

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

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

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai'i

February 29, 2016

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

Chair Keith-Agaran, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony expressing concerns regarding 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 currently 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 are concerned that the current proposal in H.B. 1726 would not 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.

Thank for you the opportunity to testify on this matter.

To: Senator Gilbert Keith-Agaran, Chair- Senate Committee on Judiciary and Labor;
Senator Maile Shimabukuro, Vice Chair; and members of the Committee

From: Nonohe Botelho, Parents of Murdered Children (POMC)

Date: February 27, 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.

My name is Nonohe Botelho. I am the Hawaii Contact Person for the National Organization of Parents of Murdered Children (POMC). I became affiliated with Parents of Murdered Children in 2011 after my son, Joel Kealiinoa Botelho, was gunned down and brutally killed in front of our home in Kaneohe.

I am here today in strong support 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 and consideration

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 28, 2016 10:03 AM
To: JDLTestimony
Cc:
Subject: Submitted testimony for HB1726 on Feb 29, 2016 10:00AM
Attachments: First Degree Murder Statutes by State as of November 2015.docx.p

HB1726

Submitted on: 2/28/2016

Testimony for JDL on Feb 29, 2016 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Brooke Scott	Individual	Support	Yes

Comments: Aloha Chair Keith-Agaran and Committee- Thank you for the opportunity to submit testimony in SUPPORT of SB 1726 (JOEL'S LAW). Attached is a list of First Degree Murder statutes from all fifty states. Hawaii's is unique in the worst way as hopefully you will be able to see. Mahalo for your time. I apologize for not including a heading on my written testimony- I'm trying to submit this from a phone with poor service and was unable to edit.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

To: Senator Gilbert Keith-Agaran, Chair- Senate Committee on Judiciary and Labor;
Senator Maile Shimabukuro, Vice Chair; and members of the Committee

From: Chris Botelho, Father of Joel Botelho

Date: February 27, 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.

My name is Chris Botelho. I have been a paramedic/supervisor with American Medical Response for the past 30 years. I am also the father of Joel Kealiinoa Botelho, who was shot and brutally killed in front of our Kaneohe home 5 years ago. Sadly, my son died in my arms while I performed CPR on him that fateful night.

I've performed CPR on many victims in my career, but never could I have imagined that one day I would have to do so on my own son. I was the first one to hold my son when he was born and I was the last one to hold him at his death.

I am here today to strongly urge and implore you to pass HB 1726. As you are aware, in the State of Hawaii, the charge of First Degree murder is reserved for someone who "knowingly and intentionally" causes the death of more than one person, kills a police officer, judge, or someone who is a witness in a criminal prosecution, to name a few. Passing HB 1726, as it is will include anyone who "knowingly and intentionally causes the death of a person whom the defendant "restrained or otherwise detained as a shield, hostage, or for ransom." Prior to being shot in the chest, my son Joel was detained at gun point and unable to escape.

There are many other murder cases which are either pending or have been completed, which under current law could only charge the defendant with Second Degree Murder. Some of these cases include the bludgeoning and dismemberment of the victim; the rape and strangulation of a young girl; and the brutal stabbing of a mother and her unborn child. None of the defendants in these cases who committed these "atrocious and heinous" acts were able to be charged with First Degree Murder.

My wife and I were told by the judge, prosecutors and law enforcement officers involved in our case that "their hands were tied" regarding the current laws defining criteria for First Degree Murder, and its obvious inadequacies. We were encouraged to go to our legislators and work to change the current laws. We are doing that today. We are humbly asking this Senate Judiciary Committee to take a step forward in righting this wrong by passing HB 1726, which we call "Joel's Law"

Thank you for your time and consideration

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 28, 2016 9:14 AM
To: JDLTestimony
Cc:
Subject: Submitted testimony for HB1726 on Feb 29, 2016 10:00AM
Attachments: Johnny 1726.pages

HB1726

Submitted on: 2/28/2016

Testimony for JDL on Feb 29, 2016 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
john pipkin	Individual	Support	No

Comments: Looking forward to seeing what the legislature does to fix the laws this year.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

Nanette N. Napoleon

February 27, 2016

TESTIMONY IN SUPPORT OF HB 1726 - RELATING TO MURDER

Committee: Senate Committee on Judiciary and Labor
Chair: Senator Gilbert S.C. Keith-Agaran
Vice Chair: Senator Maile S.L. Shimabukuro
Hearing Date: Monday, February 29, 2016 / Room 016

Dear members of the Senate Committee on Judiciary and Labor,

In 2011, my nephews Joel and Leon Botelho were hunted down by the shooter and ten other individuals. Once the group reached the Botelho residence, where Leon and his parents lived and Joel was visiting for the holiday, they blocked the entrance to the cul-de-sac with their vehicles so that there was no route of escape. The shooter, and at least five others, got out of their vehicles and proceeded on foot in search of Leon and Joel. The shooter found Joel (who was unarmed), detained him and ordered him to his knees, “execution style,” then fired his handgun at Joel hitting him in the chest. Joel died instantly, one day after his 27th 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 attempted 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 rare because the criteria for first degree murder is so limited. As a result, many murderers, whose actions clearly constituted acts of extreme malice, retribution and cruelty to the victim, have been only 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

Electronically submitted on the State Legislature website.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 25, 2016 8:23 PM
To: JDLTestimony
Cc:
Subject: *Submitted testimony for HB1726 on Feb 29, 2016 10:00AM*

HB1726

Submitted on: 2/25/2016

Testimony for JDL on Feb 29, 2016 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Verdean Goins	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov