

SENATE SPEC. COM. REP. NO. 1

Honolulu, Hawaii

JAN 15 2009

, 2009

RE: S.R. No. 10
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam President:

Your Senate Committee on Human Services and Public Housing to which was referred S.R. No. 10, S.D. 1, entitled:

"SENATE RESOLUTION REQUESTING THE SENATE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING TO CONVENE A WORKING GROUP TO FURTHER STUDY RECOMMENDATIONS MADE BY THE SCR 52 TASK FORCE COMMITTEES,"

begs leave to report as follows:

PART I. BACKGROUND

During the Regular Session of 2006 of the Twenty-Third State Legislature, the Legislature adopted S.C.R. No. 52, S.D. 1, which requested the Senate and House of Representatives Committees on Human Services to continue addressing issues relating to the Hawaii Family Court, including the legal interventions available to the Family Court and to establish one or more task forces to facilitate their work, as recommended by an earlier task force established during a previous session. See S.R. No. 40, S.D. 2 (2004).

Pursuant to S.C.R. No. 52, S.D. 1 (2006), a task force was established (SCR 52 Task Force), which developed and submitted its findings and recommendations to the Legislature prior to the convening of the Regular Session of 2007 of the Twenty-Fourth State Legislature.

Subsequently, the Senate determined that unresolved issues and proposals required additional work and continuing attention.

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Accordingly, the Senate adopted S.R. No. 10, S.D. 1, during the Regular Session of 2007 of the Twenty-Fourth State Legislature, requesting the Senate Committee on Human Services and Public Housing to convene a working group, to be known as the Family Court Legal Interventions Working Group, to further study the recommendations of the four committees convened pursuant to S.C.R. No. 52, S.D. 1, namely, the:

- (1) Best Interest of the Child Committee;
- (2) Family Court Models Committee;
- (3) Family Court Sunshine and Accountability Committee; and
- (4) Temporary Restraining Orders Committee.

Senate Resolution No. 10, S.D. 1 (2007), also requested the Family Court Legal Interventions Working Group to submit an interim report of its findings and recommendations to the Legislature, including any proposed legislation, prior to the convening of the Regular Session of 2008, and a final report prior to the convening of the Regular Session of 2009.

PART II. FAMILY COURT LEGAL INTERVENTIONS WORKING

A. Year 1

The Chair of the Senate Committee on Human Services and Public Housing, Senator Suzanne Chun Oakland, convened the Family Court Legal Interventions Working Group, comprised of representatives of the organizations recommended in S.R. 10, S.D. 1 (2007).

The Family Court Legal Interventions Working Group held public meetings on July 18, August 30, September 20, November 16, and December 14, 2007. The Working Group established committees to continue to address the four subject areas under S.C.R. No. 52, S.D. 1 (2006):

- (1) Best Interest of the Child;
- (2) Family Court Models;
- (3) Family Court Sunshine and Accountability; and



(4) Temporary Restraining Orders.

The Working Group submitted its Interim Report and proposed legislation to the Legislature, as required by S.R. No. 10, S.D. 1, on January 2, 2008 (Special Committee Report No. 2). Subsequently, the proposed legislation was introduced as S.B. No. 2054, Relating to Family Court, and as S.B. No. 2055, Relating to Family Court. Both measures were passed by the 2008 Legislature and enacted into law.

S.B. No 2054, S.D. 2, H.D. 2, C.D. 1, (Act 114, Session Laws of Hawaii 2008), establishes criteria for the best interests of the child, to specify what factors the courts shall consider in making a custody or visitation determination concerning a minor child.

S.B. No 2055, S.D. 2, H.D. 2, C.D. 1, (Act 149, Session Laws of Hawaii 2008), requires the Judiciary to convene and obtain assistance from a child custody advisory task force to define the employment requirements, standards of practice, policies, procedures, and court-enforced oversight of investigators and professional personnel that assist with child custody evaluations.

B. Year 2

The Family Court Legal Interventions Working Group held public meetings on August 20, October 21, November 17, and December 15, 2008. The Working Group refocused the four committees from Year 1 under three categories:

- (1) Best Interest of the Child/Family Court Models;
- (2) Family Court Sunshine and Accountability; and
- (3) Temporary Restraining Orders.

At the November 17, 2008, meeting, a presentation was made to the Working Group on the Judiciary's Access to Justice Commission (Commission) by Jill Hasegawa, Vice Chair of the Commission.

In May 2008, the Hawai'i Supreme Court adopted Rule 21, which established an Access to Justice Commission. The purpose of the Commission is to increase access to justice in civil legal matters for low- and moderate-income residents, and implement the recommendations of the 2007 Access to Justice Hui report,



Achieving Access to Justice for Hawai'i's People. The report, which was funded by the Hawaii Justice Foundation and the Hawaii State Bar Association, was prepared by the Access to Justice Hui, a group comprised of representatives from the Hawai'i Judiciary (Judiciary), the University of Hawai'i William S. Richardson School of Law, and several legal organizations, including the Hawaii State Bar Association, Legal Aid Society of Hawai'i, Hawaii Justice Foundation, and Volunteer Legal Services Hawai'i and several other nonprofits. According to the report, only one in five low- and moderate-income Hawai'i residents have their legal needs met and legal service providers are able to serve only one in three of those who contact them for assistance. In addition to the inability to afford an attorney, many also face language and cultural barriers, and have little knowledge of their legal rights and the legal services available.

