

JAN 20 2006

S.B. NO. 2066

A BILL FOR AN ACT

RELATING TO CAPITAL PUNISHMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that there is a need to
2 provide for the imposition of the death penalty to address one
3 of the most serious offenses that can be committed, namely, the
4 sexual assault and murder of a minor. The use of capital
5 punishment in this circumstance is intended both to punish the
6 perpetrator and to deter others from committing this type of
7 crime.

8 The legislature further finds that this Act is in
9 compliance with the United States Supreme Court's decision in
10 Ring v. Arizona, 536 U.S. 584 (2002), in which the Court ruled
11 that a jury, rather than a judge, must make a finding of
12 aggravating factors when those factors are underlying a judge's
13 choice to impose the death penalty rather than a lesser,
14 statutory punishment. Because Arizona's enumerated aggravating
15 factors operated as the "functional equivalent of an element of
16 a greater offense", the Sixth Amendment to the United States
17 Constitution required that they be found by a jury..



1 The legislature finds that this Act complies with this
2 case, which has affected Arizona and other states' capital
3 punishment statutes. This Act requires that the jury deliberate
4 and recommend to the court whether the defendant should be
5 sentenced to death or to life imprisonment without the
6 possibility of parole. A recommendation of death requires the
7 unanimous vote of the entire membership of the jury, and must be
8 based on a written finding that there are insufficient
9 mitigating circumstances to overcome the circumstances of the
10 murder, and a listing of any aggravating circumstances.

11 In particular, the jury must find that there must exist at
12 least one aggravating circumstance that justifies the death
13 penalty, and there must be no mitigating circumstances or
14 insufficient mitigating circumstances considered as a whole to
15 outweigh each aggravating circumstance considered separately.
16 The court may enter a sentence of death only upon the
17 recommendation of the jury, but notwithstanding the
18 recommendation of the jury, the court has full discretion to not
19 issue such a sentence.

20 Finally, this Act prohibits the use of capital punishment
21 for persons under the age of eighteen years, and for those who,
22 as a result of a physical or mental disease, disorder, or



1 defect, lack the capacity to understand the proceedings against
2 them or to assist in their own defense, so long as the
3 incapacity endures.

4 The legislature finds that this Act is necessary for the
5 health, safety, and welfare of all of the people of this State,
6 and particularly for the protection of Hawaii's children.

7 SECTION 2. Chapter 706, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§706- Capital punishment; sexual assault and murder of
11 a minor. (1) This section shall apply only to a defendant who
12 has been convicted of the following offenses against the same
13 victim:

14 (a) Sexual assault under section 707-730, 707-731, 707-
15 732, 707-733, or 707-733.5; and

16 (b) Murder in the first degree under section 707-701 or
17 murder in the second degree under section 707-701.5;

18 in which the victim was under the age of eighteen and was under
19 the domination and control of the defendant during the entire,
20 continuous period of time in which the offenses under paragraphs

21 (a) and (b) were committed.



1 (2) Upon conviction of a defendant for the offenses
2 specified in subsection (1), the court shall conduct a separate
3 sentencing proceeding to determine whether the defendant shall
4 be sentenced to death or to life imprisonment without
5 possibility of parole; provided that no person shall be
6 sentenced to death under this section who:

7 (a) Is under the age of eighteen years; or

8 (b) As a result of a physical or mental disease, disorder,
9 or defect lacks capacity to understand the proceedings
10 against the person or to assist in the person's own
11 defense, so long as the incapacity endures.

12 The proceeding shall be conducted by the trial judge before the
13 trial jury as soon as practicable. If the trial jury has been
14 waived or if the defendant pleaded guilty, the sentencing
15 proceeding shall be conducted before a jury empaneled for that
16 purpose, unless waived by the defendant. In the proceeding,
17 evidence shall be presented regarding any of the aggravating
18 circumstances listed in subsection (4) and the mitigating
19 circumstances listed in subsection (5), and evidence may be
20 presented as to any other matter that the court deems relevant
21 to the sentence. Any evidence that the court deems to have
22 probative value may be received; provided that this subsection



1 shall not be construed to authorize the introduction of any
2 evidence secured in violation of the Constitution of the United
3 States or of the State. The defendant and the State shall be
4 permitted to present arguments for or against the sentence of
5 death.

