

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1           SECTION 1. During the 2004 legislative session, the senate  
2 adopted Senate Resolution 40, which authorized the senate  
3 committee on human services to convene interim hearings on the  
4 Hawaii family court. Specifically, the hearings were designed  
5 to explore ways to make the family court more accessible and  
6 family oriented. Among other things, they focused on exploring  
7 ways to reduce needless expenditures of time and money in  
8 counterproductive litigation relating to child custody  
9 determinations.

10           Research shows that children recover faster from a parent's  
11 divorce or separation when there is less emotional trauma  
12 associated with the process. Moreover, parents who do not  
13 experience prolonged litigation in their divorce and separation  
14 are able to regain financial and emotional security for their  
15 families and themselves more quickly.

16           Act 232, Session Laws of Hawaii 1965, which established the  
17 family court system, directed the court to liberally construe  
18 the family court statutes so as to promote, not hinder, familial



1 relationships. An award of joint legal custody in divorce and  
2 child custody proceedings can preserve the familial relationship  
3 between a child and each parent, in situations where both  
4 parents are fit, loving, sincere, safe parents who have a  
5 psychological bond with their child and who desire to continue  
6 meaningful contact in their child's life. A mutually  
7 cooperative joint custody arrangement between parents should be  
8 the preferred parenting plan.

9 With respect to the issue of joint custody, Act 244,  
10 Session Laws of Hawaii 2005, requires parents to create and file  
11 parenting plans with the court in all cases involving contested  
12 custody of children. Parenting plans help the parties focus on  
13 the needs of their children at the beginning of the custody  
14 dispute, provide templates with a wider range of custody and  
15 visitation solutions that the parents may agree on, giving the  
16 parents more control, flexibility and creativity over their  
17 custody and visitation arrangements, and minimizing unnecessary  
18 adversarial litigation and the associated negative effects - all  
19 of which are helpful in reducing a children's post-separation  
20 distress and feelings of alienation, fear or anger.

21 Act 244 also provides that in awarding custody of a minor  
22 child, the family court may consider the importance of frequent,



1 continuing, and meaningful contact of each parent with the  
2 child, unless the court finds that a parent is unable to act in  
3 the best interest of the child.

4 The purpose of this Act is to require the family court to  
5 articulate the standards by which it determined that the best  
6 interests of the child required an award of sole legal custody,  
7 in all proceedings in which joint custody was requested but not  
8 granted.

9 SECTION 2. Section 571-46.1, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) Upon the application of either parent, joint custody  
12 may be awarded in the discretion of the court[-]; provided that  
13 the court shall issue findings of fact and conclusions of law in  
14 all cases in which joint legal custody is not determined to be  
15 in the best interests of the child. For the purpose of  
16 assisting the court in making a determination whether an award  
17 of joint custody is appropriate, the court shall, upon the  
18 request of either party, direct that an investigation be  
19 conducted pursuant to the provisions of section 571-46(4)."

20 SECTION 3. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



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

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**Title:**

Family Court; Joint Custody

**SB. NO. 3239**

**Description:**

Requires the family court to issue findings of fact and conclusions of law when a request for an award of joint legal custody is not granted.

