

JAN 21 2011

S.B. NO. 838

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 the
3 most serious offenses that can be committed, namely, the murder
4 of a minor who is less than twelve years old, murder combined
5 with torture or sexual assault, or any multiple murder. The use
6 of capital punishment in these circumstances is intended both to
7 punish the perpetrator and to deter others from committing these
8 types of crimes.

9 The legislature further finds that this Act is in
10 compliance with the United States Supreme Court's decision in
11 *Ring v. Arizona*, 536 U.S. 584 (June 24, 2002), in which the
12 Court ruled that a jury, rather than a judge, must make a
13 finding of aggravating factors when those factors underlie a
14 judge's choice to impose the death penalty rather than a lesser
15 statutory punishment. The Supreme Court found that Arizona's
16 enumerated aggravating factors operated as the "functional
17 equivalent of an element of a greater offense." Therefore, the



1 Sixth Amendment to the United States Constitution requires that
2 such aggravating factors be determined by a jury.

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

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



1 This Act also prohibits a sentence of capital punishment
2 for persons under the age of eighteen years, and for those who,
3 as a result of a physical or mental disease, disorder, or
4 defect, lack the capacity to understand the proceedings against
5 them or to assist in their own defense, for so long as the
6 incapacity endures. The legislature finds that this Act is
7 necessary for the health, safety, and welfare of all of the
8 people of this State.

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

12 "§706- Capital punishment. (1) This section shall
13 apply only to a defendant who has been convicted of one or more
14 of the following offenses:

15 (a) Murder in the second degree under section 707-701.5 in
16 which the victim was under twelve years of age;

17 (b) Murder in the second degree under section 707-701.5 in
18 combination with either:

19 (i) Sexual assault in the first, second, or third
20 degree, under sections 707-730, 707-731, or 707-
21 732, respectively; or



1 (ii) Torture. As used in this section, "torture" has
2 the same meaning as "torture" as defined in
3 section 711-1100;

4 in which the victim was under the domination and
5 control of the defendant during the entire, continuous
6 period of time in which the offenses under clause (i)
7 or (ii) were committed; or

8 (c) Murder in the first degree of more than one person in
9 the same or separate incident under section 707-
10 701(1)(a).

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

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

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



1 The proceeding shall be conducted by the trial judge before the
2 trial jury as soon as practicable. If the trial jury has been
3 waived or if the defendant pleaded guilty, the sentencing
4 proceeding shall be conducted before a jury empanelled for that
5 purpose, unless waived by the defendant. In the proceeding,
6 evidence shall be presented regarding any of the aggravating
7 circumstances listed in subsection (4) and the mitigating
8 circumstances listed in subsection (5), and evidence may be
9 presented as to any other matter that the court deems relevant
10 to the sentence. Any evidence that the court deems to have
11 probative value may be received; provided that this subsection
12 shall not be construed to authorize the introduction of any
13 evidence secured in violation of the Constitution of the United
14 States or of the State. The defendant and the State shall be
15 permitted to present arguments for or against the sentence of
16 death.

17 (3) After hearing all of the evidence, the jury shall
18 deliberate and recommend to the court whether the defendant
19 should be sentenced to death or to life imprisonment without the
20 possibility of parole. A recommendation of death shall require
21 a unanimous vote of the entire membership of the jury and shall
22 be based on a written finding that there are insufficient



1 mitigating circumstances to overcome the circumstances of the
2 sexual assault, murder, or torture, and a listing of any
3 aggravating circumstances. For a recommendation of death, the
4 jury must find:

5 (a) That there exists at least one aggravating
6 circumstance under subsection (4) that justifies the
7 death penalty; and

8 (b) That there are no mitigating circumstances, as listed
9 in subsection (5), or there are insufficient
10 mitigating circumstances considered as a whole to
11 outweigh each aggravating circumstance considered
12 separately.

