

FLORIDA HOUSE OF REPRESENTATIVES

FINAL BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/CS/HB 1283	COMPANION BILL: CS/CS/SB 1804 (Martin)
TITLE: Capital Human Trafficking of Vulnerable Persons for Sexual Exploitation	LINKED BILLS: None
SPONSOR(S): Jacques	RELATED BILLS: None

FINAL HOUSE FLOOR ACTION: 95 Y's 17 N's **GOVERNOR'S ACTION:** Pending

SUMMARY

Effect of the Bill:

The bill creates the capital felony of capital human trafficking of vulnerable persons for sexual exploitation which prohibits a person 18 years of age or older from knowingly initiating, organizing, planning, financing, directing, managing, or supervising a venture that has subjected a child younger than 12 years of age, or a person who is mentally defective or mentally incapacitated to human trafficking for sexual exploitation. The bill establishes the sentencing procedure which must be used to determine if an offender convicted of the offense will be sentenced to death or life imprisonment, and requires the finding of at least two aggravating factors to make an offender eligible for a sentence of death. The bill specifies it applies to an offense committed on or after October 1, 2025. The bill authorizes the state to appeal from a sentence in a capital human trafficking of vulnerable persons for sexual exploitation case that resulted from the circuit court's failure to comply with the required sentencing procedures.

Fiscal or Economic Impact:

The bill may have an indeterminate negative impact on state expenditures. To the extent the bill results in more death sentences being imposed, it may increase costs associated with the incarceration and execution of prisoners. Additionally, the bill may also increase the workload of the Florida Supreme Court by requiring the Court to review an increased number of death penalty cases.

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ANALYSIS

EFFECT OF THE BILL:

CS/CS/HB 1283 passed as [CS/CS/SB 1804](#). (Please note that bill section parentheticals do not contain hyperlinks to bill sections for Senate bills)

The bill creates the capital felony of capital human trafficking of vulnerable persons for sexual exploitation. Specifically, the bill prohibits a person 18 years of age or older from knowingly initiating, organizing, planning, financing, directing, managing, or supervising a [venture](#) that has subjected a child younger than 12 years of age, or a person who is [mentally defective](#) or [mentally incapacitated](#) to [human trafficking](#) for sexual exploitation. (Section 7)

The bill provides that for each instance of such human trafficking a separate crime is committed and a separate punishment is authorized. (Section 7)

The bill defines "sexual exploitation" to mean any violation of s. 794.011, F.S., relating to [sexual battery](#), excluding a violation of s. 794.011(10), F.S., relating to making a false accusation related to sexual battery. (Section 7)

The bill establishes a sentencing procedure that is required to be followed to determine if an offender convicted of an offense of capital human trafficking of vulnerable persons for sexual exploitation will be sentenced to death or life imprisonment. (Section 7)

If the state attorney intends to seek the death penalty in such a case, the bill requires the state attorney to give notice to the defendant and file the notice with the court within 45 days of the defendant's arraignment. The notice

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must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. Under the bill, the court may allow the state to amend the notice upon a showing of good cause. (Section 7)

The bill requires a court to conduct a separate sentencing proceeding to determine whether a defendant convicted or adjudicated guilty of a capital human trafficking of vulnerable persons for sexual exploitation offense for which the state is seeking the death penalty should be sentenced to death or life imprisonment. Under the bill, the sentencing proceeding must be conducted by the trial judge in front of the trial jury as soon as practicable. If the trial jury is unable to reconvene for the sentencing proceeding, the trial judge may summon a special juror or jurors to determine the defendant's sentence. In a case where the defendant waived a trial jury or pleaded guilty, the sentencing proceeding must be conducted by a jury impaneled to determine his or her sentence, unless the defendant waives a jury. (Section 8)

At the sentencing proceeding, the bill authorizes evidence relevant to the nature of the crime and the character of the defendant to be presented and requires evidence relating to aggravating factors and mitigating circumstances to be presented. The bill establishes statutory aggravating factors specific to capital human trafficking of vulnerable persons for sexual exploitation, which include:

- The capital felony was committed by a person previously convicted of a felony violation of [s. 787.06, F.S.](#), relating to human trafficking, and under sentence of imprisonment or placed on community control or felony probation.
- The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- The capital felony was committed by a person designated as a sexual predator pursuant to [s. 775.21, F.S.](#), or a person previously designated as a sexual predator who had the sexual predator designation removed.
- The capital felony was committed by a sexual offender who is required to register pursuant to [s. 943.0435, F.S.](#), or a person previously required to register as a sexual offender who had such requirement removed.
- The defendant knowingly created a great risk of death to one or more persons such that participation in the offense constituted reckless indifference or disregard for human life.
- The defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm to threaten, intimidate, assault, or injure a person in committing the offense or in furtherance of the offense.
- The capital felony was especially heinous, atrocious, or cruel.
- The victim of the capital felony was particularly vulnerable due to age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- The capital felony was committed by a person subject to an injunction issued pursuant to [s. 741.30, F.S.](#), or [s. 784.046, F.S.](#), or a foreign protection order accorded full faith and credit pursuant to [s. 741.315, F.S.](#), and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.
- The victim of the capital felony sustained serious bodily injury. (Section 8)

Once the state provides evidence of two or more aggravating factors, the bill authorizes the state to introduce victim impact evidence. Such evidence must be designed to demonstrate the victim's uniqueness as a human being and the physical and psychological harm to the victim. (Section 8)

The bill also establishes mitigating circumstances a jury may consider as follows:

- The defendant has no significant history of prior criminal activity.
- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- The defendant acted under extreme duress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- The age of the defendant at the time of the crime.

- The defendant could not have reasonably foreseen that his or her conduct in the course of the commission of the crime would cause or would create a grave risk of death to one or more persons.
- The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty. (Section 8)

After hearing all the evidence presented regarding aggravating factors and mitigating circumstances, the bill requires the jury to deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least two aggravating factors. If the jury:

- Does not unanimously find at least two aggravating factors, the defendant is ineligible for a sentence of death.
- Unanimously finds at least two aggravating factors, the defendant is eligible for a sentence of death and the jury must make a recommendation to the court as to whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death. (Section 8)

The bill requires the jury's recommendation to be based on a weighing of the following:

- Whether sufficient aggravating factors exist.
- Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.
- Based on the prior considerations, whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death. (Section 8)

Under the bill, if at least eight jurors determine the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of death. Upon receiving a jury recommendation of death, the court must consider all aggravating factors unanimously found by the jury and any mitigating circumstances, and may impose a sentence of life imprisonment without the possibility of parole or a death sentence. (Section 8)

If fewer than eight jurors determine the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of life imprisonment without the possibility of parole and the court must impose the recommended sentence. (Section 8)

The bill requires the court, after imposing sentence, to enter a written order addressing:

- The aggravating factors found to exist;
- The mitigating circumstances reasonably established by the evidence;
- Whether there are sufficient aggravating factors to warrant the death penalty; and
- Whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence. (Section 8)

The court must also include any reasons it did not accept the jury's recommended sentence in its written order when applicable. (Section 8)

In a case where the defendant waives his or her right to a sentencing proceeding by a jury, the court must consider all the aggravating factors and mitigating circumstances and may impose a sentence of life imprisonment or death. The bill specifies a court may only impose a sentence of death if the court finds that at least two aggravating factors have been proven to exist beyond a reasonable doubt. (Section 8)

If the court does not enter a written order requiring a death sentence within 30 days after entering the defendant's judgment and sentence, the court must impose a sentence of life imprisonment without the possibility of parole. (Section 8)

Under the bill, the Florida Supreme Court (FSC) must automatically review a judgment of conviction and sentence of death and must render an opinion within two years of the filing of a notice of appeal. (Section 8)

