

REPORT TO THE THIRTY-FIRST LEGISLATURE

STATE OF HAWAII

2022

REQUIRES THE DEPARTMENT OF HEALTH TO CONVENE A TASK FORCE TO RECOMMEND AMENDMENTS TO THE HAWAII REVISED STATUTES TO UPDATE EXISTING PARENTAGE LAWS THAT REFLECT OUTDATED, CISHETERONORMATIVE CONCEPTS OF FAMILIES, PARENTHOOD, AND PARENTAL RIGHTS.

PREPARED BY:

STATE OF HAWAII DEPARTMENT OF HEALTH

DECEMBER 2021

EXECUTIVE SUMMARY

The Department of Health convened two meetings of the task force to recommend amendments to the Hawaii Revised Statutes to update existing parentage laws that reflect outdated, cisheteronormative concepts of families, parenthood, and parental rights. All stakeholders required by Act 201, Session Laws of Hawaii (SLH) 2021, participated in at least one meeting.

The task force reviewed model law drafted by the National Conference of Commissioners on Uniform State Laws from 2017, and draft model law to replace the Uniform Parentage Act of 1973, otherwise known as chapter 584, Hawaii Revised Statutes (HRS).

A final Ramseyer version of law was not produced due to time constraints and the complexities of conforming amendments throughout Hawaii Revised Statutes. However, comments were collected that may be considered by the Legislature to move forward the public policy dialogue.

General issues that require resolution include but are not limited to various amendments for clarity and style, safeguards against coercive surrogacy for vulnerable persons, assurances of the continuity of enforcement of child support laws and safe harbor conditions for natural parents, an adoptee's right to access information about genetic parents regardless of conditions of anonymity, and appropriate documentation on legal documents such as birth certificates that accommodate non-binary persons.

This report includes a copy of both the national and localized model laws as attachments.

BACKGROUND

HB1096 was introduced in the 2021 legislative session to amend chapter 584-3.5, which authorizes the voluntary establishment of paternity, to remedy inequitable parentage rights for LGBTQ+ parents. Expedited paternity permits males, regardless of biological affiliation with a child, to produce an affidavit to the Department of Health and with minimal paperwork and expense, establish him as the child's legal father.

Although the policy goal of this measure was administrative simplification for one or both parents to declare legal and financial responsibility for a child, the Department of Health and the Department of the Attorney General, Child Support Enforcement Agency, registered concerns that the methods may be problematic. In particular, the immediate repeal and replacement of the term "paternity," which is a decades-old legal concept around which a significant public policy and social welfare infrastructure is built. Identification of paternity is a key strategy to reduce the financial burden of family and child support, i.e., general assistance, food stamps, etc., and shift it to the biological father. HB1096 would have repealed this from HRS with unknown results to child support enforcement.

It is also worth noting that the original wording of HB1096 would only benefit those couples that included a partner capable of gestating and delivering a child, and that voluntary establishment of parentage would remain unavailable to male-male couples and hetero or same-sex couples with female partners incapable of gestating and delivering a child, as well as female-female and non-binary couples where neither could gestate.

As result of concerns from state agencies, the Legislature amended the measure to create a task force to study the impacts and provide recommendations.

TASK FORCE

Pursuant to Act 201, SLH 2021, the Director of Health convened a task force that included the following members:

1. The director of health, or the director's designee, who shall serve as chairperson: Lorrin Kim, Chief, Office of Planning, Policy, and Program Development, on behalf of Elizabeth A. Char, MD, Director of Health;
2. A representative from the department of the attorney general: Brandon Flores, Assistant Administrator, Hawaii Child Support Enforcement Agency (CSEA), Department of the Attorney General; Geraldine Hasegawa, CSEA; and Lauren Kennedy, CSEA;
3. A family court judge: The Honorable Jessi Hall;
4. A family law attorney: Carol Lockwood, Esq., Academy of Adoption and Assisted Reproduction Attorneys;
5. A representative of AF3IRM Hawaii: Jasmine Pontillas Esq., and Cu Ri Lee;
6. A representative of the department of health's sexual and gender minority working group: Thaddeus Pham, Department of Health;
7. A representative of Ka Aha Mahu: Maddalynn Sesepasara; and
8. Any other member as recommended by the task force: Mihoko Ito, Esq.; Sean Taylor, Esq.; Lauren Johnston, The Adoption Circle; and Ryan Oshiro, Department of Health.

The task force met in-person on August 27, 2021 at the Kakuhihewa Building in Kapolei. Members shared their reasons for participation, which included personal experiences with surrogacy or adoption, concerns over the lack of explicit legal authorization of the existing practices of surrogacy in Hawaii, the rights of adoptees, individual and couple's access to parentage, and general social justice for underrepresented persons. A discussion further ensued about chapters of HRS that should be in scope beyond chapter 548, and unintended consequences of amendments. One member shared that the National Conference of Commissioners on Uniform State Laws produced a draft model law in 2017, and that draft had been localized to amend chapter 548. The task force agreed that further deliberations should be based on those drafts and the meeting adjourned with the commitment to circulate the draft among task force members.

Email responses to the draft were collected during the months of September and October, preceding a Permitted Interactive Group (PIG) meeting on October 22. The discussion from the PIG meeting is summarized:

AF3IRM submitted comments:

- Providing various edits for clarity and style
- Concerning limiting parentage to holders of US Social Security Numbers
- Concerning insufficient safeguards against economic coercion for low SES or LEP persons
- Concerning the broader scope of the task force's direction, specifically the dilution of focus on inequitable parentage rights for LGBTQ+ parents

- Clarifying that the initial measure amended a constitutional defect in the law related to gender identity and people who give birth, and not meant to grant surrogacy rights to people without uteruses or the ability to conceive and gestate.
- Discussion
 - Checks and balances against exploitation of gestational carriers may be provided by court-approved surrogacy agreements, to be determined
 - To what extent does Hawaii law cover international surrogacies and at what point, or if only one person is a resident or citizen?
- Finding
 - Economic coercion safeguards should be considered as part of final draft or as an amendment
 - Group to review original law vs proposed UPA, as well as other model law, to determine intent re: residents vs citizens vs international surrogacies
 - Solutions that benefit LGBTQ+ parents should remain the policy priority, as established in the original draft of HB1096
 - Concluding that AF3IRM does not support a legislative measure on surrogacy with regard to HB1096

State of Hawaii Child Support Enforcement Agency submitted a letter from 2020 to the Judiciary for a similar legislative proposal that highlighted:

- The need for a two-year working group to develop a comprehensive repeal/replace draft
- In lieu of a working group, CSEA proposed amendments
 - Defining or clarifying terms relating to assisted reproductive technologies and surrogacy
 - Assuring continuity of enforcement authority for natural parents, as well as permutations created by ART and surrogacy heretofore not explicitly authorized in chapter 584, for both the Judiciary and Executive branches
 - Various conforming amendments to state and federal law
- Discussion
 - Clarify definition of “donation” since the common denotation is something given without regard for compensation
 - Assure that genetic testing remains a tool for identification of paternity and that record-keeping or record-seeking authority for CSEA is maintained amidst race/ethnicity based on self-report by surrogacy or adoption practices
 - Local laboratories and scientific best practices have, over the decades, built up robust databases for Hawaii’s racial and ethnic markers and remains a valuable resource

- Finding
 - Genetic testing is a key tool for CSEA and a future UPA proposal must not limit CSEA's ability to order genetic testing to establish paternity/parentage for enforcement purposes
 - Further comments provided as an attachment in the form of a letter to the Judiciary

Adoption Circle of Hawaii (ACH)

- All other persons need to and must have access to information about their genetic parents for medical history, ethnic identity, family lineage, and other legitimate uses
- Birth certificates should not list intended parents on the birth certificate for ART and surrogacy No, DOH will not since BCs document the facts at birth and any substantive amendment requires a judicial proceeding, such as adoption. DOH's role is ministerial only.
- Discussion
 - Objections to children of ART having access to genetic information of genetic parent(s)
 - Practical access is the real limitation due to confidentiality of sperm/ova banks
 - ACH does not have objections to children of ART/surrogacy having access to genetic information. It should be required.
 - Requests for adoptee access to information should remain in chapter 578. ACH is not requesting release of parent DNA tests to adoptees, nor inclusion of adoptees' access to information in chapter 584.
 - If not the UPA, the proposal may have a Part II to address adoptee "right to know"
- Finding
 - Right to know is important for individuals and past barriers relating to adoptions should be avoided, but practical issues and competing ethical perspectives will need to be debated
 - The proposed law as currently written will facilitate the creation of a class of people who will not be able to access their genetic origin information, even when they are adults. Without this information, these people will lack accurate and current medical history from the donor parent(s) and have no information about their genetic family history
 - The state should require that genetic information be kept, safeguarded and accessible, upon request, to the people created through assisted reproduction when they are 18
 - This requirement for preservation of a person's genetic origins should be done in conjunction with laws regulating assistive reproduction and surrogacy, and include sanctions for non-disclosure of this information on original government-issued birth records

- Further comments provided on attached Excel spreadsheet

SGM Working Group

- Interest in non-binary options on the birth certificate
- Current BC has M/F/Undetermined (which is never published) for a newborn; otherwise, a surgeon's affidavit is required during transition or post-surgery
 - Recent amendments took away gender reassignment surgery requirement
- Discussion
 - What is the mechanism for identifying the sex/gender of a parent on a birth certificate, for example instead of mother/father or mother/mother, should it just be parent/parent?
 - For marriage certificates, gender-neutral terms are used but unsure about birth certificates (DOH to follow up)
 - Including parent/parent designation should be considered as part of the LP
- Finding
 - Non-binary parent and child standards should be considered to the extent that UPA is an appropriate chapter

Individual and Miscellaneous Input

- Although several task force members supported expanding the scope of the discussion to include surrogacy, it is important to emphasize that surrogacy was not part of the original intent
- To the extent that surrogacy became an issue, several resources were identified that describe the recent history of the issue at the Legislature, including:
 - 2018: [HB1857 RELATING TO GESTATIONAL SURROGACY](#) and HCR73 REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO CONVENE A TWO-YEAR WORKING GROUP TO DETERMINE THE BEST WAY TO PROTECT THE RIGHTS OF SURROGATES, GESTATIONAL CARRIERS, INTENDED PARENTS, AND CHILDREN
 - [HCR 73 REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO CONVENE A TWO-YEAR WORKING GROUP TO DETERMINE THE BEST WAY TO PROTECT THE RIGHTS OF SURROGATES, GESTATIONAL CARRIERS, INTENDED PARENTS, AND CHILDREN](#)

Point of Information

- Nevada adopted a version of the proposed UPA repeal/replace

FOLLOW UP AND RECOMMENDATIONS

A third meeting was not convened due to the current public health situation and department priorities. Further, based on informal consultation with the Department of the Attorney general, the extent of conforming amendments throughout HRS, including but not limited to probate and other legal matters, could not be accomplished in time for the Act's deadline. As a result, the Department of Health

forwards as an attachment to this report of recommendations the national and localized model law, as well as forementioned concerns of stakeholders for public debate at the Legislature. The Department of Health concurs with the recommendation of the Department of the Attorney General in written testimony on HB1096 to reference a report to the 29th Legislature on Surrogacy and Gestational Carrier Agreements, pursuant to HCR 56, SLH 2017, for further study and synthesis.

It is also strongly recommended that future policies benefit as many families as possible, while not losing focus on LGBTQ+ parents. However, it is worth reiterating that the original wording of HB1096 would only benefit those couples that included a partner capable of gestating and delivering a child, and that voluntary establishment of parentage would remain unavailable to male-male couples and hetero or same-sex couples with female partners incapable of gestating and delivering a child, as well as female-female and non-binary couples where neither could gestate. Although that expands the scope and complexity, the same or similar method to establish parentage available to all families regardless of gestational potential is optimal. If LGBTQ+ issues are separated from surrogacy issues, that disparity within LGBTQ+ communities should be addressed.

Lastly, the Department of Health recommends that any future task force or legislative measure include the input of public and private agencies that provide services to children and families, and in particular those whose budgets or operations may be affected by expanded parentage options.

Draft 16 -LCO - 10/12/2020

Report Title:

Uniform Parentage Act

Description:

Enacts Uniform Parentage Act of 2017 to replace Uniform Parentage Act of 1973.

1 “Adjudicated parent” means an individual who has been
2 adjudicated to be a parent of a child by a court with
3 jurisdiction.

4 “Alleged genetic parent” means an individual who is alleged
5 to be, or alleges that the individual is, a genetic parent or
6 possible genetic parent of a child whose parentage has not been
7 adjudicated. The term does not include a presumed parent; an
8 individual whose parental rights have been terminated or
9 declared not to exist; or a donor.

10 “Assisted reproduction” means a method of causing pregnancy
11 other than sexual intercourse. The term includes intrauterine
12 or intracervical insemination, donation of gametes, donation of
13 embryos, in-vitro fertilization and transfer of embryos, and
14 intracytoplasmic sperm injection.

15 “Birth” includes stillbirth.

16 “Child” means an individual of any age whose parentage may
17 be determined under this chapter.

18 “Child support enforcement agency” means a state agency
19 created pursuant to chapter 576D.

20 “Determination of parentage” means establishment of a
21 parent-child relationship by a judicial or administrative

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1 proceeding or signing of a valid acknowledgment of parentage
2 under part IV.

3 "Donor" means an individual who provides gametes intended
4 for use in assisted reproduction, whether or not for
5 consideration. The term does not include an individual who
6 gives birth to a child conceived by assisted reproduction,
7 except as otherwise provided in part VIII, or a parent under
8 part VIII or an intended parent under part IX.

9 "Gamete" means sperm, egg, or any part of a sperm or egg.

10 "Genetic testing" means an analysis of genetic markers to
11 identify or exclude a genetic relationship.

12 "Individual" means a natural person of any age.

13 "Intended parent" means an individual, married or
14 unmarried, who manifests an intent to be legally bound as a
15 parent of a child conceived by assisted reproduction.

16 "Parent" means an individual who has established a parent-
17 child relationship under section -F.

18 "Parentage" or "parent-child relationship" means the legal
19 relationship between a child and a parent of the child.

20 "Presumed parent" means an individual who under
21 section -H is presumed to be a parent of a child, unless the
22 presumption is overcome in a judicial proceeding, a valid denial

1 of parentage is made under part V, or a court adjudicates the
2 individual to be a parent.

3 "Signatory" means an individual who signs a record.

4 "Transfer" means a procedure for assisted reproduction by
5 which an embryo or sperm is placed within the reproductive tract
6 of the individual who will give birth to the child.

7 "Witnessed" means that at least one individual who is
8 authorized to sign and has signed a record to verify that the
9 individual personally observed a signatory sign the record.

10 **PART II. JURISDICTION**

11 § -C **Jurisdiction; venue.** (a) Without limiting the
12 jurisdiction of any other court, the family court has
13 jurisdiction over an action brought under this chapter or
14 chapter 583A. The action may be joined with an action for
15 divorce, annulment, separate maintenance, or support.

16 (b) An individual who has sexual intercourse, undergoes or
17 consents to assisted reproductive technology, or consents to
18 assisted reproductive technology agreements in this State
19 thereby submits to the jurisdiction of the courts of this State
20 as to an action brought under this chapter with respect to a
21 child who may have been conceived by that act of intercourse or
22 assisted reproductive technology, regardless of where the child

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1 is born. In addition to any other method provided by statute,
2 personal jurisdiction may be acquired by personal service
3 outside this State or by service by certified or registered
4 mail, postage prepaid, with return receipt requested.

5 (c) In addition to any other method of service provided by
6 statute or court rule, if the respondent is not found within the
7 circuit, the court may authorize service by registered or
8 certified mail, with request for a return receipt and direction
9 to deliver to addressee only. The return receipt signed by the
10 respondent shall be prima facie evidence that the respondent
11 accepted delivery of the complaint and summons on the date set
12 forth on the receipt. For service effectuated by registered or
13 certified mail, an electronic copy or facsimile of the signature
14 of the served individual or certified mailers provided by the
15 United States Postal Service shall constitute valid proof of
16 service on the individual. Actual receipt by the respondent of
17 the complaint and summons sent by registered or certified mail
18 shall be the equivalent to personal service on the respondent by
19 an authorized process server as of the date of the receipt.

20 (d) If it appears that the respondent has refused to
21 accept service by registered or certified mail or is concealing
22 oneself or evading service, or the petitioner does not know the

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1 address or residence of the respondent and has not been able to
2 ascertain the same after reasonable and due inquiry and search,
3 the court may authorize notice of the paternity action and the
4 time and date of hearing by publication or by any other manner
5 that is reasonably calculated to give the party actual notice of
6 proceedings and an opportunity to be heard, including the
7 following:

8 (1) When publication is authorized, the summons shall be
9 published once a week for four consecutive weeks in a
10 publication of general circulation in the circuit.
11 The publication of general circulation shall be
12 designated by the court in the order for publication
13 of the summons. Notice by publication shall have the
14 same force and effect as such individual having been
15 personally served with the summons; provided that the
16 date of the last publication shall be set not less
17 than twenty-one days prior to the return date stated
18 in the summons. Proof of service shall be satisfied
19 by an affidavit or declaration by the authorized
20 representative for the publication that the notice was
21 given in the manner prescribed by the court;

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1 (2) When posting to an online publication website is
2 authorized, proof of service shall be satisfied by an
3 affidavit or declaration by the authorized
4 representative for the publication that the notice was
5 given in the manner prescribed by the court;

6 (3) When service by electronic mail or posting to a social
7 networking account is authorized, proof of service
8 shall be satisfied by an affidavit or declaration by
9 the process server that the notice was given in the
10 manner prescribed by the court; and

11 (4) When service is made by posting to a public bulletin
12 board, proof of service shall be satisfied by an
13 affidavit or declaration by the process server that
14 the notice was given in the manner prescribed by the
15 court.

16 (e) The action may be brought in the county in which the
17 child, any parent as defined above, or in which the child was
18 born or, if a parent is deceased, in which proceedings for
19 probate of the parent's estate have been or could be commenced,
20 in which assisted reproductive technology was performed, or as
21 specified in the choice of law provision of a surrogacy
22 agreement, if any.

1 § -D **Parentage determinations from other states and**
2 **territories.** Parentage determinations from other states and
3 territories, whether established through voluntary
4 acknowledgement or through administrative or judicial processes,
5 shall be treated the same as a parentage adjudication in this
6 State.

7 § -E **Who may bring action; when action may be brought;**
8 **process, warrant, bond, etc.** (a) A child, or guardian ad litem
9 of the child, and individual who is the child's parent under
10 this chapter, and individual whose parentage of the child is to
11 be adjudicated, a personal representative or parent if the
12 parent has died; or their personal representative or parent if
13 the individual who otherwise would be entitled to maintain a
14 proceeding but is deceased; or the child support enforcement
15 agency, may bring an action for the purpose of declaring the
16 existence or nonexistence of a parent and child relationship in
17 accordance with the following:

18 (1) If the child is the subject of an adoption proceeding,
19 action may be brought:

20 (A) Within thirty days after the date of the child's
21 birth in any case when a parent relinquishes the
22 child for adoption during the thirty-day period;

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1 or
2 (B) Any time prior to the date of execution by a
3 parent of a valid consent to the child's
4 adoption, or prior to placement of the child with
5 adoptive parents;

6 (2) If the child has not become the subject of an adoption
7 proceeding, within three years after the child reaches
8 the age of majority or any time after that for good
9 cause; provided that any period of time during which
10 the individual whose parentage is to be adjudicated is
11 absent from the State or is openly cohabitating with a
12 parent of the child or is contributing to the support
13 of the child, shall not be computed;

14 (3) This section shall not extend the time within which a
15 right of inheritance or a right to a succession may be
16 asserted beyond the time provided by law relating to
17 distribution and closing of decedents' estates or to
18 the determination of heirship, or otherwise; and

19 (4) A personal representative in this section may be
20 appointed by the court upon a filing of an ex parte
21 motion by one of the parties entitled to file a
22 paternity action. Probate requirements need not be

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1 met. However, appointment of the personal
2 representative in this section is limited to
3 representation in proceedings under this chapter.

4 (b) When an action is brought under this section, process
5 shall issue in the form of a summons and an order directed to
6 the individual whose parentage of the child is to be
7 adjudicated, requiring each to appear and to show cause why the
8 action should not be brought.

9 If, at any stage of the proceedings, there appears probable
10 cause to believe that the individual whose parentage is to be
11 adjudicated, will fail to appear in response thereto, or will
12 flee the jurisdiction of the court, the court may issue a
13 warrant directed to the sheriff, deputy sheriff, or any police
14 officer within the circuit, requiring the individual, to be
15 arrested and brought for pre-trial proceedings before the family
16 court. Upon such pre-trial proceedings, the court may require
17 the individual, to enter into bond with good sureties to the
18 State in a sum to be fixed by the court for each individual's
19 appearance and the trial of the proceeding in the family court.
20 If the individual whose parentage is to be adjudicated, fails to
21 give the bond required, the court may forthwith commit that
22 individual to the custody of the chief of police of the county,

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1 there to remain until that individual enters into the required
2 bond or otherwise is discharged by due process of law. If the
3 individual whose parentage is to be adjudicated, fails to appear
4 in any proceeding under this chapter, any bond for that
5 individual's appearance in any proceeding under this chapter,
6 any bond for that individual's appearance shall be forfeited;
7 but the trial of, or other proceedings in, the action, shall
8 nevertheless, proceed as though that individual were present;
9 and upon the findings of the court it shall make such orders as
10 it deems proper as though that individual were in court.