13 (4) In making its recommendation, the jury shall consider
14 the following as aggravating circumstances, if they apply;

15 (a) The sexual assault, torture, or murder was committed
16 while the defendant was confined in a correctional
17 facility, regardless of whether that confinement was
18 legal;

19 (b) The defendant committed another sexual assault,
20 torture, or murder at the time of the sexual assault,
21 torture, or murder at issue;



1 (c) The defendant knowingly created a substantial risk of
2 death to a person other than the victim or the
3 defendant;

4 (d) The sexual assault, torture, or murder was committed
5 while the defendant was engaged in the commission of,
6 or an attempt to commit, or flight after committing or
7 attempting to commit, any felony;

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

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

12 (g) The murder was committed for the purpose of preventing
13 a witness from testifying, or a person from providing
14 evidence, or a person from participating in any legal
15 proceedings or official investigation; and

16 (h) The murder was committed by the unlawful and malicious
17 use or detonation of any explosive.

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

20 (a) The defendant has no significant history of prior
21 criminal activity;



- 1 (b) The sexual assault, torture, or murder was committed
2 while the defendant was under the influence of extreme
3 mental or emotional disturbance;
- 4 (c) The defendant acted against the defendant's will,
5 under extreme duress, or under the substantial
6 domination of another person, a finding of which shall
7 eliminate the possible imposition of the death
8 penalty;
- 9 (d) At the time of the sexual assault, torture, or murder,
10 the capacity of the defendant to appreciate the
11 wrongfulness of the defendant's conduct or to conform
12 the defendant's conduct to the requirements of law was
13 substantially impaired by something other than the
14 defendant's voluntary and knowing ingestion of
15 intoxicating substances;
- 16 (e) The age of the defendant at the time of the sexual
17 assault, torture, or murder; and
- 18 (f) The defendant was an accomplice in the sexual assault,
19 torture, or murder committed by another person and the
20 defendant's participation was relatively minor, a
21 finding of which shall eliminate the possible
22 imposition of the death penalty.



1 (6) The court may enter a sentence of death only upon the
2 recommendation of the jury but shall have full discretion to not
3 issue such a sentence. The court shall set forth in writing its
4 findings upon which the sentence of death is based, including
5 the finding required of the jury in subsection (3). If the
6 court does not make the findings required to impose the death
7 sentence, the court shall impose a sentence of life imprisonment
8 without the possibility of parole.

9 (7) The judgment of conviction and sentence of death shall
10 be subject to automatic review by the supreme court within sixty
11 days after certification by the sentencing court of the entire
12 record unless time is extended by the supreme court for an
13 additional period, not to exceed thirty days, for good cause
14 shown. The review by the supreme court shall have priority over
15 all other cases before the supreme court and shall be heard in
16 accordance with rules adopted by the supreme court. The supreme
17 court shall determine whether the sentence was imposed under the
18 influence of passion, prejudice, or any other arbitrary factor,
19 whether the evidence supports the finding of a statutory
20 aggravating circumstance, and whether the sentence is
21 disproportionate as compared to other cases of a similar
22 nature. If the sentence is affirmed, the supreme court's



1 findings shall include a reference to other cases of a similar
2 nature that the court considered, if any, in affirming the
3 sentence.

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

10 (9) In the event the death penalty in this section is held
11 to be unconstitutional by the supreme court or the United States
12 Supreme Court, the court having jurisdiction over a person
13 previously sentenced to death shall cause the person to be
14 brought before the court, and the court shall sentence the
15 person to life imprisonment without possibility of parole.

16 (10) As part of the sentence imposed under this section,
17 the court shall order the director of public safety and the
18 Hawaii paroling authority to prepare an application for the
19 governor to commute a sentence of death to life imprisonment
20 without the possibility of parole.