6 (3) After hearing all of the evidence, the jury shall
7 deliberate and recommend to the court whether the defendant
8 should be sentenced to death or to life imprisonment without the
9 possibility of parole. A recommendation of death shall require
10 a unanimous vote of the entire membership of the jury and shall
11 be based on a written finding that there are insufficient
12 mitigating circumstances to overcome the circumstances of the
13 sexual assault and murder, and a listing of any aggravating
14 circumstances:

15 (a) The jury finds that there exists at least one
16 aggravating circumstance under subsection (4) that
17 justifies the death penalty; and

18 (b) The jury finds that there are no mitigating
19 circumstances or there are insufficient mitigating
20 circumstances considered as a whole, as listed in
21 subsection (5), to outweigh each aggravating
22 circumstance considered separately.



1 (4) In making its recommendation, the jury shall consider
2 the following as aggravating circumstances:

3 (a) The sexual assault and murder were committed while the
4 defendant was confined in a correctional facility,
5 regardless of whether that confinement was legal;

6 (b) The defendant committed another sexual assault or
7 murder at the time of the sexual assault and murder in
8 issue;

9 (c) The defendant knowingly created a substantial risk of
10 death to a person other than the victim or the
11 defendant;

12 (d) The sexual assault and murder were committed while the
13 defendant was engaged in the commission of, or an
14 attempt to commit, or flight after committing or
15 attempting to commit, any felony;

16 (e) The murder was committed for the defendant's pecuniary
17 or other personal gain or as a murder for hire;

18 (f) The defendant has a prior conviction for sexual
19 assault in any degree or murder in any degree;

20 (g) The murder was committed for the purpose of preventing
21 a witness from testifying, or a person from providing



1 evidence, or a person from participating in any legal
2 proceedings or official investigation;

3 (h) The murder was committed by the unlawful and malicious
4 use or detonation of any explosive; and

5 (i) The sexual assault or murder included the deliberate
6 torture of the victim.

7 (5) In making its recommendation, the jury shall consider
8 the following mitigating circumstances, if they apply:

9 (a) The defendant has no significant history of prior
10 criminal activity;

11 (b) The sexual assault and murder were committed while the
12 defendant was under the influence of extreme mental or
13 emotional disturbance;

14 (c) The defendant acted against the defendant's will,
15 under extreme duress, or under the substantial
16 domination of another person, a finding of which shall
17 eliminate the possible imposition of the death
18 penalty;

19 (d) At the time of the sexual assault and murder, the
20 capacity of the defendant to appreciate the
21 wrongfulness of the defendant's conduct or to conform
22 the defendant's conduct to the requirements of law was



1 substantially impaired by something other than the
2 defendant's voluntary and knowing ingestion of
3 intoxicating substances;

4 (e) The age of the defendant at the time of the sexual
5 assault and murder; and

6 (f) The defendant was an accomplice in the sexual assault
7 and murder committed by another person and the
8 defendant's participation was relatively minor, a
9 finding of which shall eliminate the possible
10 imposition of the death penalty.

11 (6) The court may enter a sentence of death only upon the
12 recommendation of the jury but, notwithstanding the
13 recommendation of the jury, shall have full discretion to not
14 issue such a sentence.

15 The court shall set forth in writing its findings upon
16 which the sentence of death is based, including the finding
17 required of the jury in subsection (3). If the court does not
18 make the findings required to impose the death sentence, the
19 court shall impose a sentence of life imprisonment without the
20 possibility of parole.

