SPEC. COMM. REP. NO. 2

Honolulu, Hawaii
January 26, 2007

RE: S.C.R. NO. 52
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Honorable Calvin K. Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam President and Mr. Speaker:

Your Committees on Human Services of the Senate and House of Representatives, to which was referred S.C.R. 52, S.D. 1 (2006) entitled:

"SENATE CONCURRENT RESOLUTION REQUESTING THE COMMITTEES ON HUMAN SERVICES OF THE SENATE AND HOUSE OF REPRESENTATIVES TO CONVENE INTERIM HEARINGS ON THE USE OF LEGAL INTERVENTIONS AVAILABLE TO THE FAMILY COURT,"

beg leave to report as follows:

PART I. BACKGROUND

Introduction

In the 2004 Regular Session, the Senate adopted Senate Resolution No. 40 authorizing the Senate Committee on Human Services to convene interim hearings on the Hawaii Family Court. The purpose of the interim hearings was to explore ways to:

(1) Make the Family Court more accessible, family oriented, and focused on reduction in caseload;

(2) Limit the long-term use of interventions such as temporary restraining orders and protective orders;

(3) Ensure greater accountability of court-appointed personnel such as custody evaluators and guardians ad litem; and

(4) Reduce the needless expenditure of time and money on counterproductive litigation relating to child custody.

During the course of those interim hearings, task force groups where formed and submitted their findings and recommendations to the Senate Committee on Human Services. Some of the recommendations were adopted and received legislative attention, but there were still issues that remained unresolved.

Legislative Mandate

In order to continue work on the unresolved issues, the Senate and the House of Representatives adopted S.C.R. 52, S.D. 1 (2006), authorizing the Committees on Human Services of the Senate and the House of Representatives to convene interim hearings on the use of legal interventions available to the Family Court, including:

(1) An assessment of the caseload;

(2) The long-term use of temporary restraining orders;

(3) The selection, use, and accountability of custody evaluators, guardians ad litem, factfinders, parenting coordinators, and other court-appointed personnel;

(4) An evaluation of definitions of "the best interests of the child";

(5) An examination of issues that may have an impact on the fair and timely resolution of cases; and

(6) The identification of practices that meet an acceptable national standard of care for the children and families before the Family Court.

The Committees on Human Services of the Senate and House of Representatives were also requested to:

(1) Establish one or more task forces to facilitate their work with representation from the Department of Human Services; Department of Health; Hawaii Association of Marriage and Family Therapists; Family Law Section of the Hawaii State Bar Association; National Association of Social Workers, Hawaii Chapter; Children's Rights Council; Hawaii Coalition for Dads; Legal Aid Society of Hawaii; Volunteer Legal Services Hawaii; Hawaii State Coalition Against Domestic Violence; Domestic Violence Clearinghouse and Legal Hotline; Mediation Center of the Pacific; EPIC Ohana Conferencing; and American Psychological Association; and

(2) Report their findings, along with any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2007.

Approach

The Chair of the Senate Human Services Committee, Senator Suzanne Chun Oakland, and the Chair of the House Human Services Committee, Representative Alex M. Sonson, convened the S.C.R. 52 Task Force (Task Force), with representation from all of the organizations as directed by S.C.R. 52, S.D. 1 (2006), to facilitate their work.

The Task Force held public meetings on July 17, August 22, October 9, November 27, December 1, December 15, 2006, and January 5, 2007.

The Task Force prioritized four categories and formed four committees to explore which issues should be prioritized within each category and to report their findings and recommendations to the Task Force. The four committees were:

(1) Best Interests of the Child Committee;

(2) Family Court Models Committee;

(3) Family Court, Sunshine & Accountability Committee; and

(4) Temporary Restraining Orders Committee.

In addition to conferring with all of the organizations as directed by S.C.R. 52, S.D. 1 (2006), between the Task Force and the four committees, input was obtained from individual members of the public and representatives of the following organizations: the Judiciary; University of Hawaii, School of Social Work; Hawaii State Commission on the Status of Women; City and County of Honolulu Prosecutor's Office; American Civil Liberties Union of Hawaii; Hawaii Association of Family Therapists; VOICES, Maui Chapter; VOICES, Oahu Chapter; Coalition for a Drug-Free Hawaii; Hawaii Women Lawyers; Women Helping Women, Maui Chapter; Na Lei Lokahi; Na Keiki Law Center; Parents for Righteousness; and Stop the Violence.

The Family Court Custody Investigation Unit also made a presentation to the Task Force.

PART II. COMMITTEE FINDINGS

Best Interests of the Child Committee

The Task Force requested the Best Interests of the Child Committee to explore and prioritize the possibility of defining "best interests of the child," adopting a standard and criteria for best interests of the child, and the reintroduction of S.B. No. 3233 (2006) to authorize parents to amend provisions of the parenting plan.

The Best Interests of the Child Committee held public meetings on October 18, October 30, and November 9, 2006.

