

**LATE**

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE KARL RHOADS, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawai'i**

February 11, 2016

**RE: H.B. 1726; RELATING TO MURDER.**

Chair Rhoads, Vice-Chair San Buenaventura and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in opposition to H.B. 1726. The Department does not believe that the proposed addition would always fit properly within the current landscape of Murder in the first degree, and moreover, there are already multiple means by which enhanced, extended, or mandatory minimum sentencing can be applied to the proposed scenarios, on a case-by-case basis.

In Hawai'i, Murder in the first degree (HRS §707-701) is a very limited and narrowly defined offense, limited to rare cases in which there are multiple victims, or the victim was killed by a hired killer, or the victim was under the specific protection of—or had a particular role within—our courts or law enforcement system. All other forms of murder are covered under the offense of Murder in the second degree (HRS §707-702).

Those who are convicted of Murder in the first degree are automatically sentenced to life imprisonment *without* possibility of parole. Those convicted of Murder in the second degree are generally sentenced to life imprisonment *with* possibility of parole; however, they may be sentenced to life imprisonment *without* possibility of parole if:

- Enhanced sentencing is applied under HRS §706-657, upon court finding that the offender was previously convicted of murder, or “the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity” (this is further defined as “a conscienceless or pitiless crime which is unnecessarily torturous to the victim”); *or*
- Extended term of imprisonment is applied under HRS §706-661, upon court finding necessity for the protection of the public and the offender meets any of the criteria under

HRS §706-662 (e.g. previously convicted of 2 or more felony offenses, currently being sentenced for two or more felonies, hate crimes, etc)

If neither of the above are found to apply, those convicted of Murder in the second degree may also be sentenced to mandatory minimum imprisonment pursuant to HRS §706-606.5 (repeat offenders), HRS §706, 660.1 (use of a firearm in a felony), or HRS §706-660.2 (offenses against children, elder or handicapped persons), such that the offender would not be eligible for parole for many years.

While the Department understands that the parameters for all of these offenses and sentencing provisions are a matter of policy set by the Legislature, the Department does not believe that the proposed subsection—adding a victim “whom the defendant restrained or otherwise detained as a shield, hostage or for ransom”—would always fit properly within the current landscape of offenses delineated in Murder in the first degree. Indeed, some instances may qualify as being “especially heinous, atrocious, or cruel, manifesting exceptional depravity,” but that assessment can already be made by the court on a case-by-case basis, even without a motion from the prosecution.

We also note that murder cases in which the victim was restrained or otherwise detained as a shield, hostage or for ransom would likely be charged concurrently as Kidnapping (HRS §707-720), which is a class A felony and could thus bring the case into the realm of Extended term of imprisonment, as noted above.

Although the Department does appreciate the intent of H.B. 1726, to review the scope of Hawai'i's murder laws and sentencing provisions, we do not believe that the current proposal in H.B. 1726 would bring any needed benefit to the offense of Murder in the first degree, and may actually expand this offense—and its automatic sentence of lifetime imprisonment without possibility of parole—in a way that the Legislature does not truly desire.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 1726. Thank for you the opportunity to testify on this matter.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 09, 2016 10:16 PM  
**To:** JUDtestimony  
**Cc:** rkailianu57@gmail.com  
**Subject:** \*Submitted testimony for HB1726 on Feb 11, 2016 14:00PM\*

**HB1726**

Submitted on: 2/9/2016

Testimony for JUD on Feb 11, 2016 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Ho`omana Pono, LLC	Support	Yes

Comments:

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**LATE**

To: Representative Karl Rhodes, Chair- House Committee on Judiciary;  
Representative Joy San Buenaventura, Vice Chair; and members of the Committee

From: **Nonohe Botelho**, Parents of Murdered Children

Date: Thursday, February 11, 2016

Re: **House Bill 1726**: Provides that First Degree murder includes a case in which the victim was restrained or otherwise detained as a shield, hostage, or for ransom.

---

Aloha, my name is Nonohe Botelho. You just heard from me regarding the proposed Constitutional Amendment for Victims' Rights. I know we still have a lot of work ahead of us, but I honestly feel we are moving in the right direction. Thank you for passing HB1144.

Today, I am here on a different matter and in many ways far more difficult. I am writing to say that I am in strong support of the of HB 1726, pertaining to a proposed revision to First Degree Murder. The proposed revision, under item (i), reads, a person commits first degree murder if "**the victim was restrained or otherwise detained as a shield, hostage, or for ransom**".