21 (7) The judgment of conviction and sentence of death shall
22 be subject to automatic review by the supreme court within sixty



1 days after certification by the sentencing court of the entire
2 record unless time is extended by the supreme court for an
3 additional period, not to exceed thirty days, for good cause
4 shown. The review by the supreme court shall have priority over
5 all other cases before the supreme court and shall be heard in
6 accordance with rules adopted by the supreme court. The supreme
7 court shall determine whether the sentence was imposed under the
8 influence of passion, prejudice, or any other arbitrary factor,
9 whether the evidence supports the finding of a statutory
10 aggravating circumstance, and whether the sentence is
11 disproportionate as compared to other cases of a similar nature.
12 If the sentence is affirmed, the supreme court's findings shall
13 include a reference to other cases of a similar nature that the
14 court considered in affirming the sentence.

15 (8) A person sentenced to death under this section shall
16 be executed by the administration of lethal injection at a place
17 and time to be determined by the sentencing court, which may
18 delegate the decision to the director of public safety; provided
19 that the death penalty shall be stayed, if imposed on a pregnant
20 woman, until after the woman has given birth.

21 (9) In the event the death penalty in this section is held
22 to be unconstitutional by the supreme court or the United States



1 Supreme Court, the court having jurisdiction over a person
2 previously sentenced to death shall cause the person to be
3 brought before the court, and the court shall sentence the
4 person to life imprisonment without possibility of parole.

5 (10) As part of the sentence imposed under this section,
6 the court shall order the director of public safety and the
7 Hawaii paroling authority to prepare an application for the
8 governor to commute a sentence of death to life imprisonment
9 without the possibility of parole.

10 (11) Any forensic or other evidence, including
11 deoxyribonucleic acid samples, that have been collected from:

12 (a) The defendant as provided in chapter 844D, and the
13 results recorded, preserved, and disseminated as
14 provided in chapter 844D; or

15 (b) The victim, the scene of the offense, or from any
16 other person or place relevant to any of the offenses
17 in question,

18 shall be further preserved for evidentiary purposes by the
19 appropriate law enforcement agency to allow the defendant the
20 opportunity to introduce that evidence at any hearing, the
21 purpose of which in whole or in part is to exonerate the
22 defendant from guilt. The evidence shall be preserved until



1 either the defendant has been exonerated or executed pursuant to
2 this section."

3 SECTION 3. Section 706-606.3, Hawaii Revised Statutes, is
4 amended by amending subsection (1) to read as follows:

5 "(1) [A] Except as provided in section 706-____, a person
6 who has committed intra-family sexual assault may be considered
7 for the expedited sentencing program in accordance with this
8 section. As used in this section, "intra-family" sexual assault
9 means any criminal offense of felony sexual assault under
10 section 707-730, 707-731, or 707-732, or incest, as defined in
11 section 707-741, in which the victim of the offense is related
12 to the defendant by consanguinity or marriage, or resides in the
13 same dwelling unit as the defendant, and the victim was, at the
14 time of the sexual assault, under the age of eighteen."

15 SECTION 4. Section 706-606.5, Hawaii Revised Statutes, is
16 amended by amending subsection (1) to read as follows:

17 "(1) Notwithstanding section 706-669 and any other law to
18 the contrary, except section 706-____, any person convicted of
19 murder in the second degree, any class A felony, any class B
20 felony, or any of the following class C felonies: section 188-
21 23 relating to possession or use of explosives, electrofishing
22 devices, and poisonous substances in state waters; section 707-



