while the defendant was imprisoned;
- 8 (f) A person from whom the defendant has been restrained,
9 by order of any court, including an ex parte order,
10 from contacting, threatening, or physically abusing
11 pursuant to chapter 586;
- 12 (g) A person who is being protected by a police officer
13 ordering the defendant to leave the premises of that
14 protected person pursuant to section 709-906(4),
15 during the effective period of that order; [~~e~~]
- 16 (h) A person known by the defendant to be a witness in a
17 family court proceeding and the killing is related to
18 the person's status as a witness [~~-~~]; or
- 19 (i) A person in an especially heinous, atrocious, or cruel
20 manner, manifesting exceptional depravity. As used in
21 this subsection, "an especially heinous, atrocious, or



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1 cruel manner, manifesting exceptional depravity" means
 2 a conscienceless or pitiless crime which is
 3 unnecessarily torturous to a victim."

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

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

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INTRODUCED BY:

John M. Nigro
Kal Ruck
John M. Nigro
Mark Spivey

JAN 21 2015



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Report Title:

Penal Code; First Degree Murder

Description:

Elevates to first degree murder the act of intentionally or knowingly killing a person in an especially heinous, atrocious, or cruel manner, manifesting exceptional depravity.

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