

MAR 13 2008

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY  
ON THE REBUTTABLE PRESUMPTION OF JOINT PHYSICAL AND LEGAL  
CUSTODY IN FAMILY COURT CHILD CUSTODY PROCEEDINGS.

1           WHEREAS, Senate Resolution No. 10, Regular Session of 2007,  
2 authorized the Senate Committee on Human Services and Public  
3 Housing to conduct interim hearings on matters related to family  
4 court child custody proceedings; and  
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6           WHEREAS, the purpose of these interim hearings was to  
7 provide all interested parties with access and information  
8 related to the family court system and child custody  
9 proceedings; and  
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11           WHEREAS, the interim hearings addressed the issue of shared  
12 parenting through joint legal and physical custody with the  
13 focus on what the best interest of the child would be; and  
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15           WHEREAS, shared parenting allows the parents and children  
16 substantial contact and residential time together and this may  
17 provide an opportunity for parents to amicably resolve child  
18 custody issues between each other; and  
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20           WHEREAS, it is the policy of this State to assure that  
21 minor children have continued contact with their parents who  
22 have shown the ability to act in their child's best interest and  
23 to encourage parents to share in the rights and responsibilities  
24 of rearing their children after the parents have separated or  
25 dissolved their marriage; and  
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27           WHEREAS, during the course of these interim hearings,  
28 several working groups were established and they submitted their  
29 findings and recommendations to the larger task force; and  
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31           WHEREAS, the task force adopted the recommendations of the  
32 working groups which were later implemented by the Legislature,



1 however, there were other issues that the task force was unable  
2 to explore fully; and

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4 WHEREAS, one issue the task force did not explore is the  
5 presumption of joint physical and legal custody of a minor  
6 child, in a divorce proceeding, where there is a rebuttable  
7 presumption that parents should equally share in the physical  
8 and legal parenting of the child; and

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10 WHEREAS, being unable to fully explore and discuss the  
11 presumption of joint physical and legal custody, the task force  
12 members are interested in exploring how other states have  
13 responded to this issue and whether our State should adopt  
14 similar legislation; now, therefore,

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16 BE IT RESOLVED by the Senate of the Twenty-fourth  
17 Legislature of the State of Hawaii, Regular Session of 2008, the  
18 House of Representatives concurring, that the Legislative  
19 Reference Bureau is requested to conduct a study on the  
20 presumption of joint or shared physical and legal custody in  
21 family court child custody proceedings; and

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23 BE IT FURTHER RESOLVED that the study include:

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25 (1) A review and comparison of the other states' and  
26 countries' statutes and laws relating to the  
27 presumption of joint or shared physical and legal  
28 child custody;

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30 (2) A review of studies conducted, if any, on the impact  
31 of the use of the presumption of joint or shared  
32 physical and legal child custody in contested and non-  
33 contested cases;

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35 (3) A review of current Hawaii case law on the use of the  
36 foregoing presumptions and the applicable standards of  
37 proof; and

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39 (4) A review of data regarding joint physical and legal  
40 custody requests in family court proceedings in  
41 Hawaii, which resulted in either a temporary or  
42 permanent court order, involving both contested and  
43 non-contested cases; and

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1 BE IT FURTHER RESOLVED that the Legislative Reference  
2 Bureau is requested to report its findings and recommendations,  
3 including any proposed legislation, to the Legislature no later  
4 than twenty days prior to the convening of the Regular Session  
5 of 2009; and

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7 BE IT FURTHER RESOLVED that a certified copy of this  
8 Concurrent Resolution be transmitted to the Director of the  
9 Legislative Reference Bureau.

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OFFERED BY:

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