

EXECUTIVE CHAMBERS

HONOLULU

June 18, 2001

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 236

Honorable Members
Twenty-First Legislature
State of Hawaii

Pursuant to Section 16 of Article III of Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 236, entitled "A Bill for an Act Relating to Sexual Assault."

The primary purpose of House Bill No. 236 is to address the age of consent for consensual sexual activity. The bill criminalizes consensual sexual penetration and contact with a minor, who is between the ages of 14 and 16, if the actor is more than five years older than the minor and not married to the minor.

Hawaii currently has some of the strictest statutes in the nation concerning sexual assaults. Under these statutes, it is a crime for anyone to engage in acts of sexual penetration or contact without the consent of the other person regardless of the victim's age. This bill creates crimes that only apply to consensual sexual activity and that are defined by the relative ages of the individuals involved. The legislative history of this bill reflects opposition to this approach by the Hawaii Commission on the Status of Women, the Honolulu Police Department, the Sex Abuse Treatment Center, the Coalition for the Prevention of Sexual Assault, and the Honolulu Prosecuting Attorney. These crimes that are created by this bill are overly broad and in some situations may inappropriately bring teenagers and young adults, as both victims and defendants, into the State's criminal justice system. In these cases, neither society's interests relating to criminal law enforcement nor the

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well-being of these teenagers and young adults will be advanced by this approach.

The legislative history of this bill demonstrates that the age of sexual consent issue involves complex social issues that are surrounded by very strong opinions within our community. At the present time, there has not been any comprehensive study as to the best way to address this issue. The need for such a comprehensive study by a broad range of community members and experts is recognized by the provision in this bill that creates an extensive task force to study the bill's impact. Such a comprehensive study should precede, not follow, the enactment of legislation in this area. Hawaii's Coalition for the Prevention of Sexual Assault is already embarked upon the process of such a study that would provide the Legislature with factual information, expert opinions, and information regarding the experience of other states that have legislated in this area. The Coalition's study can be accomplished without this bill and will provide recommendations for the best way to develop public policy in this area.

Finally, the language of this bill that creates offenses defined by the relative ages of the individuals involved can create undesirable results. For example, a 19-year-old person who exercises poor judgment and engages in consensual sexual activity with a 14-year-old person could be prosecuted and branded as a sex offender for life under this bill. Additionally, the "not less than five years older than the minor" language that is employed in the bill is vague and can result in unexpected behavioral windows of criminal activity by teenagers. For example, an 18-year-old person who is having a consensual sexual relationship with a 14-year-old minor will become a sex offender at his or her nineteenth birthday when the "not less than five years older" period is exceeded. Once the minor has a

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birthday, the relationship between the two would again become legal.

For the foregoing reasons, I am returning House Bill No. 236 without my approval.

Respectfully,

A handwritten signature in black ink, reading "Benjamin J. Cayetano". The signature is written in a cursive style with a large initial 'B'.

BENJAMIN J. CAYETANO
Governor of Hawaii