

EXECUTIVE CHAMBERS

HONOLULU

JUNE 18, 2001

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 645

Honorable Members
Twenty-First Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 645, entitled "A Bill for an Act Relating to Endangering the Welfare of Incompetent Persons."

The purpose of House Bill No. 645 is to expand the legal protections for the elderly and dependent adult populations by creating first and second degree penal sanctions against persons who intentionally or recklessly act in a manner likely to be injurious to the physical or mental welfare of these vulnerable adults. However, this bill actually reduces the legal protections for these adults and fails to carry out its intended purpose.

House Bill No. 645 contains the elements of the crime of Endangering the Welfare of an Incompetent Person in the Second Degree ("Endangering 2nd") which are nearly the same as the elements of the crime of Assault in the Third Degree. Both make it a crime to "recklessly cause bodily injury to another person" and are misdemeanors. Importantly, however, it would be more difficult to prosecute a perpetrator under Endangering 2nd because it would require the prosecution to prove the additional element that the victim is an "incompetent" or "dependent" adult. Thus, Endangering 2nd does nothing to protect these vulnerable adults.

Both Endangering the Welfare of an Incompetent Person in the First Degree ("Endangering 1st") and Endangering 2nd contain the element of "bodily injury," which in turn requires proof of "physical pain." In many instances, victims of elderly or dependent adult abuse simply cannot testify at court because

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of their disabilities. Therefore, it would be difficult to prove beyond a reasonable doubt that those victims suffered pain, as the bill requires. Additionally, many victims cannot testify with regard to their pain because they are insensate or are unable to feel pain. The unfortunate result is that otherwise egregious conduct would go without prosecution.

Finally, both Endangering 1st and 2nd fail to address the frequently occurring problem of patient or resident neglect. The original language of the bill addressed the neglect cases by allowing for the prosecution under circumstances that rose to the level where injury to the physical or mental welfare of that person occurred or was very likely to occur. Cases of neglect, which should be prosecuted, would not be prosecuted at all under this bill.

For the foregoing reasons, I am returning House Bill No. 645 without my approval.

Respectfully,


BENJAMIN J. CAYETANO
Governor of Hawaii