

JAN 23 2009

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 (i) Torture. As used in this section, "torture" has
2 the same meaning as "torture" or "torment" as
3 defined in 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) Notwithstanding the recommendation of the jury, the
2 court may enter a sentence of death only upon the recommendation
3 of the jury but shall have full discretion to not issue such a
4 sentence.

5 The court shall set forth in writing its findings upon
6 which the sentence of death is based, including the finding
7 required of the jury in subsection (3). If the court does not
8 make the findings required to impose the death sentence, the
9 court shall impose a sentence of life imprisonment without the
10 possibility of parole.

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



1 disproportionate as compared to other cases of a similar
2 nature. If the sentence is affirmed, the supreme court's
3 findings shall include a reference to other cases of a similar
4 nature that the court considered in affirming the sentence.

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

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

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



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

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

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



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

17 If the court imposes a sentence of life imprisonment
18 without possibility of parole pursuant to section 706-657, as
19 part of that sentence, the court shall order the director of
20 public safety and the Hawaii paroling authority to prepare an
21 application for the governor to commute the sentence to life
22 imprisonment with parole at the end of twenty years of



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

4 SECTION 3. Section 706-660.1, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§706-660.1 Sentence of imprisonment for use of a firearm,
7 semiautomatic firearm, or automatic firearm in a felony. (1)**

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

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



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

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

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

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



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

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

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

12 (3) [A] Except as provided in section 706- , a person
13 convicted of a felony, where the person had a semiautomatic
14 firearm or automatic firearm in the person's possession or used
15 or threatened its use while engaged in the commission of the
16 felony, whether the semiautomatic firearm or automatic firearm
17 was loaded or not, and whether operable or not, shall in
18 addition to the indeterminate term of imprisonment provided for
19 the grade of offense be sentenced to a mandatory minimum term of
20 imprisonment without possibility of parole or probation the
21 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 706-669;
10 provided further that a person who is imprisoned in a
11 correctional institution as provided in this subsection shall
12 become subject to the parole procedure as prescribed in section
13 706-670 only upon expiration of the term of mandatory
14 imprisonment fixed under paragraph (a), (b), (c), or (d).

15 (4) In this section:

- 16 (a) "Firearm" has the same meaning defined in section 134-
17 1 except that it does not include "semiautomatic
18 firearm" or "automatic firearm."
- 19 (b) "Automatic firearm" has the same meaning defined in
20 section 134-1.
- 21 (c) "Semiautomatic firearm" means any firearm that uses
22 the energy of the explosive in a fixed cartridge to



1 extract a fired cartridge and chamber a fresh
2 cartridge with each single pull of the trigger."

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

5 **"§706-660.2 Sentence of imprisonment for offenses against**
6 **children, elder persons, or handicapped persons.**

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

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

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

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

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

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

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



- 1 [~~(2)~~] (b) For a class A felony--six years, eight months;
- 2 [~~(3)~~] (c) For a class B felony--three years, four months;
- 3 [~~(4)~~] (d) For a class C felony--one year, eight months."

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

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

- 11 (1) For murder in the second degree--life without the
12 possibility of parole;
- 13 (2) For a class A felony--indeterminate life term of
14 imprisonment;
- 15 (3) For a class B felony--indeterminate twenty-year term
16 of imprisonment; and
- 17 (4) For a class C felony--indeterminate ten-year term of
18 imprisonment.

19 When ordering an extended term sentence, the court shall impose
20 the maximum length of imprisonment. The minimum length of
21 imprisonment for an extended term sentence under paragraphs (2),



1 (3), and (4) shall be determined by the Hawaii paroling
2 authority in accordance with section 706-669."

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

5 **"§706-662 Criteria for extended terms of imprisonment.**

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

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

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

18 (a) The circumstances of the crime show that the
19 defendant has knowingly engaged in criminal
20 activity as a major source of livelihood; or



1 (b) The defendant has substantial income or resources
2 not explained to be derived from a source other
3 than criminal activity;

4 (3) The defendant is a dangerous person in that the
5 defendant has been subjected to a psychiatric or
6 psychological evaluation that documents a significant
7 history of dangerousness to others resulting in
8 criminally violent conduct, and this history makes the
9 defendant a serious danger to others. Nothing in this
10 section precludes the introduction of victim-related
11 data to establish dangerousness in accord with the
12 Hawaii rules of evidence;

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

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

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



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

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 has the status of being:

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 the person's status is known or reasonably should
17 be known to the defendant; or

18 (6) The defendant is a hate crime offender in that:

19 (a) The defendant is convicted of a crime under
20 chapter 707, 708, or 711; and

21 (b) The defendant intentionally selected a victim or,
22 in the case of a property crime, the property



1 that was the object of a crime, because of
2 hostility toward the actual or perceived race,
3 religion, disability, ethnicity, national origin,
4 gender identity or expression, or sexual
5 orientation of any person. For purposes of this
6 subsection, "gender identity or expression"
7 includes a person's actual or perceived gender,
8 as well as a person's gender identity, gender-
9 related self-image, gender-related appearance, or
10 gender-related expression, regardless of whether
11 that gender identity, gender-related self-image,
12 gender-related appearance, or gender-related
13 expression is different from that traditionally
14 associated with the person's sex at birth."

