

Honolulu, Hawaii

APR 08 2016

RE: H.B. No. 1726  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred  
H.B. No. 1726 entitled:

"A BILL FOR AN ACT RELATING TO MURDER,"

begs leave to report as follows:

The purpose and intent of this measure is to include that a person commits the offense of murder in the first degree when the person intentionally or knowingly causes the death of another person whom the defendant restrained or otherwise detained as a shield, as a hostage, or for ransom.

Your Committee received testimony in support of this measure from eight individuals. Your Committee received comments on this measure from the Department of the Prosecuting Attorney, City and County of Honolulu.

Your Committee finds that the offense of murder in the first degree is a narrowly defined offense that is limited to cases in which there are multiple victims, the victim was killed by a hired killer, or the victim was under the specific protection of or had a particular role with the courts or law enforcement system. Defendants convicted of murder in the first degree are automatically sentenced to life imprisonment without the possibility of parole. All other forms of murder are covered under the offense of murder in the second degree, and defendants convicted of murder in the second degree are generally sentenced to life imprisonment with the possibility of parole. However, it is possible for a defendant convicted of murder in the second



degree to be sentenced to life imprisonment without the possibility of parole if enhanced sentencing under section 706-657, Hawaii Revised Statutes (HRS), or an extended term of imprisonment under section 706-661, HRS, is applied. The different sentencing requirements between these two offenses can have a tremendous impact on the surviving members of the victims' families.

Your Committee notes the testimony received from individuals that the offense of murder in the first degree may be too narrowly defined and that the offense of murder in the second degree and its sentencing requirements may not appropriately correlate to the type of act committed. This measure expands the acts for which a person may be convicted of murder in the first degree.

Your Committee further notes the concerns raised by the Department of the Prosecuting Attorney of the City and County of Honolulu that this measure does not fit properly within the current landscape of the types of acts delineated under the offense of murder in the first degree. However, your Committee believes that further clarity is necessary to provide additional circumstances in which restraint of a person by a defendant during the course of a murder could result in the defendant being charged with murder in the first degree under section 707-701, HRS. Your Committee notes that these clarifying amendments are technically consistent with other provisions in chapter 707, HRS.

Your Committee is aware that a conviction under section 707-701, HRS, necessarily results in a sentence of life without the possibility of parole. Your Committee notes that by incorporating the newly particularized context for murder in the first degree proposed by this measure, the State might be seen as moving closer to enacting a type of homicide charge traditionally not recognized in Hawaii law. By adopting this measure, it is not your Committee's intention to endorse such an interpretation.

Accordingly, your Committee has amended this measure by:

- (1) Clarifying that the offense of murder in the first degree includes when the defendant intentionally or knowingly causes the death of a person whom the defendant restrained with intent to hold the person for ransom or reward or use the person as a shield or hostage, in order to be consistent with the language under other offenses under chapter 707, HRS;



- (2) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (3) Making a technical, nonsubstantive amendment for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1726, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1726, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,

  
\_\_\_\_\_  
GILBERT S.C. KEITH-AGARAN, Chair