1 703 relating to negligent homicide in the first degree; 707-711
2 relating to assault in the second degree; 707-713 relating to
3 reckless endangering in the first degree; 707-716 relating to
4 terroristic threatening in the first degree; 707-721 relating to
5 unlawful imprisonment in the first degree; 707-732 relating to
6 sexual assault or rape in the third degree; 707-735 relating to
7 sodomy in the third degree; 707-736 relating to sexual abuse in
8 the first degree; 707-751 relating to promoting child abuse in
9 the second degree; 707-766 relating to extortion in the second
10 degree; 708-811 relating to burglary in the second degree; 708-
11 821 relating to criminal property damage in the second degree;
12 708-831 relating to theft in the first degree as amended by Act
13 68, Session Laws of Hawaii 1981; 708-831 relating to theft in
14 the second degree; 708-835.5 relating to theft of livestock;
15 708-836 relating to unauthorized control of propelled vehicle;
16 708-852 relating to forgery in the second degree; 708-854
17 relating to criminal possession of a forgery device; 708-875
18 relating to trademark counterfeiting; 710-1071 relating to
19 intimidating a witness; 711-1103 relating to riot; 712-1203
20 relating to promoting prostitution in the second degree; 712-
21 1221 relating to gambling in the first degree; 712-1224 relating
22 to possession of gambling records in the first degree; 712-1243



1 relating to promoting a dangerous drug in the third degree; 712-
2 1247 relating to promoting a detrimental drug in the first
3 degree; 134-7 relating to ownership or possession of firearms or
4 ammunition by persons convicted of certain crimes; 134-8
5 relating to ownership, etc., of prohibited weapons; 134-9
6 relating to permits to carry, or who is convicted of attempting
7 to commit murder in the second degree, any class A felony, any
8 class B felony, or any of the class C felony offenses enumerated
9 above and who has a prior conviction or prior convictions for
10 the following felonies, including an attempt to commit the same:
11 murder, murder in the first or second degree, a class A felony,
12 a class B felony, any of the class C felony offenses enumerated
13 above, or any felony conviction of another jurisdiction shall be
14 sentenced to a mandatory minimum period of imprisonment without
15 possibility of parole during such period as follows:

- 16 (a) One prior felony conviction:
 - 17 (i) Where the instant conviction is for murder in the
18 second degree or attempted murder in the second
19 degree--ten years;
 - 20 (ii) Where the instant conviction is for a class A
21 felony--six years, eight months;

- 1 (iii) Where the instant conviction is for a class B
- 2 felony--three years, four months;
- 3 (iv) Where the instant conviction is for a class C
- 4 felony offense enumerated above--one year, eight
- 5 months;
- 6 (b) Two prior felony convictions:
- 7 (i) Where the instant conviction is for murder in the
- 8 second degree or attempted murder in the second
- 9 degree--twenty years;
- 10 (ii) Where the instant conviction is for a class A
- 11 felony--thirteen years, four months;
- 12 (iii) Where the instant conviction is for a class B
- 13 felony--six years, eight months;
- 14 (iv) Where the instant conviction is for a class C
- 15 felony offense enumerated above--three years,
- 16 four months;
- 17 (c) Three or more prior felony convictions:
- 18 (i) Where the instant conviction is for murder in the
- 19 second degree or attempted murder in the second
- 20 degree--thirty years;
- 21 (ii) Where the instant conviction is for a class A
- 22 felony--twenty years;

1 (iii) Where the instant conviction is for a class B
2 felony--ten years;

3 (iv) Where the instant conviction is for a class C
4 felony offense enumerated above--five years."

5 SECTION 5. Section 706-606.6, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

7 "(1) Notwithstanding any other provision of law to the
8 contrary, except section 706- , any person who is convicted of
9 an offense under section 707-701.5, 707-702, 707-730, 707-731,
10 707-732, 707-733.5, 707-750, or 708-840, after having been
11 convicted on at least three prior and separate occasions of an
12 offense under section 707-701.5, 707-702, 707-710, 707-711, 707-
13 730, 707-731, 707-732, 707-733.5, 707-750, or 708-840, or of an
14 offense under federal law or the laws of another state that is
15 comparable to an offense under section 707-701.5, 707-702, 707-
16 710, 707-711, 707-730, 707-731, 707-732, 707-733.5, 707-750, or
17 708-840, shall be sentenced to an extended term of imprisonment
18 as provided in section 706-661."