21 (11) Any deoxyribonucleic acid, or "DNA" samples or
22 evidence that have been collected from:



1 (a) The defendant pursuant to a court order; or
2 (b) The victim, the scene of the offense, or from any
3 other person or place relevant to any of the offenses
4 in question;
5 shall be further preserved for evidentiary purposes by the
6 appropriate law enforcement agency to allow the defendant the
7 opportunity to introduce that DNA evidence at any hearing, the
8 purpose of which in whole or in part is to exonerate the
9 defendant from guilt. The DNA evidence shall be preserved until
10 either the defendant has been exonerated or executed pursuant to
11 this section."

12 SECTION 3. Section 706-656, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§706-656 Terms of imprisonment for first and second**
15 **degree murder and attempted first and second degree murder. (1)**
16 **[Persons] Except as provided in section 706- , persons**
17 **convicted of first degree murder or first degree attempted**
18 **murder shall be sentenced to life imprisonment without**
19 **possibility of parole.**

20 As part of such sentence the court shall order the director
21 of public safety and the Hawaii paroling authority to prepare an
22 application for the governor to commute the sentence to life



1 imprisonment with parole at the end of twenty years of
2 imprisonment; provided that persons who are repeat offenders
3 under section 706-606.5 shall serve at least the applicable
4 mandatory minimum term of imprisonment.

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

14 If the court imposes a sentence of life imprisonment
15 without possibility of parole pursuant to section 706-657, as
16 part of that sentence, the court shall order the director of
17 public safety and the Hawaii paroling authority to prepare an
18 application for the governor to commute the sentence to life
19 imprisonment with parole at the end of twenty years of
20 imprisonment; provided that persons who are repeat offenders
21 under section 706-606.5 shall serve at least the applicable
22 mandatory minimum term of imprisonment."



1 SECTION 4. Section 706-660.1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§706-660.1 Sentence of imprisonment for use of a firearm,
4 semiautomatic firearm, or automatic firearm in a felony. (1)

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

14 (a) For murder in the second degree and attempted murder
15 in the second degree--up to fifteen years;

16 (b) For a class A felony--up to ten years;

17 (c) For a class B felony--up to five years; and

18 (d) For a class C felony--up to three years.

19 The sentence of imprisonment for a felony involving the use of a
20 firearm as provided in this subsection shall not be subject to
21 the procedure for determining minimum term of imprisonment
22 prescribed under section 706-669; provided further that a person



1 who is imprisoned in a correctional institution as provided in
2 this subsection shall become subject to the parole procedure as
3 prescribed in section 706-670 only upon the expiration of the
4 term of mandatory imprisonment fixed under paragraph (a), (b),
5 (c), or (d).

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

- 16 (a) For murder in the second degree and attempted murder
17 in the second degree--twenty years;
- 18 (b) For a class A felony--thirteen years, four months;
- 19 (c) For a class B felony--six years, eight months; and
- 20 (d) For a class C felony--three years, four months.

21 The sentence of imprisonment for a second felony offense
22 involving the use of a firearm as provided in this subsection



1 shall not be subject to the procedure for determining a minimum
2 term of imprisonment prescribed under section 706-669; provided
3 further that a person who is imprisoned in a correctional
4 institution as provided in this subsection shall become subject
5 to the parole procedure as prescribed in section 706-670 only
6 upon expiration of the term of mandatory imprisonment fixed
7 under paragraph (a), (b), (c), or (d).

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

- 18 (a) For murder in the second degree and attempted murder
19 in the second degree--twenty years;
20 (b) For a class A felony--fifteen years;
21 (c) For a class B felony--ten years; and
22 (d) For a class C felony--five years.



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

10 (4) In this section:

11 (a) "Firearm" has the same meaning defined in section 134-
12 1 except that it does not include "semiautomatic
13 firearm" or "automatic firearm."

14 (b) "Automatic firearm" has the same meaning defined in
15 section 134-1.

16 (c) "Semiautomatic firearm" means any firearm that uses
17 the energy of the explosive in a fixed cartridge to
18 extract a fired cartridge and chamber a fresh
19 cartridge with each single pull of the trigger."

20 SECTION 5. Section 706-660.2, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§706-660.2 Sentence of imprisonment for offenses against
2 children, elder persons, or handicapped persons.

