

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 380

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO LEWD CONDUCT; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE
2 ADDITION OF A NEW SECTION 18-1508B, IDAHO CODE, TO ESTABLISH PROVISIONS
3 REGARDING THE CRIME OF AGGRAVATED LEWD CONDUCT WITH A MINOR CHILD UNDER
4 SIXTEEN; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF
5 A NEW SECTION 18-1508C, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING
6 THE CRIME OF AGGRAVATED LEWD CONDUCT WITH A MINOR CHILD TWELVE OR UN-
7 DER; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A
8 NEW SECTION 18-1508D, IDAHO CODE, TO PROVIDE A PUNISHMENT FOR THE CRIME
9 OF AGGRAVATED LEWD CONDUCT WITH A MINOR CHILD TWELVE OR UNDER; AMEND-
10 ING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
11 18-1508E, IDAHO CODE, TO PROVIDE THAT CERTAIN SEX OFFENDERS ORDERED TO
12 A FIXED MINIMUM TERM OF CONFINEMENT SHALL NOT BE ELIGIBLE FOR PAROLE,
13 DISCHARGE, CREDIT, REDUCTION OF SENTENCE FOR GOOD CONDUCT, WORK RE-
14 LEASE, OR FURLOUGH; AMENDING SECTION 18-4004A, IDAHO CODE, TO PROVIDE
15 FOR THE CRIME OF AGGRAVATED LEWD CONDUCT WITH A MINOR CHILD TWELVE OR
16 UNDER; AMENDING SECTION 18-8304, IDAHO CODE, TO PROVIDE FOR THE CRIMES
17 OF AGGRAVATED LEWD CONDUCT WITH A MINOR CHILD UNDER SIXTEEN AND AGGRA-
18 VATED LEWD CONDUCT WITH A MINOR CHILD TWELVE OR UNDER; AMENDING SECTION
19 19-2515, IDAHO CODE, TO PROVIDE FOR THE CRIME OF AGGRAVATED LEWD CONDUCT
20 WITH A MINOR CHILD TWELVE OR UNDER; PROVIDING SEVERABILITY; AND DECLAR-
21 ING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
22

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

24 SECTION 1. That Chapter 15, Title 18, Idaho Code, be, and the same is
25 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
26 ignated as Section 18-1508B, Idaho Code, and to read as follows:

27 18-1508B. AGGRAVATED LEWD CONDUCT WITH MINOR CHILD UNDER SIXTEEN. Any
28 person eighteen (18) years of age or older who commits any lewd or lasciv-
29 ious act or acts on or with the body or any part or member thereof of a mi-
30 nor child under sixteen (16) years of age but thirteen (13) years of age or
31 older, including but not limited to genital-genital contact, oral-genital
32 contact, anal-genital contact, oral-anal contact, manual-anal contact, or
33 manual-genital contact, whether between persons of the same or opposite sex,
34 or who involves such minor child in any act of bestiality or sadomasochism as
35 defined in section 18-1507, Idaho Code, when any of such acts are done with
36 the intent of arousing, appealing to, or gratifying the lust or passions or
37 sexual desires of such person, such minor child, or a third party shall be
38 guilty of felony aggravated lewd conduct with a minor child under sixteen
39 (16) years of age and shall be sentenced to a mandatory minimum fixed term of
40 imprisonment of twenty-five (25) years with a possible maximum term of life
41 if any two (2) of the following aggravating factors occurred during the com-
42 mission of or to accomplish the lewd conduct:

1 (1) The victim was kidnapped as defined in section 18-4501, Idaho Code;

2 (2) The defendant committed the crime of human trafficking, as defined
3 in section 18-8602, Idaho Code, against the victim;

4 (3) The defendant has been found guilty of or has plead guilty to any
5 offense requiring sex offender registration as set forth in section 18-8304,
6 Idaho Code;