At this time I want to provide supplemental *Addendum 1*. This addendum lists cases I have followed within the last 5 years. Of these dozen cases, 7 victims were murdered while being restrained or detained and left unable to escape, including my own son, Joel. The most recent case involved a 24 year old female who was doused with gasoline and set on fire while she was detained in a van. She was able to get out of the van and was seen running away while still on fire. The defendants in all but one of these cases could only be charged with Second Degree Murder because currently heinous acts, such as these, do not fit the criteria for First Degree Murder.

In addition, nine of these defendants were also eligible to receive the maximum term of imprisonment under the Extended Sentencing, HRS 662. Families of victims who are murdered in a "heinous, atrocious and cruel manner" are told that the defendant would be eligible for an Extended Sentence, as a supplement to Second Degree Murder. I personally know of a hand full of families, including myself, that went through this process. After waiting two years for the extended sentencing phase we poured our hearts out imploring the judge to grant the Extended Sentence. In the end, the judge simply stated that she "Could NOT impose the Extended Sentence." We were devastated and left very confused.

I'm providing you with another supplemental document, *Addendum 2*. This article was written and published in the Star advertiser October 2007. It states, "The Supreme Court ruled that the Extended Sentencing law violates the constitutional rights of the defendant." Everyone from the Supreme Court down, including prosecutors and judges, know the extended sentencing law is unconstitutional and yet they mislead families and spend tax payer's dollars to go through a process designed to fail.

I know we have a lot of work ahead of us on this issue, but today, I am asking you, our lawmakers, to take another step in the right direction. Please pass HB 1726 because extended sentencing is NOT a viable substitute for First Degree Murder.

Thank you for your time

# Addendum 1

## LATE TESTIMONY

Botelho  
HB 1724

### Case Study- State of Hawaii

Case/ Year	Victim(s)	Description	Charge	Verdict	<sup>1</sup> Extended Sentence
*State vs. Corbit Ahn, 2009	Iris Rodrigues-Kaikana (f)	Murdered, beat, raped and left nude in an alley	2 <sup>nd</sup> Degree	Guilty (2012)	Eligible, but Not Granted
*State Vs. Toi Nofoa, 2009	Royal Kaukani (f)	Murdered, shot in the head. Had TRO on Nofoa	<sup>2</sup> 1 <sup>st</sup> Degree	Not Guilty (2011)	Eligible
*State vs. Joshua Williams, 2010	Jamil Khan (m)	Murdered, sliced throat, bludgeoned and dismembered	2 <sup>nd</sup> Degree	Guilty (2011)	<sup>3</sup> Eligible, but Not Granted
*State vs. Michael Connally, 2010	Jamil Khan (m)	Co-defendant, accomplice, drove Khan to meet Williams	2 <sup>nd</sup> Degree	<sup>4</sup> Dismissed	Eligible, but Not Granted
*State vs. Makuoia Collins, 2011	Joel K. Botelho (m) <sup>5</sup> Leon Botelho (m)	Executed, shot while on his knees	2 <sup>nd</sup> Degree Att. 2 <sup>nd</sup> Degree	Guilty (2011)	Eligible, but Not Granted
*State vs. Tobey Stigel, 2011	Tammy Nyguen (f)	H-3 Shooting. Nyguen shot while sitting in her car	2 <sup>nd</sup> Degree <sup>6</sup> Att. 2 <sup>nd</sup> Degree (x2)	Guilty (2012)	Eligible, but Not Granted
*State vs. Teddy Munet, 2011	<sup>7</sup> William "Billy" Failau (m)	Executed, shot in the back of the head	2 <sup>nd</sup> Degree	Not Guilty (2014)	Eligible

<sup>1</sup> Extended Sentence (Act 1, SP 2007, HB1152). If Defendant meets certain criteria they are eligible for extended sentence which *may* include life without the possibility of parole

<sup>2</sup> Nofoa was charged with First Degree Murder because Kaukani was to testify against him in a separate case. Kaukani was a State witness.

<sup>3</sup> Williams qualified for Extended Sentence, but prosecutors withdrew request as part of a plea deal.

<sup>4</sup> Case against Connolly was dismissed as part of a plea deal. Connolly agreed to testify against Williams.

<sup>5</sup> Collins was charged with Attempted Second Degree Murder of Leon Botelho. Collins shot at Leon, but missed. Collins was not charged with First Degree because he did not kill more than one person.

