

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 405

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO LEWD CONDUCT WITH A MINOR CHILD; AMENDING SECTION 18-1508, IDAHO  
2 CODE, TO PROVIDE A PENALTY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING  
3 SECTION 19-2515, IDAHO CODE, TO REVISE PROVISIONS REGARDING SENTENC-  
4 ING IN CAPITAL CASES AND AGGRAVATING CIRCUMSTANCES AND TO MAKE TECHNI-  
5 CAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE  
6 DATE.  
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Section 18-1508, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 18-1508. LEWD CONDUCT WITH MINOR CHILD UNDER SIXTEEN. Any person who  
12 shall commit any lewd or lascivious act or acts upon or with the body or any  
13 part or member thereof of a minor child under ~~the age of~~ sixteen (16) years  
14 of age, including but not limited to, genital-genital contact, oral-geni-  
15 tal contact, anal-genital contact, oral-anal contact, manual-anal contact,  
16 or manual-genital contact, whether between persons of the same or opposite  
17 sex, or who shall involve such minor child in any act of bestiality or ~~sado-~~  
18 ~~masechism~~ sadomasochism as defined in section 18-1507, Idaho Code, when any  
19 of such acts are done with the intent of arousing, appealing to, or gratify-  
20 ing the lust or passions or sexual desires of such person, such minor child,  
21 or third party, shall be guilty of a felony and:

22 (1) If the minor child is under sixteen (16) years of age but is twelve  
23 (12) years of age or older, shall be imprisoned in the state prison for a term  
24 of not more than ~~life~~; or

25 (2) If the minor child is under twelve (12) years of age, such person  
26 shall be, subject to the provisions of sections 19-2515 and 19-2515A, Idaho  
27 Code, punished by death or by imprisonment for life, provided that a sentence  
28 of death shall not be imposed unless the prosecuting attorney filed writ-  
29 ten notice of intent to seek the death penalty as required under the provi-  
30 sions of section 18-4004A, Idaho Code, and provided further that whenever  
31 the death penalty is not imposed the court shall impose a sentence. If a  
32 jury, or the court if a jury is waived, finds a statutory aggravating circum-  
33 stance beyond a reasonable doubt but finds that the imposition of the death  
34 penalty would be unjust, the court shall impose a fixed life sentence. If a  
35 jury, or the court if a jury is waived, does not find a statutory aggravating  
36 circumstance beyond a reasonable doubt or if the death penalty is not sought,  
37 the court shall impose a life sentence with a minimum period of confinement  
38 of not less than ten (10) years during which period of confinement the of-  
39 fender shall not be eligible for parole or discharge or credit or reduction  
40 of sentence for good conduct, except for meritorious service.

1 SECTION 2. That Section 19-2515, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 19-2515. SENTENCE IN CAPITAL CASES -- SPECIAL SENTENCING PROCEEDING  
4 -- STATUTORY AGGRAVATING CIRCUMSTANCES -- SPECIAL VERDICT OR WRITTEN FIND-  
5 INGS. (1) Except as provided in section 19-2515A, Idaho Code, a person con-  
6 victed of murder in the first degree or lewd conduct with a minor child shall  
7 be liable for the imposition of the penalty of death if such person killed,  
8 intended a killing, or acted with reckless indifference to human life, ir-  
9 respective of whether such person directly committed the acts that caused  
10 death or if the lewd conduct occurred with a minor child under twelve (12)  
11 years of age.

12 (2) Where a person is sentenced to serve a term in the penitentiary,  
13 after conviction of a crime ~~which~~ that falls within the provisions of sec-  
14 tion 20-1005, Idaho Code, except in cases where the court retains jurisdic-  
15 tion, the comments and arguments of the counsel for the state and the defen-  
16 dant relative to the sentencing and the comments of the judge relative to the  
17 sentencing shall be recorded. If the comments are recorded electronically,  
18 they need not be transcribed. Otherwise, they shall be transcribed by the  
19 court reporter.