7 (4) The defendant was, at the time of the offense, in a position of
8 trust, or had supervisory or disciplinary power over the victim by virtue
9 of the defendant's legal, professional, or occupational status and used the
10 position of trust or power to accomplish the lewd conduct; or the defendant
11 had, at the time of the offense, parental or custodial authority over the
12 victim and used the authority to accomplish the lewd conduct;

13 (5) The defendant tortured the victim by the intentional infliction of
14 extreme and prolonged pain with the intent to cause suffering or by the in-
15 fliction of extreme and prolonged acts of brutality irrespective of proof of
16 intent to cause suffering;

17 (6) The defendant used force or coercion;

18 (7) The defendant was armed with a weapon or any article used or fash-
19 ioned in a manner to lead the victim reasonably to believe it to be a weapon;

20 (8) The defendant caused great bodily injury, as defined in section
21 19-2520B, Idaho Code, or mutilation to the victim;

22 (9) The defendant's commission of the offense involved more than one
23 (1) victim;

24 (10) The defendant's commission of the offense involved more than one
25 (1) perpetrator;

26 (11) The victim contracted a sexually transmitted disease as a result of
27 the lewd conduct;

28 (12) The victim was impregnated as a result of the lewd conduct;

29 (13) The defendant willfully and unlawfully choked or attempted to
30 strangle the victim during the commission of the lewd conduct; or

31 (14) The defendant knew or had reason to know that the victim had a de-
32 velopmental disability as defined in section 66-402(5), Idaho Code.

33 SECTION 2. That Chapter 15, Title 18, Idaho Code, be, and the same is
34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
35 ignated as Section 18-1508C, Idaho Code, and to read as follows:

36 18-1508C. AGGRAVATED LEWD CONDUCT WITH MINOR CHILD TWELVE OR UN-
37 DER. Any person eighteen (18) years of age or older who commits any lewd or
38 lascivious act or acts on or with the body or any part or member thereof of
39 a minor child twelve (12) years of age or under, including but not limited
40 to genital-genital contact, oral-genital contact, anal-genital contact,
41 oral-anal contact, manual-anal contact, or manual-genital contact, whether
42 between persons of the same or opposite sex, or who involves such minor child
43 in any act of bestiality or sadomasochism as defined in section 18-1507,
44 Idaho Code, when any of such acts are done with the intent of arousing, ap-
45 pealing to, or gratifying the lust or passions or sexual desires of such
46 person, such minor child, or a third party shall be guilty of felony aggra-
47 vated lewd conduct with a minor child twelve (12) years of age or under if any
48 two (2) of the following aggravating factors occurred during the commission
49 of or to accomplish the lewd conduct:

1 (1) The defendant engaged in three (3) or more incidents of lewd conduct
2 of a child involving the same victim on separate occasions;

3 (2) The defendant penetrated, however slight, the oral, anal, or vagi-
4 nal opening of the victim with a penis;

5 (3) The victim was kidnapped as defined in section 18-4501, Idaho Code;

6 (4) The defendant committed the crime of human trafficking, as defined
7 in section 18-8602, Idaho Code, against the victim;

8 (5) The defendant has been found guilty of or has plead guilty to any
9 offense requiring sex offender registration as set forth in section 18-8304,
10 Idaho Code;

11 (6) The defendant was, at the time of the offense, in a position of
12 trust, or had supervisory or disciplinary power over the victim by virtue
13 of the defendant's legal, professional, or occupational status and used the
14 position of trust or power to accomplish the lewd conduct; or the defendant
15 had, at the time of the offense, parental or custodial authority over the
16 victim and used the authority to accomplish the lewd conduct;

17 (7) The defendant tortured the victim by the intentional infliction of
18 extreme and prolonged pain with the intent to cause suffering or by the in-
19 fliction of extreme and prolonged acts of brutality irrespective of proof of
20 intent to cause suffering;

21 (8) The defendant used force or coercion;

22 (9) The defendant was armed with a weapon or any article used or fash-
23 ioned in a manner to lead the victim reasonably to believe it to be a weapon;