<sup>6</sup> Stigel was charged with Attempted Second Degree (x2). He shot at 2 others, but missed. Stigel was not charged with First Degree because he did not kill more than one person.

<sup>7</sup> Munet was found not guilty of murder, but was sentenced to 10 years for prison escape and 10 years for firearms.

## Case Study- State of Hawaii

Case/ Year	Victim(s)	Description	Charge	Verdict	<sup>8</sup> Extended Sentence
*State vs. Christopher Deedy 2011	Kollin Elderts (m)	Shot in chest. Died at the scene	2 <sup>nd</sup> Degree	Pending new trial	n/a
*State vs. Jacob Le, 2012	Brent Keola Kanae (m)	Stabbed repeatedly in stairwell at Ala Moana	2 <sup>nd</sup> Degree	First trial, hung jury	n/a
State vs. Steven Capobianco, 2014	Carly Scott (f) Unborn Child	Missing. Recovered clothing indicated more than 20 stab wounds to chest and abdomen.	2 <sup>nd</sup> Degree	Pending	Eligible
Suspect, Boaz Johnson, 2014	Brittany-Jane Royal (f) Unborn Child	Murder/Suicide. Suspect confessed to murdering pregnant girlfriend. Her body was dumped in the ocean. Johnson found hanging. Left suicide note	n/a	n/a	n/a
State vs. Bobby Young-Townsend (2016)	Leilani Parado (f)	Doused with gasoline and set on fire	Attempted 2nd	pending	Eligible

\* Above cases went to trial between 2011-2015

### UPDATES:

- 1) State vs. Makuola Collins, On September 2015, The Intermediate Court of Appeals remanded case for new trial.
- 2) State vs. Toby Stangel, March 2015, Appeals Court Overturns Stangel's 3 consecutive life terms.
- 3) State vs. Jacob Le, First trial ended in a hung jury in favor of a Guilty Verdict (11 jurors favored guilt, 1 juror not guilty). Second trial, defendant said he gave a false confession after feeling pressured by police. Defendant was found "NOT GUILTY" in September 2015.
- 4) State vs. Christopher Deedy, Case is referred for third trial after two mistrials.

<sup>8</sup> Extended Sentence (Act 1, SP 2007, HB1152). If Defendant meets certain criteria they are eligible for extended sentence which *may* include life without the possibility of parole

# Addendum 2

BOTELHO  
HB 1736

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## LATE TESTIMONY

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HAWAII'S **GOV. SOURCE**

Posted on Friday, October 5, 2007

### Court overrules Hawaii law extending sentences

**StoryChat:** Comment on this story

By Demick DePledge  
Advertiser Government Writer

The Lingle administration is considering whether to call a special session of the Legislature to respond to a Hawaii Supreme Court ruling that the state's extended sentencing law is unconstitutional.

The court ruled on Monday that the sentencing law violates the Sixth Amendment right to a jury trial because judges, rather than juries, determine the facts that trigger longer prison sentences. The court also found that while the judiciary has the inherent power to impanel juries for extended sentencing, the task to remedy the law rests with the Legislature.

The ruling means judges cannot apply the extended sentencing law and that felons already sentenced under the law, but who are appealing, could have their sentences reduced.

State Attorney General Mark Bennett said he has spoken to Gov. Linda Lingle about either calling a special session to address the situation or waiting until the Legislature meets again for its regular session in January. Bennett said he is also gathering information from county prosecutors about the potential impact of the court's ruling.

Bennett said a threat to public safety is not immediate, since felons will still be sentenced to prison, "but they'll be getting out before they otherwise would have and so there will be a danger to the community down the road and a danger that can never be remedied if they end up not getting extended terms."

State lawmakers, who already are discussing a potential special session to help Hawaii Superferry, are also analyzing the court's ruling and whether an immediate fix is necessary. The state Senate is also likely to return for a special session to review a Lingle nominee to the Intermediate Court of Appeals.

"If it's something that can't wait for regular session, then we'll have to take a look at it," state Senate President Colleen Hanabusa, D-21st (Nanakuli, Makaha), said of the court's ruling on the sentencing law.

Some observers at the state Capitol asked privately whether the court's ruling gives Lingle some political cover to call lawmakers into special session where they can deal with both the extended sentencing law and the Superferry. Such a move may help deflect criticism that Lingle and lawmakers are taking an extraordinary step to help Superferry.