20 (3) Where a person is convicted of an offense ~~which may be~~ punishable by  
21 death, a sentence of death shall not be imposed unless:

22 (a) A notice of intent to seek the death penalty was filed and served as  
23 provided in section 18-4004A, Idaho Code; and

24 (b) The jury, or the court if a jury is waived, finds beyond a reason-  
25 able doubt at least one (1) statutory aggravating circumstance. Where  
26 a statutory aggravating circumstance is found, the defendant shall  
27 be sentenced to death unless mitigating circumstances ~~which~~ that may  
28 be presented are found to be sufficiently compelling that the death  
29 penalty would be unjust. The jury shall not direct imposition of a sen-  
30 tence of death unless it unanimously finds at least one (1) statutory  
31 aggravating circumstance and unanimously determines that the penalty  
32 of death should be imposed.

33 (4) Notwithstanding any court rule to the contrary, when a defendant is  
34 adjudicated guilty of murder in the first degree or lewd conduct with a mi-  
35 nor child where the minor child was under twelve (12) years of age, whether  
36 by acceptance of a plea of guilty, by verdict of a jury, or by decision of the  
37 trial court sitting without a jury, no presentence investigation shall be  
38 conducted; provided however, that if a special sentencing proceeding is not  
39 held or if a special sentencing proceeding is held but no statutory aggravat-  
40 ing circumstance has been proven beyond a reasonable doubt, the court may or-  
41 der that a presentence investigation be conducted.

42 (5) (a) If a person is adjudicated guilty of murder in the first degree  
43 or lewd conduct with a minor child where the minor child was under twelve  
44 (12) years of age, whether by acceptance of a plea of guilty, by verdict  
45 of a jury, or by decision of the trial court sitting without a jury, and  
46 a notice of intent to seek the death penalty was filed and served as pro-  
47 vided in section 18-4004A, Idaho Code, a special sentencing proceeding  
48 shall be held promptly for the purpose of hearing all relevant evidence  
49 and arguments of counsel in aggravation and mitigation of the offense.

1 Information concerning the victim and the impact that the death of the  
2 victim has had on the victim's family is relevant and admissible. Such  
3 information shall be designed to demonstrate the victim's uniqueness as  
4 an individual human being and the resultant loss to the community by the  
5 victim's death. Characterizations and opinions about the crime, the  
6 defendant and the appropriate sentence shall not be permitted as part of  
7 any victim impact information. The special sentencing proceeding shall  
8 be conducted before a jury, unless a jury is waived by the defendant with  
9 the consent of the prosecuting attorney.

10 (b) If the defendant's guilt was determined by a jury verdict, the same  
11 jury shall hear the special sentencing proceeding; provided however,  
12 that if it is impracticable to reconvene the same jury to hear the spe-  
13 cial sentencing proceeding due to an insufficient number of jurors, the  
14 trial court may dismiss that jury and convene a new jury of twelve (12)  
15 persons, plus alternate jurors, as the trial court deems necessary pur-  
16 suant to section 19-1904, Idaho Code.

17 (c) If the defendant's guilt was determined by a plea of guilty or by  
18 a decision of the trial court sitting without a jury, or if a retrial  
19 of the special sentencing proceeding is necessary for any reason, in-  
20 cluding, but not limited to, a mistrial in a previous special sentencing  
21 proceeding or as a consequence of a remand from an appellate court, the  
22 trial court shall impanel a jury of twelve (12) persons, plus alternate  
23 jurors, as the trial court deems necessary pursuant to section 19-1904,  
24 Idaho Code, unless such jury is waived.

25 (d) If a special sentencing proceeding is conducted before a newly im-  
26 paneled jury pursuant to the provisions of ~~subsection (5) paragraph (b)~~  
27 ~~or (5)(c) of this subsection~~, the state and the defense may present evi-  
28 dence to inform the jury of the nature and circumstances of the murder or  
29 lewd conduct with a minor child for which the defendant was convicted.  
30 The newly impaneled jury shall be instructed that the defendant has pre-  
31 viously been found guilty of first-degree murder or lewd conduct with a  
32 minor child where the minor child was under twelve (12) years of age and  
33 that the jury's purpose is limited to making findings relevant for sen-  
34 tencing.

35 (6) At the special sentencing proceeding, the state and the defendant  
36 shall be entitled to present all relevant evidence in aggravation and miti-  
37 gation. Disclosure of evidence to be relied on in the sentencing proceeding  
38 shall be made in accordance with Idaho criminal rule 16. Evidence admitted  
39 at trial shall be considered and need not be repeated at the sentencing hear-  
40 ing.

