
HOUSE CONCURRENT RESOLUTION

REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO REVIEW THE
FAMILY COURT'S JUDICIAL WAIVER PROCESS INVOLVING JUVENILE
FELONY DEFENDANTS.

1 WHEREAS, the Family Court has exclusive original
2 jurisdiction in proceedings involving a felony act allegedly
3 committed by a juvenile under the age of eighteen pursuant to
4 section 571-11, Hawaii Revised Statutes; and

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6 WHEREAS, if the juvenile was between the age of fourteen
7 and eighteen at the time the act was allegedly committed, the
8 Family Court can waive its jurisdiction and order the juvenile
9 held for criminal proceedings pursuant to section 571-22, Hawaii
10 Revised Statutes; and

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12 WHEREAS, however, the Family Court must complete a full
13 investigation and hearing to determine whether certain criteria
14 exist to warrant excluding the juvenile from the juvenile
15 justice system; and

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17 WHEREAS, while there are thousands of juvenile criminal
18 cases annually, there have been only about one hundred judicial
19 waiver requests over the past ten years; and

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21 WHEREAS, in the past ten years, there have been nine
22 petitions for waiver of a juvenile alleged to have committed an
23 act that would constitute murder if committed by an adult and
24 waiver was granted in all nine of those cases; and

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26 WHEREAS, a fifteen-year old juvenile is alleged to have
27 committed an act in June 2007 that would constitute murder if
28 committed by an adult and, nine months later, the Family Court,
29 after four postponements, still has not decided whether to waive
30 its jurisdiction over the juvenile so that he may be tried as an
31 adult; and



1
2 WHEREAS, in response to the pending case and the lack of a
3 Family Court decision on the waiver petition, legislation has
4 been introduced in 2008 that would require waiver of Family
5 Court jurisdiction over juveniles between the age of fifteen and
6 seventeen alleged to have committed an act that would constitute
7 murder if committed by an adult; and

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9 WHEREAS, the existing law regarding waiver of juveniles
10 appears to be working but its interpretation and application by
11 the Family Court in one case has given rise to concerns about
12 its efficacy; and

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14 WHEREAS, it is important to periodically examine the Family
15 Court's judicial waiver process to determine whether it is
16 adequately protecting not only juveniles, but the community as
17 well; now, therefore,

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19 BE IT RESOLVED by the House of Representatives of the
20 Twenty-fourth Legislature of the State of Hawaii, Regular
21 Session of 2008, the Senate concurring, that the Judiciary is
22 requested to convene a task force to review the Family Court's
23 judicial waiver process involving juvenile felony defendants;
24 and

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26 BE IT FURTHER RESOLVED that in convening the task force,
27 the Judiciary is requested to include: at least one
28 representative each of the Judiciary, Department of the Attorney
29 General, Office of the Public Defender, Department of Human
30 Services, Office of Youth Services, and Office or Department of
31 the Prosecuting Attorney of each county; and a member of the
32 Hawaii State Bar Association in private practice with experience
33 in criminal defense and representing juveniles in Family Court;
34 and

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36 BE IT FURTHER RESOLVED that in reviewing the Family Court's
37 judicial waiver process involving juvenile felony defendants,
38 the task force, among other things, is requested to:

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40 (1) Examine the application of evidence that a juvenile is
41 committable to an institution for the mentally
42 defective or retarded or the mentally ill which may be
43 used to bar a judicial waiver;
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- 1 (2) Identify concerns that arise during the Family Court's
- 2 judicial waiver process that affect the rights and
- 3 likelihood of reasonable rehabilitation of a juvenile,
- 4 as well as affect the prospects for adequate
- 5 protection of the public;
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- 7 (3) Identify any circumstances that may be suitable for an
- 8 "automatic judicial waiver";
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- 10 (4) Consider the need for speedy processing, disposition,
- 11 and ruling on the matter of judicial waiver;
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- 13 (5) Recommend possible statutory amendments to address
- 14 issues and concerns; and
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- 16 (6) Meet at least twice monthly; and
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18 BE IT FURTHER RESOLVED that the Judiciary is requested to
 19 provide administrative, professional, technical, and clerical
 20 support to the task force; and

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 22 BE IT FURTHER RESOLVED that the Judiciary is requested to
 23 submit a report of the task force's findings and
 24 recommendations, including any proposed legislation, to the
 25 Legislature no later than twenty days prior to the convening of
 26 the 2009 Regular Session; and

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 28 BE IT FURTHER RESOLVED that certified copies of this
 29 Concurrent Resolution be transmitted to the Chief Justice of the
 30 Supreme Court, Senior Judge of the Family Court, Attorney
 31 General, Public Defender, Executive Director of the Office of
 32 Youth Services, the prosecuting attorney of each county, and the
 33 President of the Hawaii State Bar Association.

OFFERED BY:

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