

STAND. COM. REP. NO.

2865

Honolulu, Hawaii

MAR 29 2010

RE: H.B. No. 1019
H.D. 1
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2010
State of Hawaii

Madam:

Your Committee on Judiciary and Government Operations, to which was referred H.B. No. 1019, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE PENAL CODE,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Include within the offense of murder in the second degree conduct where a person, with the intent to do serious bodily injury to any person, performs acts that cause the death of that person;
- (2) Add within the offense of terroristic threatening in the first degree conduct where a person uses a simulated firearm; and
- (3) Add within the offense of robbery in the first degree conduct where the person is armed with a simulated firearm and, in the course of committing theft or non-consensual taking of a motor vehicle, either uses force against another with the intent to overcome that person's resistance or threatens the imminent use of force against another with the intent to compel acquiescence to the taking or escaping with the property.



Testimony in support of the measure was submitted by one state agency and three county agencies. Testimony in opposition to the measure was submitted by one state agency. Written testimony presented to your Committee may be reviewed on the Legislature's website.

Your Committee finds that the amendment to the conduct comprising murder in the second degree is intended to address cases that have occurred under the current law, where a defendant who brutally beat another person has been able to convince the jury to reduce murder charges to manslaughter by claiming that the defendant only intended to cause bodily injury to the person but did not know that the person would be killed. Your Committee received testimony from the Public Defender expressing concern that the revised definition may sweep in the conduct of a person who clearly did not intend to kill someone but whose actions set in motion a situation which ended in the victim's death, essentially creating a strict liability standard dependent upon the death of the victim rather than the intent of the defendant.

Your Committee also finds that the amendments to the terroristic threatening and robbery offenses are intended to address cases in which offenders brandish objects, which may not be real firearms, in the commission of these offenses. In these cases, the victims cannot tell that the simulated firearms are not real and respond to the threats and intimidation in the same manner as if the firearms are real. Your Committee heard testimony from the Public Defender explaining that the reason that terroristic threatening and robbery offenses that are committed with the use of an actual firearm are treated more seriously is that the introduction of a firearm into such situations increases the potential for someone to suffer death or serious bodily injury.

Your Committee has amended this measure by:

- (1) Inserting an effective date of September 14, 2047, to ensure further discussion regarding the proposed amendments and their scope; and
- (2) Making a technical, nonsubstantive change for purposes of clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached



to this report, your Committee is in accord with the intent and purpose of H.B. No. 1019, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1019, H.D. 1, 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
Government Operations,



BRIAN T. TANIGUCHI, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Judiciary and Government Operations
JGO

Bill / Resolution No.:* HB 1019, HD 1	Committee Referral: JGO	Date: 3/16/10		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"><input type="checkbox"/> Pass, unamended 2312</div> <div style="text-align: center;"><input checked="" type="checkbox"/> Pass, with amendments 2311</div> <div style="text-align: center;"><input type="checkbox"/> Hold 2310</div> <div style="text-align: center;"><input type="checkbox"/> Recommit 2313</div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
TAKAMINE, Dwight Y. (VC)	✓			
BUNDA, Robert				✓
GABBARD, Mike	✓			
NISHIHARA, Clarence K.	✓			
SLOM, Sam	✓			
TOTAL	5	0	0	1
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature: <div style="text-align: center; margin-top: 10px;"> </div>				
Distribution: <div style="display: flex; justify-content: space-between; font-size: small; margin-top: 5px;"> Original File with Committee Report Yellow Clerk's Office Pink Drafting Agency Goldenrod Committee File Copy </div>				

***Only one measure per Record of Votes**