

EXECUTIVE CHAMBERS

HONOLULU

June 10, 1999

ORIGINAL

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 273

Honorable Members
Twentieth 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. 273, entitled "A Bill for an Act Relating to Children."

The purpose of House Bill No. 273 is to amend chapter 707, Hawaii Revised Statutes, to create three new sections for the offenses of child abuse in the first, second, and third degrees, which are classified as A, B, and C felony offenses, respectively. The graduation for these offenses is based on the defendant's state of mind and the extent of the injury caused to the minor victim, who must be twelve years old or younger. This bill also amends sections 707-710 and 707-711, Hawaii Revised Statutes, relating to the offenses of assault in the first and second degrees, which are classified as B and C felony offenses, respectively, by adding the provision that the victim be thirteen years old or older. Lastly, the bill adds the three new child abuse offenses to section 706-662, Hawaii Revised Statutes, which sets out the criteria for extended terms of imprisonment.

I understand that this measure was passed at least partially in response to a few cases widely reported in the media. However, the prohibited conduct covered by the newly created offenses is already punishable under our existing assault statutes. Consequently, the real impact of this bill is simply to elevate the criminal penalties that are presently prescribed in our statutes when the assaults are committed against a person who is twelve years old or younger. It is unnecessary to create new child abuse offenses and redefine our existing assault offenses when the only effect is the increase of possible

penalties when the assault is committed against a minor under the age of thirteen years.

Furthermore, the new child abuse offenses or the redefined assault offenses will not be lesser included offenses in the offense of attempted murder. Lesser included offenses must meet the requirements listed in section 701-109(4), Hawaii Revised Statutes. Because the new and redefined offenses will require proof of the victim's age and the offense of attempted murder does not require proof of the victim's age, the new child abuse and redefined assault offenses will require proof of more facts than those required to establish attempted murder. Since the other requirements of section 701-109(4), Hawaii Revised Statutes, are not met, the new and redefined offenses will not be lesser included offenses of attempted murder. This change to be effectuated by this bill will seriously disadvantage both the prosecution and the defense in criminal prosecutions. The Legislature has inserted age requirements in two particular offenses in the Hawaii Penal Code and in three newly created offenses, apparently without being cognizant that the Penal Code has internal consistency and amending one statute may have significant incongruous consequences in another context.

For the foregoing reasons, I am returning House Bill No. 273 without my approval.

Respectfully,


BENJAMIN J. CAYETANO
Governor of Hawaii

P R O C L A M A T I O N

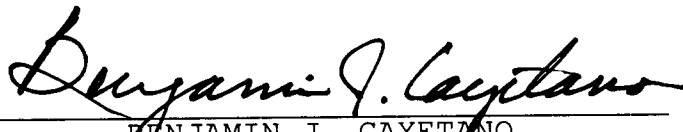
WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of his plan to return with his objections any bill presented to him less than ten days before adjournment sine die or presented to him after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 273, entitled "A Bill for an Act Relating to Children," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 273 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, BENJAMIN J. CAYETANO, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 273 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 10th
day of June, 1999.



BENJAMIN J. CAYETANO
Governor of Hawaii