3 [~~Notwithstanding~~] (1) Except as provided in section 706- , and
4 notwithstanding section 706-669, a person who, in the course of
5 committing or attempting to commit a felony, causes the death or
6 inflicts serious or substantial bodily injury upon a person who
7 is:

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

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

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

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

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

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

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

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

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



1 SECTION 6. Section 706-661, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§706-661 **Extended terms of imprisonment.** [The] Except as
4 provided in section 706- , the court may sentence a person who
5 satisfies the criteria for any of the categories set forth in
6 section 706-662 to an extended term of imprisonment, which shall
7 have a maximum length as follows:

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

10 (2) For a class A felony--indeterminate life term of
11 imprisonment;

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

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

16 When ordering an extended term sentence, the court shall impose
17 the maximum length of imprisonment. The minimum length of
18 imprisonment for an extended term sentence under paragraphs (2),
19 (3), and (4) shall be determined by the Hawaii paroling
20 authority in accordance with section 706-669."

21 SECTION 7. Section 706-662, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§706-662 Criteria for extended terms of imprisonment.

2 [A] Except as provided in section 706- , a defendant who has
3 been convicted of a felony may be subject to an extended term of
4 imprisonment under section 706-661 if it is proven beyond a
5 reasonable doubt that an extended term of imprisonment is
6 necessary for the protection of the public and that the
7 convicted defendant satisfies one or more of the following
8 criteria:

9 (1) The defendant is a persistent offender in that the
10 defendant has previously been convicted of two or more
11 felonies committed at different times when the
12 defendant was eighteen years of age or older;

13 (2) The defendant is a professional criminal in that:

14 (a) The circumstances of the crime show that the
15 defendant has knowingly engaged in criminal
16 activity as a major source of livelihood; or

17 (b) The defendant has substantial income or resources
18 not explained to be derived from a source other
19 than criminal activity;

20 (3) The defendant is a dangerous person in that the
21 defendant has been subjected to a psychiatric or
22 psychological evaluation that documents a significant



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

7 (4) The defendant is a multiple offender in that:

8 (a) The defendant is being sentenced for two or more
9 felonies or is already under sentence of
10 imprisonment for any felony; or

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

17 (5) The defendant is an offender against the elderly,
18 handicapped, or a minor eight years of age or younger
19 in that:

20 (a) The defendant attempts or commits any of the
21 following crimes: murder, manslaughter, a sexual
22 offense that constitutes a felony under chapter



- 1 707, robbery, felonious assault, burglary, or
2 kidnapping; and
- 3 (b) The defendant, in the course of committing or
4 attempting to commit the crime, inflicts serious
5 or substantial bodily injury upon a person who
6 has the status of being:
- 7 (i) Sixty years of age or older;
- 8 (ii) Blind, a paraplegic, or a quadriplegic; or
- 9 (iii) Eight years of age or younger; and
- 10 the person's status is known or reasonably should
11 be known to the defendant; or
- 12 (6) The defendant is a hate crime offender in that:
- 13 (a) The defendant is convicted of a crime under
14 chapter 707, 708, or 711; and
- 15 (b) The defendant intentionally selected a victim or,
16 in the case of a property crime, the property
17 that was the object of a crime, because of
18 hostility toward the actual or perceived race,
19 religion, disability, ethnicity, national origin,
20 gender identity or expression, or sexual
21 orientation of any person. For purposes of this
22 subsection, "gender identity or expression"



1 includes a person's actual or perceived gender,
2 as well as a person's gender identity, gender-
3 related self-image, gender-related appearance, or
4 gender-related expression, regardless of whether
5 that gender identity, gender-related self-image,
6 gender-related appearance, or gender-related
7 expression is different from that traditionally
8 associated with the person's sex at birth."