Rule 21 specifically provides that the Commission endeavor to meet the needs of low- and moderate-income Hawai'i residents by, among other things:

- (1) Developing and publishing a strategic, integrated plan for statewide delivery of civil legal services;
- (2) Increasing and stabilizing long-term public and private funding and resources for delivery of civil legal services;
- (3) Increasing pro bono contributions by attorneys through such things as rule changes, recruitment campaigns, increased judicial involvement, and increased recognition for contributors; and
- (4) Reducing barriers to the civil justice system by developing resources to overcome language, cultural, and other barriers and by giving input on existing and proposed laws, court rules, regulations, procedures, and policies that may affect meaningful access to justice.

The twenty-two member Commission includes neighbor island members, lawyers, non-lawyers, and representatives from the various legal entities, as specified in Rule 21. The Commission has established three administrative committees and ten substantive committees to address the following subject matter areas:



- (1) Funding of civil services;
- (2) Increasing pro bono legal services;
- (3) Right to counsel when basic human needs are at stake;
- (4) Self-representation and unbundling of legal services;
- (5) Maximizing the use of legal services;
- (6) Overcoming barriers to access such as language and culture;
- (7) Initiatives to enhance civil legal services;
- (8) Education and communication/public awareness of legal rights and assistance;
- (9) Eliminating poverty; and
- (10) Law school liaison.

The Commission receives recommendations from the ten committees, which are the bodies that receive public input.

Additional information on the Commission is available through the following website: <http://www.hsba.org/accesstojustice.aspx>.

The Working Group learned that there is no public notice requirement for Commission meetings because the meetings fall under the Judiciary's exemption under the sunshine law. A ruling on this decision from the Office of Information Practices is pending. The Working Group also learned that the Commission does not have a Family Court Committee and has not posted a list of its members and committees.

The Access to Justice Commission is scheduled to release its first annual report in mid-2009.

At the December 15, 2008, meeting, a presentation was made to the Working Group by Robert Geffner, Ph.D., ABPP, ABPN, Founding President of the Family Violence and Sexual Assault Institute and Founding President of Alliant International University's Institute on Violence, Abuse and Trauma, both located in California. Dr. Geffner discussed California's approach to child custody



evaluations, particularly in cases of allegations of child abuse, domestic violence, or substance abuse, and that state's efforts to ensure consistent and ongoing training requirements for child custody evaluators. He distributed information on child custody evaluation training and California Rules of Court related to child custody evaluations. See Exhibits A and B.

PART III. WORKING GROUP FINDINGS

The following reflects the work and findings of each committee of the Working Group.

A. Best Interest of the Child/Family Court Models

The Best Interest of the Child/Family Court Models Committee held meetings on September 2, October 10, and October 28, 2008.

The Committee identified a number of items of interest and concern for further discussion and prioritization, including:

- (1) Monitoring the Family Court's custody evaluator standards and training;
- (2) Reviewing Volunteer Legal Services Hawai'i (VLSH) Parenting Plan Mediation Pilot Program;
- (3) Exploring more effective enforcement of parenting plans and other violations of Family Court orders;
- (4) Examining the shared parenting rebuttable presumption;
- (5) Reviewing grandparent visitation procedures;
- (6) Examining data on the impact of custody decisions on children's well-being outcomes; and
- (7) Reviewing Enchanted Lake Elementary School's program as a potential model for negotiation skill training.

Best Interest of the Child/Family Court Models Committee members attended meetings of the Child Custody Task Force established by the Judiciary pursuant to Act 149, Session Laws of Hawaii 2008, and will continue to monitor progress and implementation of certification standards. The Judiciary will submit a report to the Legislature prior to the 2009 Session, on



the findings and any recommendations by the Task Force. A letter was transmitted from Senator Suzanne Chun Oakland to the Judiciary, regarding the Family Court rule on child custody evaluations and on the inclusion in the report of options and resource requirements as required under Act 149, SLH 2008.

The Best Interest of the Child/Family Court Models Committee has noted that while the Judiciary indicates it has limited resources, there are training programs available, including the Hawaii Association for Marriage and Family Therapy training, which is open to all professionals; and the Institute on Violence, Abuses and Trauma program on child evaluation. See: www.childabusesolutions.com.

Family Court rules relating to child custody evaluation are available on the Judiciary's website. The rules are currently in comment period and are expected to be adopted in Spring 2009 in all circuits.

The University of Hawaii has developed a custody evaluator curriculum, and Dr. Laurette DeMandel-Schaller, a working group participant, has submitted recommendation for a custody evaluator curriculum. See Exhibit C.

The Best Interest of the Child/Family Court Models Committee is also reviewing Hawaii's grandparent visitation procedures and the California Rules of Court related to child custody evaluations. The Committee and the full Working Group voted to support the VLSH Parenting Plan Mediation Pilot Program request for grant-in-aid funding in the amount of \$85,000.