19 SECTION 6. Section 706-656, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§706-656 Terms of imprisonment for first and second**
22 **degree murder and attempted first and second degree murder.** (1)



1 ~~[Persons]~~ Except as provided in section 706- , persons
2 convicted of first degree murder or first degree attempted
3 murder shall be sentenced to life imprisonment without
4 possibility of parole.

5 As part of such sentence the court shall order the director
6 of public safety and the Hawaii paroling authority to prepare an
7 application for the governor to commute the sentence to life
8 imprisonment with parole at the end of twenty years of
9 imprisonment; provided that persons who are repeat offenders
10 under section 706-606.5 shall serve at least the applicable
11 mandatory minimum term of imprisonment.

12 (2) Except as provided in section 706- or 706-657,
13 ~~[pertaining to enhanced sentence for second degree murder,~~
14 persons convicted of second degree murder and attempted second
15 degree murder shall be sentenced to life imprisonment with
16 possibility of parole. The minimum length of imprisonment shall
17 be determined by the Hawaii paroling authority; provided that
18 persons who are repeat offenders under section 706-606.5 shall
19 serve at least the applicable mandatory minimum term of
20 imprisonment.

21 If the court imposes a sentence of life imprisonment
22 without possibility of parole pursuant to section 706-657, as



1 part of that sentence, the court shall order the director of
2 public safety and the Hawaii paroling authority to prepare an
3 application for the governor to commute the sentence to life
4 imprisonment with parole at the end of twenty years of
5 imprisonment; provided that persons who are repeat offenders
6 under section 706-606.5 shall serve at least the applicable
7 mandatory minimum term of imprisonment."

8 SECTION 7. Section 706-659, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§706-659 Sentence of imprisonment for class A felony.**

11 Notwithstanding part II; sections 706-605, 706-606, 706-606.5,
12 706-660.1, 706-661, and 706-662; and any other law to the
13 contrary, except section 706-_____, a person who has been
14 convicted of a class A felony, except class A felonies defined
15 in chapter 712, part IV, shall be sentenced to an indeterminate
16 term of imprisonment of twenty years without the possibility of
17 suspension of sentence or probation. The minimum length of
18 imprisonment shall be determined by the Hawaii paroling
19 authority in accordance with section 706-669. A person who has
20 been convicted of a class A felony defined in chapter 712, part
21 IV, may be sentenced to an indeterminate term of imprisonment,
22 except as provided for in section 706-660.1 relating to the use



1 of firearms in certain felony offenses and section 706-606.5
2 relating to repeat offenders. When ordering such a sentence,
3 the court shall impose the maximum length of imprisonment which
4 shall be twenty years. The minimum length of imprisonment shall
5 be determined by the Hawaii paroling authority in accordance
6 with section 706-669."

7 SECTION 8. Section 706-660.1, Hawaii Revised Statutes, is
8 amended by amending subsections (1), (2), and (3) to read as
9 follows:

10 "(1) [A] Except as provided in section 706- , a person
11 convicted of a felony, where the person had a firearm in the
12 person's possession or threatened its use or used the firearm
13 while engaged in the commission of the felony, whether the
14 firearm was loaded or not, and whether operable or not, may in
15 addition to the indeterminate term of imprisonment provided for
16 the grade of offense be sentenced to a mandatory minimum term of
17 imprisonment without possibility of parole or probation the
18 length of which shall be as follows:

- 19 (a) For murder in the second degree and attempted murder
20 in the second degree--up to fifteen years;
21 (b) For a class A felony--up to ten years;
22 (c) For a class B felony--up to five years; and



1 (d) For a class C felony--up to three years.
2 The sentence of imprisonment for a felony involving the use of a
3 firearm as provided in this subsection shall not be subject to
4 the procedure for determining a minimum term of imprisonment
5 prescribed under section 706-669[~~, provided further that a~~]. A
6 person who is imprisoned in a correctional institution as
7 provided in this subsection shall become subject to the parole
8 procedure as prescribed in section 706-670 only upon the
9 expiration of the term of mandatory imprisonment fixed under
10 paragraph (a), (b), (c), or (d).