The bill provides legislative intent specifying that the Legislature finds that a person who commits the offense of capital human trafficking of a vulnerable person for sexual exploitation, by initiating, organizing, planning, financing, directing, managing, or supervising a venture that has subjected a child younger than 12 years of age, or a person who is mentally defective or mentally incapacitated, to human trafficking for sexual exploitation, imposes

a great risk of death and danger to vulnerable members of the state. The Legislature further finds that such crimes exploit society's most vulnerable citizens, destroy the innocence of young children, and violate all standards of decency held by civilized society, and that persons who commit such acts against vulnerable persons may be determined by the trier of fact to have a culpable mental state of reckless indifference or disregard for human life. (Section 8)

Under the bill, and when applicable, a court must impose a sentence of death notwithstanding existing case law which holds such a sentence unconstitutional under the Florida Constitution and the United States Constitution. However, in any case for which the FSC or the United States Supreme Court reviews a death sentence imposed for a capital human trafficking of vulnerable persons for sexual exploitation offense, and in making such a review reconsiders the holdings in [Buford v. State](#) and [Kennedy v. Louisiana](#), and determines a sentence of death remains unconstitutional, the court having jurisdiction over the person previously sentenced to death must resentence the person to life imprisonment without the possibility of parole. (Section 8)

The bill authorizes the [state to appeal](#) from a sentence in a capital human trafficking of vulnerable persons for sexual exploitation case that resulted from the circuit court's failure to comply with the sentencing procedures established by the bill in s. 921.1427, F.S., including by striking a notice of intent to seek the death penalty, refusing to impanel a capital jury, or otherwise granting relief that prevents the state from seeking a sentence of death. (Section 9)

The bill specifies it is applicable to crimes committed on or after October 1, 2025. (Section 8)

The bill makes conforming changes and reenacts certain sections of law to incorporate the changes made by the bill. (Multiple sections)

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2025. (Section 97)

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have an indeterminate negative impact on state expenditures. To the extent the bill results in more death sentences being imposed, it may increase the:

- Number of inmates on death row and the costs associated with their incarceration and execution.
- Workload of the Florida Supreme Court related to reviewing death penalty cases. However, any increased workload would likely be absorbed within existing resources.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

[Human Trafficking](#)

Human trafficking is a form of modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person.¹ A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor, or services:

- By using coercion;^{2,3}

¹ S. [787.06\(2\)\(d\), F.S.](#)

² S. [787.06\(3\)\(a\)2., \(b\), \(c\)2., \(d\), \(e\)2., and \(f\)2., F.S.](#)

³ "Coercion" means: using or threatening to use physical force against any person; restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported

- With or of a child or person believed to be a child younger than 18;⁴ or
- If for commercial sexual activity,⁵ with a mentally defective or mentally incapacitated person.⁶

“[Mentally defective](#)” means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.⁷

“[Mentally incapacitated](#)” means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.⁸

“[Venture](#)” means any group of two or more individuals associated in fact, whether or not a legal entity.⁹

Any human trafficking offense committed upon a child younger than 18 years of age or an adult believed by the defendant to be a child younger than 18 years of age for labor or services is punishable as a first-degree felony.¹⁰ However, if a child younger than 18 years of age or an adult believed by the defendant to be a child younger than 18 years of age, or a person who is mentally defective or mentally incapacitated, is involved in human trafficking for the purposes of commercial sexual activity, the defendant commits a life felony.¹¹

Additionally, a parent, legal guardian, or a person with custody over a minor, who sells or transfers custody or control of the minor, or offers to sell or transfer custody or control of the minor, with knowledge or in reckless disregard of the fact that the minor will be subject to human trafficking after the sale or transfer, commits a life felony.¹²

A defendant's ignorance of the victim's age, the victim's misrepresentation of his or her age, or a defendant's bona fide belief of the victim's age cannot be raised as a defense in a prosecution for a human trafficking offense.¹³

[Sexual Battery](#)

Section [794.011, F.S.](#), criminalizes sexual battery offenses and defines “sexual battery” as oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.¹⁴

government identification document, of any person; causing or threatening to cause financial harm to any person; enticing or luring any person by fraud or deceit; or providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person. S. [787.06\(2\)\(a\), F.S.](#)

