



GOV. MSG. NO. 878

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 8, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2345 SD1 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB2345 SD1 HD1 CD1

A BILL FOR AN ACT RELATING TO CHILDREN.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2345

Honorable Members
Twenty-Fourth 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. 2345, entitled "A Bill for an Act Relating to Children."

The purpose of this bill is to establish "guiding principles" for State agencies to use when dealing with the children of incarcerated parents.

While the objective of the bill is laudable, the bill is nevertheless objectionable because it unnecessarily and unfairly singles out children of incarcerated parents for special treatment and it lacks a statement that the bill was not intended to create a private right of action or right to sue.

In addition, the guiding principles contained in paragraphs (6), (7), (8), and (9) of the new section being added to chapter 346, Hawaii Revised Statutes, by section 2 of the bill are not well-founded. Paragraph (6) provides that "children's wishes should be taken into consideration regarding any decisions made concerning their welfare." Similarly, paragraph (7) provides that "children's wishes should be taken into consideration when decisions are made about their incarcerated parent." These provisions appear to give children a say in significant and complex issues even though, as minors, many of these children lack the requisite capacity to make such decisions. Even for older children who may have the requisite capacity, honoring their wishes infringes upon the authority of

STATEMENT OF OBJECTIONS
SENATE BILL NO. 2345
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the courts, the Department of Public Safety, the Hawaii Paroling Authority, and other agencies responsible for the welfare and custody of incarcerated parents and their children.

Paragraph (8) is vague, providing simply that "[c]hildren should be well cared for in the absence of an incarcerated parent." Paragraph (9) is also vague, providing that "[c]hildren should receive proper support during any struggles with the parent's incarceration." These guiding principles do not specify who should provide the care and support, nor do they describe the type or extent of the care and support. Such vagueness presents the possibility that these provisions may be interpreted in ways detrimental to the State and, therefore, expose the State to potential liability.

For the foregoing reasons, I am returning Senate Bill No. 2345 without my approval.

Respectfully,



LINDA LINGIE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO CHILDREN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that an estimated six
2 thousand children in the State of Hawaii have a parent in
3 prison. Many children of incarcerated parents experience grief,
4 guilt, shame, fear, depression, and have difficulty sleeping or
5 concentrating. Although children need to maintain contact with
6 their parent, visits at correctional facilities can be
7 frightening for some children.

8 The purpose of this Act is to help maintain the well-being
9 of children of incarcerated parents and support their needs.

10 SECTION 2. Chapter 346, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§346- Guiding principles to be used by state agencies
14 when dealing with children of incarcerated parents. The guiding
15 principles to be used by the state agencies when dealing with
16 children of incarcerated parents shall be as follows:

17 (1) Children should be treated with respect and dignity at
18 all times;



- 1 (2) The children's safety and care should be of paramount
2 importance to all involved;
- 3 (3) If the children so choose, communication avenues
4 should be made available such that the children should
5 have opportunities to see, speak to, or visit parents,
6 where appropriate;
- 7 (4) State support for the children should be provided as
8 resources permit;
- 9 (5) The children should be kept safe and informed at the
10 time of the parent's arrest;
- 11 (6) The children's wishes should be taken into
12 consideration regarding any decisions made concerning
13 their welfare;
- 14 (7) The children's wishes should be taken into
15 consideration when decisions are made about their
16 incarcerated parent;
- 17 (8) Children should be well cared for in the absence of an
18 incarcerated parent;
- 19 (9) Children should receive proper support during any
20 struggles with the parent's incarceration;
- 21 (10) Children should not be judged, blamed, or labeled
22 because of a parent's incarceration; and



1 (11) Children should receive support for the desire to
2 retain a relationship with an incarcerated parent,
3 where appropriate."

4 SECTION 3. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