11 In case of forfeiture of any appearance bond, the money
12 collected upon the forfeiture shall be applied in payment of the
13 judgment against the individual if they are adjudicated to be a
14 parent under this chapter.

15 (c) Regardless of its terms, an agreement, other than an
16 agreement approved by the court in accordance with
17 section -L(a)(2), between a parent and the individual whose
18 parentage is to be adjudicated, shall not bar an action under
19 this section.

20 (d) Except as otherwise provided in section -DDD, if an
21 action under this section is brought before the birth of the
22 child, all proceedings shall be stayed until after the birth,

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1 except service of process and the taking of depositions to
2 perpetuate testimony.

3 (e) Subject to the requirements of section -H(a), with
4 respect to a child conceived who was not conceived through
5 assisted reproduction, where a married individual has not had
6 sexual contact with their spouse nor resided in the same house
7 with the spouse for at least three hundred days prior to the
8 birth of the child and the spouse cannot be contacted after due
9 diligence, the court may accept an affidavit by the married
10 individual, attesting to their diligent efforts to contact their
11 spouse and providing clear and convincing evidence to rebut the
12 presumption of the parentage of the subject child, and upon the
13 court's satisfaction, notice of the spouse may be waived and the
14 spouse need not be made a party in the parentage proceedings.
15 The court, after receiving evidence, may also enter a finding of
16 non-parentage of the spouse.

17 (f) With respect to a child who was not conceived through
18 assisted reproduction, where a married individual has not had
19 sexual contact with their spouse nor resided in the same house
20 with the spouse for at least three hundred days prior to the
21 birth of the child, and the biological parent is known,
22 parentage in the married spouse may be disestablished by

1 submission of affidavits of both spouses, and biological parent
2 which states the name and birthdate of the child and
3 acknowledgement that spouse is not the parent and that natural
4 parent should be adjudicated as the legal parent.

5 **PART III. PARENT-CHILD RELATIONSHIP**

6 **§ -F Establishment of parent-child relationship.** A
7 parent-child relationship is established between an individual
8 and a child if:

- 9 (1) The individual gives birth to the child, except as
10 otherwise provided in part IX;
- 11 (2) There is a presumption under section -H of the
12 individual's parentage of the child, unless the
13 presumption is overcome in a judicial proceeding or a
14 valid denial of parentage is made under part V;
- 15 (3) The individual is adjudicated a parent of the child
16 under part V;
- 17 (4) The individual adopts the child;
- 18 (5) The individual acknowledges parentage of the child
19 under part IV, unless the acknowledgment is rescinded
20 under section -K(e) or successfully challenged
21 under part IV or V;
- 22 (6) The individual's parentage of the child is established

1 under part VIII; or

2 (7) The individual's parentage of the child is established
3 under part IX.

4 § -G **Relationship not dependent on marriage.** A parent-
5 child relationship extends equally to every child and parent,
6 regardless of the marital status of the parent.

7 § -H **Presumption of parentage.** (a) An individual is
8 presumed to be a parent of a child if:

9 (1) Except as otherwise provided under part IX or the law
10 of this State other than this chapter:

11 (A) The individual and the individual who gave birth
12 to the child are married to each other and the
13 child is born during the marriage, regardless
14 whether the marriage is or could be declared
15 invalid;

16 (B) The individual and the individual who gave birth
17 to the child were married to each other and the
18 child is born not later than three hundred days
19 after the marriage is terminated by death,
20 divorce, annulment, or after a decree of
21 separation, regardless whether the marriage is or
22 could be declared invalid; or

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1 (C) The individual and the individual who gave birth
2 to the child married each other after the birth of
3 the child, regardless whether the marriage is or
4 could be declared invalid, the individual at any
5 time asserted parentage of the child, and the
6 individual agreed to be and is named as a parent
7 of the child on the birth certificate of the
8 child;

9 (2) The individual resided in the same household with the
10 child prior to the child reaching the age of majority,
11 including any period of temporary absence, and openly
12 held out the child as the individual's child;

13 (3) The individual is deemed a genetic parent pursuant to
14 section -X; or

15 (4) If voluntary establishment is completed pursuant to
16 part IV of this chapter.

17 **PART IV. VOLUNTARY ESTABLISHMENT OF PARENTAGE**

18 § -I **Acknowledgment of parentage.** An individual who
19 gave birth to a child and an alleged genetic parent of the
20 child, intended parent under part VIII, or presumed parent may
21 sign an acknowledgment of parentage to establish the parentage
22 of the child.

1 § **-J Execution of acknowledgment of parentage.** (a) An
2 acknowledgment of parentage under section -F shall:

3 (1) Be in a record signed by the individual who gave birth
4 to the child and by the individual seeking to
5 establish a parent-child relationship, and the
6 signatures must be attested by a notarial officer or
7 witnessed;

8 (2) State that the child whose parentage is being
9 acknowledged:

10 (A) Does not have a presumed parent other than the
11 individual seeking to establish the parent-child
12 relationship or has a presumed parent whose full
13 name is stated; and

14 (B) Does not have another acknowledged parent,
15 adjudicated parent, or individual who is a parent
16 of the child under part VIII or IX other than the
17 individual who gave birth to the child; and

18 (3) State that the signatories understand that the
19 acknowledgment is the equivalent of and adjudication
20 of parentage of the child and that a challenge to the
21 acknowledgment is permitted only under limited

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1 circumstances and is barred two years after the
2 effective date of the acknowledgment.

3 (b) An acknowledgment of parentage is void if, at the time
4 of signing:

5 (1) An individual other than the individual seeking to
6 establish parentage is a presumed parent, unless a
7 denial of parentage by the presumed parent in a signed
8 record is filed with the department of health; or

9 (2) An individual, other than the individual who gave
10 birth to the child or the individual seeking to
11 establish parentage, is an acknowledged or adjudicated
12 parent or a parent under part VIII or IX.

13 § -K **Expedited process of parentage.** (a) To expedite
14 the establishment of parentage, each public and private birthing
15 hospital or center and the department of health shall provide
16 parents the opportunity to voluntarily acknowledge the parentage
17 of a child during the period immediately prior to or following
18 the child's birth. The voluntary acknowledgment of parentage
19 shall be in writing and shall consist of a single form signed
20 under oath by individual who gave birth to the child and the
21 individual seeking to establish a parent-child relationship and
22 signed by a witness. The voluntary acknowledgment of parentage

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1 form shall include the social security number of each signatory.
2 Prior to the signing of the voluntary acknowledgment of
3 parentage form, designated staff members of such facilities
4 shall provide to both the individual who gave birth to the child
5 and the other signatory, if either are present at the facility:

- 6 (1) Written materials regarding parentage establishment;
- 7 (2) Forms necessary to voluntarily acknowledge parentage;
- 8 and
- 9 (3) Oral, video, or audio, and written descriptions of the
10 alternatives to the legal consequences of, and the
11 rights and responsibilities of acknowledging
12 parentage, including, if one parent is a minor, any
13 right afforded due to minority status.

14 The completed voluntary acknowledgment forms shall clearly
15 identify the name and position of the staff member who provides
16 information to the parents regarding parentage establishment.
17 The provision by designated staff members of the facility of the
18 information required by this section shall not constitute the
19 unauthorized practice of law. Each facility shall send to the
20 department of health the original acknowledgment of parentage
21 containing the social security numbers, if available, of both
22 signatories, with the information required by the department of

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1 health so that the birth certificate issued includes the name of
2 signatories, which shall be promptly recorded by the department
3 of health.

4 (b) The child support enforcement agency shall:

5 (1) Provide to any individual or facility the necessary:

6 (A) Materials and forms and a written description of
7 the rights and responsibilities related to
8 voluntary acknowledgment of parentage; and

9 (B) Training, guidance, and written instructions
10 regarding voluntary acknowledgment of parentage;

11 (2) Annually assess each facility's parentage
12 establishment program; and

13 (3) Determine if a voluntary acknowledgment has been filed
14 with the department of health whenever it receives an
15 application for parentage establishment services.

16 (c) Notwithstanding sections 338-17.7 and 338.18(b), the
17 department of health shall disclose to the child support
18 enforcement agency, upon request, all voluntary acknowledgment
19 of parentage forms on file with the department of health.

20 (d) As used in this section:

21 "Agency" means the child support enforcement agency.

1 "Birthing center" means any facility outside a hospital
2 that provides maternity services.

3 "Facility" means a birthing hospital or a birthing center.

4 (e) The signed voluntary acknowledgment of parentage shall
5 constitute a legal finding of parentage, subject to the right of
6 any signatory to rescind the acknowledgment:

7 (1) Within sixty days of signature; or

8 (2) Before the date of an administrative or judicial
9 proceeding relating to the child, including a
10 proceeding to establish a support order to which the
11 signatory is a party, whichever is sooner.

12 (f) Following the sixty-day period referred to in
13 subsection (e), a signed voluntary acknowledgment of parentage
14 may be challenged in court only on the basis of fraud, duress,
15 or material mistake of fact, with the burden of proof on the
16 challenger. The legal responsibilities of any signatory arising
17 from the acknowledgment, including child support obligations,
18 shall not be suspended during the challenge, except for good
19 cause shown.

20 (g) The courts and office of child support hearings of
21 this State shall give full faith and credit to affidavits for
22 the voluntary acknowledgment of parentage signed in any other

1 state and these affidavits shall constitute legal findings of
2 parentage subject to subsections (e) and (f).

3 (h) Judicial and administrative proceedings shall not be
4 required or permitted to ratify an unchallenged acknowledgment
5 of parentage.

6 **PART V. PROCEEDING TO ADJUDICATE PARENTAGE**

7 § -L **Pretrial recommendations.** (a) On the basis of the
8 information produced at the pre-trial hearing, the judge
9 conducting the hearing shall evaluate the probability of
10 determining the existence or nonexistence of the parent and
11 child relationship in a trial and whether a judicial declaration
12 of the relationship would be in the best interest of the child.
13 On the basis of the evaluation, an appropriate recommendation
14 for settlement shall be made to the parties, which may include
15 any of the following:

- 16 (1) That the action be dismissed with or without
17 prejudice;
- 18 (2) That the matter be compromised by an agreement among
19 the parent and the individual who is seeking to have
20 their parentage adjudicated, and the child, in which
21 the individual seeking to be adjudicated to be a
22 parent is not adjudicated to be a parent but in which

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1 a defined economic obligation is undertaken by the
2 individual whose parentage is to be adjudicated in
3 favor of the child and, if appropriate, in favor of
4 the parent, subject to approval by the judge
5 conducting the hearing. In reviewing the obligation
6 undertaken by the individual whose parentage is to be
7 adjudicated in a compromise agreement, the judge
8 conducting the hearing shall consider the best
9 interest of the child, in light of the factors
10 enumerated in section 576D-7, discounted by the
11 improbability, as it appears to the judge, of
12 establishing the parentage or nonparentage of the
13 individual whose parentage is to be adjudicated in a
14 trial of the action. In the best interest of the
15 child the court may order that the identity of the
16 individual whose parentage is to be adjudicated be
17 kept confidential. In that case, the court may
18 designate an individual or agency to receive from the
19 individual whose parentage is to be adjudicated and
20 disburse on behalf of the child all amounts paid by
21 the individual whose parentage is to be adjudicated in

1 fulfillment of obligations imposed on the individual;

2 or

3 (3) That the individual whose parentage is to be
4 adjudicated voluntarily acknowledges their parentage
5 of the child.

6 (b) If the parties accept a recommendation made in
7 accordance with subsection (a), judgment shall be entered
8 accordingly.

9 (c) If a party refuses to accept the final recommendation,
10 the action shall be set for trial.

11 (d) The guardian ad litem may accept or refuse to accept a
12 recommendation under this section.

13 (e) The informal hearing may be terminated and the action
14 set for trial if the judge conducting the hearing finds it
15 unlikely that all parties would accept a recommendation the
16 judge might make under subsection (a) or (c).

17 § -M Civil action. (a) An action under this chapter
18 shall be a civil action governed by the Hawaii rules of civil
19 procedure or the Hawaii family court rules. The individual who
20 gave birth to the child and the individual whose parentage is to
21 be adjudicated shall be competent to testify and may be
22 compelled to testify, provided that no criminal prosecution,

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1 other than a prosecution for perjury, shall afterwards be had
2 against the individual who gave birth to the child or the
3 individual whose parentage is to be adjudicated of or on account
4 of any transaction, matter, or thing concerning which they may
5 testify or produce evidence, documentary or otherwise. Part VII
6 shall apply in any action brought under this chapter.

7 (b) Testimony relating to sexual access to the individual
8 who gave birth to the child by an unidentified individual at any
9 time or by an identified individual at a time other than the
10 probable time of conception of the child shall be inadmissible
11 in evidence, unless offered by the individual who gave birth to
12 the child.

13 (c) In an action against an individual whose parentage is
14 to be adjudicated, evidence offered by the individual whose
15 parentage is to be adjudicated with respect to an individual who
16 is not subject to the jurisdiction of the court concerning
17 sexual intercourse with the individual who gave birth to the
18 child at or about the probable time of conception of the child
19 shall be admissible in evidence only if said individual has
20 undergone and made available to the court genetic tests,
21 including genetic tests the results of which do not exclude the
22 possibility their parentage of the child.

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1 § -N **Judgment or order.** (a) The judgment or order of
2 the court determining the existence or nonexistence of the
3 parent and child relationship shall be determinative for all
4 purposes.

5 (b) If the judgment or order of the court is at variance
6 with the child's birth certificate, the court shall order that a
7 new birth certificate be issued under section -U.

8 (c) The judgment or order may contain any other provision
9 directed against the appropriate party to the proceeding,
10 concerning the duty of support, the custody and guardianship of
11 the child, visitation privileges with the child, the furnishing
12 of bond or other security for the payment of the judgment, or
13 any other matter in the best interest of the child. Upon
14 neglect or refusal to give this security, or upon default of a
15 parent or a parent's surety in compliance with the terms of the
16 judgment, the court may order the forfeiture of any such
17 security and the application of the proceeds thereof toward the
18 payment of any sums due under the terms of the judgment and may
19 also sequester a parent's personal estate, and the rents and
20 profits of a parent's real estate, and may appoint a receiver
21 thereof, and may cause a parent's personal estate, including any
22 salaries, wages, commissions, or other moneys owed to them and

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1 the rents and profits of the parent's real estate, to be applied
2 toward the meeting of the terms of the judgment, to the extent
3 that the court, from time to time, deems just and reasonable.
4 The judgment or order may direct a parent to pay the reasonable
5 expenses of the pregnancy and confinement, including but not
6 limited to medical insurance premiums, such as for MedQuest,
7 which cover the periods of pregnancy, childbirth, and
8 confinement. The court may further order the noncustodial parent
9 to reimburse the custodial parent, the child, or any public
10 agency for reasonable expenses incurred prior to entry of
11 judgment, including support, maintenance, education, and funeral
12 expenses expended for the benefit of the child.

13 (d) Support judgment or orders ordinarily shall be for
14 periodic payments which may vary in amount. In the best
15 interest of the child, a lump sum payment or the purchase of an
16 annuity may be ordered in lieu of periodic payments of support.
17 The court may limit the obligor parent's liability for past
18 support of the child to the proportion of the expenses already
19 incurred that the court deems just.

20 (e) In determining the amount to be paid by a parent for
21 support of the child and the period during which the duty of
22 support is owed, a court enforcing the obligation of support

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1 shall use the guidelines established under section 576D-7.
2 Provision may be made for the support, maintenance, and
3 education of an adult or minor child and an incompetent adult
4 child, whether or not the petition is made before or after the
5 child has attained the age of majority.

6 (f) Whenever a parent of a child is a minor, unmarried,
7 and not able to provide full support, the court may order one or
8 both parents of the minor to support the child until the minor
9 reaches the age of majority, is otherwise emancipated, or is
10 financially able to fully support the child, whichever occurs
11 first. For this purpose:

12 (1) The judgment or order for support shall be made
13 against the parent or parents of the minor to the
14 extent that the minor is unable to support the child;

15 (2) The resources, standard of living, and earning ability
16 of the parent or parents of the minor shall be
17 considered under subsection (d) in determining the
18 amount of support; and

19 (3) The parent or parents of the minor shall be an obligor
20 under this chapter and chapter 571 and any action
21 against the obligor to collect support may be pursued
22 against the parent or parents of the minor.

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1 § -O **Costs.** The court may order reasonable fees of
2 counsel, experts, and the child's guardian ad litem, and other
3 costs of the action and pre-trial proceedings, including genetic
4 tests, subject to the provisions of section -JJ, to be paid
5 by the parties in proportions and at times determined by the
6 court. The court may order the proportion of any indigent party
7 to be paid by the State, or such individual as the court shall
8 direct.

9 § -P **Enforcement of judgment or order.** (a) If
10 existence of the parent and child relationship is declared, or
11 parentage or a duty of support has been acknowledged or
12 adjudicated under this chapter or under prior law, the
13 obligation of a parent may be enforced in the same or other
14 proceedings by a parent, the child, the public authority that
15 has furnished or may furnish the reasonable expenses of
16 pregnancy, confinement, education, support, or funeral, or by
17 any other individual, including a private agency, to the extent
18 the individual has furnished or is furnishing these expenses.

19 (b) The court may order support payments to be made to a
20 parent, an adult child, the child support enforcement agency, or
21 an individual, corporation, or agency designated to administer

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1 them for the benefit of the child under the supervision of the
2 court.

3 (c) Willful failure to obey the judgment or order of the
4 court shall be a civil contempt of the court. All remedies for
5 the enforcement of judgments shall apply to this chapter. When
6 a court of competent jurisdiction issues an order compelling a
7 parent to furnish support, including child support, medical
8 support, or other remedial care, for the parent's child, it
9 shall constitute prima facie evidence of a civil contempt of
10 court upon proof that:

11 (1) The order was made, filed, and served on the parent or
12 proof that the parent was present in court at the time
13 the order was pronounced; and

14 (2) The parent did not comply with the order. An order of
15 civil contempt of court based on prima facie evidence
16 under this subsection shall clearly state that the
17 failure to comply with the order of civil contempt of
18 court may subject the parent to a penalty that may
19 include imprisonment or, if imprisonment is
20 immediately ordered, the conditions that must be met
21 for release from imprisonment. A party may also prove

1 civil contempt of court by means other than prima
2 facie evidence under this subsection.

3 § -Q **Modification of judgment or order.** (a) The court
4 shall have continuing jurisdiction to modify or revoke a
5 judgment or order:

- 6 (1) For future education and support; and
7 (2) With respect to matters listed in section -N(c) and
8 (d) and section -P(b), except that a court entering
9 a judgment or order for the payment of a lump sum or
10 the purchase of an annuity under section -N(d) may
11 specify that the judgment or order may not be modified
12 or revoked.

13 (b) In those cases where child support payments are to
14 continue due to the adult child's pursuance of education, the
15 child support enforcement agency, three months prior to the
16 adult child's nineteenth birthday, shall send notice by regular
17 mail to the adult child and the custodial parent that
18 prospective child support will be suspended unless proof is
19 provided by the custodial parent or adult child, to the child
20 support enforcement agency, prior to the child's nineteenth
21 birthday, that the child is presently enrolled as a full-time
22 student in school or has been accepted into and plans to attend

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1 as a full-time student for the next semester a post-high school
2 university, college or vocational school. If the custodial
3 parent or adult child fails to do so, prospective child support
4 payments may be automatically suspended by the child support
5 enforcement agency, hearings officer, or court upon the child
6 reaching the age of nineteen years. In addition, if applicable,
7 the agency, hearings officer, or court may issue an order
8 terminating existing assignments against the responsible
9 parent's income and income assignment orders.

10 (c) The need to provide for the child's health care needs
11 through health insurance or other means shall be a basis for
12 petitioning for a modification of the support order.

13 § -R **Hearings and records; confidentiality.** (a)
14 Notwithstanding any other law concerning public hearings and
15 records, any hearing or trial held under this chapter shall be
16 held in closed court without admittance of any individual other
17 than those individuals necessary to the action or proceeding.
18 All papers and records pertaining to the action or proceeding,
19 whether part of the permanent record of the court or of a file
20 in the department of health or elsewhere, shall be subject to
21 inspection only upon consent of the court and all interested

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1 individuals, or in exceptional cases only upon an order of the
2 court for good cause shown.

3 (b) Upon parentage being established, the confidentiality
4 requirement shall not extend to the judgment and all
5 subsequently filed documents that are used in good faith for
6 support and medical expenses, insurance, or enforcement
7 purposes, except that the confidentiality requirement shall
8 continue to apply to any references to a non-adjudicated alleged
9 or presumed parent.