⁴ S. [787.06\(3\)\(a\)1., F.S.](#), s. [787.06\(3\)\(c\)1., F.S.](#), s. [787.06\(3\)\(e\)1., F.S.](#), s. [787.06\(3\)\(f\)1., F.S.](#), and s. [787.06\(3\)\(g\), F.S.](#)

⁵ “Commercial sexual activity” means any prostitution, lewdness, or assignation offense or attempt to commit such an offense, and includes a sexually explicit performance and the production of pornography. S. [787.06\(2\)\(b\), F.S.](#) “Sexually explicit performance” means an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest. S. [787.06\(2\)\(i\), F.S.](#)

⁶ S. [787.06\(3\)\(g\), F.S.](#) A person convicted of committing or attempting, soliciting, or conspiring to commit an offense of human trafficking upon a child younger than 18 or a mentally defective or mentally incapacitated person for commercial sexual activity is automatically designated as a sexual offender and is required to comply with statutory registration requirements, or may be designated by a court to be a sexual predator and subject to registration and community and public notification requirements. S. [775.21, F.S.](#) and s. [943.0435, F.S.](#)

⁷ S. [794.011\(1\)\(c\), F.S.](#)

⁸ S. [794.011\(1\)\(d\), F.S.](#)

⁹ S. [787.06\(2\)\(k\), F.S.](#)

¹⁰ S. [787.06\(3\)\(a\)1., F.S.](#), s. [787.06\(3\)\(c\)1., F.S.](#), and s. [787.06\(3\)\(e\)1., F.S.](#)

¹¹ S. [787.06\(3\)\(g\), F.S.](#)

¹² S. [787.06\(4\)\(a\), F.S.](#)

¹³ S. [787.06\(9\), F.S.](#)

¹⁴ S. [794.011\(1\)\(j\), F.S.](#) Sexual battery does not include an act done for a bona fide medical purpose.

A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable by death or life imprisonment.¹⁵ Additionally, without regard to the willingness or consent of the victim, which is not a defense to prosecution, a person 18 years of age or older who is in a position of familial or custodial authority to a person less than 12 years of age and who engages in any act with that person which constitutes sexual battery, or in an attempt to commit sexual battery injures the sexual organs of such person, commits a capital felony.¹⁶

A person commits a first-degree felony if he or she is 18 years of age or older and commits sexual battery upon a person 12 years of age or older, without that person's consent, and when:

- The offender, without the prior knowledge or consent of the victim, administers or has knowledge that someone else has administered to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim.
- The victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact.¹⁷

Sentence of Death or Life Imprisonment for Capital Sexual Battery

Section [794.011, F.S.](#), requires a person who has been convicted of a capital sexual battery to be punished by death if a proceeding held to determine sentence under [s. 921.1425, F.S.](#),¹⁸ results in a determination that such person shall be punished by death, otherwise the person shall be punished by life imprisonment and is not eligible for parole.

Under [s. 921.1425, F.S.](#), to sentence a defendant to death when he or she has not waived the right to a sentencing proceeding by a jury, a jury must unanimously find the existence of at least two aggravating factors and find that any aggravating factors found to exist were proven beyond a reasonable doubt. If a jury makes such a finding, the jury must then make a recommendation to the court as to whether the defendant should be sentenced to death or life imprisonment.¹⁹ The jury's recommendation must be based on a weighing of the following:

- Whether sufficient aggravating factors exist;
- Whether aggravating factors exist which outweigh the mitigating circumstances found to exist; and
- Whether, based on the prior considerations, the defendant should be sentenced to death or life without the possibility of parole.²⁰

If fewer than eight jurors determine that the defendant should be sentenced to death, the jury must recommend a sentence of life imprisonment without the possibility of parole and the court must impose a life sentence.²¹ If at least eight jurors determine that the defendant should be sentenced to death, the jury must recommend a sentence of death.²² Thereafter, the judge must consider each aggravating factor that was unanimously found to exist by the jury and all mitigating circumstances, and may impose a sentence of life imprisonment or a death sentence.²³ The aggravating factors a jury may consider are limited by statute.