41 (7) The jury shall be informed as follows:

42 (a) If the jury finds that a statutory aggravating circumstance exists  
43 and no mitigating circumstances exist ~~which that~~ would make the impo-  
44 sition of the death penalty unjust, the defendant will be sentenced to  
45 death by the court.

46 (b) If the jury finds the existence of a statutory aggravating circum-  
47 stance but finds that the existence of mitigating circumstances makes  
48 the imposition of the death penalty unjust or if the jury cannot unani-  
49 mously agree on whether the existence of mitigating circumstances makes  
50 the imposition of the death penalty unjust, the defendant will be sen-

1           tenced to a term of life imprisonment without the possibility of parole;  
2           and

3           (c) If the jury does not find the existence of a statutory aggravating  
4           circumstance or if the jury cannot unanimously agree on the existence of  
5           a statutory aggravating circumstance, the defendant will be sentenced  
6           by the court to a term of life imprisonment with a fixed term of not less  
7           than ten (10) years.

8           (8) Upon the conclusion of the evidence and arguments in mitigation and  
9           aggravation:

10          (a) With regard to each statutory aggravating circumstance alleged by  
11          the state, the jury shall return a special verdict stating:

12           (i) Whether the statutory aggravating circumstance has been  
13           proven beyond a reasonable doubt; and

14           (ii) If the statutory aggravating circumstance has been proven  
15           beyond a reasonable doubt, whether all mitigating circumstances,  
16           when weighed against the aggravating circumstance, are suffi-  
17           ciently compelling that the death penalty would be unjust.

18          (b) If a jury has been waived, the court shall:

19           (i) Make written findings setting forth any statutory aggravat-  
20           ing circumstance found beyond a reasonable doubt;

21           (ii) Set forth in writing any mitigating circumstances consid-  
22           ered; and

23           (iii) Upon weighing all mitigating circumstances against each  
24           statutory aggravating circumstance separately, determine whether  
25           mitigating circumstances are found to be sufficiently compelling  
26           that the death penalty would be unjust and detail in writing its  
27           reasons for so finding.

28          (9) The following are statutory aggravating circumstances, at least  
29          one (1) of which must be found to exist beyond a reasonable doubt before a  
30          sentence of death can be imposed:

31           (a) The defendant was previously convicted of another murder.

32           (b) At the time the murder was committed, the defendant also committed  
33           another murder.

34           (c) The defendant knowingly created a great risk of death to many per-  
35           sons.

36           (d) The murder was committed for remuneration or the promise of remu-  
37           neration or the defendant employed another to commit the murder for re-  
38           muneration or the promise of remuneration.

39           (e) The murder or lewd conduct with a minor child where the minor child  
40           was under twelve (12) years of age was especially heinous, atrocious or  
41           cruel, manifesting exceptional depravity.

42           (f) By the murder, or circumstances surrounding its commission, the de-  
43           fendant exhibited utter disregard for human life.

44           (g) The murder was committed in the perpetration of, or attempt to per-  
45           petrate, arson, rape, robbery, burglary, kidnapping or mayhem and the  
46           defendant killed, intended a killing, or acted with reckless indiffer-  
47           ence to human life.

48           (h) The murder was committed in the perpetration of, or attempt to  
49           perpetrate, lewd and lascivious conduct with a minor, sexual abuse of  
50           a child under sixteen (16) years of age, ritualized abuse of a child,

1 sexual exploitation of a child, sexual battery of a minor child sixteen  
2 (16) or seventeen (17) years of age, or forcible sexual penetration by  
3 use of a foreign object, and the defendant killed, intended a killing,  
4 or acted with reckless indifference to human life.

5 (i) The defendant, by his conduct, whether such conduct was before,  
6 during, or after the commission of the murder or lewd conduct with a mi-  
7 nor child at hand, has exhibited a propensity to commit murder ~~which or~~  
8 lewd conduct with a minor child that will probably constitute a continu-  
9 ing threat to society.

10 (j) The murder was committed against a former or present peace officer,  
11 executive officer, officer of the court, judicial officer or prosecut-  
12 ing attorney because of the exercise of official duty or because of the  
13 victim's former or present official status.

14 (k) The murder was committed against a witness or potential witness in a  
15 criminal or civil legal proceeding because of such proceeding.

16 SECTION 3. An emergency existing therefor, which emergency is hereby  
17 declared to exist, this act shall be in full force and effect on and after  
18 July 1, 2024.