24 (10) The defendant caused great bodily injury, as defined in section
25 19-2520B, Idaho Code, or mutilation to the victim;

26 (11) The defendant's commission of the offense involved more than one
27 (1) victim;

28 (12) The defendant's commission of the offense involved more than one
29 (1) perpetrator;

30 (13) The victim contracted a sexually transmitted disease as a result of
31 the lewd conduct;

32 (14) The victim was impregnated as a result of the lewd conduct;

33 (15) The defendant willfully and unlawfully choked or attempted to
34 strangle the victim during the commission of the lewd conduct;

35 (16) The defendant provided alcohol, drugs, or other intoxicating sub-
36 stance to the victim; or

37 (17) The defendant knew or had reason to know that the victim had a de-
38 velopmental disability as defined in section 66-402(5), Idaho Code.

39 SECTION 3. That Chapter 15, Title 18, Idaho Code, be, and the same is
40 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
41 ignated as Section 18-1508D, Idaho Code, and to read as follows:

42 18-1508D. PUNISHMENT FOR AGGRAVATED LEWD CONDUCT WITH MINOR CHILD
43 TWELVE OR UNDER. Subject to the provisions of sections 19-2515 and 19-2515A,
44 Idaho Code, every person eighteen (18) years of age or older guilty of aggra-
45 vated lewd conduct with a minor child twelve (12) years of age or under shall
46 be punished by death or by imprisonment for life, provided that a sentence
47 of death shall not be imposed unless the prosecuting attorney filed written
48 notice of intent to seek the death penalty as required under the provisions
49 of section 18-4004A, Idaho Code, and provided further that whenever the

1 death penalty is not imposed the court shall impose a sentence. If a jury,
2 or the court if a jury is waived, finds three (3) statutory aggravating cir-
3 cumstances beyond a reasonable doubt but finds that the imposition of the
4 death penalty would be unjust, the court shall impose a fixed life sentence.
5 If a jury, or the court if a jury is waived, finds two (2) statutory aggra-
6 vating circumstances beyond a reasonable doubt and if the death penalty is
7 not sought, the court shall impose a life sentence with a minimum period of
8 confinement of not less than thirty (30) years during which period of con-
9 finement the offender shall not be eligible for parole or discharge or credit
10 or reduction of sentence for good conduct, except for meritorious service.

11 SECTION 4. That Chapter 15, Title 18, Idaho Code, be, and the same is
12 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
13 ignated as Section 18-1508E, Idaho Code, and to read as follows:

14 18-1508E. SEX OFFENDER REGISTRATION -- TERM OF CONFINEMENT. Any per-
15 son convicted of an offense as provided in section 18-1508, 18-1508B, or
16 18-1508C, Idaho Code, requiring sex offender registration as set forth in
17 section 18-8304, Idaho Code, and who is ordered to a fixed minimum term of
18 confinement shall not, during such term of confinement, be eligible for
19 parole, discharge, credit, reduction of sentence for good conduct, work
20 release, or furlough.

21 SECTION 5. That Section 18-4004A, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 18-4004A. NOTICE OF INTENT TO SEEK DEATH PENALTY. (1) A sentence of
24 death shall not be imposed unless the prosecuting attorney filed written no-
25 tice of intent to seek the death penalty with the court and served the notice
26 upon the defendant or his attorney of record no later than sixty (60) days
27 after entry of a plea for murder in the first degree and no later than thirty
28 (30) days after entry of a plea for aggravated lewd conduct with a minor child
29 twelve (12) years of age or under. Any notice of intent to seek the death
30 penalty shall include a listing of the statutory aggravating circumstances
31 that the state will rely on in seeking the death penalty. The state may amend
32 its notice upon a showing of good cause at any time prior to trial. A notice
33 of intent to seek the death penalty may be withdrawn at any time prior to the
34 imposition of sentence. However, upon a showing of good cause, and a stip-
35 ulation by the state and the defendant and his attorney of record the court
36 may extend the time for the filing of the notice of intent to seek the death
37 penalty for a reasonable period of time.