Aggravating Factors

Section [921.1425\(7\), F.S.](#), provides the following aggravating factors:

- The capital felony was committed by a person previously convicted of a felony violation of s. [794.011, F.S.](#), relating to sexual battery offenses, and under sentence of imprisonment or placed on community control or on felony probation.

¹⁵ Punishable as provided in ss. [775.082](#) and [921.1425, F.S.](#)

¹⁶ S. [794.011\(8\)\(c\), F.S.](#)

¹⁷ An offense committed on a victim 12 years of age or older, but younger than 18 years of age is punishable by a term of years not exceeding life. S. [794.011\(4\)\(a\) and \(b\), F.S.](#), and s. [794.011\(4\)\(e\)4. and 5., F.S.](#)

¹⁸ The sentencing of other capital felony offenses are provided for in s. [921.141, F.S.](#), and the sentencing of capital drug trafficking felonies are specifically provided for in s. [921.142, F.S.](#)

¹⁹ S. [921.1425\(3\), F.S.](#)

²⁰ *Id.*

²¹ S. [921.1425\(3\)\(c\) and \(4\)\(a\)1., F.S.](#)

²² S. [921.1425\(3\)\(c\), F.S.](#)

²³ S. [921.1425\(4\)\(a\)2., F.S.](#)

- The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- The capital felony was committed by a person designated as a sexual predator pursuant to [s. 775.21, F.S.](#), or a person previously designated as a sexual predator who had the sexual predator designation removed.
- The capital felony was committed by a sexual offender who is required to register pursuant to [s. 943.0435, F.S.](#), or a person previously required to register as a sexual offender who had such requirement removed.
- The defendant knowingly created a great risk of death to one or more persons such that participation in the offense constituted reckless indifference or disregard for human life.
- The defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm to threaten, intimidate, assault, or injure a person in committing the offense or in furtherance of the offense.
- The capital felony was committed for pecuniary gain.
- The capital felony was especially heinous, atrocious, or cruel.
- The victim of the capital felony was particularly vulnerable due to age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- The capital felony was committed by a person subject to an injunction issued pursuant to [s. 741.30, F.S.](#), or [s. 784.046, F.S.](#), or a foreign protection order accorded full faith and credit pursuant to [s. 741.315, F.S.](#), and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.
- The victim of the capital felony sustained serious bodily injury.

Mitigating Circumstances

Mitigating circumstances are not limited by statute. Section [921.1425\(8\), F.S.](#), specifies that mitigating circumstances for a capital sexual battery offense include the following:

- The defendant has no significant history of prior criminal activity.
- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- The defendant acted under extreme duress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- The age of the defendant at the time of the crime.
- The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.

Automatic Review

Section [921.1425\(6\), F.S.](#), provides that any judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida, with the required disposition rendered within two years after the filing of a notice of appeal. Such automatic reviews have priority over all other cases.²⁴

Imposing the Death Penalty for Sexual Battery Offenses

Coker v. Georgia, 433 U.S. 584 (1977)

In *Coker v. Georgia*, the United States Supreme Court (USSC) determined that, with respect to rape of an adult woman,²⁵ a sentence of death is a grossly disproportionate and excessive punishment forbidden by the Eighth

²⁴ S. [921.1425\(6\), F.S.](#)

²⁵ In subsequent decisions, the USSC has noted that the victim in this case, although characterized as an adult was actually a 16-year-old woman, however, she may have qualified as an adult as she was married, had her own home, and had a child. See *Kennedy v. Louisiana*, 554 U.S. 407, 427 (2008).

Amendment as cruel and unusual punishment.²⁶ The defendant in *Coker*, had prior convictions for capital felonies of rape, murder, and kidnapping, however, the USSC found his previous convictions did not change the fact that in the case being punished, the rape did not involve the taking of a life. Distinguishing the crime of rape from the crime of murder, the USSC said, “The murderer kills; the rapist, if no more than that, does not. Life is over for the victim of the murderer; for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair. We have the abiding conviction that the death penalty, which ‘is unique in its severity and irrevocability’ is an excessive punishment for the rapist who, as such, does not take human life.”

