

EXECUTIVE CHAMBERS

HONOLULU

June 9, 1999

COPY

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 919

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. 919, entitled "A Bill for an Act Relating to Robbery."

The purpose of Senate Bill No. 919 is to amend the statutes for robbery in the first and second degrees to permit a robbery conviction even though the victim was unaware that a theft had been committed and to amend the definition of "dangerous instrument" to include the term "an animal."

Permitting a robbery conviction even though the victim was unaware of the theft would overturn the recent Hawaii Supreme Court decision in State v. Mitsuda, 86 Haw. 37, 947 P.2d 349 (1997). This requirement that the victim of a robbery be aware of the theft comes from a fundamental notion regarding robbery -- that robbery is in essence a forcible theft from the person.

The definition of robbery in the Hawaii Penal Code embodies this concept of forcible theft from the person by requiring that the person threatened during the robbery be present and that the threat be made with the intent "to compel acquiescence to the taking of or escaping with the property." In Mitsuda, the Hawaii Supreme Court found that the requirement that the person be aware of the theft is consistent with the law defining the offense of robbery in Hawaii even before the adoption of the Hawaii Penal Code. It is for this reason, as noted by the Hawaii Supreme Court, that robbery is punished more severely than its component parts, assault and theft, because of


the heightened sense of danger to a victim who is aware of having possessions taken through the use or threat of force. Deleting the requirement that the victim be aware of the theft undermines the rationale for punishing robbery more severely than its component parts.

Furthermore, the amendments to the robbery offense, as proposed in this bill, were prompted by a unique case. The facts in Mitsuda were unusual, because a defendant rarely is charged with a robbery offense when the victim of the robbery is unaware of the theft. Moreover, the defendant in the Mitsuda case did not go unpunished, because the defendant was convicted of burglary and theft. The robbery offense should not be rewritten because of one unusual case, especially when there are historical and cogent reasons in support of the Supreme Court's decision in the Mitsuda case.

This bill also adds "an animal" to the definition of "dangerous instrument" in section 708-840, Hawaii Revised Statutes. However, the current definition of "dangerous instrument" already includes "any . . . weapon, device, instrument, material, or substance, whether animate or inanimate." "Animate" would of course include "an animal." Since the existing statute already defines "dangerous instrument" to include "an animal," this bill's amendment to the definition is superfluous.

For the foregoing reasons, I am returning Senate Bill No. 919 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. 919, entitled "A Bill for an Act Relating to Robbery," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 919 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. 919 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 9th
day of June, 1999.


BENJAMIN J. CAYETANO
Governor of Hawaii