11 (2) [A] Except as provided in section 706- , a person
12 convicted of a second firearm felony offense as provided in
13 subsection (1) where the person had a firearm in the person's
14 possession or threatened its use or used the firearm while
15 engaged in the commission of the felony, whether the firearm was
16 loaded or not, and whether operable or not, shall in addition to
17 the indeterminate term of imprisonment provided for the grade of
18 offense be sentenced to a mandatory minimum term of imprisonment
19 without possibility of parole or probation the length of which
20 shall be as follows:

21 (a) For murder in the second degree and attempted murder
22 in the second degree--twenty years;



1 (b) For a class A felony--thirteen years, four months;

2 (c) For a class B felony--six years, eight months; and

3 (d) For a class C felony--three years, four months.

4 The sentence of imprisonment for a second felony offense
5 involving the use of a firearm as provided in this subsection
6 shall not be subject to the procedure for determining a minimum
7 term of imprisonment prescribed under section 706-669[~~, provided~~
8 ~~further that a~~]. A person who is imprisoned in a correctional
9 institution as provided in this subsection shall become subject
10 to the parole procedure as prescribed in section 706-670 only
11 upon expiration of the term of mandatory imprisonment fixed
12 under paragraph (a), (b), (c), or (d).

13 (3) [A] Except as provided in section 706- , a person
14 convicted of a felony, where the person had a semiautomatic
15 firearm or automatic firearm in the person's possession or used
16 or threatened its use while engaged in the commission of the
17 felony, whether the semiautomatic firearm or automatic firearm
18 was loaded or not, and whether operable or not, shall in
19 addition to the indeterminate term of imprisonment provided for
20 the grade of offense be sentenced to a mandatory minimum term of
21 imprisonment without possibility of parole or probation the
22 length of which shall be as follows:



- 1 (a) For murder in the second degree and attempted murder
2 in the second degree--twenty years;
3 (b) For a class A felony--fifteen years;
4 (c) For a class B felony--ten years; and
5 (d) For a class C felony--five years.

6 The sentence of imprisonment for a felony involving the use of a
7 semiautomatic firearm or automatic firearm as provided in this
8 subsection shall not be subject to the procedure for determining
9 a minimum term of imprisonment prescribed under section
10 706-669[; ~~provided further that a~~]. A person who is imprisoned
11 in a correctional institution as provided in this subsection
12 shall become subject to the parole procedure as prescribed in
13 section 706-670 only upon expiration of the term of mandatory
14 imprisonment fixed under paragraph (a), (b), (c), or (d)."

15 SECTION 9. Section 706-660.2, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§706-660.2 Sentence of imprisonment for offenses against**
18 **children, elder persons, or handicapped persons.**

19 [~~Notwithstanding~~] (1) Except as provided in section 706- ,
20 and notwithstanding section 706-669, a person who, in the course
21 of committing or attempting to commit a felony, causes the death



1 or inflicts serious or substantial bodily injury upon a person
2 who is:

3 ~~[(1)]~~ (a) Sixty years of age or older;

4 ~~[(2)]~~ (b) Blind, a paraplegic, or a quadriplegic; or

5 ~~[(3)]~~ (c) Eight years of age or younger;

6 and such disability is known or reasonably should be known to
7 the defendant, ~~[shall,]~~ if not subjected to an extended term of
8 imprisonment pursuant to section 706-662, shall be sentenced to
9 a mandatory minimum term of imprisonment without possibility of
10 parole as ~~[follows:]~~ provided in subsection (2).

