

EXECUTIVE CHAMBERS
HONOLULU

June 10, 1999

COPY

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1119

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, Senate Bill No. 1119, entitled "A Bill for an Act Relating to Homicide."

The purpose of Senate Bill No. 1119 is to change the burden of proof of the extreme mental or emotional disturbance (EMED) defense of manslaughter by placing the burden on the defendant and not on the prosecution. The bill seeks to achieve this change by labeling the EMED defense, as an "affirmative defense."

The major impetus of this legislation appears to be a misunderstanding of the current law that resulted from widespread media coverage of a homicide case. The EMED defense in its current form has been part of Hawaii law for nearly thirty years and has been clarified and explained through a number of well-reasoned appellate cases. The Hawaii Penal Code's formulation of the EMED defense was adopted from, and is consistent with, the Model Penal Code.

Shifting the burden on the EMED defense to the defendant will have the unintended effect of denying the defense under some circumstances to persons, such as battered women, who should be legitimately entitled to its benefit. It is not uncommon for a battered woman to kill her abuser when he is sleeping or not posing an immediate threat. Under this bill, in order to successfully raise the EMED defense, a battered woman will be required to prove by a preponderance of the evidence that she acted under an extreme mental or emotional disturbance for which there is a reasonable explanation, although the circumstances may show no immediate threat -- and, by inference, little reason for a disturbance. This may impose on the battered woman an evidentiary burden that may be

difficult or impossible to meet.

Additionally, restructuring the extreme mental or emotional disturbance manslaughter ("voluntary manslaughter") defense into an affirmative defense, thereby requiring the defendant to prove by a preponderance of the evidence that he or she was under extreme mental or emotional distress for which there is a reasonable explanation, raises due process concerns because of the unique nature of the offense of "voluntary" manslaughter in Hawaii.

This bill will consequently not only require the defendant to come forward with evidence, it will likely compel the defendant to testify in order to prove the defense. Indeed, this bill assumes that the defendant will invariably be able to establish the "affirmative defense" to the satisfaction of the jury when it exists in fact. However, this is not necessarily true, because the defendant may not be able to establish the "affirmative defense," even when the prosecutor acknowledges its applicability. The burden, therefore, should properly remain on the prosecution.

It is not surprising that the vast majority of jurisdictions nationwide, including the federal jurisdiction, do not require the defendant to prove the EMED defense; instead, they place the burden on the prosecution, as the law in Hawaii currently provides. Such an overwhelming lack of endorsement of the use of the affirmative defense as applied to the EMED defense is not a good indication of the viability of its use.

For the foregoing reasons, I am returning Senate Bill No. 1119 without my approval.

Respectfully,


BENJAMIN J. CAYETANO
Governor of Hawaii

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

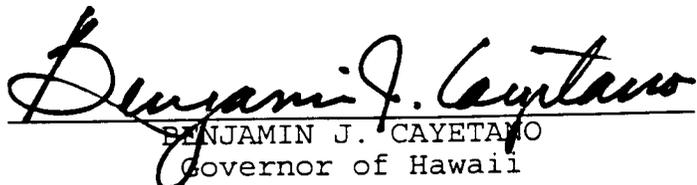
WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of his plan to return with his objections any bill presented to him less than ten days before adjournment sine die or presented to him after adjournment sine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

WHEREAS, Senate Bill No. 1119, entitled "A Bill for an Act Relating to Homicide," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 1119 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 Senate Bill No. 1119 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