
A BILL FOR AN ACT

RELATING TO CAPITAL PUNISHMENT.

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

1 SECTION 1. Chapter 712, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:

4 "§712- Sex trafficking of a minor; capital punishment.

5 (1) This section shall apply only to a defendant who has been
6 convicted of sex trafficking of a minor under section
7 712-1202(1)(b).

8 (2) Upon the defendant's conviction, the court shall
9 conduct a separate sentencing proceeding to determine whether
10 the defendant shall be sentenced to death or to life
11 imprisonment without possibility of parole; provided that a
12 defendant shall not be sentenced to death under this section if
13 the defendant:

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

15 (b) As a result of a physical or mental disease, disorder,
16 or defect lacks capacity to understand the proceedings



1 against the person or to assist in the person's own
2 defense, so long as the incapacity endures.

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

19 (3) After hearing all evidence, the jury shall deliberate
20 and recommend to the court whether the defendant should be
21 sentenced to death or to life imprisonment without the



1 possibility of parole. A recommendation of death shall require
2 a unanimous vote of the jury and shall be based on a written
3 finding that there are insufficient mitigating circumstances to
4 overcome the circumstances of the act of sex trafficking of a
5 minor, and a listing of any aggravating circumstances. The jury
6 shall not recommend a death sentence unless the jury finds:

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

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

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

16 (a) The defendant knowingly created a substantial risk of
17 death to the victim;

18 (b) The offense was committed while the defendant was
19 engaged in the commission of, or an attempt to commit,
20 any other felony; and



1 (c) The defendant has a prior conviction for any offense
2 under this part.

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

5 (a) The defendant has no significant history of prior
6 criminal activity;

7 (b) The defendant acted against the defendant's will,
8 under extreme duress, or under the substantial
9 domination of another person, a finding of which shall
10 eliminate the possible imposition of the death
11 penalty;

12 (c) At the time of the act of sex trafficking, the
13 capacity of the defendant to appreciate the
14 wrongfulness of the defendant's conduct or to conform
15 the defendant's conduct to the requirements of law was
16 substantially impaired by something other than the
17 defendant's voluntary and knowing ingestion of
18 intoxicating substances;

19 (d) The age of the defendant at the time of the offense;
20 and

1 (e) The defendant was an accomplice in the offense
2 committed by another person and the defendant's
3 participation was relatively minor, a finding of which
4 shall eliminate the possible imposition of the death
5 penalty.

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

14 (7) The judgment of conviction and sentence of death shall
15 be subject to automatic review by the supreme court within sixty
16 days after certification by the sentencing court of the entire
17 record unless time is extended by the supreme court for an
18 additional period, not to exceed thirty days, for good cause
19 shown. The review by the supreme court shall have priority over
20 all other cases before the supreme court and shall be heard in
21 accordance with rules adopted by the supreme court. The supreme



1 court shall determine whether the sentence was imposed under the
2 influence of passion, prejudice, or any other arbitrary factor,
3 whether the evidence supports the finding of a statutory
4 aggravating circumstance, and whether the sentence is
5 disproportionate as compared to other cases of a similar nature.
6 If the sentence is affirmed, the supreme court's findings shall
7 include a reference to other cases of a similar nature that the
8 court considered, if any, in affirming the sentence.

9 (8) A person sentenced to death under this section shall
10 be executed by the administration of lethal injection at a place
11 and time to be determined by the sentencing court, which may
12 delegate the decision to the director of corrections and
13 rehabilitation; provided that the death penalty shall be stayed,
14 if imposed on a pregnant person, until after the person has
15 given birth.

16 (9) If the death penalty as provided in this section is
17 held to be unconstitutional by the supreme court or the United
18 States Supreme Court, the court having jurisdiction over a
19 person previously sentenced to death shall cause the person to
20 be brought before the court, and the court shall sentence the
21 person to life imprisonment without possibility of parole.



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1 (10) As part of the sentence imposed under this section,
2 the court shall order the director of corrections and
3 rehabilitation and the Hawaii paroling authority to prepare an
4 application for the governor to commute a sentence of death to
5 life imprisonment without the possibility of parole.

6 (11) Any deoxyribonucleic acid samples or evidence that
7 have been collected from:

8 (a) The defendant pursuant to a court order; or

9 (b) The victim, the scene of the offense, or from any
10 other person or place relevant to any of the offenses
11 in question,

12 shall be further preserved for evidentiary purposes by the
13 appropriate law enforcement agency to allow the defendant the
14 opportunity to introduce that deoxyribonucleic acid evidence at
15 any hearing, the purpose of which in whole or in part is to
16 overturn the defendant's conviction. The deoxyribonucleic acid
17 evidence shall be preserved until either the defendant's
18 conviction has been overturned or the defendant has been
19 executed pursuant to this section."

20 SECTION 2. Section 712-1202, Hawaii Revised Statutes, is
21 amended by amending subsection (2) to read as follows:



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1 "(2) [~~Sex~~] Except as provided in section 712- , sex
2 trafficking is a class A felony."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

6

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to read "Jimmie B. ...", is written over a horizontal line. Above the signature, there are several thick, dark, horizontal strokes that look like a scribble or a stamp.

JAN 18 2024



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Report Title:

Death Penalty; Sex Trafficking; Minors; Criminals; Penal Code

Description:

Provides for a sentence of death or life imprisonment without possibility of parole upon conviction for sex trafficking of a minor. 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.