38 (2) In the event that the prosecuting attorney does not file a notice of
39 intent to seek the death penalty or otherwise puts the court on notice that
40 the state does not intend to seek the death penalty, the court shall inform
41 potential jurors at the outset of jury selection that the death penalty is
42 not a sentencing option for the court or the jury.

43 SECTION 6. That Section 18-8304, Idaho Code, be, and the same is hereby
44 amended to read as follows:

1 18-8304. APPLICATION OF CHAPTER -- RULEMAKING AUTHORITY. (1) The pro-
2 visions of this chapter shall apply to any person who:

3 (a) On or after July 1, 1993, is convicted of the crime, or an attempt,
4 a solicitation, or a conspiracy to commit a crime provided for in sec-
5 tion 18-909 (assault with intent to commit rape or lewd and lascivious
6 conduct with a minor, but excluding mayhem, murder or robbery), 18-911
7 (battery with intent to commit rape or lewd and lascivious conduct with
8 a minor, but excluding mayhem, murder or robbery), 18-919 (sexual ex-
9 ploitation by a medical care provider), 18-925 (aggravated sexual bat-
10 tery), 18-1505B (sexual abuse and exploitation of a vulnerable adult),
11 18-1506 (sexual abuse of a child under sixteen years of age), 18-1506A
12 (ritualized abuse of a child), felony violations of 18-1507 (sexual
13 exploitation of a child), 18-1508 (lewd conduct with a minor child),
14 18-1508A (sexual battery of a minor child sixteen or seventeen years of
15 age), 18-1508B (aggravated lewd conduct with a minor child under six-
16 teen), 18-1508C (aggravated lewd conduct with a minor child twelve or
17 under), 18-1509A (enticing a child over the internet), 18-4003(d) (mur-
18 der committed in perpetration of rape), 18-4116 (indecent exposure, but
19 excluding a misdemeanor conviction), 18-4502 (first degree kidnapping
20 committed for the purpose of rape or for committing any lewd and las-
21 civious act upon any child under the age of sixteen, or for purposes of
22 sexual gratification or arousal), 18-4503 (second degree kidnapping
23 where the victim is an unrelated minor child), 18-5605 (detention for
24 commercial sexual activity), 18-5609 (inducing a child into commercial
25 sexual activity), 18-5610 (utilizing a child for commercial sexual
26 activity), 18-5611 (inducing a child to engage in commercial sexual
27 activity), 18-6101 (rape, but excluding 18-6101(1) where the defendant
28 is eighteen years of age), 18-6110 (sexual contact with a prisoner),
29 18-6601 (incest), 18-6602 (sexual abuse of an animal), 18-6603 (sexual
30 abuse of human remains), 18-6604 (forcible penetration by use of a for-
31 foreign object), 18-6605 (video voyeurism where the victim is a minor or
32 upon a second or subsequent conviction), 18-7804 (if the racketeering
33 act involves kidnapping of a minor) or chapter 86, title 18 (human traf-
34 ficking), Idaho Code.

35 (b) On or after July 1, 1993, has been convicted of any crime, an at-
36 tempt, a solicitation or a conspiracy to commit a crime in another ju-
37 risdiction, including military courts, or who has a foreign conviction
38 that is substantially equivalent to the offenses listed in paragraphs
39 (a) or (f) of this subsection and enters this state to establish resi-
40 dence or for employment purposes or to attend, on a full-time or part-
41 time basis, any public or private educational institution including any
42 secondary school, trade or professional institution or institution of
43 higher education.

44 (c) Has been convicted of any crime, an attempt, a solicitation or a
45 conspiracy to commit a crime in another jurisdiction, including mil-
46 itary courts, or who has a foreign conviction that is substantially
47 equivalent to the offenses listed in paragraphs (a) or (f) of this sub-
48 section and was required to register as a sex offender in any other state
49 or jurisdiction when he established residency in Idaho.