9 SECTION 8. Section 707-701, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§707-701 **Murder in the first degree.** (1) A person
12 commits the offense of murder in the first degree if the person
13 intentionally or knowingly causes the death of:

14 (a) More than one person in the same or separate incident;

15 (b) A law enforcement officer, judge, or prosecutor
16 arising out of the performance of official duties;

17 (c) A person known by the defendant to be a witness in a
18 criminal prosecution and the killing is related to the
19 person's status as a witness;

20 (d) A person by a hired killer, in which event both the
21 person hired and the person responsible for hiring the
22 killer shall be punished under this section; or



1 (e) A person while the defendant was imprisoned.

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

5 SECTION 9. Section 707-701.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[+]§707-701.5[+] **Murder in the second degree.** (1)

8 Except as provided in section 707-701, a person commits the
9 offense of murder in the second degree if the person
10 intentionally or knowingly causes the death of another person.

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

14 SECTION 10. Section 707-730, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§707-730 **Sexual assault in the first degree.** (1) A
17 person commits the offense of sexual assault in the first degree
18 if:

19 (a) The person knowingly subjects another person to an act
20 of sexual penetration by strong compulsion;



- 1 (b) The person knowingly engages in sexual penetration
- 2 with another person who is less than fourteen years
- 3 old;
- 4 (c) The person knowingly engages in sexual penetration
- 5 with a person who is at least fourteen years old but
- 6 less than sixteen years old; provided that:
- 7 (i) The person is not less than five years older than
- 8 the minor; and
- 9 (ii) The person is not legally married to the minor;
- 10 (d) The person knowingly subjects to sexual penetration
- 11 another person who is mentally defective; or
- 12 (e) The person knowingly subjects to sexual penetration
- 13 another person who is mentally incapacitated or
- 14 physically helpless as a result of the influence of a
- 15 substance that the actor knowingly caused to be
- 16 administered to the other person without the other
- 17 person's consent.

18 Paragraphs (b) and (c) shall not be construed to prohibit
19 practitioners licensed under chapter 453 or 455 from performing
20 any act within their respective practices.

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



1 SECTION 11. Section 707-731, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§707-731 Sexual assault in the second degree. (1) A
4 person commits the offense of sexual assault in the second
5 degree if:

6 (a) The person knowingly subjects another person to an act
7 of sexual penetration by compulsion;

8 (b) The person knowingly subjects to sexual penetration
9 another person who is mentally incapacitated or
10 physically helpless; or

11 (c) The person, while employed:

12 (i) In a state correctional facility;

13 (ii) By a private company providing services at a
14 correctional facility;

15 (iii) By a private company providing community-based
16 residential services to persons committed to the
17 director of public safety and having received
18 notice of this statute;

19 (iv) By a private correctional facility operating in
20 the State of Hawaii; or

21 (v) As a law enforcement officer as defined in
22 section 710-1000(13),



1 knowingly subjects to sexual penetration an imprisoned
 2 person, a person confined to a detention facility, a
 3 person committed to the director of public safety, a
 4 person residing in a private correctional facility
 5 operating in the State of Hawaii, or a person in
 6 custody; provided that paragraph (b) and this
 7 paragraph shall not be construed to prohibit
 8 practitioners licensed under chapter 453 or 455 from
 9 performing any act within their respective practices;
 10 and further provided that this paragraph shall not be
 11 construed to prohibit a law enforcement officer from
 12 performing a lawful search pursuant to a warrant or
 13 exception to the warrant clause.

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

16 SECTION 12. Section 707-732, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 "§707-732 Sexual assault in the third degree. (1) A
 19 person commits the offense of sexual assault in the third degree
 20 if:

21 (a) The person recklessly subjects another person to an
 22 act of sexual penetration by compulsion;