State Rep. Tommy Waters, D-51st (Lanikai, Weiramanalo), the chairman of the House Judiciary Committee, said he believes the court went too far in declaring the extended sentencing law unconstitutional. He noted two dissenting justices found that the court could have ruled that juries be impaneled to hear facts in extended sentencing while preserving the law.

"We'll have to fix it, but the question is whether we come back in special session or do it in the beginning of next session," Waters said.

Jack Tonaki, the state's public defender, said the issues raised by the court's ruling will likely require extensive debate by lawmakers that may not be suited to a special session.

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**LATE**

I strongly support HB 1726 (Joel's Law) to designate certain heinous crimes as First Degree Murder. My twenty-four son, Michael, was assassinated in our Hawaii Kai home over thirty-two years ago. He was shot in the forehead, and the autopsy report revealed that there was a bruise around the bullet hole that was a perfect impression of a gun muzzle. We knew that Mike had been shot, but didn't realize that the killer had put the gun against his face and then pulled the trigger. I had envisioned him standing some feet away from Mike when firing at him --- not actually touching him.

There are some homicides that have been committed with such shocking viciousness that they deserve to be punished at a higher level. If it is an assassination or has inflicted a horrific degree of suffering for the victim, it must merit classification as First Degree Murder / Attempted Murder. The recent case of the young woman doused with gasoline in a vehicle and then set on fire is an example. Her level of suffering should be acknowledged by a higher degree of charges against the perpetrator.

Please honor the victims of these awful crimes by showing the respect they deserve by passing House Bill 1726 or Joel's Law.

Thank you.



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 08, 2016 6:50 PM  
**To:** JUDtestimony  
**Cc:** blawaiianlvr@icloud.com  
**Subject:** \*Submitted testimony for HB1726 on Feb 11, 2016 14:00PM\*

**HB1726**

Submitted on: 2/8/2016

Testimony for JUD on Feb 11, 2016 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Individual	Support	No

Comments:

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# Nanette N. Napoleon

131-A Hauoli St. / Kailua, HI 96734  
Ph. (808) 261-0705 / Email: nanetten@hawaii.rr.com

February 10, 2016

## TESTIMONY IN SUPPORT OF HB 1726

Committee: Judiciary  
Chair: Representative Karl Rhoades  
Vice Chair: Representative Joy A. San Buenaventure  
Hearing Date: Thursday, February 11, 2016, 2:00 p.m., Room 325

Dear Representative Rhodes, Representative San Buenaventure,

In 2011, my nephew Joel Botelho was hunted down, held against his will and heinously murdered, "execution style," in front of his parent's home in Kaneohe...one day after his 27<sup>th</sup> birthday. He was the father of three young children.

Justice was served in that the shooter was arrested, tried and rightly convicted in a court of law. However, everyone in our family were extremely disappointed and heartbroken because even though the perpetrator was charged with first degree murder, the jury convicted him on the lesser charge of second degree murder.

Traditionally, convictions for first degree murder in Hawaii have been extremely limited. As a result, many murderers, whose actions clearly constituted acts of extreme malice, retribution and cruelty to the victim, have been convicted on the lesser charge of second degree murder.

I implore the Judiciary Committee to pass HB1726 which amends Section 707-701 of the Hawaii Revised Statutes to include, among the criteria for first degree murder, criteria (i) "A **person whom the defendant restrained or otherwise detained as a shield, hostage, or for ransom.**"

Mahalo,



Nanette Napoleon

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 10, 2016 2:06 PM  
**To:** JUDtestimony  
**Cc:** temanihi7@gmail.com  
**Subject:** Submitted testimony for HB1726 on Feb 11, 2016 14:00PM

**HB1726**

Submitted on: 2/10/2016

Testimony for JUD on Feb 11, 2016 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Noa Napoleon	Individual	Support	No

Comments: Aloha Chair and Committee members In consideration of... HB 1726  
"Provides that first degree murder includes a case in which a victim is used as a shield or held as a hostage or for ransom." I fully support this measure and pray members please pass this out of JUD. Mahalo!