1 (d) Pleads guilty to or has been found guilty of a crime covered in this
 2 chapter prior to July 1, 1993, and the person, as a result of the of-
 3 fense, is incarcerated in a county jail facility or a penal facility or
 4 is under probation or parole supervision, on or after July 1, 1993.

5 (e) Is a nonresident regularly employed or working in Idaho or is a stu-
 6 dent in the state of Idaho and was convicted, found guilty or pleaded
 7 guilty to a crime covered by this chapter and, as a result of such con-
 8 viction, finding or plea, is required to register in his state of resi-
 9 dence.

10 (f) On or after July 1, 1993, is convicted of the crime or an attempt,
 11 solicitation, or conspiracy to commit the infamous crime against na-
 12 ture, a felony offense formerly codified in chapter 66, title 18, Idaho
 13 Code, and whose conviction is entered before July 1, 2022.

14 (2) An offender shall not be required to comply with the registration
 15 provisions of this chapter while incarcerated in a correctional institution
 16 of the department of correction, a county jail facility, committed to the de-
 17 partment of juvenile corrections or committed to a mental health institution
 18 of the department of health and welfare.

19 (3) A conviction for purposes of this chapter means that the person has
 20 pled guilty or has been found guilty, notwithstanding the form of the judg-
 21 ment or withheld judgment.

22 (4) The department shall have authority to promulgate rules to imple-
 23 ment the provisions of this chapter.

24 SECTION 7. That Section 19-2515, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 19-2515. SENTENCE IN CAPITAL CASES -- SPECIAL SENTENCING PROCEEDING
 27 -- STATUTORY AGGRAVATING CIRCUMSTANCES -- SPECIAL VERDICT OR WRITTEN FIND-
 28 INGS. (1) Except as provided in section 19-2515A, Idaho Code, a person con-
 29 victed of murder in the first degree or aggravated lewd conduct with a minor
 30 child twelve (12) years of age or under shall be liable for the imposition of
 31 the penalty of death if such person killed, intended a killing, or acted with
 32 reckless indifference to human life, irrespective of whether such person di-
 33 rectly committed the acts that caused death or the aggravated lewd conduct.

34 (2) Where a person is sentenced to serve a term in the penitentiary,
 35 after conviction of a crime which falls within the provisions of section
 36 20-1005, Idaho Code, except in cases where the court retains jurisdiction,
 37 the comments and arguments of the counsel for the state and the defendant
 38 relative to the sentencing and the comments of the judge relative to the
 39 sentencing shall be recorded. If the comments are recorded electronically,
 40 they need not be transcribed. Otherwise, they shall be transcribed by the
 41 court reporter.

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

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

46 (b) The jury, or the court if a jury is waived, finds beyond a reasonable
 47 doubt at least one (1) statutory aggravating circumstance for murder
 48 and at least three (3) statutory aggravating circumstances, as listed
 49 in subsection (10) of this section, for aggravated lewd conduct with a

1 minor child twelve (12) years of age or under. Where a statutory ag-
2 gravating circumstance is found, the defendant shall be sentenced to
3 death unless mitigating circumstances which may be presented are found
4 to be sufficiently compelling that the death penalty would be unjust.
5 The jury shall not direct imposition of a sentence of death unless it
6 unanimously finds at least one (1) statutory aggravating circumstance
7 and unanimously determines that the penalty of death should be imposed.

8 (4) Notwithstanding any court rule to the contrary, when a defendant is
9 adjudicated guilty of murder in the first degree or aggravated lewd conduct
10 with a minor child twelve (12) years of age or under, whether by acceptance of
11 a plea of guilty, by verdict of a jury, or by decision of the trial court sit-
12 ting without a jury, no presentence investigation shall be conducted; pro-
13 vided however, that if a special sentencing proceeding is not held or if a
14 special sentencing proceeding is held but no statutory aggravating circum-
15 stance has been proven beyond a reasonable doubt, the court may order that a
16 presentence investigation be conducted.