10 (c) Subsections (a) and (b) shall only apply to cases
11 filed before January 1, 2021 and parts VIII, IX, and X of this
12 chapter.

13 § -S **Court filings; minutes of proceedings; posting**
14 **requirement.** The judiciary shall post on its website the titles
15 of all court filings and the minutes of court proceedings in
16 cases brought under this chapter except for actions filed
17 pursuant to part VIII or IX; provided that the judiciary shall
18 redact information that has been made confidential by any
19 statute, rule of court, or court order; and provided further
20 that, on request of a party and for good cause, the court may
21 close a proceeding and records to the public except that the
22 titles of all court filings for the case and the contents of a

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1 final order shall be available for public inspection, with other
2 papers and records available for public inspection only with the
3 consent of the parties or by court order.

4 § **-T Promise to render support.** (a) Any promise in
5 writing to furnish support for a child, growing out of a
6 supposed or alleged parent and child relationship, shall not
7 require consideration and shall be enforceable according to its
8 terms.

9 (b) In the best interest of the child or the natural
10 parent, the court may, and upon request shall, order the promise
11 to be kept in confidence and designate an individual or agency
12 to receive and disburse on behalf of the child all amounts paid
13 in performance of the promise.

14 § **-U Birth records.** (a) Upon order of a court of this
15 State or upon request or order of a court of another state, or
16 following acknowledgment as provided in section -I, the
17 department of health shall prepare a new certificate of birth
18 consistent with the findings of the court or in cases of
19 acknowledgment under section -I, consistent with the
20 acknowledgment, and shall substitute the new certificate for the
21 original certificate of birth.

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1 (b) The fact that a parent and child relationship was
2 declared or acknowledged after the child's birth shall not be
3 ascertainable from the new certificate but the actual place and
4 date of birth shall be shown.

5 (c) The evidence upon which the new certificate was made
6 and the original birth certificate shall be kept in a sealed and
7 confidential file and be subject to inspection only upon consent
8 of the court and all interested individuals, or in exceptional
9 cases only upon an order of the court for good cause shown.

10 § -V **Parentage judgment, acknowledgment, support order;**
11 **social security number.** The social security number of any
12 individual who is subject to a parentage judgment or
13 acknowledgment, or support order issued under this chapter shall
14 be placed in the records relating to the matter in compliance
15 with any other court rule or law.

16 § -W **Filing of acknowledgments and adjudications with**
17 **department of health.** All voluntary acknowledgments and
18 adjudications of parentage by judicial process shall be filed
19 with the department of health for comparison with information in
20 the state case registry. Filing of the adjudications of
21 parentage shall be the responsibility of the natural parent or
22 such individual or agency as the court shall direct.

**PART VI. SPECIAL RULES FOR PROCEEDINGS
TO ADJUDICATE PARENTAGE**

§ -X Adjudicating parentage of child with alleged

genetic parent. (a) A proceeding to determine whether an alleged genetic parent who is not a presumed parent is a parent of a child may be commenced:

- (1) Before the child becomes an adult; or
- (2) After the child becomes an adult, but only if the child initiates the proceeding.

(b) Except as otherwise provided by law, this subsection applies in a proceeding described in subsection (a) if the individual who gave birth to the child is the only other individual with a claim to parentage of the child. The court shall adjudicate an alleged genetic parent to be a parent of the child if the alleged genetic parent:

- (1) Is identified under section -JJ as a genetic parent of the child and the identification is not successfully challenged under section -JJ;
- (2) Admits parentage in a pleading, when making an appearance, or during a hearing, the court accepts the admission, and the court determines the alleged genetic parent to be a parent of the child;

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1 (3) Declines to submit to genetic testing ordered by the
2 court or a child support agency, in which case the
3 court may adjudicate the alleged genetic parent to be
4 a parent of the child even if the alleged genetic
5 parent denies a genetic relationship with the child;

6 (4) Is in default after service of process and the court
7 determines the alleged genetic parent to be a parent
8 of the child; or

9 (5) Is neither identified nor excluded as a genetic parent
10 by genetic testing and, based on other evidence, the
11 court determines the alleged genetic parent to be a
12 parent of the child.

13 (c) If in a proceeding involving an alleged genetic
14 parent, at least one other individual in addition to the
15 individual who gave birth to the child has a claim to parentage
16 of the child, the court shall adjudicate parentage under
17 section -DD.

18 § -Y **Adjudicating parentage of child with presumed**

19 **parent.** (a) A proceeding to determine whether a presumed
20 parent is a parent of a child may be commenced:

21 (1) Before the child becomes an adult; or

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1 (2) After the child becomes an adult, but only if the
2 child initiates the proceeding.

3 (b) A presumption of parentage under section -H cannot
4 be overcome after the child attains two years of age unless the
5 court determines:

6 (1) The presumed parent is not a genetic parent, never
7 resided with the child, and never held out the child as
8 the presumed parent's child; or

9 (2) The child has more than one presumed parent.

10 (c) Except as otherwise provided by law, the following
11 rules apply in a proceeding to adjudicate a presumed parent's
12 parentage of a child if the individual who gave birth to the
13 child is the only other individual with a claim to parentage of
14 the child;

15 (1) If no party to the proceeding challenges the presumed
16 parent's parentage of the child, the court shall
17 adjudicate the presumed parent to be a parent of the
18 child;

19 (2) If the presumed parent is identified under
20 section -JJ as a genetic parent of the child and
21 that identification is not successfully challenged

1 under section -JJ, the court shall adjudicate the
2 presumed parent to be a parent of the child; and
3 (3) If the presumed parent is not identified under
4 section -JJ as a genetic parent of the child and
5 the presumed parent or the individual who gave birth
6 to the child challenges the presumed parent's
7 parentage of the child, the court shall adjudicate the
8 parentage of the child in the best interest of the
9 child based on the factors under section -DD(a) and
10 (b).

11 (d) If in a proceeding to adjudicate a presumed parent's
12 parentage of a child, another individual in addition to the
13 individual who gave birth to the child asserts a claim to
14 parentage of the child, the court shall adjudicate parentage
15 under section -DD.

16 **§ -Z Adjudicating claim of de facto parentage of child.**

17 (a) A proceeding to establish parentage of a child under this
18 section may be commenced only by an individual who:

- 19 (1) Is alive when the proceeding is commenced; and
20 (2) Claims to be a de facto parent of the child.

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1 (b) An individual who claims to be a de facto parent of a
2 child must commence a proceeding to establish parentage of a
3 child under this section:

4 (1) Before the child attains eighteen years of age; and

5 (2) While the child is alive.

6 (c) The following rules govern standing of an individual
7 who claims to be a de facto parent of a child to maintain a
8 proceeding under this section:

9 (1) The individual must file an initial verified pleading
10 alleging specific facts that support the claim to
11 parentage of the child asserted under this section.

12 The verified pleading must be served on all parents and
13 legal guardians of the child and any other party to
14 the proceeding;

15 (2) An adverse party, parent, or legal guardian may file a
16 pleading in response to the pleading filed under
17 paragraph (1). A responsive pleading must be verified
18 and must be served on parties to the proceeding; and

19 (3) Unless the court finds a hearing is necessary to
20 determine disputed facts material to the issue of
21 standing, the court shall determine, based on the
22 pleadings under paragraphs (1) and (2), whether the

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1 individual has alleged facts sufficient to satisfy by
2 a preponderance of the evidence the requirements of
3 paragraphs (1) through (7) of subsection (d). If the
4 court holds a hearing under this subsection, the
5 hearing shall be held on an expedited basis.

6 (d) In a proceeding to adjudicate parentage of an
7 individual who claims to be a de facto parent of the child, if
8 there is only one other individual who is a parent or has a
9 claim to parentage of the child, the court shall adjudicate the
10 individual who claims to be a de facto parent to be a parent of
11 the child if the individual demonstrates by clear and convincing
12 evidence that:

13 (1) The individual resided with the child as a regular
14 member of the child's household for a significant
15 period;

16 (2) The individual engaged in consistent caretaking of the
17 child;

18 (3) The individual undertook full and permanent
19 responsibilities of a parent of the child without
20 expectation of financial compensation;

21 (4) The individual held out the child as the individual's
22 child;

1 (5) The individual established a bonded and dependent
2 relationship with the child which is parental in
3 nature;

4 (6) Another parent of the child fostered or supported the
5 bonded and dependent relationship required under
6 paragraph (5); and

7 (7) Continuing the relationship between the individual and
8 the child is in the best interest of the child.

9 (e) Subject to other limitations in this part, if in a
10 proceeding to adjudicate parentage of an individual who claims
11 to be a de facto parent of the child, there is more than one
12 other individual who is a parent or has a claim to parentage of
13 the child and the court determines that the requirements of
14 subsection (d) are satisfied, the court shall adjudicate
15 parentage under section -DD.

16 § -AA **Adjudicating parentage of child with acknowledged**
17 **parent.** (a) If a child has an acknowledged parent, a
18 proceeding to challenge the acknowledgment of parentage or a
19 denial of parentage, brought by a signatory to the
20 acknowledgment or denial, is governed by section -K(f).

21 (b) If a child has an acknowledged parent, the following
22 rules apply in a proceeding to challenge the acknowledgment of

1 parentage or a denial of parentage brought by an individual,
2 other than the child, who has standing under section -E and
3 was not a signatory to the acknowledgment or denial:

4 (1) The individual shall commence the proceeding not later
5 than two years after the effective date of the
6 acknowledgment;

7 (2) The court may permit the proceeding only if the court
8 finds permitting the proceeding is in the best
9 interest of the child; and

10 (3) If the court permits the proceeding, the court shall
11 adjudicate parentage under section -DD.

12 § -BB **Adjudicating parentage of child with adjudicated**

13 **parent.** (a) If a child has an adjudicated parent, a proceeding
14 to challenge the adjudication, brought by an individual who was
15 a party to the adjudication or received notice under
16 section -C, is governed by the rules governing a collateral
17 attack on a judgment.

18 (b) If a child has an adjudicated parent, the following
19 rules apply to a proceeding to challenge the adjudication of
20 parentage brought by an individual, other than the child, who
21 has standing under section -E and was not a party to the
22 adjudication and did not receive notice under section -C:

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1 (1) The individual shall commence the proceeding not later
2 than two years after the effective date of the
3 adjudication;

4 (2) The court may permit the proceeding only if the court
5 finds permitting the proceeding is in the best
6 interest of the child; and

7 (3) If the court permits the proceeding, the court shall
8 adjudicate parentage under section -DD.

9 § -CC **Adjudicating parentage of child of assisted**
10 **reproduction.** (a) An individual who is a parent under part
11 VIII or the individual who gave birth to the child may bring a
12 proceeding to adjudicate parentage. If the court determines the
13 individual is a parent under part VIII, the court shall
14 adjudicate the individual to be a parent of the child.

15 (b) In a proceeding to adjudicate an individual's
16 parentage of a child, if another individual other than the
17 individual who gave birth to the child is a parent under part
18 VIII, the court shall adjudicate the individual's parentage of
19 the child under section -DD.

20 § -DD **Adjudicating competing claims of parentage.** (a)
21 Except as otherwise provided by law, in a proceeding to
22 adjudicate competing claims of, or challenges under

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1 section -Y, -AA, or -BB to, parentage of a child by two
2 or more individuals, the court shall adjudicate parentage in the
3 best interest of the child, based on:

- 4 (1) The age of the child;
- 5 (2) The length of time during which each individual
6 assumed the role of parent of the child;
- 7 (3) The nature of the relationship between the child and
8 each individual;
- 9 (4) The harm to the child if the relationship between the
10 child and each individual is not recognized;
- 11 (5) The basis for each individual's claim to parentage of
12 the child; and
- 13 (6) Other equitable factors arising from the disruption of
14 the relationship between the child and each individual
15 or the likelihood of other harm to the child.

16 (b) If an individual challenges parentage based on the
17 results of genetic testing, in addition to the factors listed in
18 subsection (a), the court shall consider:

- 19 (1) The facts surrounding the discovery the individual
20 might not be a genetic parent of the child; and
- 21 (2) The length of time between the time that the
22 individual was placed on notice that the individual

1 supported, compared to the probability that a genetic
2 relationship is supported between the child and a random
3 individual of the ethnic or racial group used in the
4 hypothesized genetic relationship, expressed as a percentage
5 incorporating the combined relationship index and a prior
6 probability.

7 § -FF **Scope of part; limitation on use of genetic**
8 **testing.** (a) This part governs genetic testing of an
9 individual in a proceeding to adjudicate parentage, whether the
10 individual:

- 11 (1) Voluntarily submits to testing; or
- 12 (2) Is tested under an order of the court or a child
13 support agency.

- 14 (b) Genetic testing may not be used:
 - 15 (1) To challenge the parentage of an individual who is a
16 parent under part VIII or IX; or
 - 17 (2) To establish the parentage of an individual who is a
18 donor.

19 § -GG **Authority to order or deny genetic testing.** (a)
20 Except as otherwise provided in this part or part V, in a
21 proceeding under this chapter to determine parentage, the court
22 shall order the child and any other individual to submit to

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1 genetic testing if a request for testing is supported by the
2 sworn statement of a party:

3 (1) Alleging a reasonable possibility that the individual
4 is the child's genetic parent; or

5 (2) Denying genetic parentage of the child and stating
6 facts establishing a reasonable possibility that the
7 individual is not a genetic parent.

8 (b) A child support agency may order genetic testing only
9 if there is no presumed, acknowledged, or adjudicated parent of
10 a child other than the individual who gave birth to the child.

11 (c) The court or child support agency may not order in
12 utero genetic testing.

13 (d) If two or more individuals are subject to court-
14 ordered genetic testing, the court may order that testing be
15 completed concurrently or sequentially.

16 (e) Genetic testing of an individual who gave birth to a
17 child is not a condition precedent to testing of the child and
18 an individual whose genetic parentage of the child is being
19 determined. If the individual who gave birth to the child is
20 unavailable or declines to submit to genetic testing, the court
21 may order genetic testing of the child and each individual whose
22 genetic parentage of the child is being adjudicated.

1 (f) In a proceeding to adjudicate the parentage of a child
2 having a presumed parent or an individual who claims to be a
3 parent under section -Z, or to challenge an acknowledgment of
4 parentage, the court may deny a motion for genetic testing of
5 the child and any other individual after considering the factors
6 in section -DD(a) and (b).

7 (g) If an individual requesting genetic testing is barred
8 under section -K(f) from establishing the individual's
9 parentage, the court shall deny the request for genetic testing.

10 (h) An order under this section for genetic testing is
11 enforceable by contempt.

12 § -HH **Requirements for genetic testing.** (a) Genetic
13 testing shall be of a type reasonably relied on by experts in
14 the field of genetic testing and performed in a testing
15 laboratory accredited by:

16 (1) The AABB, formerly known as the American Association
17 of Blood Banks, or a successor to its functions; or

18 (2) An accrediting body designated by the Secretary of the
19 United States Department of Health and Human Services.

20 (b) A specimen used in genetic testing may consist of a
21 sample or a combination of samples of blood, buccal cells, bone,
22 hair, or other body tissue or fluid. The specimen used in the

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1 testing need not be of the same kind for each individual
2 undergoing genetic testing.

3 (c) If, after recalculation of the relationship index
4 under section -JJ(c) using a different ethnic or racial
5 group, genetic testing does not identify an individual as a
6 genetic parent of a child, the court may require an individual
7 who has been tested to submit to additional genetic testing to
8 identify a genetic parent.

9 § -II **Report of genetic testing.** (a) A report of
10 genetic testing shall be in a record and signed under penalty of
11 perjury by a designee of the testing laboratory. A report
12 complying with the requirements of this part is self-
13 authenticating.

14 (b) Documentation from a testing laboratory of the
15 following information is sufficient to establish a reliable
16 chain of custody and allow the results of genetic testing to be
17 admissible without testimony:

- 18 (1) The name and photograph of each individual whose
19 specimen has been taken;
- 20 (2) The name of the individual who collected each specimen;
- 21 (3) The place and date each specimen was collected;

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1 (4) The name of the individual who received each specimen
2 in the testing laboratory; and

3 (5) The date each specimen was received.

4 § -JJ Genetic testing results; challenge to results.

5 (a) Subject to a challenge under subsection (b), an individual
6 is identified under this chapter as a genetic parent of a child
7 if genetic testing complies with this part and the results of
8 the testing disclose:

9 (1) The individual has at least a ninety-nine percent
10 probability of parentage, using a prior probability of
11 0.50, as calculated by using the combined relationship
12 index obtained in the testing; and

13 (2) A combined relationship index of at least one hundred
14 to one.

15 (b) An individual identified under subsection (a) as a
16 genetic parent of the child may challenge the genetic testing
17 results only by other genetic testing satisfying the
18 requirements of this part which:

19 (1) Excludes the individual as a genetic parent of the
20 child; or

21 (2) Identifies another individual as a possible genetic
22 parent of the child other than:

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1 (A) The individual who gave birth to the child; or

2 (B) The individual identified under subsection (a).

3 (c) If more than one individual other than the individual
4 who gave birth is identified by genetic testing as a possible
5 genetic parent of the child, the court shall order each
6 individual to submit to further genetic testing to identify a
7 genetic parent.

8 § -KK Genetic testing when specimen not available. (a)

9 Subject to subsection (b), if a genetic-testing specimen is not
10 available from an alleged genetic parent of a child, an
11 individual seeking genetic testing demonstrates good cause, and
12 the court finds that the circumstances are just, the court may
13 order any of the following individuals to submit specimens for
14 genetic testing:

15 (1) A parent of the alleged genetic parent;

16 (2) A sibling of the alleged genetic parent;

17 (3) Another child of the alleged genetic parent and the
18 individual who gave birth to the other child; and

19 (4) Another relative of the alleged genetic parent
20 necessary to complete genetic testing.

1 (b) To issue an order under this section, the court shall
2 find that a need for genetic testing outweighs the legitimate
3 interests of the individual sought to be tested.

4 § -LL **Deceased individual.** If an individual seeking
5 genetic testing demonstrates good cause, the court may order
6 genetic testing of a deceased individual.

7 **PART VIII. ASSISTED REPRODUCTION**

8 § -MM **Scope of part.** This part does not apply to the
9 birth of a child conceived by sexual intercourse or assisted
10 reproduction under a surrogacy agreement under part IX.

11 § -NN **Parental status of donor.** A donor is not a parent
12 of a child conceived by assisted reproduction. This section
13 shall apply whether the donor is known or anonymous, related or
14 unrelated to the intended parents, or compensated or
15 uncompensated.

16 § -OO **Parentage of child of assisted reproduction.** An
17 individual who consents under section -PP to assisted
18 reproduction by an individual with the intent to be a parent of
19 a child conceived by the assisted reproduction is a parent of
20 the child.

21 § -PP **Consent to assisted reproduction.** (a) Except as
22 otherwise provided in subsection (b), the consent described in

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1 section -00 shall be in a record signed by an individual
2 giving birth to a child conceived by assisted reproduction and an
3 individual who intends to be a parent of the child.

4 (b) Failure to consent in a record as required by
5 subsection (a), before, on, or after the birth of the child,
6 does not preclude the court from finding consent to parentage if:

7 (1) The individual giving birth to a child or the
8 individual proves by clear and convincing evidence the
9 existence of an express agreement entered into before
10 conception that the individual and the natural parent
11 intended they both would be parents of the child; or

12 (2) The individual giving birth to the child and the
13 individual for the first two years of the child's
14 life, including any period of temporary absence,
15 resided together in the same household with the child
16 and both openly held out the child as the individual's
17 child, unless the individual dies or becomes
18 incapacitated before the child attains two years of
19 age or the child dies before the child attains two
20 years of age, in which case the court may find consent
21 under this subsection to parentage if a party proves
22 by clear and convincing evidence that the individual

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1 giving birth to the child and the individual intended
2 to reside together in the same household with the
3 child and both intended the individual would openly
4 hold out the child as the individual's child, but the
5 individual was prevented from carrying out that intent
6 by death or incapacity.

7 § -QQ **Limitation on spouse's dispute of parentage.** (a)

8 Except as otherwise provided in subsection (b), an individual
9 who, at the time of a child's birth, is the spouse of the
10 individual who gave birth to the child by assisted reproduction
11 may not challenge the individual's parentage of the child unless:

12 (1) Not later than two years after the birth of the child
13 or the date as of which the individual first learns of
14 the birth of the child, whichever is later, the
15 individual commences a proceeding to adjudicate the
16 individual's parentage of the child; and

17 (2) The court finds the individual did not consent to the
18 assisted reproduction, before, on, or after the birth
19 of the child, or withdrew consent under section -SS.

20 (b) A proceeding to adjudicate a spouse's parentage of a
21 child born by assisted reproduction may be commenced at any time
22 if the court determines:

- 1 (1) The spouse neither provided a gamete for, nor
2 consented to, the assisted reproduction;
- 3 (2) The spouse and the individual who gave birth to the
4 child have not cohabited since the probable time of
5 assisted reproduction; and
- 6 (3) The spouse never openly held out the child as the
7 spouse's child.