11 (2) A person who meets the criteria under subsection (1)
12 shall be sentenced as follows:

13 ~~[(1)]~~ (a) For murder in the second degree--fifteen years;

14 ~~[(2)]~~ (b) For a class A felony--six years, eight months;

15 ~~[(3)]~~ (c) For a class B felony--three years, four months;

16 ~~[(4)]~~ (d) For a class C felony--one year, eight months."

17 SECTION 10. Section 706-661, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§706-661 Sentence of imprisonment for felony; extended**
20 **terms.** ~~[(1)]~~ Except as provided in section 706- , in the cases
21 designated in section 706-662, a person who has been convicted
22 of a felony may be sentenced to an extended indeterminate term



1 of imprisonment. When ordering such a sentence, the court shall
2 impose the maximum length of imprisonment which shall be as
3 follows:

4 (1) For murder in the second degree--life without the
5 possibility of parole;

6 (2) For a class A felony--indeterminate life term of
7 imprisonment;

8 (3) For a class B felony--indeterminate twenty-year term
9 of imprisonment; and

10 (4) For a class C felony--indeterminate ten-year term of
11 imprisonment.

12 The minimum length of imprisonment for [+]paragraphs[+]
13 (2), (3), and (4) shall be determined by the Hawaii paroling
14 authority in accordance with section 706-669."

15 SECTION 11. Section 706-662, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§706-662 Criteria for extended terms of imprisonment.**

18 [A] Except as provided in section 706- , a convicted defendant
19 may be subject to an extended term of imprisonment under section
20 706-661, if the convicted defendant satisfies one or more of the
21 following criteria:



- 1 (1) The defendant is a persistent offender whose
2 imprisonment for an extended term is necessary for
3 protection of the public. The court shall not make
4 this finding unless the defendant has previously been
5 convicted of two felonies committed at different times
6 when the defendant was eighteen years of age or older.
- 7 (2) The defendant is a professional criminal whose
8 imprisonment for an extended term is necessary for
9 protection of the public. The court shall not make
10 this finding unless:
- 11 (a) The circumstances of the crime show that the
12 defendant has knowingly engaged in criminal
13 activity as a major source of livelihood; or
- 14 (b) The defendant has substantial income or resources
15 not explained to be derived from a source other
16 than criminal activity.
- 17 (3) The defendant is a dangerous person whose imprisonment
18 for an extended term is necessary for protection of
19 the public. The court shall not make this finding
20 unless the defendant has been subjected to a
21 psychiatric or psychological evaluation that documents
22 a significant history of dangerousness to others



1 resulting in criminally violent conduct, and this
2 history makes the defendant a serious danger to
3 others. Nothing in this section precludes the
4 introduction of victim-related data in order to
5 establish dangerousness in [~~accord~~] accordance with
6 the Hawaii rules of evidence.

7 (4) The defendant is a multiple offender whose criminal
8 actions were so extensive that a sentence of
9 imprisonment for an extended term is necessary for
10 protection of the public. The court shall not make
11 this finding unless:

12 (a) The defendant is being sentenced for two or more
13 felonies or is already under sentence of
14 imprisonment for felony; or

15 (b) The maximum terms of imprisonment authorized for
16 each of the defendant's crimes, if made to run
17 consecutively, would equal or exceed in length
18 the maximum of the extended term imposed or would
19 equal or exceed forty years if the extended term
20 imposed is for a class A felony.

21 (5) The defendant is an offender against the elderly,
22 handicapped, or a minor under the age of eight, whose



1 imprisonment for an extended term is necessary for the
2 protection of the public. The court shall not make
3 this finding unless:

4 (a) The defendant attempts or commits any of the
5 following crimes: murder, manslaughter, a sexual
6 offense that constitutes a felony under chapter
7 707, robbery, felonious assault, burglary, or
8 kidnapping; and

9 (b) The defendant, in the course of committing or
10 attempting to commit the crime, inflicts serious
11 or substantial bodily injury upon a person who
12 is:

- 13 (i) Sixty years of age or older;
- 14 (ii) Blind, a paraplegic, or a quadriplegic; or
- 15 (iii) Eight years of age or younger; and

16 (c) Such disability is known or reasonably should be
17 known to the defendant.