The Committee also examined more responsive enforcement when court orders are violated. Options discussed include: (1) meeting with the Board of Family Court Judges to clarify the concerns relating to the lack of enforcement for violations of court orders, and what information or evidence is needed to obtain speedier enforcement and sanctions for violations; (2) developing a list of problems and concerns with enforcement, particularly as they relate to children, to be shared with the Family Law Section of the Hawaii State Bar Association and the Judiciary; and (3) creating a checklist form to list all orders and status to facilitate review of the enforcement of orders.



B. Family Court Sunshine and Accountability

The Family Court Sunshine and Accountability Committee held meetings on September 4, September 22, and October 8, 2008.

The Committee identified the following issues for further discussion and prioritization:

- (1) Requiring that the Judiciary be subject to the sunshine law for administrative matters;
- (2) Determining what information should be available to the public, including issues of privacy, confidentiality, and sealing of court records;
- (3) Opening public access to custody hearings and trials;
- (4) Recommending that property division be codified in state law;
- (5) Defining abuse of process in Family Court cases and creating consequences for abuse, including a review of statutory procedure;
- (6) Requiring informed consent from all affected parties before off-the-record proceedings occur; and
- (7) Providing a defined option for binding arbitration to resolve Family Court cases at the time of filing for marriage, divorce, or custody.

The Family Court Sunshine and Accountability Committee reviewed draft legislation to amend section 92-6, Hawaii Revised Statutes, relating to applicability of the State's sunshine law to the non-adjudicatory functions of the Judiciary. After extensive discussion, the Working Group agreed that there is need for additional information on the possible impacts and successful application of the proposal. Senator Suzanne Chun Oakland will request further study of the issue, including recommendations for legislation, by the Legislative Reference Bureau.

The Family Court Sunshine and Accountability Committee also recommended a survey of other states to determine how states provide for citizen participation or how the public can provide feedback on court services; whether a state's sunshine law applies



to its Judiciary, and, if so, a review of the applicable provisions; how states define "adjudicatory" functions of the court; whether the state legislature has the authority to legislate activities of the Judiciary, and, if so, the scope of the actions that can be legislated; and whether meetings of a state's judiciary commissions and committees are subjected to sunshine laws.

C. Temporary Restraining Orders (TRO)

The Temporary Restraining Orders Committee held meetings on September 4, September 22, and October 8, 2008.

The Committee identified the following issues for further discussion and prioritization:

- (1) Creating normal notice for the TRO process if an ex parte application is denied (chapter 586, Hawaii Revised Statutes);
- (2) Developing consequences for TROs issued based on false statements;
- (3) Evaluating the effectiveness of batterer intervention programs, including national data;
- (4) Following-up on a request for court data;
- (5) Reviewing TROs filed on behalf of children;
- (6) Assessing the applicability of Hawaii's Opportunity Probation with Enforcement (HOPE) program for TROs with domestic violence cases; and
- (7) Assessing the analysis of problems in relation to seeking solutions.

The Temporary Restraining Orders Committee discussed the issue of handling allegations when TROs are denied, examining chapters 580 and 586, Hawaii Revised Statutes, and agreed not to pursue legislation at this time.

Committee members met with the Honorable Steven Alm, First Circuit Judge, to discuss Project Hope and whether this program can be expanded to include TRO violators. As the program is



judge-driven, Judge Alm indicated that it has the capacity to expand to cover TRO violations, and he will be submitting a budget for program expansion for this purpose. A national evaluation has been conducted, and an annual report of the program will be forthcoming.

The Committee is exploring an informational brochure on the TRO process that can be made available to both parties.

PART IV. WORKING GROUP RECOMMENDATIONS

The Working Group considered the work of each of its three committees and prepared proposed legislation, attached, for introduction during the Regular Session of 2009. Accordingly, the Working Group recommends the following:

- (1) Working Group support for the Volunteer Legal Services Hawai'i (VLSH) Parenting Plan Mediation Pilot Program grant-in-aid request in the amount of \$85,000; and
- (2) Legislative support for the adoption of a Resolution requesting that the Family Court Legal Interventions Working Group established in 2007 through S.R No. 10, S.D. 1, continue its work for one additional year and cease to exist on January 1, 2010, as attached in Exhibit D.

Passage of this Resolution would enable the Working Group and committees to continue to explore the aforementioned issues, with final findings and recommendations to be submitted to the Twenty-Fifth State Legislature prior to the Regular Session of 2010.

PART V. CONCLUSION

After a majority vote of the members, the Working Group recommends that legislation as outlined and attached be introduced during the Regular Session of 2009 to implement the findings and recommendations of the Working Group contained herein. The convener of the Working Group, Senator Suzanne Chun Oakland, will sponsor introduction of the necessary legislation.



Respectfully submitted on
behalf of the members of the
Committee on Human Services and
Public Housing of the Senate,

Suzanne Chun Oakland

SUZANNE CHUN OAKLAND, Chair