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**LATE**

February 10, 2016

TO: Hawai'i State Legislature  
House Judiciary Committee

FROM: Noela Napoleon

RE: Testimony in Favor of HB1726 – **REVISED TESTIMONY\_02/10/16\_8:00PM**

Good afternoon Chairman Rhoads, Vice Chair San Buenaventura, Members of the House Judiciary Committee and Sponsoring Members:

My name is Noela Napoleon and I'm writing in support of HB1726. I am a middle aged mother of four, a graduate of Kailua High School and the University of Hawai'i at Mānoa, active community volunteer, business owner/operator of twenty years.

In my lifetime I have endured the murders of my first cousin, one of my best friends and, most recently, my nephew. While still in high school my first cousin, Kaniela Kahuanui, was beat to death at a night club in Waikiki while trying to help another person who was being attacked by a drunken mob. While I was in college my dear friend Lisa Kauhane, young and vibrant, was shot in the head by an abusive boyfriend while sitting in her car. In 2011 my beautiful nephew, Joel Keli'inoa Botelho, was shot to death while trying to reason with his killer. All of these deaths were devastating and have had brutal, irreversible effects on the families and friends who loved each of these people.

By now many of you have learned of my nephew's death and the circumstances surrounding it. So in this testimony I share my experience as I am now enduring the slow demise of my vitality, my will power and my own zest for life. For this is what it feels like to miss my nephew who I will never again enjoy; to watch as my sister and other survivors are made to plead for the barest, minimal rights while murderers are extended the fullest rights and protections under our laws.

When our family first learned of the 'Murder Two' charge against Joel's murderer we thought it was a mistake. Surely shooting an un-armed, innocent man at close range deserved the highest charge? But then we learned that in the State of Hawai'i all men and women are not created equal; and that Murder in the First Degree is only reserved for a select few categories of citizen. Imagine our shock to learn that our beloved son does not matter as much as a judge, a kupuna, a child and others who are ranked in order of importance to society or degree of vulnerability. He was unarmed, cornered, held at gun point and had no way to escape. He was deprived of the experience of raising his family, maturing into full adulthood and living out his life on earth. And we are forever deprived of him.

Even more shocking is the notion that murdering one human being is not serious enough to merit a Murder in the First Degree charge. In the State of Hawai'i one must kill two or more people to earn that distinction. I feel that both the social ranking and quantification system (with only minimal regard for the heinousness of the act itself) is unethical, immoral and unconstitutional.

Losing a loved one to murder is one of those experiences that defy explanation and even education. So we rely on you, our elected officials, to hear our voices for change and to have the same confidence in your electorate that we have to have when we elect you. We are looking to each of you for proof that you are listening and, this year, are taking meaningful action to support those measures that would improve justice for our loved ones and for those of us left behind to suffer - including HB1726.

I see that HB1726 (in its current evolution) has been scrubbed of all substantial content which has been submitted in other versions in the past two legislative sessions. Still, I believe that amendment (i) is desperately needed and will send a clearer, stronger message of change. I ask that you heed the rational arguments in favor of a broader definition of Murder in the First Degree such as HB1726.

Across races and cultures taking human life is a crime of the highest order; because human life is the most precious, the most sacred. Please do the right thing. The minimal thing. Begin the process to create stronger, stricter deterrents. Please do not allow fear of administrative and fiscal impacts to stand in the way of true, meaningful and lasting justice. Help our families to heal. Put into place one more stepping stone on the path to more just, contemporary and enlightened murder laws in Hawai'i.

In loving memory of our loved ones gone; and in hope for a better future for all of us,

Noela Napoleon  
(808) 222-0494  
506 Uluoa Street  
Kailua, Hawai'i 96734

**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 10, 2016 4:09 PM  
**To:** JUDtestimony  
**Cc:** mrocca@hscadv.org  
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**HB1726**

Submitted on: 2/10/2016  
Testimony for JUD on Feb 11, 2016 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michelle Rocca	Hawaii State Coalition Against Domestic Violence	Support	No

Comments: Please support HB 1726 which will provide 1st degree murder charges as an option for prosecutors to pursue. Murder is the most heinous crime that can ever be committed and perpetrators of this level of violence must be held to the highest standard of accountability. HSCADV urges you to favorably pass this very important measure.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 11, 2016 10:29 AM  
**To:** JUDtestimony  
**Cc:** andy.ancheta@amr.net  
**Subject:** \*Submitted testimony for HB1726 on Feb 11, 2016 14:00PM\*

**HB1726**

Submitted on: 2/11/2016  
Testimony for JUD on Feb 11, 2016 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andy Ancheta, MPH	Individual	Support	No

Comments:

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