17 (5) (a) If a person is adjudicated guilty of murder in the first degree
18 or aggravated lewd conduct with a minor child twelve (12) years of age or
19 under, whether by acceptance of a plea of guilty, by verdict of a jury,
20 or by decision of the trial court sitting without a jury, and a notice
21 of intent to seek the death penalty was filed and served as provided in
22 section 18-4004A, Idaho Code, a special sentencing proceeding shall be
23 held promptly for the purpose of hearing all relevant evidence and ar-
24 guments of counsel in aggravation and mitigation of the offense. Infor-
25 mation concerning the victim and the impact that the death or aggravated
26 lewd conduct of the victim has had on the victim's family is relevant and
27 admissible. Such information shall be designed to demonstrate the vic-
28 tim's uniqueness as an individual human being and the resultant loss to
29 the community or impact caused by the victim's death or lewd conduct of
30 the victim. Characterizations and opinions about the crime, the defen-
31 dant and the appropriate sentence shall not be permitted as part of any
32 victim impact information. The special sentencing proceeding shall be
33 conducted before a jury unless a jury is waived by the defendant with the
34 consent of the prosecuting attorney.

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

42 (c) If the defendant's guilt was determined by a plea of guilty or by a
43 decision of the trial court sitting without a jury, or if a retrial of
44 the special sentencing proceeding is necessary for any reason includ-
45 ing, but not limited to, a mistrial in a previous special sentencing
46 proceeding or as a consequence of a remand from an appellate court, the
47 trial court shall impanel a jury of twelve (12) persons, plus alternate
48 jurors as the trial court deems necessary pursuant to section 19-1904,
49 Idaho Code, unless such jury is waived.

1 (d) If a special sentencing proceeding is conducted before a newly im-
2 paneled jury pursuant to the provisions of subsection (5) (b) or (5) (c)
3 of this section, the state and the defense may present evidence to in-
4 form the jury of the nature and circumstances of the murder or aggra-
5 vated lewd conduct for which the defendant was convicted. The newly im-
6 paneled jury shall be instructed that the defendant has previously been
7 found guilty of first-degree murder or aggravated lewd conduct with a
8 minor child twelve (12) years of age or under and that the jury's purpose
9 is limited to making findings relevant for sentencing.

10 (6) At the special sentencing proceeding, the state and the defendant
11 shall be entitled to present all relevant evidence in aggravation and miti-
12 gation. Disclosure of evidence to be relied on in the sentencing proceeding
13 shall be made in accordance with Idaho criminal rule 16. Evidence admitted
14 at trial shall be considered and need not be repeated at the sentencing hear-
15 ing.

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

17 (a) If the jury finds that a statutory aggravating circumstance exists
18 and no mitigating circumstances exist which would make the imposition
19 of the death penalty unjust, the defendant will be sentenced to death by
20 the court.

21 (b) If the jury finds the existence of a statutory aggravating circum-
22 stance but finds that the existence of mitigating circumstances makes
23 the imposition of the death penalty unjust or the jury cannot unani-
24 mously agree on whether the existence of mitigating circumstances makes
25 the imposition of the death penalty unjust, the defendant will be sen-
26 tenced to a term of life imprisonment without the possibility of parole;
27 and

28 (c) If the jury does not find the existence of a statutory aggravating
29 circumstance or if the jury cannot unanimously agree on the existence of
30 a statutory aggravating circumstance, the defendant will be sentenced
31 by the court to a term of life imprisonment with a fixed term of not less
32 than ten (10) years for first-degree murder or thirty (30) years for ag-
33 gravated lewd conduct with a minor child twelve (12) years of age or un-
34 der.

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

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

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

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

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

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

48 (ii) Set forth in writing any mitigating circumstances consid-
49 ered; and

1 (iii) Upon weighing all mitigating circumstances against each
2 statutory aggravating circumstance separately, determine whether
3 mitigating circumstances are found to be sufficiently compelling
4 that the death penalty would be unjust and detail in writing its
5 reasons for so finding.