[Buford v. State, 403 So.2d 943 \(Fla. 1981\)](#)

In *Buford*, the Defendant was convicted of first-degree murder, sexual battery on a child under 11 years of age, and burglary with intent to commit sexual battery. The trial court imposed two death sentences for the murder and sexual battery convictions. In determining whether a death sentence for the crime of sexual battery of a child violated the Eighth and Fourteenth Amendments to the U.S. Constitution as cruel and unusual punishment, the Florida Supreme Court (FSC) looked to the USSC’s *Coker* decision, explicitly acknowledging that *Coker* did not decide whether a death sentence for the rape of a child under the age of 11 was unconstitutional. However, the FSC went on to explain that “[t]he reasoning in *Coker v. Georgia* compels us to hold that a sentence of death is grossly disproportionate and excessive punishment for the crime of sexual assault and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment.” The FSC did not explicitly explain why the *Coker* holding regarding the rape of an adult woman should apply equally to the rape of a child under 11 years of age. The death sentence for the defendant’s murder conviction was sustained and the death sentence for sexual assault was vacated and the defendant was sentenced to life imprisonment on the sexual assault.

[Kennedy v. Louisiana, 554 U.S. 407 \(2008\)](#)

In this case, the defendant was charged with the aggravated rape of his 8-year-old stepdaughter. The jury unanimously determined the defendant should be sentenced to death and the Louisiana Supreme Court affirmed the death sentence. In determining whether the death penalty was cruel and unusual punishment and thus violative of the Eighth Amendment, the USSC examined the number of states with capital rape provisions, finding that of the 36 states plus the Federal Government that had the death penalty, only six of those jurisdictions authorized the death penalty for rape of a child. As such, the Court found there was a national consensus against capital punishment for the crime of child rape.

Consistent with evolving standards of decency, the Court found a distinction between intentional first-degree murder and nonhomicide crimes against individual persons, including child rape. The Court went on to conclude that regardless of any restrictions requiring the finding of aggravating factors necessary to impose a death sentence for child rape, it had “no confidence that the imposition of the death penalty would not be so arbitrary as to be ‘freakish.’”

Finally, the Court went on to consider the problem of unreliable child testimony in some child rape cases, the issue of removing the incentive for an offender not to kill their child rape victim, and the harm that may be caused to the child victim if he or she was required to give testimony on multiple occasions in a death penalty case. In striking down the death sentence in this case, the Court held that in their “independent judgment” the death penalty was not a proportional punishment for the rape of a child.²⁷

[Appeal by the State](#)

Section [924.07\(1\), F.S.](#), authorizes the state to appeal from:

- An order dismissing an indictment or information or any count thereof or dismissing an affidavit charging the commission of a crime or a violation of probation, community control, or any supervised correctional release.
- An order granting a new trial.
- An order arresting judgment.
- A ruling on a question of law when the defendant is convicted and appeals from the judgment.

²⁶ At the time the case was decided, Georgia was the only jurisdiction in the United States that authorized a sentence of death for the rape of an adult woman.

²⁷ *Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008).

- The sentence, on the ground that it is illegal.
- A judgment discharging a prisoner on habeas corpus.
- An order adjudicating a defendant insane under the Florida Rules of Criminal Procedure.
- All other pretrial orders, except that it may not take more than one appeal under this subsection in any case.
- A sentence imposed below the lowest permissible sentence established by the Criminal Punishment Code under ch. 921, F.S.
- A ruling granting a motion for judgment of acquittal after a jury verdict.
- An order denying restitution under [s. 775.089, F.S.](#)
- An order or ruling suppressing evidence or evidence in limine at trial.
- An order withholding adjudication of guilt in violation of [s. 775.08435, F.S.](#)
- The sentence in a case of capital sexual battery on the ground that it resulted from the circuit court's failure to comply with sentencing procedures under [s. 921.1425, F.S.](#), including by striking a notice of intent to seek the death penalty, refusing to impanel a capital jury, or otherwise granting relief that prevents the state from seeking a sentence of death.