18 (6) The defendant is a hate crime offender whose
19 imprisonment for an extended term is necessary for the
20 protection of the public. The court shall not make
21 this finding unless:



- 1 (a) The defendant is convicted of a crime under
- 2 chapter 707, 708, or 711; and
- 3 (b) The defendant intentionally selected a victim, or
- 4 in the case of a property crime, the property
- 5 that was the object of a crime, because of
- 6 hostility toward the actual or perceived race,
- 7 religion, disability, ethnicity, national origin,
- 8 gender identity or expression, or sexual
- 9 orientation of any person. For purposes of this
- 10 subsection, "gender identity or expression"
- 11 includes a person's actual or perceived gender,
- 12 as well as a person's gender identity, gender-
- 13 related self-image, gender-related appearance, or
- 14 gender-related expression; regardless of whether
- 15 that gender identity, gender-related self-image,
- 16 gender-related appearance, or gender-related
- 17 expression is different from that traditionally
- 18 associated with the person's sex at birth. "

19 SECTION 12. Section 707-701, Hawaii Revised Statutes, is
20 amended by amending subsection (2) to read as follows:



1 "(2) Murder in the first degree is a felony for which the
2 defendant shall be sentenced [~~to imprisonment~~] as provided in
3 section 706- or 706-656[~~-~~], as applicable."

4 SECTION 13. Section 707-701.5, Hawaii Revised Statutes, is
5 amended by amending subsection (2) to read as follows:

6 "(2) Murder in the second degree is a felony for which the
7 defendant shall be sentenced [~~to imprisonment~~] as provided in
8 section 706- or 706-656[~~-~~], as applicable."

9 SECTION 14. Section 707-730, Hawaii Revised Statutes, is
10 amended by amending subsection (2) to read as follows:

11 "(2) [~~Sexual~~] Except as provided in section 706- ,
12 sexual assault in the first degree is a class A felony."

13 SECTION 15. Section 707-731, Hawaii Revised Statutes, is
14 amended by amending subsection (2) to read as follows:

15 "(2) [~~Sexual~~] Except as provided in section 706- ,
16 sexual assault in the second degree is a class B felony."

17 SECTION 16. Section 707-732, Hawaii Revised Statutes, is
18 amended by amending subsection (2) to read as follows:

19 "(2) [~~Sexual~~] Except as provided in section 706- ,
20 sexual assault in the third degree is a class C felony."

21 SECTION 17. Section 707-733.5, Hawaii Revised Statutes, is
22 amended by amending subsection (4) to read as follows:

1 "(4) [~~Continuous~~] Except as provided in section 706- ,
2 continuous sexual assault of a minor under the age of fourteen
3 years is a class A felony."

4 SECTION 18. Section 707-741, Hawaii Revised Statutes, is
5 amended by amending subsection (2) to read as follows:

6 "(2) [~~Incest~~] Except as provided in section 706- ,
7 incest is a class C felony."

8 SECTION 19. This Act does not affect rights and duties
9 that matured, penalties that were incurred, and proceedings that
10 were begun, before its effective date.

11 SECTION 20. Statutory material to be repealed is
12 bracketed. New statutory material is underscored.

13 SECTION 21. This Act shall take effect on July 1, 2006.

14

INTRODUCED BY: Will Espero

SB2066

Report Title:

Capital Punishment; Sexual Assault and Murder of Minor

Description:

Provides for a sentence of death or life imprisonment without possibility of parole upon conviction of a defendant for the sexual assault and murder of a minor. Requires separate sentencing proceeding after conviction before a jury. Establishes aggravating and mitigating circumstances.