8 (c) This section applies to a spouse's dispute of
9 parentage even if the spouse's marriage is declared invalid
10 after assisted reproduction occurs.

11 § -RR **Effect of certain legal proceedings regarding**
12 **marriage.** If a marriage of an individual who gives birth to a
13 child conceived by assisted reproduction is terminated through
14 divorce or dissolution, subject to legal separation or separate
15 maintenance, declared invalid, or annulled before transfer of
16 gametes or embryos to said individual, a former spouse of said
17 individual is not a parent of the child unless the former spouse
18 consented in a record that the former spouse would be a parent of
19 the child if assisted reproduction were to occur after a
20 divorce, dissolution, annulment, declaration of invalidity,
21 legal separation, or separate maintenance, and the former spouse
22 did not withdraw consent under section -SS.

1 § -SS **Withdrawal of consent.** (a) An individual who
2 consents under section -PP to assisted reproduction may
3 withdraw consent any time before a transfer that results in a
4 pregnancy, by giving notice in a record of the withdrawal of
5 consent to the individual who agreed to give birth to a child
6 conceived by assisted reproduction and to any clinic or health-
7 care provider facilitating the assisted reproduction. Failure
8 to give notice to the clinic or health-care provider does not
9 affect a determination of parentage under this part.

10 (b) An individual who withdraws consent under subsection
11 (a) is not a parent of the child under this part.

12 § -TT **Parental status of deceased individual.** (a) If
13 an individual who intends to be a parent of a child conceived by
14 assisted reproduction dies during the period between the
15 transfer of a gamete or embryo and the birth of the child, the
16 individual's death does not preclude the establishment of the
17 individual's parentage of the child if the individual otherwise
18 would be a parent of the child under this chapter.

19 (b) If an individual who consented in a record to assisted
20 reproduction by an individual who agreed to give birth to a
21 child dies before a transfer of gametes or embryos, the deceased

1 individual is a parent of a child conceived by the assisted
2 reproduction only if:

3 (1) Either:

4 (A) The individual consented in a record that if
5 assisted reproduction were to occur after the
6 death of the individual, the individual would be
7 a parent of the child; or

8 (B) The individual's intent to be a parent of a child
9 conceived by assisted reproduction after the
10 individual's death is established by clear-and-
11 convincing evidence; and

12 (2) Either:

13 (A) The embryo is in utero not later than thirty-six
14 months after the individual's death; or

15 (B) The child is born not later than forty-five
16 months after the individual's death.

17 **PART IX. SURROGACY AGREEMENT**

18 § -UU **Definitions.** In this part:

19 "Genetic surrogate" means an individual who is capable of
20 carrying a pregnancy to term and giving birth to a child, who is
21 not an intended parent and who agrees to become pregnant through

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1 assisted reproduction using their own gamete, under a genetic
2 surrogacy agreement as provided in this part.

3 "Gestational surrogate" means an individual who is capable
4 of carrying a pregnancy to term and giving birth to a child, who
5 is not an intended parent and who agrees to become pregnant
6 through assisted reproduction using gametes that are not their
7 own, under a gestational surrogacy agreement as provided in this
8 part.

9 "Surrogacy agreement" means an agreement between one or two
10 intended parents and an individual who is capable of carrying a
11 pregnancy to term and giving birth to a child and who is not an
12 intended parent in which said individual agrees to become
13 pregnant through assisted reproduction and which provides that
14 any intended parent is a parent of a child conceived under the
15 agreement. Unless otherwise specified, the term refers to both
16 a gestational surrogacy agreement and a genetic surrogacy
17 agreement.

18 **§ -VV Eligibility to enter gestational or genetic**
19 **surrogacy agreement.** (a) To execute an agreement to act as a
20 gestational or genetic surrogate, an individual who is capable
21 of carrying a pregnancy to term and giving birth to a child
22 shall:

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- 1 (1) Have attained twenty-one years of age;
- 2 (2) Previously have given birth to at least one child;
- 3 (3) Complete a medical evaluation related to the surrogacy
- 4 arrangement by a licensed medical doctor;
- 5 (4) Complete a mental health consultation by a licensed
- 6 mental health professional; and
- 7 (5) Have independent legal representation of their choice
- 8 throughout the surrogacy arrangement regarding the
- 9 terms of the surrogacy agreement and the potential
- 10 legal consequences of the agreement.
- 11 (b) To execute a surrogacy agreement, each intended
- 12 parent, whether or not genetically related to the child, shall:
- 13 (1) Have attained twenty-one years of age;
- 14 (2) Complete a mental health consultation by a licensed
- 15 mental health professional; and
- 16 (3) Have independent legal representation of the intended
- 17 parent's or parents' choice throughout the surrogacy
- 18 arrangement regarding the terms of the surrogacy
- 19 agreement and the potential legal consequences of the
- 20 agreement.

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1 § -**WW** Requirements of gestational or genetic surrogacy
2 **agreement; process.** A surrogacy agreement shall be executed in
3 compliance with the following rules:

4 (1) At least one party shall be a resident of this State
5 or, if no party is a resident of this State, at least
6 one medical evaluation or procedure or mental health
7 consultation under the agreement shall occur in this
8 State;

9 (2) A surrogate and each intended parent shall meet the
10 requirements of section -VV;

11 (3) Each intended parent, the surrogate, and the
12 surrogate's spouse, if any, shall be parties to the
13 agreement;

14 (4) The agreement shall be in a record signed by each
15 party listed in paragraph (3);

16 (5) The surrogate and each intended parent shall
17 acknowledge in a record receipt of a copy of the
18 agreement;

19 (6) The signature of each party to the agreement shall be
20 attested by a notarial officer or witnessed in
21 accordance with the laws of the jurisdiction in which
22 the agreement is signed;

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1 (7) The surrogate, surrogate's spouse, if any, and the
2 intended parent or parents shall have independent
3 legal representation throughout the surrogacy
4 arrangement regarding the terms of the surrogacy
5 agreement and the potential legal consequences of the
6 agreement, and each counsel shall be identified in the
7 surrogacy agreement;

8 (8) The intended parent or parents shall pay for
9 independent legal representation for the surrogate and
10 surrogate's spouse, if any; and

11 (9) The agreement shall be executed before a medical
12 procedure, to include the taking of medication, occurs
13 related to the surrogacy agreement, other than the
14 medical evaluation and mental health consultation
15 required by section -VV.

16 § -XX **Requirements of gestational or genetic surrogacy**
17 **agreement; content.** (a) A surrogacy agreement shall comply
18 with the following requirements:

19 (1) A surrogate agrees to attempt to become pregnant by
20 means of assisted reproduction;

21 (2) Except as otherwise provided in
22 sections -DDD, -GGG, and -HHH, the surrogate

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1 and the surrogate's spouse or former spouse, if any,
2 have no claim to parentage of a child conceived by
3 assisted reproduction under the agreement;

4 (3) The surrogate's spouse, if any, shall acknowledge and
5 agree to comply with the obligations imposed on the
6 surrogate by the agreement;

7 (4) Except as otherwise provided in sections -DDD,
8 -GGG, and -HHH, the intended parent or parents,
9 each one jointly and severally, immediately on birth
10 will be the exclusive parent or parents of the child,
11 regardless of the number of children born, or the
12 gender or mental or physical condition of each child;

13 (5) Except as otherwise provided in sections -DDD,
14 -GGG, and -HHH, the intended parent or parents,
15 each parent jointly and severally, immediately on
16 birth will assume physical and legal custody of, and
17 responsibility for the financial support of the child,
18 regardless of the number of children born, or the
19 gender or mental or physical condition of each child;

20 (6) The agreement shall include information disclosing how
21 each intended parent will cover the surrogacy-related
22 compensation and expenses of the surrogate and the

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1 medical expenses of the child(ren), including whether
2 a bond or escrow account shall be required of each
3 intended parent. If health care coverage is used to
4 cover the medical expenses, the disclosure shall
5 include a summary of the health care policy provisions
6 related to coverage for surrogate pregnancy, including
7 any possible liability of the surrogate, third-party
8 liability liens, other insurance coverage, and any
9 notice requirement that could affect coverage or
10 liability of the surrogate. Unless the agreement
11 expressly provides otherwise, the review and
12 disclosure does not constitute legal advice. If the
13 extent of coverage is uncertain, a statement of that
14 fact is sufficient to comply with this paragraph;

- 15 (7) The agreement shall permit the surrogate to make all
16 health and welfare decisions regarding themselves and
17 their pregnancy, but may include agreed-to health-
18 related commitments. This chapter does not enlarge or
19 diminish the surrogate's constitutional right to
20 terminate the pregnancy;

1 (8) The agreement shall include information about each
2 party's right under this part to terminate the
3 surrogacy agreement; and

4 (9) The agreement shall contain a confidentiality
5 agreement;

6 (b) A surrogacy agreement may provide for:

7 (1) Payment of consideration to, and payment or
8 reimbursement of reasonable expenses to, the
9 surrogate; and

10 (2) Reimbursement of specific expenses if the agreement is
11 terminated under this part.

12 (c) A right created under a surrogacy agreement is not
13 assignable and there is no third-party beneficiary of the
14 agreement other than the child.

15 **§ -YY Surrogacy agreement; effect of subsequent change**

16 **of marital status.** (a) Unless a surrogacy agreement expressly
17 provides otherwise:

18 (1) The marriage of a surrogate after the agreement is
19 signed by all parties does not affect the validity of
20 the agreement, their spouse's consent to the agreement
21 is not required, and their spouse is not a presumed

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1 parent of a child conceived by assisted reproduction
2 under the agreement; and

3 (2) The divorce, dissolution, annulment, declaration of
4 invalidity, or legal separation, of the surrogate
5 after the agreement is signed by all parties does not
6 affect the validity of the agreement.

7 (b) Unless a surrogacy agreement expressly provides
8 otherwise:

9 (1) The marriage of an intended parent after the agreement
10 is signed by all parties does not affect the validity
11 of a surrogacy agreement, the consent of the spouse of
12 the intended parent is not required, and the spouse of
13 the intended parent is not, based on the agreement, a
14 parent of a child conceived by assisted reproduction
15 under the agreement; and

16 (2) The divorce, dissolution, annulment, declaration of
17 invalidity, or legal separation of an intended parent
18 after the agreement is signed by all parties does not
19 affect the validity of the agreement and, except as
20 otherwise provided in section -GGG, the intended
21 parents are the parents of the child.

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1 § **-ZZ Exclusive, continuing jurisdiction.** During the
2 period after the execution of a surrogacy agreement until ninety
3 days after the birth of a child conceived by assisted
4 reproduction under the agreement, a court of this State
5 conducting a proceeding under this chapter has exclusive,
6 continuing jurisdiction over all matters arising out of the
7 agreement. This section does not give the court jurisdiction
8 over a child custody or child support proceeding if jurisdiction
9 is not otherwise authorized by a law of this State other than
10 this chapter.

11 § **-AAA Termination of gestational surrogacy agreement.**

12 (a) A party to a gestational surrogacy agreement may terminate
13 the agreement, at any time before an embryo transfer, by giving
14 notice of termination in a record to all other parties. If an
15 embryo transfer does not result in a pregnancy, a party may
16 terminate the agreement at any time before a subsequent embryo
17 transfer.

18 (b) Unless a gestational surrogacy agreement provides
19 otherwise, on termination of the agreement under subsection (a),
20 the parties are released from the agreement, except that each
21 intended parent remains responsible for expenses that are

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1 reimbursable under the agreement and incurred by the gestational
2 surrogate through the date of termination.

3 (c) Except in a case involving fraud, neither a
4 gestational surrogate nor the surrogate's spouse or former
5 spouse, if any, is liable to the intended parent or parents for
6 a penalty or liquidated damages, for terminating a gestational
7 surrogacy agreement under this section.

8 § -BBB Parentage under gestational surrogacy agreement.

9 (a) Except as otherwise provided in subsection (c),
10 section -CCC(b), or section -EEE, on birth of a child
11 conceived by assisted reproduction under a gestational surrogacy
12 agreement, each intended parent is, by operation of law, a parent
13 of the child.

14 (b) Except as otherwise provided in subsection (c) or
15 section -EEE, neither a gestational surrogate nor the
16 surrogate's spouse or former spouse, if any, is a parent of the
17 child.

18 (c) If a child is alleged to be a genetic child of the
19 surrogate, the court shall order genetic testing of the child.
20 If the child is a genetic child of said individual who agreed to
21 be a gestational surrogate, parentage shall be determined based
22 on parts I through VII.

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1 (d) Except as otherwise provided in subsection (c),
2 section -CCC(b), or section -EEE, if, due to a clinical or
3 laboratory error, a child conceived by assisted reproduction
4 under a gestational surrogacy agreement is not genetically
5 related to either intended parent or to a donor who donated
6 gametes to the intended parent or parents, each intended parent,
7 and not the gestational surrogate and the surrogate's spouse or
8 former spouse, if any, is a parent of the child, subject to any
9 other claim of parentage.

10 § -CCC **Gestational surrogacy agreement; parentage of**
11 **deceased intended parent.** (a) Section -BBB applies to an
12 intended parent even if the intended parent dies during the
13 period between the transfer of a gamete or embryo and the birth
14 of the child.

15 (b) Except as otherwise provided in section -EEE, an
16 intended parent is not a parent of a child conceived by assisted
17 reproduction under a gestational surrogacy agreement if the
18 intended parent dies before the transfer of a gamete or embryo
19 unless:

- 20 (1) The agreement provides otherwise; and
21 (2) The transfer of a gamete or embryo occurs not later
22 than thirty-six months after the death of the intended

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1 parent or the birth of the child occurs not later than
2 forty-five months after the death of the intended
3 parent.

4 § -DDD **Gestational surrogacy agreement; order of**
5 **parentage.** (a) Except as otherwise provided in
6 section -BBB(c) or -EEE, before, on, or after the birth of
7 a child conceived by assisted reproduction under a gestational
8 surrogacy agreement, a party to the agreement may commence a
9 proceeding in the appropriate court for an order or judgment:

10 (1) Declaring that each intended parent is a parent of the
11 child and ordering that parental rights and duties
12 vest immediately on the birth of the child exclusively
13 in each intended parent;

14 (2) Declaring that the gestational surrogate and the
15 surrogate's spouse or former spouse, if any, are not
16 the parents of the child;

17 (3) Designating the content of the birth record in
18 accordance with chapter 338 and directing the
19 department of health to designate each intended parent
20 as a parent of the child;

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1 (4) To protect the privacy of the child and the parties,
2 declaring that the court record is not open to
3 inspection;

4 (5) If necessary, that the child be surrendered to the
5 intended parent or parents; and

6 (6) For other relief the court determines necessary and
7 proper.

8 (b) The court may issue an order or judgment under
9 subsection (a) before the birth of the child. The court shall
10 stay enforcement of the order or judgment until the birth of the
11 child.

12 (c) Neither this State nor the department of health is a
13 necessary party to a proceeding under subsection (a).

14 § ~~EEE~~ **Effect of gestational surrogacy agreement.** (a) A
15 gestational surrogacy agreement that complies with
16 sections ~~VV~~, ~~WW~~, and ~~XX~~ is enforceable.

17 (b) If a child was conceived by assisted reproduction
18 under a gestational surrogacy agreement that does not comply
19 with sections ~~VV~~, ~~WW~~, and ~~XX~~, the court shall
20 determine the rights and duties of the parties to the agreement
21 consistent with the intent of the parties at the time of
22 execution of the agreement. Each party to the agreement and any

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1 individual who at the time of the execution of the agreement was
2 a spouse of a party to the agreement has standing to maintain a
3 proceeding to adjudicate an issue related to the enforcement of
4 the agreement.

5 (c) Except as expressly provided in a gestational
6 surrogacy agreement or subsection (d) or (e), if the agreement
7 is breached by the gestational surrogate or one or more intended
8 parents, the non-breaching party is entitled to the remedies
9 available at law or in equity.

10 (d) Specific performance is not a remedy available for
11 breach by a gestational surrogate of a provision in the
12 agreement that the gestational surrogate undergo an embryo
13 transfer, terminate or not terminate a pregnancy, or submit to
14 medical procedures.

15 (e) Except as otherwise provided in subsection (d), if an
16 intended parent is determined to be a parent of the child,
17 specific performance is a remedy available for:

18 (1) Breach of the agreement by a gestational surrogate or
19 gestational surrogate's spouse which prevents the
20 intended parent from exercising immediately on the
21 birth of the child the full rights of parentage; or

1 (2) Breach by the intended parent which prevents the
2 intended parent's acceptance, immediately on the birth
3 of the child conceived by assisted reproduction under
4 the agreement, of the duties of parentage.

5 § -FFF **Requirements to validate genetic surrogacy**

6 **agreement.** (a) Except as otherwise provided in
7 section -HHH, to be enforceable, a genetic surrogacy
8 agreement shall be validated by the family court. A proceeding
9 to validate the agreement shall be commenced before assisted
10 reproduction related to the surrogacy agreement.

11 (b) The court shall issue an order validating a genetic
12 surrogacy agreement if the court finds that:

13 (1) Sections -VV, -WW, and -XX are satisfied; and

14 (2) All parties entered into the agreement voluntarily and
15 understand its terms.

16 (c) An individual who terminates under section -GGG a
17 genetic surrogacy agreement shall file notice of the termination
18 with the court. On receipt of the notice, the court shall
19 vacate any order issued under subsection (b). An individual who
20 does not notify the court of the termination of the agreement is
21 subject to sanctions.

1 § -~~GGG~~ **Termination of genetic surrogacy agreement.** (a)

2 A party to a genetic surrogacy agreement may terminate the
3 agreement as follows:

4 (1) An intended parent who is a party to the agreement may
5 terminate the agreement at any time before a gamete or
6 embryo transfer by giving notice of termination in a
7 record to all other parties. If a gamete or embryo
8 transfer does not result in a pregnancy, a party may
9 terminate the agreement at any time before a
10 subsequent gamete or embryo transfer. The notice of
11 termination shall be attested by a notarial officer or
12 witnessed; and

13 (2) A genetic surrogate who is a party to the agreement
14 may withdraw consent to the agreement any time before
15 seventy-two hours after the birth of a child conceived
16 by assisted reproduction under the agreement. To
17 withdraw consent, the genetic surrogate shall execute
18 a notice of termination in a record stating the
19 surrogate's intent to terminate the agreement. The
20 notice of termination shall be attested by a notarial
21 officer or witnessed and be delivered to each intended

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1 parent any time before seventy-two hours after the
2 birth of the child.

3 (b) On termination of the genetic surrogacy agreement
4 under subsection (a), the parties are released from all
5 obligations under the agreement except that each intended parent
6 remains responsible for all expenses incurred by the surrogate
7 through the date of termination which are reimbursable under the
8 agreement. Unless the agreement provides otherwise, the
9 surrogate is not entitled to and shall refund to intended
10 parents within ten days after withdrawal of consent any non-
11 expense related compensation paid for serving as a surrogate.

12 (c) Except in a case involving fraud, neither a genetic
13 surrogate nor the surrogate's spouse or former spouse, if any,
14 is liable to the intended parent or parents for a penalty or
15 liquidated damages, for terminating a genetic surrogacy
16 agreement under this section.

17 § -HHH **Parentage under validated genetic surrogacy**

18 **agreement.** (a) Unless a genetic surrogate exercises the right
19 under section -GGG to terminate a genetic surrogacy
20 agreement, each intended parent is a parent of a child conceived
21 by assisted reproduction under an agreement validated under
22 section -FFF.

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1 (b) Unless a genetic surrogate exercises the right under
2 section -GGG to terminate the genetic surrogacy agreement, on
3 proof of a court order issued under section -FFF validating
4 the agreement, the court shall make an order:

5 (1) Declaring that each intended parent is a parent of a
6 child conceived by assisted reproduction under the
7 agreement and ordering that parental rights and duties
8 vest exclusively in each intended parent;

9 (2) Declaring that the gestational surrogate and the
10 surrogate's spouse or former spouse, if any, are not
11 parents of the child;

12 (3) Designating the contents of the birth certificate in
13 accordance with chapter 338 and directing the
14 department of health to designate each intended parent
15 as a parent of the child;

16 (4) To protect the privacy of the child and the parties,
17 declaring that the court record is not open to
18 inspection including captions of filings;

19 (5) If necessary, that the child be surrendered to the
20 intended parent or parents; and

21 (6) For other relief the court determines necessary and
22 proper.

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1 (c) If a genetic surrogate terminates under
2 section -GGG(a)(2) a genetic surrogacy agreement, parentage
3 of the child conceived by assisted reproduction under the
4 agreement shall be determined under parts I through VII.

5 (d) If a child born to a genetic surrogate is alleged not
6 to have been conceived by assisted reproduction, the court shall
7 order genetic testing to determine the genetic parentage of the
8 child. If the child was not conceived by assisted reproduction,
9 parentage shall be determined under parts I through VII. Unless
10 the genetic surrogacy agreement provides otherwise, if the child
11 was not conceived by assisted reproduction, the surrogate is not
12 entitled to any non-expense related compensation paid for
13 serving as a surrogate.