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

17 "**§707-701 Murder in the first degree.** (1) A person
18 commits the offense of murder in the first degree if the person
19 intentionally or knowingly causes the death of:

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

21 (b) A law enforcement officer, judge, or prosecutor

22 arising out of the performance of official duties;



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

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

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

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

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

13 "[~~§~~707-701.5[~~§~~] **Murder in the second degree.** (1)

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

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

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



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

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

6 (b) The person knowingly engages in sexual penetration
7 with another person who is less than fourteen years
8 old;

9 (c) The person knowingly engages in sexual penetration
10 with a person who is at least fourteen years old but
11 less than sixteen years old; provided that:

12 (i) The person is not less than five years older than
13 the minor; and

14 (ii) The person is not legally married to the minor;

15 (d) The person knowingly subjects to sexual penetration
16 another person who is mentally defective; or

17 (e) The person knowingly subjects to sexual penetration
18 another person who is mentally incapacitated or
19 physically helpless as a result of the influence of a
20 substance that the actor knowingly caused to be
21 administered to the other person without the other
22 person's consent.



1 Paragraphs (b) and (c) shall not be construed to prohibit
2 practitioners licensed under chapter 453, 455, or 460, from
3 performing any act within their respective practices.

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

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

8 "**§707-731 Sexual assault in the second degree.** (1) A
9 person commits the offense of sexual assault in the second
10 degree if:

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

13 (b) The person knowingly subjects to sexual penetration
14 another person who is mentally incapacitated or
15 physically helpless; or

16 (c) 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 penetration 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; provided that paragraph (b) and this
13 paragraph shall not be construed to prohibit
14 practitioners licensed under chapter 453, 455, or 460,
15 from performing any act within their respective
16 practices; and further provided that this paragraph
17 shall not be construed to prohibit a law enforcement
18 officer from performing a lawful search pursuant to a
19 warrant or exception to the warrant clause.
20 (2) [~~Sexual~~] Except as provided in section 706- , sexual
21 assault in the second degree is a class B felony."



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

3 **"§707-732 Sexual assault in the third degree.** (1) A
4 person commits the offense of sexual assault in the third degree
5 if:

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

8 (b) The person knowingly subjects to sexual contact
9 another person who is less than fourteen years old or
10 causes such a person to have sexual contact with the
11 person;

12 (c) The person knowingly engages in sexual contact with a
13 person who is at least fourteen years old but less
14 than sixteen years old or causes the minor to have
15 sexual contact with the person; provided that:

16 (i) The person is not less than five years older than
17 the minor; and

18 (ii) The person is not legally married to the minor;

19 (d) The person knowingly subjects to sexual contact
20 another person who is mentally defective, mentally
21 incapacitated, or physically helpless, or causes such
22 a person to have sexual contact with the actor;



- 1 (e) The person, while employed:
- 2 (i) In a state correctional facility;
- 3 (ii) By a private company providing services at a
- 4 correctional facility;
- 5 (iii) By a private company providing community-based
- 6 residential services to persons committed to the
- 7 director of public safety and having received
- 8 notice of this statute;
- 9 (iv) By a private correctional facility operating in
- 10 the State of Hawaii; or
- 11 (v) As a law enforcement officer as defined in
- 12 section 710-1000(13),
- 13 knowingly subjects to sexual contact an imprisoned
- 14 person, a person confined to a detention facility, a
- 15 person committed to the director of public safety, a
- 16 person residing in a private correctional facility
- 17 operating in the State of Hawaii, or a person in
- 18 custody, or causes the person to have sexual contact
- 19 with the actor; or
- 20 (f) The person knowingly, by strong compulsion, has sexual
- 21 contact with another person or causes another person
- 22 to have sexual contact with the actor.



1 Paragraphs (b), (c), (d), and (e) shall not be construed to
2 prohibit practitioners licensed under chapter 453, 455, or 460,
3 from performing any act within their respective practices;
4 provided further that paragraph (e)(v) shall not be construed to
5 prohibit a law enforcement officer from performing a lawful
6 search pursuant to a warrant or an exception to the warrant
7 clause.

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

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

12 "[~~+~~]**§707-733.6[+]** **Continuous sexual assault of a minor**
13 **under the age of fourteen years.** (1) A person commits the
14 offense of continuous sexual assault of a minor under the age of
15 fourteen years if the person:

16 (a) Either resides in the same home with a minor under the
17 age of fourteen years or has recurring access to the
18 minor; and

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



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

5 (3) No other felony sex offense involving the same victim
6 may be charged in the same proceeding with a charge under this
7 section, unless the other charged offense occurred outside the
8 period of the offense charged under this section, or the other
9 offense is charged in the alternative. A defendant may be
10 charged with only one count under this section, unless more than
11 one victim is involved, in which case a separate count may be
12 charged for each victim.

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

16 SECTION 14. This Act does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun, before its effective date.

19 SECTION 15. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

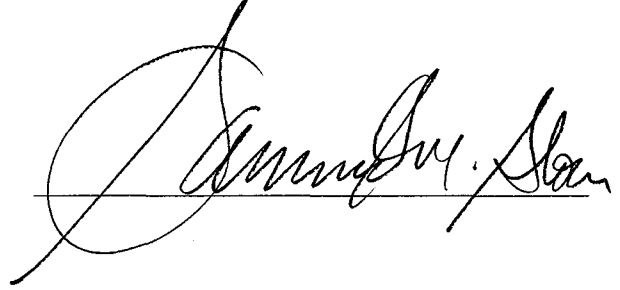
21 SECTION 16. This Act shall take effect on July 1, 2009.

22



S.B. NO. 348

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Dennis J. Slon", is written over a horizontal line.



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.