- 1 (b) The person knowingly subjects to sexual contact
- 2 another person who is less than fourteen years old or
- 3 causes such a person to have sexual contact with the
- 4 person;
- 5 (c) The person knowingly engages in sexual contact with a
- 6 person who is at least fourteen years old but less
- 7 than sixteen years old or causes the minor to have
- 8 sexual contact with the person; provided that:
- 9 (i) The person is not less than five years older than
- 10 the minor; and
- 11 (ii) The person is not legally married to the minor;
- 12 (d) The person knowingly subjects to sexual contact
- 13 another person who is mentally defective, mentally
- 14 incapacitated, or physically helpless, or causes such
- 15 a person to have sexual contact with the actor;
- 16 (e) The person, while employed:
- 17 (i) In a state correctional facility;
- 18 (ii) By a private company providing services at a
- 19 correctional facility;
- 20 (iii) By a private company providing community-based
- 21 residential services to persons committed to the



1 director of public safety and having received
2 notice of this statute;

3 (iv) By a private correctional facility operating in
4 the State of Hawaii; or

5 (v) As a law enforcement officer as defined in
6 section 710-1000(13),

7 knowingly subjects to sexual contact an imprisoned
8 person, a person confined to a detention facility, a
9 person committed to the director of public safety, a
10 person residing in a private correctional facility
11 operating in the State of Hawaii, or a person in
12 custody, or causes the person to have sexual contact
13 with the actor; or

14 (f) The person knowingly, by strong compulsion, has sexual
15 contact with another person or causes another person
16 to have sexual contact with the actor.

17 Paragraphs (b), (c), (d), and (e) shall not be construed to
18 prohibit practitioners licensed under chapter 453 or 455 from
19 performing any act within their respective practices; provided
20 further that paragraph (e)(v) shall not be construed to prohibit
21 a law enforcement officer from performing a lawful search
22 pursuant to a warrant or an exception to the warrant clause.



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

3 SECTION 13. Section 707-733.6, Hawaii Revised Statutes, is
4 amended to read as follows:

5 " ~~[+]§707-733.6[+]~~ **Continuous sexual assault of a minor**
6 **under the age of fourteen years.** (1) A person commits the
7 offense of continuous sexual assault of a minor under the age of
8 fourteen years if the person:

9 (a) Either resides in the same home with a minor under the
10 age of fourteen years or has recurring access to the
11 minor; and

12 (b) Engages in three or more acts of sexual penetration or
13 sexual contact with the minor over a period of time,
14 while the minor is under the age of fourteen years.

15 (2) To convict under this section, the trier of fact, if a
16 jury, need unanimously agree only that the requisite number of
17 acts have occurred; the jury need not agree on which acts
18 constitute the requisite number.

19 (3) No other felony sex offense involving the same victim
20 may be charged in the same proceeding with a charge under this
21 section, unless the other charged offense occurred outside the
22 period of the offense charged under this section, or the other



1 offense is charged in the alternative. A defendant may be
2 charged with only one count under this section, unless more than
3 one victim is involved, in which case a separate count may be
4 charged for each victim.

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

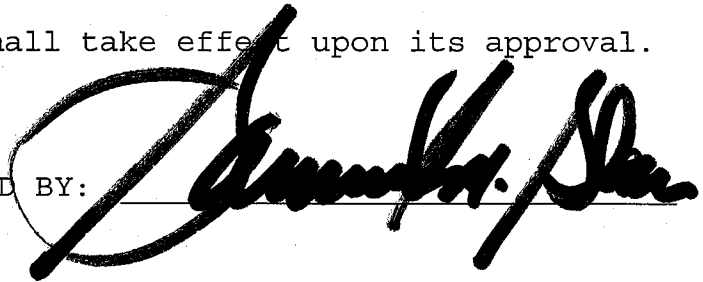
8 SECTION 14. This Act does not affect rights and duties
9 that matured, penalties that were incurred, and proceedings that
10 were begun, before its effective date.

11 SECTION 15. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 16. This Act shall take effect upon its approval.

14

INTRODUCED BY:



Report Title:

Capital Punishment: Murder

Description:

Provides for a sentence of death or life imprisonment without possibility of parole upon conviction of a defendant for the murder of a minor less than twelve years of age, murder combined with torture or sexual assault, or multiple murders. Requires separate sentencing proceedings after conviction before a jury.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