14 (e) Unless a genetic surrogate exercises the right under
15 section § -GGG to terminate the genetic surrogacy agreement,
16 if an intended parent fails to file notice required under
17 section -GGG(a), the genetic surrogate or the department of
18 health may file with the court, not later than sixty days after
19 the birth of a child conceived by assisted reproduction under
20 the agreement, notice that the child has been born to the
21 genetic surrogate. Unless the genetic surrogate has properly
22 exercised the right under section -GGG to withdraw consent to

1 the agreement, on proof of a court order issued under
2 section -FFF validating the agreement, the court shall order
3 that each intended parent is a parent of the child.

4 § -III **Effect of nonvalidated genetic surrogacy**

5 **agreement.** (a) A genetic surrogacy agreement, whether or not
6 in a record, that is not validated under section -FFF is
7 enforceable only to the extent provided in this section and
8 section -KKK.

9 (b) If all parties agree, a court may validate a genetic
10 surrogacy agreement after assisted reproduction has occurred but
11 before the birth of a child conceived by assisted reproduction
12 under the agreement.

13 (c) If a child conceived by assisted reproduction under a
14 genetic surrogacy agreement that is not validated under
15 section -FFF is born and the genetic surrogate, consistent
16 with section -GGG(a)(2), withdraws their consent to the
17 agreement before seventy-two hours after the birth of the child,
18 the court shall adjudicate the parentage of the child under part
19 I or VII.

20 (d) If a child conceived by assisted reproduction under a
21 genetic surrogacy agreement that is not validated under
22 section -EEE is born and a genetic surrogate does not

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1 withdraw their consent to the agreement, consistent with
2 section -GGG(a)(2), before seventy-two hours after the birth
3 of the child, the genetic surrogate is not automatically a
4 parent and the court shall adjudicate parentage of the child
5 based on the best interest of the child, taking into account the
6 factors in section -DD(a) and the intent of the parties at
7 the time of the execution of the agreement.

8 (e) The parties to a genetic surrogacy agreement have
9 standing to maintain a proceeding to adjudicate parentage under
10 this section.

11 § -JJJ **Genetic surrogacy agreement; parentage of**
12 **deceased intended parent.** (a) Except as otherwise provided in
13 section -HHH or -III, on birth of a child conceived by
14 assisted reproduction under a genetic surrogacy agreement, each
15 intended parent is, by operation of law, a parent of the child,
16 notwithstanding the death of an intended parent during the
17 period between the transfer of a gamete or embryo and the birth
18 of the child.

19 (b) Except as otherwise provided in section -HHH
20 or -III, an intended parent is not a parent of a child
21 conceived by assisted reproduction under a genetic surrogacy

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1 agreement if the intended parent dies before the transfer of a
2 gamete or embryo unless:

- 3 (1) The agreement provides otherwise; and
- 4 (2) The transfer of the gamete or embryo occurs not later
5 than thirty-six months after the death of the intended
6 parent, or the birth of the child occurs not later
7 than forty-five months after the death of the intended
8 parent.

9 § -KKK **Breach of genetic surrogacy agreement.** (a)

10 Subject to section -GGG(b), if a genetic surrogacy agreement
11 is breached by a genetic surrogate or one or more intended
12 parents, the non-breaching party is entitled to the remedies
13 available at law or in equity.

14 (b) Specific performance is not a remedy available for
15 breach by a genetic surrogate of a requirement of a validated or
16 non-validated genetic surrogacy agreement that the surrogate
17 undergo insemination or embryo transfer, terminate or not
18 terminate a pregnancy, or submit to medical procedures.

19 (c) Except as otherwise provided in subsection (b),
20 specific performance is a remedy available for:

- 21 (1) Breach of a validated genetic surrogacy agreement by a
22 genetic surrogate of a requirement which prevents an

1 intended parent from exercising the full rights of
2 parentage seventy-two hours after the birth of the
3 child; or

4 (2) Breach by an intended parent which prevents the
5 intended parent's acceptance of duties of parentage
6 seventy-two hours after the birth of the child.

7 **PART X. INFORMATION ABOUT DONOR**

8 § -LLL **Definitions.** In this part:

9 "Identifying information" means:

- 10 (1) The full name of a donor;
11 (2) The date of birth of the donor; and
12 (3) The permanent and, if different, current address of
13 the donor at the time of the donation.

14 "Medical history" means information regarding any:

- 15 (1) Present illness of a donor;
16 (2) Past illness of the donor; and
17 (3) Social, genetic, and family history pertaining to the
18 health of the donor.

19 § -MMM **Applicability.** This part applies only to gametes
20 collected on or after the effective date of this chapter.

21 § -NNN **Collection of information.** (a) A gamete bank or
22 fertility clinic licensed in this State shall collect from a

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1 donor the donor's identifying information and medical history at
2 the time of the donation.

3 (b) A gamete bank or fertility clinic licensed in this
4 State which receives gametes of a donor collected by another
5 gamete bank or fertility clinic shall collect the name, address,
6 telephone number, and electronic mail address of the gamete bank
7 or fertility clinic from which it received the gametes.

8 (c) A gamete bank or fertility clinic licensed in this
9 State shall disclose the information collected under subsections
10 (a) and (b) as provided under section -000.

11 § -000 **Declaration regarding identity disclosure.** (a)

12 A gamete bank or fertility clinic licensed in this State which
13 collects gametes from a donor shall:

14 (1) Provide the donor with information in a record about
15 the donor's choice regarding identity disclosure; and

16 (2) Obtain a declaration from the donor regarding identity
17 disclosure.

18 (b) A gamete bank or fertility clinic licensed in this
19 State shall give a donor the choice to sign a declaration,
20 attested by a notarial officer or witnessed, that either:

21 (1) States that the donor agrees to disclose the donor's
22 identity to a child conceived by assisted reproduction

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1 with the donor's gametes on request once the child
2 attains eighteen years of age; or

3 (2) States that the donor does not agree presently to
4 disclose the donor's identity to the child.

5 (c) A gamete bank or fertility clinic licensed in this
6 State shall permit a donor who has signed a declaration under
7 subsection (b) (2) to withdraw the declaration at any time by
8 signing a declaration under subsection (b) (1).

9 § -PPP Disclosure of identifying information and medical
10 history. (a) On request of a child conceived by assisted
11 reproduction who attains eighteen years of age, a gamete bank or
12 fertility clinic licensed in this State which collected the
13 gametes used in the assisted reproduction shall make a good
14 faith effort to provide the child with identifying information
15 of the donor who provided the gametes, unless the donor signed
16 and did not withdraw a declaration under section § -000(b) (2).
17 If the donor signed and did not withdraw the declaration, the
18 gamete bank or fertility clinic shall make a good faith effort
19 to notify the donor, who may elect under section § -000(c) to
20 withdraw the donor's declaration.

21 (b) Regardless whether a donor signed a declaration under
22 section § -000(b) (2), on request by a child conceived by

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1 assisted reproduction who attains eighteen years of age, or, if
2 the child is a minor, by a parent or guardian of the child, a
3 gamete bank or fertility clinic licensed in this State which
4 collected the gametes used in the assisted reproduction shall
5 make a good faith effort to provide the child or, if the child
6 is a minor, the parent or guardian of the child, access to non-
7 identifying medical history of the donor.

8 (c) On request of a child conceived by assisted
9 reproduction who attains eighteen years of age, a gamete bank or
10 fertility clinic licensed in this State which received the
11 gametes used in the assisted reproduction from another gamete
12 bank or fertility clinic shall disclose the name, address,
13 telephone number, and electronic mail address of the gamete bank
14 or fertility clinic from which it received the gametes.

15 § -000 **Recordkeeping.** (a) A gamete bank or fertility
16 clinic licensed in this State which collects gametes for use in
17 assisted reproduction shall maintain identifying information and
18 medical history about each gamete donor. The gamete bank or
19 fertility clinic shall maintain records of gamete screening and
20 testing and comply with reporting requirements, in accordance
21 with federal law and the applicable law of this State other than
22 this chapter.

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1 (b) A gamete bank or fertility clinic licensed in this
2 State that receives gametes from another gamete bank or
3 fertility clinic shall maintain the name, address, telephone
4 number, and electronic mail address of the gamete bank or
5 fertility clinic from which it received the gametes.

6 § -RRR **Storage of gametes.** A gamete bank or fertility
7 clinic may deem gametes abandoned upon the storage fee not being
8 paid by the owner(s) of the gametes for a period of six months.
9 The gamete bank or fertility clinic shall send a written
10 correspondence to the last known address of the owner(s) upon
11 the expiration of the six-month failure-to-pay period. If the
12 owner(s) do not respond to the correspondence within thirty days
13 of the correspondence being transmitted, the gametes shall be
14 destroyed in a manner agreed to by the owner(s) in the original
15 contractual agreement. The owner(s) have an affirmative duty to
16 update the gamete bank or fertility clinic if their address
17 changes.

18 **PART XI. OTHERS**

19 § -SSS **Uniformity of application and construction.** This
20 chapter shall be applied and construed to effectuate its general
21 purpose to make uniform the law with respect to the subject of
22 this chapter among states enacting it."

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1 SECTION 3. Section 26-14.6, Hawaii Revised Statutes, is
2 amended by amending subsection (f) to read as follows:

3 "(f) Effective July 1, 1990, the functions, authority, and
4 obligations, together with the limitations imposed thereon and
5 the privileges and immunities conferred thereby, exercised by a
6 "sheriff", "sheriffs", a "sheriff's deputy", "sheriff's
7 deputies", a "deputy sheriff", "deputy sheriffs", or a "deputy",
8 under sections 21-8, 47-18, 105-4, 134-51, 183D-11, 187A-14,
9 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-6, 325-9,
10 353-11, 356D-54, 356D-94, 383-71, 438-5, 445-37, 482E-4, 485A-
11 202, 501-42, 501-171, 501-218, 521-78, 578-4, [~~584-6,~~] ___ -E,
12 587-33, 603-29, 604-6.2, 606-14, 607-2, 607-4, 607-8, 633-8,
13 634-11, 634-12, 634-21, 634-22, 651-33, 651-37, 651-51, 654-2,
14 655-2, 657-13, 660-16, 666-11, 666-21, 803-23, 803-34, 803-35,
15 804-14, 804-18, 804-41, 805-1, 806-71, and 832-23 shall be
16 exercised to the same extent by the department of public
17 safety."

18 SECTION 4. Section 338-12, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§338-12 Evidentiary character of certificates.**

21 Certificates filed within thirty days after the time prescribed
22 therefor shall be prima facie evidence of the facts therein

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1 stated. Data pertaining to [~~the father~~] a parent of a child is
2 prima facie evidence if:

3 (1) The alleged [~~father~~] parent is:

4 (A) The [~~husband~~] spouse of the [~~mother;~~] other
5 parent; or

6 (B) The acknowledged [~~father~~] parent of the child; or

7 (2) The [~~father~~] parent and child relationship has been
8 established under chapter [~~584.~~] _____. Data pertaining
9 to the alleged [~~father~~] parent acknowledging
10 [~~paternity~~] parentage of the child is admissible as
11 evidence of [~~paternity~~] parentage in any family court
12 proceeding, including proceedings under chapter
13 [~~584.~~] _____."

14 SECTION 5. Section 338-15, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§338-15 Late or altered certificates.** A person born in
17 the State may file or amend a certificate after the time
18 prescribed, upon submitting proof as required by rules adopted
19 by the department of health. Certificates registered after the
20 time prescribed for filing by the rules of the department of
21 health shall be registered subject to any evidentiary
22 requirements that the department adopts by rule to substantiate

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1 the alleged facts of birth. The department may amend a birth
2 certificate to change or establish the identity of a
3 registrant's parent only pursuant to a court order from a court
4 of appropriate jurisdiction or pursuant to a legal establishment
5 of parenthood pursuant to chapter [584.] _____. Amendments that
6 change or establish the identity of a registrant's parent that
7 are made in accordance with this section shall not be considered
8 corrections of personal records pursuant to chapter 92F."

9 SECTION 6. Section 338-21, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsection (a) to read as follows:

12 "(a) All children born to parents not married to each
13 other, irrespective of the marriage of either natural parent to
14 another, (1) on the marriage of the natural parents with each
15 other, (2) on the voluntary, written acknowledgments of
16 [~~paternity~~] parentage under oath signed by the natural father
17 and the natural mother, or (3) on establishment of the parent
18 and child relationship under chapter [584.] _____, are entitled to
19 the same rights as those born to parents married to each other
20 and shall take the name so stipulated by their parents or, if
21 the parents do not agree on the name, shall take the name
22 specified by a court of competent jurisdiction to be the name

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1 that is in the best interests of the child. The original
2 certificate of birth shall contain the name so stipulated. The
3 child or children or the parents thereof may petition the
4 department of health to issue a new original certificate of
5 birth, and not a duplicate of the original certificate that has
6 been amended, altered, or modified, in the new name of the
7 child, and the department shall issue the new original
8 certificate of birth. As used in this section "name" includes
9 the first name, middle name, or last name."

10 2. By amending subsection (d) to read as follows:

11 "(d) Nothing in this section shall be construed to limit
12 the power of the courts to order the department to prepare new
13 certificates of birth under section [~~584-23.~~] ____-U."

14 SECTION 7. Section 532-6, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§532-6 To child born to parents not married to each**
17 **other.** Every child born to parents not married to each other at
18 the time of the child's birth and for whom the parent and child
19 relationship has not been established pursuant to chapter
20 [~~584~~] ____ shall be considered as an heir to the child's mother,
21 and shall inherit her estate, in whole or in part, as the case

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1 may be, in like manner as if the child had been born in lawful
2 wedlock."

3 SECTION 8. Section 560:2-114, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Except as provided in subsections (b) and (c), for
6 purposes of intestate succession by, through, or from a person,
7 an individual is the child of the child's natural parents,
8 regardless of their marital status. The parent and child
9 relationship may be established under chapter [~~584.~~] ____."

10 SECTION 9. Section 571-14, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Except as provided in sections 603-21.5 and 604-8,
13 the court shall have exclusive original jurisdiction:

14 (1) To try any offense committed against a child by the
15 child's parent or guardian or by any other person
16 having the child's legal or physical custody, and any
17 violation of section 707-726, 707-727, 709-902, 709-
18 903, 709-903.5, 709-904, 709-905, 709-906, or 302A-
19 1135, whether or not included in other provisions of
20 this paragraph or paragraph (2);

21 (2) To try any adult charged with:

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- 1 (A) Deserting, abandoning, or failing to provide
2 support for any person in violation of law;
3 (B) An offense, other than a felony, against the
4 person of the defendant's husband or wife;
5 (C) Any violation of an order issued pursuant to
6 chapter 586; or
7 (D) Any violation of an order issued by a family
8 court judge.

9 In any case within paragraph (1) or (2), the court, in its
10 discretion, may waive its jurisdiction over the offense
11 charged;

- 12 (3) In all proceedings under chapter 580, and in all
13 proceedings under chapter ~~[584;]~~ ____;
14 (4) In proceedings under chapter 575, the Uniform
15 Desertion and Nonsupport Act, and under chapter 576B,
16 the Uniform Interstate Family Support Act;
17 (5) For commitment of an adult alleged to be mentally
18 defective or mentally ill;
19 (6) In all proceedings for support between parent and
20 child or between husband and wife;
21 (7) In all proceedings for pre-trial detention or waiver
22 of jurisdiction over an adult who was a child at the

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1 time of an alleged criminal act as provided in section
2 571-13 or 571-22;

3 (8) In all proceedings under chapter 586, Domestic Abuse
4 Protective Orders; and

5 (9) For the protection of vulnerable adults under chapter
6 346, part X.

7 In any case within paragraph (3), (4), or (6), the attorney
8 general, through the child support enforcement agency, may
9 exercise concurrent jurisdiction as provided in chapter
10 576E."

11 SECTION 10. Section 571-50, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§571-50 **Modification of decree, rehearing.** Except as
14 otherwise provided by this chapter, any decree or order of the
15 court may be modified at any time.

16 At any time during supervision of a child the court may
17 issue notice or other appropriate process to the child if the
18 child is of sufficient age to understand the nature of the
19 process, to the parents, and to any other necessary parties to
20 appear at a hearing on a charge of violation of the terms of
21 supervision, for any change in or modification of the decree or
22 for discharge. The provisions of this chapter relating to

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1 process, custody, and detention at other stages of the
2 proceeding shall be applicable.

3 A parent, guardian, custodian, or next friend of any child
4 whose status has been adjudicated by the court, or any adult
5 affected by a decree of the court, at any time may petition the
6 court for a rehearing on the ground that new evidence, which was
7 not known or not available through the exercise of due diligence
8 at the time of the original hearing and which might affect the
9 decree, has been discovered. Upon a satisfactory showing of
10 this evidence, the court shall order a new hearing and make any
11 disposition of the case that the facts and the best interests of
12 the child warrant.

13 A parent, guardian, or next friend of a child whose legal
14 custody has been transferred by the court to an institution,
15 facility, agency, or person may petition the court for
16 modification or revocation of the decree, on the ground that the
17 legal custodian has wrongfully denied application for the
18 release of the child or has failed to act upon it within a
19 reasonable time, or has acted in an arbitrary manner not
20 consistent with the welfare of the child or the public interest.
21 An institution, facility, agency, or person vested with legal
22 custody of a child may petition the court for a renewal,

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1 modification, or revocation of the custody order on the ground
2 that the change is necessary for the welfare of the child or in
3 the public interest. The court may dismiss the petition if on
4 preliminary investigation it finds the petition without
5 substance. If the court is of the opinion that the decree
6 should be reviewed, it shall conduct a hearing on notice to all
7 parties concerned, and may enter an order continuing, modifying,
8 or terminating the decree.

9 Notwithstanding the foregoing provisions of this section
10 the court's authority with respect to the review, rehearing,
11 renewal, modification, or revocation of decrees, judgments, or
12 orders entered in the herein below listed classes of proceedings
13 shall be limited by any specific limitations set forth in the
14 statutes governing these proceedings or in any other
15 specifically applicable statutes or rules. These proceedings
16 are as follows:

- 17 (1) Annulment, divorce, separation, and other proceedings
18 under chapter 580;
- 19 (2) Adoption proceedings under chapter 578;
- 20 (3) [~~Paternity~~] Parentage proceedings under chapter
21 [~~584~~] ___;

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1 (4) Termination of parental rights proceedings under this
2 chapter; and

3 (5) State hospital commitment proceedings under chapter
4 334.

5 A decree, judgment, or order committing a child to the care
6 of the director of human services shall be reviewable under this
7 section at the instance of others other than duly authorized
8 representatives of the department only after a lapse of thirty
9 days following the date of the decree, judgment, or order, and
10 thereafter only at intervals of not less than one year.

11 Notwithstanding this section the court shall not conduct a
12 rehearing of any petition, filed under section 571-11(1), which,
13 following a hearing, has been denied or dismissed."

14 SECTION 11. Section 571-52.6, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§571-52.6 Child support order, judgment, or decree;**
17 **accident and health or sickness insurance coverage.** Each order,
18 judgment, or decree under this chapter or chapter 576B, 580, or
19 [584] ____ ordering a person to pay child support shall include
20 the following provisions:

21 (1) Both the obligor and the obligee are required to file
22 with the state case registry, through the child

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1 support enforcement agency, upon entry of the child
2 support order and to update as appropriate,
3 information on the identity and location of the party,
4 including social security number, residential and
5 mailing addresses, telephone number, driver's license
6 number if different from social security number, and
7 name, address, and telephone number of the party's
8 employer; and

9 (2) The liability of that person for accident and health
10 or sickness insurance coverage when available at
11 reasonable cost."

12 SECTION 12. Section 571-84, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) The court shall maintain records of all cases brought
15 before it. Except as provided in sections 571-84.6 and [~~584-~~
16 ~~20.57,~~] ____-S, in proceedings under section 571-11 and in
17 paternity proceedings under chapter [~~584,~~] ____, the following
18 records shall be withheld from public inspection: the court
19 docket, petitions, complaints, motions, and other papers filed
20 in any case; transcripts of testimony taken by the court; and
21 findings, judgments, orders, decrees, and other papers other
22 than social records filed in proceedings before the court. The

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1 records other than social records shall be open to
2 inspection: by the parties and their attorneys, by an
3 institution or agency to which custody of a minor has been
4 transferred, and by an individual who has been appointed
5 guardian; with consent of the judge, by persons having a
6 legitimate interest in the proceedings from the standpoint of
7 the welfare of the minor; and, pursuant to order of the court or
8 the rules of court, by persons conducting pertinent research
9 studies, and by persons, institutions, and agencies having a
10 legitimate interest in the protection, welfare, treatment, or
11 disposition of the minor."

12 SECTION 13. Section 571-84.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§571-84.5 Support order, decree, judgment, or**
15 **acknowledgment; social security number.** The social security
16 number of any individual who is a party to a divorce decree, or
17 subject to a support order or [~~paternity~~] parentage
18 determination, or has made an acknowledgment of [~~paternity~~]
19 parentage issued under this chapter or chapter 576B, 580, or
20 [~~584~~] ____ shall be placed in the records relating to the
21 matter."

