

JAN 23 2015

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# 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 in an especially heinous, atrocious, or cruel manner to



1 first degree murder in order to better reflect the severity of  
2 the crime.

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

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

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



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1 (g) A person who is being protected by a police officer  
 2 ordering the defendant to leave the premises of that  
 3 protected person pursuant to section 709-906(4),  
 4 during the effective period of that order; [e]

5 (h) A person known by the defendant to be a witness in a  
 6 family court proceeding and the killing is related to  
 7 the person's status as a witness [-]; or

8 (i) A person in an especially heinous, atrocious, or cruel  
 9 manner, manifesting exceptional depravity. As used in  
 10 this subsection, "an especially heinous, atrocious, or  
 11 cruel manner, manifesting exceptional depravity" means  
 12 a conscienceless or pitiless crime that is  
 13 unnecessarily torturous to a victim."

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

16 "§706-657 **Enhanced sentence for second degree murder.** The  
 17 court may sentence a person who was eighteen years of age or  
 18 over at the time of the offense and who has been convicted of  
 19 murder in the second degree to life imprisonment without the  
 20 possibility of parole under section 706-656 if the court finds  
 21 [~~that the murder was especially heinous, atrocious, or cruel,~~



1 ~~manifesting exceptional depravity or that]~~ the person was  
2 previously convicted of the offense of murder in the first  
3 degree or murder in the second degree in this State or was  
4 previously convicted in another jurisdiction of an offense that  
5 would constitute murder in the first degree or murder in the  
6 second degree in this State. As used in this section, the  
7 phrase [~~"especially heinous, atrocious, or cruel, manifesting~~  
8 ~~exceptional depravity"~~ means a conscienceless or pitiless crime  
9 ~~which is unnecessarily torturous to a victim and]~~ "previously  
10 convicted" means a sentence imposed at the same time or a  
11 sentence previously imposed which has not been set aside,  
12 reversed, or vacated.

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



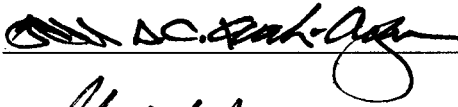

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1 SECTION 4. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

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

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

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INTRODUCED BY:   




# S.B. NO. 212

**Report Title:**

Penal Code; First Degree Murder

**Description:**

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

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