The Best Interests of the Child Committee examined various models, including the Jameson Study, to compile a list of the best interests of the child standards that a court should consider when deciding the issue of child custody. After a full discussion, the Best Interests of the Child Committee agreed upon the standards listed in Attachment A.

The Best Interests of the Child Committee considered whether various child custody related presumptions should exist. The Best Interests of the Child Committee determined that the domestic violence presumption in section 571-46, Hawaii Revised Statutes, should remain. The Best Interests of the Child Committee found that once the court determines that domestic violence is not an

issue, there should be a rebuttable presumption of joint custody (e.g., both parents share equally in the parenting of the child). If the joint custody presumption is disputed, the court would then consider the best interests of the child standards listed in Attachment A.

The Best Interests of the Child Committee also discussed the issue of enabling parents to amend parenting plans when both parents agree to the changes. The Best Interests of the Child Committee reviewed the law and determined that a mechanism already exists for parents who are in agreement to amend their parenting plans.

Family Court Models Committee

The Task Force requested the Family Court Models Committee to explore and prioritize the possibility of a non-adversarial "triage" model, "parenting time (visitation) facilitation specialists," a parent advocate or facilitator for custody cases, co-parenting education classes, expansion of Kids First, parents presenting their story at Kids First to encourage settlement, Alternative Dispute Resolution or co-parenting models not being used if battered spouse or parent, protecting a battered spouse (psychological and physical abuse) by investigating alleged abuse before a custody evaluation, evaluating the degree of conflict or abuse prior to determining custody and visitation, decreasing conflict and the effect of a "presumption," neutral pre-court services with trained personnel to identify domestic violence and mediation-type services and to report findings to the court, shaping the system to help families reduce the emotional drain on the larger community, getting government sectors to be more consumer-oriented, and a process for informing agencies serving families about changes in the law.

The Family Court Models Committee held public meetings on September 26, October 16, October 27, and November 3, 2006.

After a full discussion, the Family Court Models Committee found that:

(1) A process, known as the Family Court Parenting Plan Model, should exist to assist parents to develop a parenting plan without and prior to family court intervention;

(2) Child custody matters involving domestic violence should be exempt from the process and should be screened out at any time in the process in addition to the first screening;

(3) After the initial screening for domestic violence, parents should participate in an expanded version of Kids First that includes:

(A) Education about parenting after divorce;

(B) Parenting roles within one home and across homes;

(C) Optional advanced parenting education;

(D) An opportunity for children to provide their activities schedules;

(E) An introduction to the concept of a parenting plan; and

(F) An overview of divorce and paternity procedures;

(4) If the parents are unable to develop a parenting plan after participation in the expanded version of Kids First, the parents should meet with a Trained Parenting Plan Facilitator for a series of facilitations, if necessary, to assist with their development of a parenting plan;

(5) The Trained Parenting Plan Facilitator should be able to make confidential recommendations for services to either parent at any time in the process;

(6) The process should be confidential, non-adversarial, without the presence of attorneys, and the parents should have the same Trained Parenting Plan Facilitator throughout the process;

(7) If after participating in the process the parents still cannot develop a parenting plan, they should proceed to Family Court with any agreed upon issues and for resolution of the outstanding issues; and

(8) The parents should have the same judge throughout the child custody proceedings.

The Family Court Models Committee also found that there is a further need to:

(1) Assess the level of children's involvement in the process, including the possibility of expanding services to meet children's needs in regard to the impact of a child custody dispute;

(2) Research and recommend best practices in the development of a parenting plan;

(3) Research and recommend best practices in the training and qualifications of the trained parenting plan facilitator, including training on the issues facing both the petitioner and the respondent;

(4) Evaluate the current assessment of domestic violence matters; and

(5) Research the possible establishment of a domestic violence court.

Family Court, Sunshine & Accountability Committee

The Task Force requested the Family Court, Sunshine & Accountability Committee to explore and prioritize the possibility of a Family Law Advisory Committee, open meetings, public disclosure of the Judiciary's claim that it is self-evaluating, more communication between the Judiciary and the public or consumers, monitoring the enforcement of recently enacted laws, further judicial accountability, sanctioning attorneys for misrepresentation, developing guidelines for factfinders to focus on the "best interests of the child," the Judiciary providing updates on custody evaluation and Alternative Dispute Resolution programs, reviewing factfinders' fees, defining the guardian ad litem's responsibilities, clarifying and developing a glossary of the different court-appointed personnel, and greater public involvement in the Judiciary.

The Sunshine & Accountability Committee held public meetings on October 18, October 30, and November 9, 2006.

After a full discussion, including the review of various models, past legislation, and research (Attachment B), the Sunshine & Accountability Committee prioritized:

(1) The establishment of a Family Law Advisory Committee;

(2) Expanding the scope of chapter 92, Hawaii Revised Statutes, known as the Sunshine Law, to include non-adjudicatory functions of the Judiciary;

(3) Investigating public and media access to Family Court hearings and the constitutionality of the Family Court Confidentiality Form; and

(4) Training custody evaluators.