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1 SECTION 14. Section 571-87, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) The maximum allowable fee shall not exceed the
4 following schedule:

5 (1) Cases arising under chapters [†]587A[†] and 346, part
6 X:

7 (A) Predisposition \$3,000;

8 (B) Postdisposition review hearing . . . \$1,000;

9 (2) Cases arising under chapters 560, 571,
10 580, and [~~584~~] ____ \$3,000."

11 SECTION 15. Section 571-92, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§571-92 Application.** This part shall only apply to
14 actions under chapters 580 and [~~584~~] _____. Nothing in this part
15 shall supersede any provision of any existing state or federal
16 law. The provisions in this part shall be interpreted
17 consistently with other relevant laws and the standard of "best
18 interest of the child" shall remain paramount."

19 SECTION 16. Section 574-3, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§574-3 Children born to parents not married to each
22 other.** The registrar of births shall register any child born to

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1 parents not married to each other at the time of the child's
2 birth and where either the natural parents have not married each
3 other or where the parent and child relationship has not been
4 established pursuant to chapter [584,] _____, as having both a
5 family name and given name chosen by the mother."

6 SECTION 17. Section 576B-401, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) The tribunal may issue a temporary child support
9 order if the tribunal determines that the order is appropriate
10 and the individual ordered to pay is:

- 11 (1) A presumed [~~father~~] parent of the child;
- 12 (2) Petitioning to have [~~paternity~~] parentage adjudicated;
- 13 (3) Identified as the [~~father~~] parent of the child through
14 genetic testing;
- 15 (4) An alleged [~~father~~] parent who has declined to submit
16 to genetic testing;
- 17 (5) Shown by clear and convincing evidence to be the
18 [~~father~~] parent of the child;
- 19 (6) An acknowledged [~~father~~] parent as provided by section
20 [584-3.5,] _____-H;
- 21 (7) The [~~mother-of~~] individual who gave birth to the
22 child; or

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1 (8) An individual who has been ordered to pay child
2 support in a previous proceeding and the order has not
3 been reversed or vacated."

4 SECTION 18. Section 576B-402, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) In a proceeding to determine parentage, a responding
7 tribunal of this State shall apply chapter [584] ____ and the
8 rules of this State on choice of law."

9 SECTION 19. Section 576E-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§576E-2 Attorney general; powers.** Notwithstanding any
12 other law to the contrary, the attorney general, through the
13 agency and the office, shall have concurrent jurisdiction with
14 the court in all proceedings in which a support obligation is
15 established, modified, or enforced, including but not limited to
16 proceedings under chapters 571, 580, [~~584~~]____, and 576B. The
17 attorney general, through the agency and the office, may
18 establish, modify, suspend, terminate, and enforce child support
19 obligations and collect or enforce spousal support using the
20 administrative process provided in this chapter on all cases for
21 which the department has a responsibility under Title IV-D of
22 the Social Security Act, including but not limited to welfare

___ . B. NO.

1 and non-welfare cases in which the responsible parent is subject
2 to the department's jurisdiction, regardless of the residence of
3 the children for whom support is sought. These powers shall
4 include but not be limited to the power to:

5 (1) Conduct investigations into the ability of parties to
6 pay support and into nonpayment of support;

7 (2) Administer oaths, issue subpoenas, and require
8 production of books, accounts, documents, and
9 evidence;

10 (3) Establish, modify, suspend, terminate, or enforce a
11 child support order and to collect or enforce a
12 spousal support order in conjunction with a child
13 support order;

14 (4) Determine that a party has not complied with a court
15 or administrative order of support and make
16 recommendations to the court or other agency with
17 respect to contempt or other appropriate proceedings;

18 (5) Establish arrearage;

19 (6) Establish an order for child support for periods which
20 public assistance was provided to the child or
21 children by the department of human services;

____. B. NO.

- 1 (7) Order and enforce assignment of future income under
2 section 576E-16, chapter 571, and section 576D-14;
- 3 (8) Exercise the powers and authority described in this
4 section, notwithstanding the existence of a prior
5 court or administrative order of support issued by
6 another state or foreign jurisdiction, except as
7 modified or limited by this chapter;
- 8 (9) Determine that an obligor owes past-due support with
9 respect to a child receiving assistance under a state
10 program funded under Title IV-A of the Social Security
11 Act, including Aid to Families with Dependent Children
12 and Temporary Assistance to Needy Families and
13 petition the court to issue an order that requires the
14 obligor to pay such support in accordance with a plan
15 approved by the court or, if the obligor is subject to
16 such a plan and is not incapacitated, participate in
17 work activities, as defined in 42 U.S.C. §607(d), as
18 the court deems appropriate;
- 19 (10) Order genetic testing pursuant to chapter
20 [584] ____ for the purpose of establishing [~~paternity,~~
21 parentage with payment of costs to be made by the
22 agency, subject to recoupment by the State from [~~the~~

____. B. NO.

1 ~~father or the mother,~~ a parent if appropriate, if
2 ~~[paternity]~~ parentage is established, and to also
3 order additional testing in any case if an original
4 test result is contested, upon request and advance
5 payment by the contestant;

6 (11) Exercise the powers and authority described in this
7 section, notwithstanding the existence of a prior
8 court or administrative order of support issued by
9 another state or foreign jurisdiction, except as
10 modified or limited by this chapter and chapter 576B;
11 and

12 (12) Delegate the powers and authority described in this
13 section to hearings officers and employees of the
14 agency."

15 SECTION 20. Section 607-5.6, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) In addition to the fees prescribed under section
18 607-5 for a matrimonial action where either party has a minor
19 child, or a family court proceeding under chapter ~~[584,~~ ____,
20 the court shall collect a surcharge of \$50 at the time of filing
21 the initial complaint or petition. In cases where the surcharge
22 has been initially waived, the court may collect the surcharge

____. B. NO.

1 subsequent to the filing with such surcharge to be assessed from
2 either party or apportioned between both parties."

3 SECTION 21. Section 634-7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§634-37 Presumption of notice and service of process in**
6 **child support cases.** Whenever notice and service of process is
7 required for child support enforcement proceedings subsequent to
8 an order issued pursuant to chapter 571, 576B, 576E, 580, or
9 [~~584~~] _____, upon a showing that diligent effort has been made to
10 ascertain the location of a party, notice and service of process
11 shall be presumed to be satisfied upon delivery of written
12 notice to the most recent residential or employer address on
13 file with the state case registry pursuant to section 571-
14 52.6."

15 SECTION 22. Chapter 584, Hawaii Revised Statutes, is
16 repealed.

17 SECTION 23. In codifying this Act, the revisor of
18 statutes shall substitute appropriate section numbers for the
19 letters used in designating the new sections added by section
20 two of this Act.

____. B. NO.

1 SECTION 24. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 25. Statutory material to be repealed is
5 bracketed and stricken. New statutory material is
6 underscored.

7 SECTION 26. This Act shall take effect on January 1, 2022.

8 INTRODUCED BY: _____

UNIFORM PARENTAGE ACT (2017)*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR
SAN DIEGO, CALIFORNIA
JULY 14 - JULY 20, 2017

WITHOUT PREFATORY NOTE OR COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 19, 2017

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UNIFORM PARENTAGE ACT (2017)

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Parentage Act (2017).

SECTION 102. DEFINITIONS. In this [act]:

(1) “Acknowledged parent” means an individual who has established a parent-child relationship under [Article] 3.

(2) “Adjudicated parent” means an individual who has been adjudicated by a court with jurisdiction to be a parent of a child.

(3) “Alleged genetic parent” means an individual who is alleged to be, or alleges that the individual is, a genetic parent or possible genetic parent of a child whose parentage has not been adjudicated. The term includes an alleged genetic father and alleged genetic mother. The term does not include:

(A) a presumed parent;

(B) an individual whose parental rights have been terminated or declared not to exist; or

(C) a donor.

(4) “Assisted reproduction” means a method of causing pregnancy other than sexual intercourse. The term includes:

(A) intrauterine or intracervical insemination;

(B) donation of gametes;

(C) donation of embryos;

(D) in-vitro fertilization and transfer of embryos; and

(E) intracytoplasmic sperm injection.

(5) “Birth” includes stillbirth.

(6) “Child” means an individual of any age whose parentage may be determined under this [act].

(7) “Child-support agency” means a government entity, public official, or private agency authorized to provide parentage-establishment services under Title IV-D of the Social Security Act, 42 U. S. C. Section 651 et seq.

(8) “Determination of parentage” means establishment of a parent-child relationship by a judicial or administrative proceeding or signing of a valid acknowledgment of parentage under [Article] 3.

(9) “Donor” means an individual who provides gametes intended for use in assisted reproduction, whether or not for consideration. The term does not include:

(A) a woman who gives birth to a child conceived by assisted reproduction[, except as otherwise provided in [Article] 8]; or

(B) a parent under [Article] 7[or an intended parent under [Article] 8].

(10) “Gamete” means sperm, egg, or any part of a sperm or egg.

(11) “Genetic testing” means an analysis of genetic markers to identify or exclude a genetic relationship.

(12) “Individual” means a natural person of any age.

(13) “Intended parent” means an individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction.

(14) “Man” means a male individual of any age.

(15) “Parent” means an individual who has established a parent-child relationship under Section 201.

(16) “Parentage” or “parent-child relationship” means the legal relationship between a child and a parent of the child.

(17) “Presumed parent” means an individual who under Section 204 is recognized as a parent of a child, until the status is overcome in a judicial proceeding, a valid denial of parentage is made under [Article] 3, or a court adjudicates the individual to be a parent.

(18) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(19) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(20) “Signatory” means an individual who signs a record.

(21) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(22) “Transfer” means a procedure for assisted reproduction by which an embryo or sperm is placed in the body of the woman who will give birth to the child.

(23) “Witness” means that an individual signs a record to verify that the individual personally observed a signatory signing the record.

(24) “Woman” means a female individual of any age.

SECTION 103. SCOPE.

(a) This [act] applies to an adjudication or determination of parentage.

(b) This [act] does not create, affect, enlarge, or diminish parental rights or duties under law of this state other than this [act].

[(c) This [act] does not authorize or prohibit an agreement between one or more intended parents and a woman who is not an intended parent in which the woman agrees to become pregnant through assisted reproduction and which provides that each intended parent is a parent of a child conceived through assisted reproduction. If a birth results under the agreement and the agreement is unenforceable under [cite to the law of this state regarding surrogacy agreements], the parent-child relationship is established as provided in [Articles] 1 through 6.]

Legislative Note: A state should enact subsection (c) if the state does not enact Article 8 or otherwise does not permit surrogacy agreements.

SECTION 104. AUTHORIZED COURT. The [designate court] may adjudicate parentage under this [act].

SECTION 105. APPLICABLE LAW. The court shall apply the law of this state to adjudicate parentage. The applicable law does not depend on:

- (1) the place of birth of the child; or
- (2) the past or present residence of the child.

SECTION 106. DATA PRIVACY. A proceeding under this [act] is subject to law of this state other than this [act] which governs the health, safety, privacy, and liberty of a child or other individual who could be affected by disclosure of information that could identify the child or other individual, including address, telephone number, digital contact information, place of employment, social security number, and the child's day-care facility or school.

SECTION 107. ESTABLISHMENT OF MATERNITY AND PATERNITY. To the extent practicable, a provision of this [act] applicable to a father-child relationship applies to a mother-child relationship and a provision of this [act] applicable to a mother-child relationship applies to a father-child relationship.

[ARTICLE] 2

PARENT-CHILD RELATIONSHIP

SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP. A parent-child relationship is established between an individual and a child if:

- (1) the individual gives birth to the child[, except as otherwise provided in [Article] 8];
- (2) there is a presumption of the individual's parentage of the child under Section 204 that has not been overcome in a judicial proceeding;
- (3) the individual is adjudicated a parent of the child under [Article] 6;
- (4) the individual adopts the child;
- (5) the individual acknowledges parentage of the child under [Article] 3, unless the acknowledgment is rescinded under Section 308 or successfully challenged under [Article] 3 or [Article] 6;[or]
- (6) the individual's parentage of the child is established under [Article] 7[; or
- (7) the individual's parentage of the child is established under [Article] 8].

Legislative Note: A state should include paragraph (7) if the state includes Article 8 in the act or otherwise permits and recognizes surrogacy agreements.

SECTION 202. NO DISCRIMINATION BASED ON MARITAL STATUS OF PARENT. A parent-child relationship extends equally to every child and parent, regardless of the marital status of the parent.

SECTION 203. CONSEQUENCES OF ESTABLISHING PARENTAGE. Unless parental rights are terminated, a parent-child relationship established under this [act] applies for all purposes, except as otherwise provided by law of this state other than this [act].

SECTION 204. PRESUMPTION OF PARENTAGE.

(a) An individual is presumed to be a parent of a child if:

(1) except as otherwise provided under[[Article] 8 or] law of this state other than this [act]:

(A) the individual and the woman who gave birth to the child are married to each other and the child is born during the marriage, whether the marriage is or could be declared invalid;

(B) the individual and the woman who gave birth to the child were married to each other and the child is born not later than 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution[, or after a decree of separation], whether the marriage is or could be declared invalid; or

(C) the individual and the woman who gave birth to the child married each other after the birth of the child, whether the marriage is or could be declared invalid, and the individual at any time asserted parentage of the child, and:

(i) the assertion is in a record filed with the [state agency maintaining birth records]; or

(ii) the individual agreed to be and is named as a parent of the child on the birth certificate of the child; or

(2) the individual resided in the same household with the child for the first two years of the life of the child, including periods of temporary absence, and openly held out the

child as the individual's child.

(b) A presumption of parentage under this section may be overcome, and competing claims to parentage may be resolved, only by an adjudication under [Article] 6 or a valid denial of parentage under [Article] 3.

[ARTICLE] 3

VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

SECTION 301. ACKNOWLEDGMENT OF PARENTAGE. A woman who gave birth to a child and an individual who is the alleged genetic father of the child, an intended parent under [Article] 7, or a presumed parent may sign an acknowledgment of parentage to establish the parentage of the child.

SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF PARENTAGE.

(a) An acknowledgment of parentage must:

(1) be in a record signed by the woman who gave birth to the child and by an individual seeking to establish a parent-child relationship and the signatures must be attested by a notarial officer or witnessed by at least one individual;

(2) state that a child whose parentage is being acknowledged:

(A) does not have a presumed parent other than the individual seeking to establish the parent-child relationship or has a presumed parent whose full name is stated; and

(B) does not have another acknowledged parent, adjudicated parent, or individual who is a parent of the child under [Article] 7[or [Article] 8] other than the woman who gave birth to the child; and

(3) state that the signatories understand that the acknowledgment is the equivalent of an adjudication of parentage of the child and that a challenge to the acknowledgment is

permitted only under limited circumstances and is barred two years after the effective date of the acknowledgment.

(b) An acknowledgment of parentage is void if, at the time of signing:

(1) an individual other than the individual seeking to establish parentage is a presumed parent, unless a denial of parentage by the presumed parent in a signed record is filed with the [agency maintaining birth records]; or

(2) an individual, other than the woman who gave birth to the child or the individual seeking to establish parentage, is an acknowledged or adjudicated parent or a parent under [Article] 7[or [Article] 8].

SECTION 303. DENIAL OF PARENTAGE. A presumed parent or an alleged genetic parent may sign a denial of parentage in a record. The denial of parentage is valid only if:

(1) an acknowledgment of parentage by another individual is filed under Section 305;

(2) the signature of the presumed parent or alleged genetic parent is attested by a notarial officer or witnessed by at least one individual; and

(3) the presumed parent or alleged genetic parent has not previously:

(A) completed a valid acknowledgment of parentage, unless the previous acknowledgment was rescinded under Section 308 or challenged successfully under Section 309;

or

(B) been adjudicated to be a parent of the child.

SECTION 304. RULES FOR ACKNOWLEDGMENT OR DENIAL OF PARENTAGE.

(a) An acknowledgment of parentage and a denial of parentage may be contained in a single document or may be in counterparts and may be filed with the [agency maintaining birth

records] separately or simultaneously. If filing of the acknowledgment and denial both are required under this [act], neither is effective until both are filed under this subsection.

(b) An acknowledgment of parentage or denial of parentage may be signed before or after the birth of the child.

(c) Subject to subsection (a), an acknowledgment of parentage or denial of parentage takes effect on the birth of the child or filing of the document with the [agency maintaining birth records], whichever occurs later.

(d) An acknowledgment of parentage or denial of parentage signed by a minor is valid if the acknowledgment complies with this [act].

SECTION 305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PARENTAGE.

(a) Except as otherwise provided in Sections 308 and 309, an acknowledgment of parentage that complies with this [article] and is filed with the [agency maintaining birth records] is equivalent to an adjudication of parentage of the child and confers on the acknowledged parent all rights and duties of a parent.

(b) Except as otherwise provided in Sections 308 and 309, a denial of parentage by a presumed parent or alleged genetic parent that complies with this [article] and is filed with the [agency maintaining birth records] with an acknowledgment of parentage that complies with this [article] is equivalent to an adjudication of the nonparentage of the presumed parent or alleged genetic parent and discharges the presumed parent or alleged genetic parent from all rights and duties of a parent.

SECTION 306. NO FILING FEE. The [agency maintaining birth records] may not charge a fee for filing an acknowledgment of parentage or denial of parentage.

SECTION 307. RATIFICATION BARRED. A court conducting a judicial proceeding or an administrative agency conducting an administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of parentage.

SECTION 308. PROCEDURE FOR RESCISSION.

(a) A signatory may rescind an acknowledgment of parentage or denial of parentage by filing with [the relevant state agency] a signed record of rescission which is attested by a notarial officer or witnessed by at least one individual before the earlier of:

(1) 60 days after the effective date under Section 304 of the acknowledgment or denial; or

(2) the date of the first hearing before a court in a proceeding to which the signatory is a party, to adjudicate an issue relating to the child, including a proceeding that establishes support.

(b) If an acknowledgment of parentage is rescinded under subsection (a), any associated denial of parentage becomes invalid, and the [agency maintaining birth records] shall notify the woman who gave birth to the child and any individual who signed a denial of parentage of the child that the acknowledgment has been rescinded. Failure to give the notice required by this subsection does not affect the validity of the rescission.

SECTION 309. CHALLENGE AFTER EXPIRATION OF PERIOD FOR RESCISSION.

(a) After the period for rescission under Section 308 expires, but not later than two years after the effective date under Section 304 of an acknowledgment of parentage or denial of parentage, a signatory of the acknowledgment or denial may commence a proceeding to challenge the acknowledgment or denial, including a challenge brought under Section 614, only

on the basis of fraud, duress, or material mistake of fact.

(b) A challenge to an acknowledgment of parentage or denial of parentage by an individual who was not a signatory to the acknowledgment or denial is governed by Section 610.

SECTION 310. PROCEDURE FOR CHALLENGE BY SIGNATORY.

(a) Every signatory to an acknowledgment of parentage and any related denial of parentage must be made a party to a proceeding to challenge the acknowledgment or denial.

(b) By signing an acknowledgment of parentage or denial of parentage, a signatory submits to personal jurisdiction in this state in a proceeding to challenge the acknowledgment or denial, effective on the filing of the acknowledgment or denial with the [agency maintaining birth records].

(c) The court may not suspend the legal responsibilities arising from an acknowledgment of parentage, including the duty to pay child support, during the pendency of a proceeding to challenge the acknowledgment or a related denial of parentage, unless the party challenging the acknowledgment or denial shows good cause.

(d) A party challenging an acknowledgment of parentage or denial of parentage has the burden of proof.

(e) If the challenge to an acknowledgment of parentage or denial of parentage is successful, the court shall issue an order directing the [agency maintaining birth records] to amend the birth record of the child to reflect the legal parentage of the child.

(f) A proceeding to challenge an acknowledgment of parentage or denial of parentage must be conducted under [Article] 6.

SECTION 311. FULL FAITH AND CREDIT. The court shall give full faith and credit to an acknowledgment of parentage or denial of parentage effective in another state if the

acknowledgment or denial was in a signed record and otherwise complies with the law of the other state.

SECTION 312. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF PARENTAGE.

(a) The [agency maintaining birth records] shall prescribe forms for an acknowledgment of parentage and denial of parentage.

(b) A valid acknowledgment of parentage or denial of parentage is not affected by a later modification of the form under subsection (a).

SECTION 313. RELEASE OF INFORMATION. The [agency maintaining birth records] may release information relating to an acknowledgment of parentage or denial of parentage to a signatory of the acknowledgment or denial, a court, federal agencies, and [appropriate state agencies] of this or another state.

[SECTION 314. ADOPTION OF RULES. The [agency maintaining birth records] may adopt rules under [state administrative procedures act] to implement this [article].]

[ARTICLE] 4

REGISTRY OF PATERNITY

[PART] 1

GENERAL PROVISIONS

SECTION 401. ESTABLISHMENT OF REGISTRY. A registry of paternity is established in the [agency maintaining the registry].

SECTION 402. REGISTRATION FOR NOTIFICATION.