6 (9) The following are statutory aggravating circumstances, at least
7 one (1) of which must be found to exist beyond a reasonable doubt before a
8 sentence of death can be imposed for murder in the first degree:

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

10 (b) At the time the murder was committed the defendant also committed
11 another murder.

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

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

17 (e) The murder was especially heinous, atrocious or cruel, manifesting
18 exceptional depravity.

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

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

25 (h) The murder was committed in the perpetration of, or attempt to
26 perpetrate, lewd and lascivious conduct with a minor, sexual abuse of
27 a child under sixteen (16) years of age, ritualized abuse of a child,
28 sexual exploitation of a child, sexual battery of a minor child sixteen
29 (16) or seventeen (17) years of age, or forcible sexual penetration by
30 use of a foreign object, and the defendant killed, intended a killing,
31 or acted with reckless indifference to human life.

32 (i) The defendant, by his conduct, whether such conduct was before,
33 during or after the commission of the murder at hand, has exhibited a
34 propensity to commit murder which will probably constitute a continuing
35 threat to society.

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

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

42 (10) The following are statutory aggravating circumstances, at least
43 three (3) of which must be found to have existed during the commission of or
44 to accomplish the lewd conduct beyond a reasonable doubt before a sentence
45 of death can be imposed for aggravated lewd conduct with a minor child twelve
46 (12) years of age or under, as provided in section 18-1508C, Idaho Code:

47 (a) The defendant engaged in three (3) or more incidents of lewd conduct
48 of a child involving the same victim on separate occasions;

49 (b) The defendant penetrated, however slight, the oral, anal, or vagi-
50 nal opening of the victim with a penis;

- 1 (c) The victim was kidnapped as defined in section 18-4501, Idaho Code;
2 (d) The defendant committed the crime of human trafficking, as defined
3 in section 18-8602, Idaho Code, against the victim;
4 (e) The defendant has been found guilty of or has plead guilty to any
5 offense requiring sex offender registration as set forth in section
6 18-8304, Idaho Code;
7 (f) The defendant was, at the time of the offense, in a position of
8 trust, or had supervisory or disciplinary power over the victim by
9 virtue of the defendant's legal, professional, or occupational status
10 and used the position of trust or power to accomplish the lewd conduct;
11 or the defendant had, at the time of the offense, parental or custodial
12 authority over the victim and used the authority to accomplish the lewd
13 conduct;
14 (g) The defendant tortured the victim by the intentional infliction of
15 extreme and prolonged pain with the intent to cause suffering or by the
16 infliction of extreme and prolonged acts of brutality irrespective of
17 proof of intent to cause suffering;
18 (h) The defendant used force or coercion;
19 (i) The defendant was armed with a weapon or any article used or fash-
20 ioned in a manner to lead the victim reasonably to believe it to be a
21 weapon;
22 (j) The defendant caused great bodily injury, as defined in section
23 19-2520B, Idaho Code, or mutilation to the victim;
24 (k) The defendant's commission of the offense involved more than one
25 (1) victim;
26 (l) The defendant's commission of the offense involved more than one
27 (1) perpetrator;
28 (m) The victim contracted a sexually transmitted disease as a result of
29 the lewd conduct;
30 (n) The victim was impregnated as a result of the lewd conduct;
31 (o) The defendant willfully and unlawfully choked or attempted to
32 strangle the victim during the commission of the lewd conduct;
33 (p) The defendant provided alcohol, drugs, or other intoxicating sub-
34 stances to the victim; or
35 (q) The defendant knew or had reason to know that the victim had a devel-
36 opmental disability as defined in section 66-402 (5), Idaho Code.

37 SECTION 8. SEVERABILITY. The provisions of this act are hereby declared
38 to be severable and if any provision of this act or the application of such
39 provision to any person or circumstance is declared invalid for any reason,
40 such declaration shall not affect the validity of the remaining portions of
41 this act.

42 SECTION 9. An emergency existing therefor, which emergency is hereby
43 declared to exist, this act shall be in full force and effect on and after
44 July 1, 2025.