At the Sunshine & Accountability Committee's request, the Task Force sent a letter to Chief Justice Ronald T. Y. Moon, on or about October 16, 2006, requesting information regarding the Family Court Confidentiality Form. Copies of the letter to Chief Justice Moon and the response from the Deputy Chief Judge of the Family Court of the First Judicial Circuit, Frances Q. F. Wong, and the Chief Court Administrator of the First Circuit Court, William A. Santos, dated October 25, 2006, are provided under Attachment C.

Temporary Restraining Orders Committee

The Task Force requested the Temporary Restraining Orders Committee to explore and prioritize the possibility of reexamining the temporary restraining orders process, reducing the filings of false temporary restraining orders, reexamining the temporary restraining orders statute to look at "imminent harm," the temporary restraining orders requirement for an order of protection, assistance in evenings or weekends, a consequence or sanction for filing a false temporary restraining order, and the need for a pre-screening process to identify abuse.

The Temporary Restraining Orders Committee held public meetings on September 26, October 17, October 26, and November 8, 2006.

After a full discussion, the Temporary Restraining Orders Committee determined that there is a need:

(1) For additional information from the Family Court regarding temporary restraining orders;

(2) For temporary restraining orders to address the issue of minors in greater detail;

(3) To specify how the child is being harmed if including the child on an Ex Parte Petition for a Temporary Restraining Order for Protection;

(4) For an agency to investigate and file a written report with the Family Court regarding allegations of harm to a child;

(5) To modify the Ex Parte Petition for a Temporary Restraining Order for Protection form as follows:

(A) The form should request information on the parties' legal relationship to the child (e.g., birth or adoptive parent, legal guardian, member of household, joint or sole custody, etc.);

(B) There should be some indication on the form whether there has been agency contact and if so, it should be specified;

(C) There should be a question on the form regarding whether there are "any other known legal actions regarding the child or the parties"; and

(D) The form should be expanded to include an area for a narrative to elaborate on the "threats of abuse to the child"; and

(6) To get better information before the Family Court Judge.

PART III. COMMITTEE RECOMMENDATIONS

Each Committee submitted a report of its full findings and recommendations to the Task Force (Attachment D). The Committees' recommendations were discussed at length by Task Force members and adopted in the form presented under Part IV.

PART IV. TASK FORCE RECOMMENDATIONS

Based on the findings and recommendations of the four committees, and after a full discussion and a majority vote of the members, the Task Force recommends that with regard to:

Best Interests of the Child

(1) Custody and visitation (parenting time) criteria and procedure be amended to specify what the court shall consider when determining the best interests of the child;

(2) The Legislative Reference Bureau be requested to study joint or shared physical and legal custody presumptions in Family Law as enacted and applied by other jurisdictions;

Family Court Models

(3) The Judiciary be requested to review similar, existing parenting plan initiatives and implement a pilot Family Court Parenting Plan Model program in the First Circuit Family Court;

(4) A task force be convened to evaluate the current assessment of domestic violence matters and the possibility of establishing a domestic violence court in the First Circuit Family Court;

(5) One or more task forces be convened during the interim to further study and make recommendations regarding the remaining issues identified by the Family Court Models Committee;

Family Court, Sunshine & Accountability

(6) A Citizen's Family Law Advisory Committee be established and placed, for administrative purposes, within the Judiciary;

(7) A letter be written to the Chief Justice of the Hawaii State Supreme Court, Ronald T. Y. Moon, requesting information regarding the Family Court's practice and

procedure of sealing records and other documents in the legal matters within its jurisdiction;

(8) A letter be written to the Deputy Chief Judge of the Family Court of the First Judicial Circuit, Frances Q. F. Wong, requesting information regarding Family Court custody evaluators and policies related to custody evaluators;

(9) The Legislative Reference Bureau be requested to study custody evaluator training models applied in other jurisdictions;

(10) A task force be convened during the interim to further study and make recommendations regarding Family Court custody evaluator issues;

Temporary Restraining Orders

(11) A letter be written to the Deputy Chief Judge of the Family Court of the First Judicial Circuit, Frances Q. F. Wong, requesting further information regarding temporary restraining orders;

(12) A written copy of the referral should be provided to the parties prior to a hearing in any case involving allegations of child abuse;

(13) A task force be convened during the interim to further study and make recommendations regarding the remaining issues and recommendations identified by the Temporary Restraining Orders Committee; and

Other

(14) The Committees on Human Services of the Senate and the House of Representatives be requested to reconvene the Task Force to further study some of the remaining recommendations made by the committees.

PART V. CONCLUSION

After a majority vote of the members, the Task Force recommends that legislation be introduced in the 2007 legislative session to implement the recommendations outlined in this report.

The co-conveners of the Task Force, Senator Suzanne Chun Oakland and Representative Alex M. Sonson, will sponsor the necessary legislation.

Respectfully submitted on behalf of the members of the Committees on Human Services of the Senate and House of Representatives,

Suzanne Chun Oakland
SUZANNE CHUN OAKLAND, Chair

ALEX M. SONSON, Chair