(a) Except as otherwise provided in subsection (b) or Section 405, a man who desires to be notified of a proceeding for adoption of, or termination of parental rights regarding, his

genetic child must register in the registry of paternity established by Section 401 before the birth of the child or not later than 30 days after the birth.

(b) A man is not required to register under subsection (a) if:

(1) a parent-child relationship between the man and the child has been established under this [act] or law of this state other than this [act]; or

(2) the man commences a proceeding to adjudicate his parentage before a court has terminated his parental rights].

(c) A registrant under subsection (a) shall notify the registry promptly in a record of any change in the information registered. The [agency maintaining the registry] shall incorporate new information received into its records but need not seek to obtain current information for incorporation in the registry.

SECTION 403. NOTICE OF PROCEEDING. An individual who seeks to adopt a child or terminate parental rights to the child shall give notice of the proceeding to a registrant who has timely registered under Section 402 regarding the child. Notice must be given in a manner prescribed for service of process in a civil proceeding.

SECTION 404. TERMINATION OF PARENTAL RIGHTS: CHILD UNDER ONE YEAR OF AGE. An individual who seeks to adopt a child or terminate parental rights to a child is not required to give notice to a man who may be the genetic father of the child if:

(1) the child is under one year of age at the time of the termination of parental rights;

(2) the man did not register timely under Section 402(a); and

(3) the man is not exempt from registration under Section 402(b).

SECTION 405. TERMINATION OF PARENTAL RIGHTS: CHILD AT LEAST ONE YEAR OF AGE. If a child is at least one year of age, an individual seeking to adopt or

terminate parental rights to the child shall give notice of the proceeding to each alleged genetic father of the child, whether or not he has registered under Section 402(a) unless his parental rights have already been terminated. Notice must be given in a manner prescribed for service of process in a civil proceeding.

[PART] 2

OPERATION OF REGISTRY

SECTION 406. REQUIRED FORM.

(a) The [agency maintaining the registry] shall prepare a form for registering under Section 402(a). The form must state that:

- (1) the registrant signs the form under penalty of perjury;
- (2) timely registration entitles the registrant to notice of a proceeding for adoption of the child or termination of the registrant's parental rights;
- (3) timely registration does not commence a proceeding to establish parentage;
- (4) the information disclosed on the form may be used against the registrant to establish parentage;
- (5) services to assist in establishing parentage are available to the registrant through [the appropriate child-support agency];
- (6) the registrant also may register in a registry of paternity in another state if conception or birth of the child occurred in the other state;
- (7) information on registries of paternity of other states is available from [the appropriate state agency]; and
- (8) procedures exist to rescind the registration.

(b) The registrant shall sign the form described in subsection (a) under penalty of perjury.

SECTION 407. FURNISHING INFORMATION; CONFIDENTIALITY.

(a) The [agency maintaining the registry] is not required to seek to locate the woman who gave birth to the child who is the subject of a registration under Section 402(a), but the [agency maintaining the registry] shall give notice of the registration to the woman who gave birth to the child if the [agency maintaining the registry] has her address.

(b) Information contained in the registry established by Section 401 is confidential and may be released on request only to:

- (1) a court or individual designated by the court;
 - (2) the woman who gave birth to the child who is the subject of the registration;
 - (3) an agency authorized by law of this state other than this [act], law of another state, or federal law to receive the information;
 - (4) a licensed child-placing agency;
 - (5) a child-support agency;
 - (6) a party or the party's attorney of record in a proceeding under this [act] or in a proceeding to adopt or terminate parental rights to a child who is the subject of the registration;
- and
- (7) a registry of paternity in another state.

SECTION 408. PENALTY FOR RELEASING INFORMATION. An individual who intentionally releases information from the registry established under Section 401 to an individual or agency not authorized under Section 407 to receive the information commits a [appropriate level misdemeanor].

SECTION 409. RESCISSION OF REGISTRATION. A registrant under Section 402(a) may rescind his registration at any time by filing with the registry a rescission in a signed record that is attested by a notarial officer or witnessed by at least one individual.

SECTION 410. UNTIMELY REGISTRATION. If a man registers under Section 402(a) more than 30 days after the birth of the child, the [agency maintaining the registry] shall notify the registrant that, based on a review of the registration, the registration was not filed timely.

SECTION 411. FEES FOR REGISTRY.

(a) [The agency maintaining the registry] may not charge a fee for filing a registration under Section 402(a) or a rescission of registration under Section 409.

(b) [Except as otherwise provided in subsection (c), the][The] [agency maintaining the registry] may charge a reasonable fee to search the registry established under Section 401 and for furnishing a certificate of search under Section 414.

[(c) A child-support agency [is][and other appropriate agencies, if any, are] not required to pay a fee authorized by subsection (b).]

Legislative Note: A state should include subsection (c) if the state does not require certain agencies to pay fees authorized by subsection (b).

[PART] 3

SEARCH OF REGISTRY

**SECTION 412. CHILD BORN THROUGH ASSISTED REPRODUCTION:
SEARCH OF REGISTRY INAPPLICABLE.** This [part] does not apply to a child born through assisted reproduction.

SECTION 413. SEARCH OF APPROPRIATE REGISTRY. If a parent-child relationship has not been established under this [act] for a child who is under one year of age for an individual other than the woman who gave birth to the child:

(1) an individual seeking to adopt or terminate parental rights to the child shall obtain a certificate of search under Section 414 to determine if a registration has been filed in the registry regarding the child; and

(2) if the individual has reason to believe that conception or birth of the child may have occurred in another state, the individual shall obtain a certificate of search from the registry of paternity, if any, in that state.

SECTION 414. CERTIFICATE OF SEARCH OF REGISTRY.

(a) The [agency maintaining the registry] shall furnish a certificate of search of the registry on request to an individual, court, or agency identified in Section 407(b) or an individual required under Section 413(1) to obtain a certificate.

(b) A certificate furnished under subsection (a):

(1) must be signed on behalf of the [agency maintaining the registry] and state that:

(A) a search has been made of the registry established under Section 401;

and

(B) a registration under Section 402(a) containing the information required to identify the registrant:

(i) has been found; or

(ii) has not been found; and

(2) if subsection (1)(B)(i) applies, must have a copy of the registration attached.

(c) An individual seeking to adopt or terminate parental rights to a child must file with the court the certificate of search furnished under subsection (a) before a proceeding to adopt or terminate parental rights to the child may be concluded.

SECTION 415. ADMISSIBILITY OF REGISTERED INFORMATION. A certificate of search of a registry of paternity in this or another state is admissible in a proceeding for adoption of, or termination of parental rights regarding, a child and, if relevant, in other legal proceedings.

[ARTICLE] 5

GENETIC TESTING

SECTION 501. DEFINITIONS. In this [article]:

- (1) “Combined relationship index” means the product of all tested relationship indices.
- (2) “Ethnic or racial group” means, for purpose of genetic testing, a recognized group that an individual identifies as the individual’s ancestry or part of the ancestry or that is identified by other information.
- (3) “Hypothesized genetic relationship” means an asserted genetic relationship between an individual and a child.
- (4) “Probability of parentage” means, for the ethnic or racial group to which an individual alleged to be a parent belongs, the probability that a hypothesized genetic relationship is supported, compared to the probability that a genetic relationship is supported between a child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship, expressed as a percentage incorporating the combined relationship index and a prior probability.
- (5) “Relationship index” means a likelihood ratio that compares the probability of a

genetic marker given a hypothesized genetic relationship and the probability of a genetic marker given a genetic relationship between a child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship.

SECTION 502. SCOPE OF [ARTICLE]; LIMITATION ON USE OF GENETIC TESTING.

(a) This [article] governs genetic testing of an individual in a proceeding to adjudicate parentage, whether the individual:

- (1) voluntarily submits to testing; or
- (2) is tested under an order of the court or a child-support agency.

(b) Genetic testing may not be used:

- (1) to challenge the parentage of an individual who is a parent by operation of law under [Article] 7[or 8]; or
- (2) to establish the parentage of an individual who is a donor.

SECTION 503. AUTHORITY TO ORDER OR DENY GENETIC TESTING.

(a) Except as otherwise provided in this [article] or [Article] 6, in a proceeding under this [act] to determine parentage, the court shall order the child and other designated individuals to submit to genetic testing if a request for testing is supported by the sworn statement of a party:

- (1) alleging a reasonable possibility of genetic parentage of the child; or
- (2) denying genetic parentage of the child and stating facts establishing a

possibility that the party is not a genetic parent.

(b) A child-support agency may order genetic testing only if there is no presumed, acknowledged, or adjudicated parent other than the woman who gave birth.

(c) The court or child-support agency may not order in-utero testing.

(d) If two or more individuals are subject to court-ordered genetic testing, the court may order that testing be completed concurrently or sequentially.

(e) Genetic testing of a woman who gave birth to a child is not a condition precedent to testing of the child and an individual whose genetic parentage of the child is being determined. If the woman who gave birth is unavailable or declines to submit to genetic testing, the court may order testing of the child and each individual whose genetic parentage of the child is being adjudicated.

(f) In a proceeding to adjudicate the parentage of a child having a presumed parent or an individual who claims to be a parent under Section 609, or to challenge an acknowledgment of parentage, the court may deny a motion for genetic testing of the child and other individuals after considering the factors in Section 613(a) and (b).

(g) If an individual requesting genetic testing is barred under [Article] 6 from establishing the individual's parentage, the court shall deny the request for genetic testing.

(h) An order under this section for genetic testing is enforceable by contempt.

SECTION 504. REQUIREMENTS FOR GENETIC TESTING.

(a) Genetic testing must be of a type reasonably relied on by experts in the field of genetic testing and performed in a testing laboratory accredited by:

(1) the AABB, formerly known as the American Association of Blood Banks, or a successor to its functions; or

(2) an accrediting body designated by the Secretary of the United States Department of Health and Human Services.

(b) A specimen used in genetic testing may consist of a sample or a combination of samples of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the

testing need not be of the same kind for each individual undergoing genetic testing.

(c) Based on the ethnic or racial group of an individual undergoing genetic testing, a testing laboratory shall determine the databases from which to select frequencies for use in calculating a relationship index. If an individual or a child-support agency objects to the laboratory's choice, the following rules apply:

(1) Not later than 30 days after receipt of the report of the test, the individual or the child-support agency objecting may move the court to require the laboratory to recalculate the relationship index using an ethnic or racial group different from that used by the laboratory.

(2) The individual or the child-support agency objecting to the initial choice of laboratory shall:

(A) if frequencies are not available to the laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

(B) engage another laboratory to perform the calculations.

(3) The laboratory may use its own statistical estimate if there is a question of which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

(d) If, after recalculation of the relationship index under subsection (c) using a different ethnic or racial group, genetic testing does not identify an individual as a genetic parent of a child under Section 506, the court may require an individual who has been tested to submit to additional genetic testing to identify a genetic parent.

SECTION 505. REPORT OF GENETIC TESTING.

(a) A report of genetic testing must be in a record and signed under penalty of perjury by

a designee of the testing laboratory. A report complying with the requirements of this [article] is self-authenticating.

(b) Documentation from a testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

(1) the names and photographs of the individuals whose specimens have been taken;

(2) the names of the individuals who collected the specimens;

(3) the places and dates the specimens were collected;

(4) the names of the individuals who received the specimens in the testing laboratory; and

(5) the dates the specimens were received.

SECTION 506. GENETIC TESTING RESULTS; CHALLENGE TO RESULTS.

(a) Subject to a challenge under subsection (b), an individual is identified under this [act] as a genetic parent of a child if genetic testing complies with this [article] and the results of the testing disclose that:

(1) the individual has at least a 99 percent probability of parentage, using a prior probability of 0.50, as calculated by using the combined relationship index obtained in the testing; and

(2) a combined relationship index of at least 100 to 1.

(b) An individual identified under subsection (a) as a genetic parent of the child may challenge the genetic testing results only by other genetic testing satisfying the requirements of this [article] which:

(1) excludes the individual as a genetic parent of the child; or

(2) identifies an individual other than the woman who gave birth as a possible genetic parent of the child.

(c) Except as otherwise provided in Section 511, if more than one individual other than the woman who gave birth is identified by genetic testing as a possible genetic parent of the child, the court shall order each individual to submit to further genetic testing to identify a genetic parent.

SECTION 507. COST OF GENETIC TESTING.

(a) Subject to assessment of fees under [Article] 6, payment of the cost of initial genetic testing must be made in advance:

(1) by a child-support agency in a proceeding in which the child-support agency is providing services;

(2) by the individual who made the request for genetic testing;

(3) as agreed by the parties; or

(4) as ordered by the court.

(b) If payment of the cost of genetic testing is advanced by a child-support agency, the agency may seek reimbursement from the genetic parent whose parent-child relationship is established.

SECTION 508. ADDITIONAL GENETIC TESTING. The court or child-support agency shall order additional genetic testing on request of an individual who contests the result of the initial testing under Section 506. If initial genetic testing under Section 506 identified an individual as a genetic parent of the child, the court or agency may not order additional testing unless the contesting individual pays for the testing in advance.

SECTION 509. GENETIC TESTING WHEN SPECIMEN NOT AVAILABLE.

(a) Subject to subsection (b), if a genetic-testing specimen is not available from an alleged genetic parent of a child, an individual seeking genetic testing demonstrates good cause, and the court finds that the circumstances are just, the court may order the following individuals to submit specimens for genetic testing:

(1) a parent of the alleged genetic parent;

(2) a sibling of the alleged genetic parent;

(3) another child of the alleged genetic parent and the woman who gave birth to that other child; and

(4) another relative of the alleged genetic parent necessary to complete genetic testing.

(b) To issue an order under this section, the court must find that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

SECTION 510. DECEASED INDIVIDUAL. If an individual seeking genetic testing demonstrates good cause, the court may order genetic testing of a deceased individual.

SECTION 511. IDENTICAL SIBLINGS.

(a) If the court finds that there is reason to believe that an alleged genetic parent has an identical sibling and there is evidence that the sibling may be a genetic parent of the child, the court may order genetic testing of the sibling.

(b) If more than one sibling is identified under Section 506 as a genetic parent of the child, the court may rely on nongenetic evidence to adjudicate which sibling is a genetic parent of the child.

SECTION 512. CONFIDENTIALITY OF GENETIC TESTING.

(a) Release of a report of genetic testing for parentage is controlled by [cite to applicable law of this state other than this [act]].

(b) An individual who intentionally releases an identifiable specimen of another individual for a purpose not relevant to a proceeding regarding parentage, without a court order or written permission of the individual who furnished the specimen, commits a [appropriate level misdemeanor].

[ARTICLE] 6

PROCEEDING TO ADJUDICATE PARENTAGE

[PART] 1

NATURE OF PROCEEDING

SECTION 601. PROCEEDING AUTHORIZED.

[(a)] A proceeding may be commenced to adjudicate the parentage of a child. Except as otherwise provided in this [act], the proceeding is governed by [the rules of civil procedure].

[(b)] A proceeding to adjudicate the parentage of a child born under a surrogacy agreement is governed by [Article] 8.]

Legislative Note: A state should include subsection (b) if the state includes Article 8 in the act.

SECTION 602. STANDING TO MAINTAIN PROCEEDING. Except as otherwise provided in [Article] 3 and Sections 608 through 611, a proceeding to adjudicate parentage may be maintained by:

(1) the child;

(2) the woman who gave birth to the child unless a court has adjudicated that she is not a parent;

- (3) an individual who is a parent under this [act];
- (4) an individual whose parentage of the child is to be adjudicated;
- (5) a child-support agency[or other governmental agency authorized by law of this state other than this [act]];
- (6) an adoption agency authorized by law of this state other than this [act] or licensed child-placement agency; or
- (7) a representative authorized by law of this state other than this [act] to act for an individual who otherwise would be entitled to maintain a proceeding but is deceased, incapacitated, or a minor.

SECTION 603. NOTICE OF PROCEEDING.

(a) A [petitioner] shall give notice of the proceeding to adjudicate parentage to the following individuals:

- (1) the woman who gave birth to the child unless a court has adjudicated that she is not a parent;
- (2) an individual who is a parent of the child under this [act];
- (3) a presumed, acknowledged, or adjudicated parent of the child; and
- (4) an individual whose parentage of the child is to be adjudicated.

(b) An individual entitled to notice under subsection (a) has a right to intervene in the proceeding.

(c) Lack of notice required by subsection (a) does not render a judgment void. Lack of notice does not preclude an individual entitled to notice under subsection (a) from bringing a proceeding under Section 611(b).

SECTION 604. PERSONAL JURISDICTION.

(a) The court may adjudicate an individual’s parentage of a child only if the court has personal jurisdiction over the individual.

(b) A court of this state having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions prescribed in [cite to this state’s Section 201 of the Uniform Interstate Family Support Act] are met.

(c) Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual.

SECTION 605. VENUE. Venue for a proceeding to adjudicate parentage is in the [county] of this state in which:

- (1) the child resides or is found;
- (2) if the child does not reside in this state, the [respondent] resides or is found; or
- (3) a proceeding for administration of the estate of a person who is or may be a parent under this [act] has been commenced.

[PART] 2

SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE

SECTION 606. ADMISSIBILITY OF RESULTS OF GENETIC TESTING.

(a) Except as otherwise provided in Section 502(b), the court shall admit a report of a genetic-testing expert ordered by the court under Section 503 as evidence of the truth of the facts asserted in the report.

(b) A party may object to the admission of a report described in subsection (a) not later than [14] days after the party receives the report. The party shall cite specific grounds for

exclusion.

(c) A party who objects to the results of genetic testing may call a genetic-testing expert to testify in person or by another method approved by the court. Unless the court orders otherwise, the party offering the testimony bears the expense for the expert testifying.

(d) The admissibility of the report is not affected by whether the testing was performed:

(1) voluntarily or under an order of the court or a child-support agency; or

(2) before, on, or after commencement of the proceeding.

SECTION 607. ADJUDICATING PARENTAGE OF CHILD WITH ALLEGED GENETIC PARENT.

(a) A proceeding to determine whether an alleged genetic parent who is not a presumed parent is a parent of a child may be commenced:

(1) before the child becomes an adult; or

(2) after the child becomes an adult, but only if the child initiates the proceeding.

(b) Except as otherwise provided in Section 614, the following rules apply in the proceeding if the woman who gave birth to the child is the only other individual with a claim to parentage of the child. The court shall adjudicate an alleged genetic parent to be a parent of the child if the alleged genetic parent:

(1) is identified as a genetic parent of the child under Section 506 and the identification is not successfully challenged under Section 506;

(2) admits parentage in a pleading or admits parentage when making an appearance or during a hearing, the court accepts the admission, and the court finds the alleged genetic parent to be a parent of the child;

(3) declines to submit to genetic testing ordered by the court, in which case the

court may adjudicate the alleged genetic parent to be a parent of the child even if the alleged genetic parent denies a genetic relationship with the child;

(4) is in default after service of process and the court finds the alleged genetic parent to be a parent of the child; or

(5) is neither identified nor excluded as a genetic parent by genetic testing and is found by the court to be a parent of the child based on other evidence.

(c) Except as otherwise provided in Section 614 and subject to other applicable limitations in this [part], in a proceeding involving an alleged genetic parent if at least one other individual in addition to the woman who gave birth has a claim to parentage under this [act], the court shall adjudicate parentage under Section 613.

SECTION 608. ADJUDICATING PARENTAGE OF CHILD WITH PRESUMED PARENT.

(a) A proceeding to determine if a presumed parent is a parent of a child may be commenced:

(1) before the child becomes an adult; or

(2) after the child becomes an adult, but only if the child initiates the proceeding.

(b) A presumption of parentage under Section 204 cannot be overcome after the child is two or more years of age unless the court determines that:

(1) the presumed parent is not a genetic parent, never resided with the child, and never held out the child as the presumed parent's child; or

(2) the child has more than one presumed parent.

(c) Except as otherwise provided in Section 614, the following rules apply in a proceeding to adjudicate a presumed parent's parentage of a child if the woman who gave birth

to the child is the only other individual with a claim to parentage:

(1) If no party to the proceeding challenges the presumed parent's parentage of the child, the court shall adjudicate the presumed parent to be a parent of the child.

(2) If the presumed parent is identified as a genetic parent of the child under Section 506 and that identification is not successfully challenged under Section 506, the court shall adjudicate the presumed parent to be a parent of the child.

(3) If the presumed parent is not identified as a genetic parent of the child under Section 506 and if the presumed parent or the woman who gave birth to the child challenges the presumed parent's parentage of the child, the court shall adjudicate the parentage of the child in the best interest of the child based on the factors under Section 613(a) and (b).

(d) Except as otherwise provided in Section 614, and subject to other applicable limitations in this [part], in a proceeding to adjudicate a presumed parent's parentage of a child if another individual in addition to the woman who gave birth to the child asserts a claim to parentage under this [act], the court shall adjudicate parentage under Section 613.

SECTION 609. ADJUDICATING CLAIMS OF DE FACTO PARENTAGE OF CHILD.

(a) A proceeding to establish the parentage of a child under this section may be commenced only by an individual who:

(1) is alive when the proceeding is commenced; and

(2) claims to be a de facto parent of the child.

