

JAN 24 2007

SENATE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO STUDY JOINT OR
SHARED PHYSICAL AND LEGAL CUSTODY PRESUMPTIONS IN FAMILY
LAW AS ENACTED AND APPLIED BY OTHER JURISDICTIONS.

1 WHEREAS, in the 2006 Regular Session, the Legislature
2 adopted Senate Concurrent Resolution No. 52 authorizing the
3 Committees on Human Services of the Senate and House of
4 Representatives to convene interim hearings on the Hawaii Family
5 Court; and

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7 WHEREAS, the interim hearings were designed as a way to
8 make the Hawaii Family Court more accessible and family
9 friendly; and

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11 WHEREAS, the interim hearings focused on, among other
12 things, important issues relating to the best interest of the
13 child and custody; and

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15 WHEREAS, during the course of these interim hearings, a
16 task force was established along with working groups, that
17 submitted their findings and recommendations to the larger task
18 force; and

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20 WHEREAS, while some of the working groups' recommendations
21 were adopted by the task force and have received legislative
22 attention, due to time constraints, there were other issues the
23 task force was unable to explore fully; and

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25 WHEREAS, one issue the task force was unable to fully
26 explore is the joint or shared physical and legal custody
27 presumption where, in a divorce proceeding, there is a
28 rebuttable presumption that parents should equally share in the
29 parenting of the child; and

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31 WHEREAS, being unable to fully explore and discuss joint or
32 shared physical and legal custody presumptions, the task force



1 members are interested in examining how other states address the
2 issue before making a determination as to whether such a
3 presumption would be appropriate in Hawaii; now, therefore,
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5 BE IT RESOLVED by the Senate of the Twenty-fourth
6 Legislature of the State of Hawaii, Regular Session of 2007, the
7 House of Representatives concurring, that the Legislative
8 Reference Bureau is requested to conduct a study on joint or
9 shared physical and legal custody presumptions in family law as
10 enacted and applied by other jurisdictions; and
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12 BE IT FURTHER RESOLVED that the Legislature requests that
13 the study include:
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- 15 (1) A review and comparison of other states' and
16 countries' statutes relating to joint or shared
17 physical and legal custody presumptions;
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- 19 (2) A review of studies conducted, if any, on the impact
20 the use of joint or shared physical and legal custody
21 presumptions has on children in both contested and
22 non-contested cases;
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- 24 (3) A review of current Hawaii case law on the use of
25 presumptions and the applicable standards of proof;
26 and
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- 28 (4) A review of data regarding joint physical and joint
29 legal custody requests in Hawaii family court actions,
30 which resulted in either a temporary or permanent
31 order, including both contested and non-contested
32 cases; and
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34 BE IT FURTHER RESOLVED that the Legislative Reference
35 Bureau is requested to report its findings and recommendations,
36 including any proposed legislation, to the Legislature no later
37 than twenty days prior to the convening of the Regular Session
38 of 2008; and
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1 BE IT FURTHER RESOLVED that a certified copy of this
2 Concurrent Resolution be transmitted to the Director of the
3 Legislative Reference Bureau.
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OFFERED BY:

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