(b) An individual who claims to be a de facto parent of a child must commence the proceeding:

(1) before the child is 18 years of age; and

(2) while the child is alive.

(c) An individual who claims to be a de facto parent of a child must establish standing to maintain the proceeding under the following rules:

(1) The individual must file an initial verified pleading alleging specific facts that support the claim to parentage asserted under this section. The verified pleading must be served on all parents and legal guardians of the child and any other party to the proceeding.

(2) An adverse party, parent, or legal guardian may file a pleading in response to the pleadings filed under paragraph (1). A responsive pleading must be verified and must be served on parties to the proceeding.

(3) Unless the court finds that a hearing is necessary to determine disputed facts material to the issue of standing, the court shall determine based on the pleadings under paragraphs (1) and (2) whether the individual seeking to be adjudicated a parent of the child under this section has alleged facts sufficient to satisfy the requirements of paragraphs (1) through (7) of subsection (d). If the court holds a hearing under this subsection, the hearing must be held on an expedited basis.

(d) In a proceeding to adjudicate the parentage of an individual who claims to be a de facto parent of the child, if there is only one other individual who is a parent or has a claim to parentage of the child, the court shall adjudicate the individual who claims to be a de facto parent to be a parent of the child if the individual demonstrates by clear-and-convincing evidence that:

(1) the individual resided with the child as a regular member of the child's household for a significant period;

(2) the individual engaged in consistent caretaking of the child;

(3) the individual undertook full and permanent responsibilities of a parent of the

child without expectation of financial compensation;

(4) the individual held out the child as the individual's child;

(5) the individual established a bonded and dependent relationship with the child which is parental in nature;

(6) another parent of the child fostered or supported the bonded and dependent relationship required under paragraph (5); and

(7) continuing the relationship between the individual and the child is in the best interest of the child.

(e) In a proceeding to adjudicate the parentage of an individual who claims to be a de facto parent of the child, if there is more than one other individual who is a parent or has a claim to parentage of the child and the court determines that the requirements of paragraphs (1) through (7) of subsection (d) are met, the court shall adjudicate parentage under Section 613, subject to other applicable limitations in this [part].

**SECTION 610. ADJUDICATING PARENTAGE OF CHILD WITH
ACKNOWLEDGED PARENT.**

(a) If a child has an acknowledged parent, a proceeding to challenge the acknowledgment of parentage or denial of parentage brought by a signatory to the acknowledgment or denial is governed by Sections 309 and 310.

(b) If a child has an acknowledged parent, the following rules apply in a proceeding to challenge the acknowledgment of parentage or denial of parentage by an individual, other than the child, who has standing under Section 602 and was not a signatory to the acknowledgment or denial:

(1) The individual must commence a proceeding not later than two years after the

effective date of the acknowledgment.

(2) A court may permit the proceeding only if the court finds that permitting the proceeding is in the best interest of the child.

(3) If the court permits the proceeding, the court shall adjudicate parentage under Section 613.

SECTION 611. ADJUDICATING PARENTAGE OF CHILD WITH ADJUDICATED PARENT.

(a) If a child has an adjudicated parent, a proceeding to challenge the adjudication by an individual who was a party to the adjudication or received notice under Section 603 is governed by the rules governing a collateral attack on a judgment.

(b) If a child has an adjudicated parent, the following rules apply to a proceeding to challenge the adjudication of parentage by an individual, other than the child, who has standing under Section 602 and was not a party to the adjudication and did not receive notice under Section 603:

(1) The individual must commence the proceeding not later than two years after the effective date of the adjudication.

(2) A court may permit the proceeding only if the court finds that permitting the proceeding is in the best interest of the child.

(3) If the court permits the proceeding, the court shall adjudicate parentage under Section 613.

SECTION 612. ADJUDICATING PARENTAGE OF CHILD OF ASSISTED REPRODUCTION.

(a) An individual who is a parent under [Article] 7 or the woman who gave birth to the

child may bring a proceeding to adjudicate parentage. If the court finds that the individual is a parent under [Article] 7, the court shall adjudicate the individual to be a parent of the child.

(b) In a proceeding to adjudicate the individual's parentage of a child where another individual other than the woman who gave birth to the child is a parent under [Article] 7, the court shall adjudicate the individual's parentage of the child under Section 613.

SECTION 613. ADJUDICATING COMPETING CLAIMS OF PARENTAGE.

(a) Except as otherwise provided in Section 614, in a proceeding to adjudicate competing claims of, or challenges under Section 608(c), 610, or 611 to, parentage of a child, the court must adjudicate parentage in the best interest of the child, based on:

- (1) the age of the child;
- (2) the length of time during which each individual assumed the role of parent of the child;
- (3) the nature of the relationship between the child and each individual;
- (4) the harm to the child if the relationship between the child and each individual is not recognized;
- (5) the basis for each individual's claim to parentage under this [act]; and
- (6) other equitable factors arising from the disruption of the relationship between the child and each individual or the likelihood of other harm to the child.

(b) If an individual is challenging parentage based on the results of genetic testing, in addition to the factors listed in subsection (a), the court shall consider:

- (1) the facts surrounding the discovery that the individual might not be a genetic parent of the child;
- (2) the length of time between the time that the individual was placed on notice

that the individual might not be a genetic parent and the commencement of the proceeding.

Alternative A

(c) The court may not adjudicate a child to have more than two parents under this [act].

Alternative B

(c) The court may adjudicate a child to have more than two parents under this [act] if the court finds that failure to recognize more than two parents would be detrimental to the child. A finding of detriment to the child does not require a finding of unfitness of any parent or individual seeking an adjudication of parentage. In determining detriment to the child, the court shall consider all relevant factors, including the harm if the child is removed from a stable placement with an individual who has fulfilled the child’s physical needs and psychological needs for care and affection, and who has assumed the role for a substantial period.

End of Alternatives

Legislative Note: A state should enact Alternative A if the state does not want any child to have more than two legal parents. A state should enact Alternative B if the state wants to authorize a court in limited circumstances to establish more than two legal parents for a child.

SECTION 614. PRECLUDING ESTABLISHMENT OF PARENTAGE BY PERPETRATOR OF SEXUAL ASSAULT.

(a) In this section, “sexual assault” means [insert reference to state’s criminal rape statutes].

(b) In a proceeding in which a woman alleges that a man committed a sexual assault that resulted in the woman giving birth to a child, the woman may seek to preclude the man from establishing that he is a parent of the child.

(c) This section does not apply if:

(1) the man has previously been adjudicated to be a parent of the child; or

(2) after the birth of the child, the man established a bonded and dependent relationship with the child which is parental in nature.

(d) The woman must file a pleading making an allegation under subsection (b) not later than two years after the birth of the child, unless Section 309 or 607 applies, and may file the pleading only in a proceeding to establish parentage.

(e) An allegation under subsection (b) may be proved by either:

(1) evidence that the man was convicted of a sexual assault, or a comparable crime, in a jurisdiction, against the woman, and that the child was born not later than 300 days after the sexual assault; or

(2) clear-and-convincing evidence that the man committed sexual assault against the woman, and that the child was born not later than 300 days after the sexual assault.

(f) If the court finds that an allegation under subsection (b) has been proved and neither condition of subsection (c) is satisfied, the court shall enter an order:

(1) adjudicating that the man is not a parent of the child;

(2) requiring that the [agency maintaining birth records] amend the birth certificate as requested by the woman if the court determines that the amendment is in the best interest of the child; and

(3) requiring that the man pay child support, birth-related costs, or both, unless the woman requests otherwise and the court determines that granting the request is in the best interest of the child.

[PART] 3

HEARING AND ADJUDICATION

SECTION 615. TEMPORARY ORDER.

(a) In a proceeding under this [article], the court may issue a temporary order for support of a child if the order is consistent with law of this state other than this [act] and the individual ordered to pay support is:

- (1) a presumed parent of the child;
- (2) petitioning to be adjudicated a parent;
- (3) identified as a genetic parent through genetic testing under Section 506;
- (4) an alleged genetic parent who has declined to submit to genetic testing;
- (5) shown by clear-and-convincing evidence to be a parent of the child; or
- (6) a parent under this [act].

(b) A temporary order may include provisions for custody and visitation as provided by law of this state other than this [act].

SECTION 616. COMBINING PROCEEDINGS.

(a) Except as otherwise provided in subsection (b), the court may combine a proceeding to adjudicate parentage with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, dissolution, annulment,[legal separation or separate maintenance,] administration of an estate, or other appropriate proceeding.

(b) A [respondent] may not combine a proceeding described in subsection (a) with a proceeding to adjudicate parentage brought under [the Uniform Interstate Family Support Act].

SECTION 617. PROCEEDING BEFORE BIRTH. [Except as otherwise provided in [Article] 8, a][A] proceeding to adjudicate parentage may be commenced before the birth of the

child, and an order or judgment may be entered before birth, but enforcement of the order or judgment shall be stayed until the birth of the child.

Legislative Note: A state should include the bracketed phrase on Article 8 if the state wishes to recognize in statute surrogacy agreements and includes Article 8 in this act.

SECTION 618. CHILD AS PARTY; REPRESENTATION.

(a) A minor child is a permissive party but not a necessary party to a proceeding under this [article].

(b) The court shall appoint [an attorney, guardian ad litem, or similar person] to represent a child in a proceeding under this [article], if the court finds that the interests of the child are not adequately represented.

SECTION 619. COURT TO ADJUDICATE PARENTAGE. The court shall adjudicate parentage of a child without a jury.

SECTION 620. HEARING; INSPECTION OF RECORDS.

(a) On request of a party and for good cause, the court may close a proceeding under this [article] to the public.

(b) A final order in a proceeding under this [article] is available for public inspection. Other papers and records are available for public inspection only with the consent of the parties or on order of the court for good cause.

Legislative Note: A state should review the state's open records laws to determine if subsection (b) needs to be addressed.

SECTION 621. DISMISSAL FOR WANT OF PROSECUTION. The court may dismiss a proceeding under this [act] for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

SECTION 622. ORDER ADJUDICATING PARENTAGE.

(a) An order adjudicating parentage must identify the child in a manner provided by law of this state other than this [act].

(b) Except as otherwise provided in subsection (c), the court may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this [article]. Attorney's fees awarded under this subsection may be paid directly to the attorney, and the attorney may enforce the order in the attorney's own name.

(c) The court may not assess fees, costs, or expenses in a proceeding under this [article] against a child-support agency of this state or another state, except as provided by law of this state other than this [act].

(d) In a proceeding under this [article], a copy of a bill for genetic testing or prenatal and postnatal health care for the woman who gave birth to the child and the child, provided to the adverse party not later than 10 days before a hearing, is admissible to establish:

- (1) the amount of the charge billed; and
- (2) that the charge is reasonable and necessary.

(e) On request of a party and for good cause, the court in a proceeding under this [article] may order the name of the child changed. If the order of the court changing the name varies from the name on the birth certificate of the child, the court shall issue an order directing the [agency maintaining birth records] to issue an amended birth certificate.

SECTION 623. BINDING EFFECT OF DETERMINATION OF PARENTAGE.

(a) Except as otherwise provided in subsection (b):

- (1) the signatories to an acknowledgment of parentage or denial of parentage are

bound by the acknowledgment and denial as provided in [Article] 3; and

(2) the parties to an adjudication of parentage by a court acting under circumstances that satisfy the jurisdiction requirements of [cite to this state’s Section 201 of the Uniform Interstate Family Support Act] and the individuals who received notice of the proceeding are bound by the adjudication.

(b) A child is not bound by a determination of parentage under this [act] unless:

(1) the determination was based on an unrescinded acknowledgment of parentage and the acknowledgment is consistent with the results of genetic testing;

(2) the determination was based on a finding consistent with the results of genetic testing, and the consistency is declared in the determination or otherwise shown;

(3) the determination of parentage was made under [Article] 7[or 8]; or

(4) the child was a party or was represented by an [attorney, guardian ad litem, or similar person] in the proceeding.

(c) In a proceeding to dissolve or annul a marriage, the court is deemed to have made an adjudication of parentage of a child if the court acts under circumstances that satisfy the jurisdiction requirements of [cite to this state’s Section 201 of the Uniform Interstate Family Support Act] and the final order:

(1) expressly identifies the child as a “child of the marriage” or “issue of the marriage” or includes similar words indicating that both spouses are parents of the child; or

(2) provides for support of the child by a spouse unless that spouse’s parentage is disclaimed specifically in the order.

(d) Except as otherwise provided in subsection (b) and Section 611, a determination of parentage may be asserted as a defense in a subsequent proceeding seeking to adjudicate

parentage of an individual who was not a party to the earlier proceeding.

(e) A party to an adjudication of parentage may challenge the adjudication only under law of this state other than this [act] relating to appeal, vacation of judgment, or other judicial review.

Legislative Note: A state should include the bracketed reference to Article 8 if the state wishes to recognize in statute surrogacy agreements and includes Article 8 in this act.

[ARTICLE] 7

ASSISTED REPRODUCTION

SECTION 701. SCOPE OF [ARTICLE]. This [article] does not apply to the birth of a child conceived by sexual intercourse[or assisted reproduction under a surrogacy agreement under [Article] 8].

Legislative Note: A state should include the bracketed phrase concerning a surrogacy agreement if the state wishes to recognize in statute surrogacy agreements and includes Article 8 in this act.

SECTION 702. PARENTAL STATUS OF DONOR. A donor is not a parent of a child conceived by assisted reproduction.

SECTION 703. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION. An individual who consents under Section 704 to assisted reproduction by a woman with the intent to be a parent of a child conceived by assisted reproduction is a parent of the child.

SECTION 704. CONSENT TO ASSISTED REPRODUCTION.

(a) Except as otherwise provided in subsection (b), consent given under Section 703 shall be in a record signed by a woman giving birth to a child conceived by assisted reproduction and an individual who intends to be a parent of the child.

(b) Failure to consent in a record as required by subsection (a), before, on, or after birth of the child, does not preclude the court from finding consent to parentage if:

(1) the woman or the individual proves by clear-and-convincing evidence the

existence of an express agreement entered into before conception that the individual and the woman intended that they both would be parents of the child; or

(2) the woman and the individual for the first two years of the child's life, including periods of temporary absence, resided together in the same household with the child and both openly held out the child as the individual's child, unless the individual dies or becomes incapacitated before the child becomes two years of age or the child dies before the child becomes two years of age, in which case a court may find consent to parentage under this subsection if a party proves by clear-and-convincing evidence that the woman and the individual intended to reside together in the same household with the child and both intended that the individual would openly hold out the child as the individual's child, but that the individual was prevented from carrying out that intent by death or incapacity.

SECTION 705. LIMITATION ON SPOUSE'S DISPUTE OF PARENTAGE.

(a) Except as otherwise provided in subsection (b), an individual who, at the time of the child's birth, is the spouse of the woman who gave birth to the child by assisted reproduction may not challenge the individual's parentage of the child unless:

(1) not later than two years after the birth of the child, the individual commences a proceeding to adjudicate the individual's parentage of the child; and

(2) the court finds that the individual did not consent to the assisted reproduction, before, on, or after birth of the child, or that the individual withdrew consent under Section 707.

(b) A proceeding to adjudicate a spouse's parentage of a child born by assisted reproduction may be commenced at any time if the court determines:

(1) the spouse neither provided a gamete for, nor consented to, the assisted reproduction;

(2) the spouse and the woman who gave birth to the child have not cohabited since the probable time of assisted reproduction; and

(3) the spouse never openly held out the child as the spouse's child.

(c) This section applies to a spouse's dispute of parentage even if the spouses' marriage is declared invalid after assisted reproduction occurs.

SECTION 706. EFFECT OF DISSOLUTION OF MARRIAGE. If a marriage of a woman who gives birth to a child conceived by assisted reproduction is annulled or dissolved before transfer of gametes or embryos to the woman, a former spouse of the woman is not a parent of the child unless the former spouse consented in a record that the former spouse would be a parent of the child if assisted reproduction were to occur after a [divorce, dissolution, annulment[, legal separation or separate maintenance]], and the former spouse did not withdraw consent under Section 707.

SECTION 707. WITHDRAWAL OF CONSENT.

(a) An individual who consents to assisted reproduction under Section 704 may withdraw consent any time before transfer that results in a pregnancy by giving notice of the withdrawal of consent in a record to a woman giving birth to a child conceived by assisted reproduction and any clinic or health care provider facilitating the assisted reproduction. Failure to give notice to the clinic or health care provider does not affect a determination of parentage.

(b) An individual who withdraws consent under subsection (a) is not a parent of the child under Sections 703 and 704.

SECTION 708. PARENTAL STATUS OF DECEASED INDIVIDUAL.

(a) If an individual who intends to be a parent of a child conceived by assisted reproduction dies during the period between the transfer of a gamete or embryo and the birth of

the child, the individual's death does not preclude the establishment of the individual's parentage of the child if the individual otherwise would be a parent of the child under this [act].

(b) If an individual who consented in a record to assisted reproduction by the woman giving birth to the child dies before transfer of gametes or embryos, the deceased individual is not a parent of a child conceived by assisted reproduction unless:

(1) the deceased individual consented in a record that if assisted reproduction were to occur after the death of the deceased individual, the deceased individual would be a parent of the child; or

(2) the deceased individual's intent to be a parent of a child conceived by assisted reproduction after the individual's death is established by clear-and-convincing evidence.

(c) Notwithstanding subsection (b), an individual is a parent of a child conceived by assisted reproduction under subsection (b) only if:

(1) the embryo is in utero not later than [36] months after the individual's death;

or

(2) the child is born not later than [45] months after the individual's death.

[[ARTICLE] 8

SURROGACY AGREEMENTS

Legislative Note: A state should include Article 8 if the state wishes to recognize in statute surrogacy agreements.

[PART] 1

GENERAL REQUIREMENTS

SECTION 801. DEFINITIONS. In this [article]:

(1) "Genetic surrogate" means a woman who is not an intended parent and who agrees to become pregnant through assisted reproduction using her own gamete, under a genetic surrogacy

agreement as described in this [article].

(2) “Gestational surrogate” means a woman who is not an intended parent and who agrees to become pregnant through assisted reproduction using gametes that are not her own, under a gestational surrogacy agreement as described in this [article].

(3) “Surrogacy agreement” means an agreement between one or more intended parents and a woman who is not an intended parent in which the woman agrees to become pregnant through assisted reproduction and which provides that each intended parent is a parent of a child conceived under the agreement. Unless otherwise specified, the term refers to both a gestational surrogacy agreement and a genetic surrogacy agreement.

SECTION 802. ELIGIBILITY TO ENTER GESTATIONAL OR GENETIC SURROGACY AGREEMENT.

(a) To execute an agreement to act as a gestational or a genetic surrogate, a woman must:

(1) be at least 21 years of age;

(2) previously have given birth to at least one child;

(3) complete a medical evaluation related to the surrogacy arrangement by a licensed doctor or physician;

(4) complete a mental health consultation by a licensed mental health professional; and

(5) have independent legal representation of her choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

(b) To execute a surrogacy agreement, each intended parent, whether or not genetically related to the child, must:

- (1) be at least 21 years of age;
- (2) complete a medical evaluation related to the surrogacy arrangement by a licensed doctor or physician;
- (3) complete a mental health consultation by a licensed mental health professional; and
- (4) have independent legal representation of the intended parent's choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

SECTION 803. REQUIREMENTS OF GESTATIONAL OR GENETIC SURROGACY AGREEMENT: PROCESS. A surrogacy agreement must be executed in compliance with the following rules:

- (1) At least one party must be a resident of this state or, if no party is a resident of this state, at least one medical procedure under the agreement must occur in this state.
- (2) A surrogate and each intended parent must meet the requirements of Section 802.
- (3) Each intended parent, the surrogate, and the surrogate's spouse, if any, must be parties to the agreement.
- (4) The agreement must be in a record signed by each party listed in paragraph (3).
- (5) The surrogate and each intended parent must acknowledge in a record receipt of a copy of the agreement.
- (6) The signature of each party to the agreement must be attested by a notarial officer or witnessed by at least one individual.
- (7) The surrogate and the intended parent or parents must be represented by independent legal representation throughout the surrogacy arrangement regarding the terms of the surrogacy

agreement and the potential legal consequences of the agreement, and each counsel must be identified in the surrogacy agreement.

(8) Each intended parent must pay for independent legal representation for the surrogate.

(9) The agreement must be executed before a medical procedure occurs related to the surrogacy agreement, other than the medical evaluation required by Section 802.

**SECTION 804. REQUIREMENTS OF GESTATIONAL OR GENETIC
SURROGACY AGREEMENT: CONTENT.**

(a) The content of a surrogacy agreement must comply with the following requirements:

(1) A surrogate agrees to attempt to become pregnant by means of assisted reproduction.

(2) Except as otherwise provided in Sections 811, 814, and 815, the surrogate and the surrogate's spouse or former spouse, if any, have no claim to parentage of a child conceived by assisted reproduction under the agreement.

(3) The surrogate's spouse, if any, must acknowledge and agree to abide by the obligations imposed on the surrogate by the agreement.

(4) Except as otherwise provided in Sections 811, 814, and 815, the intended parent or, if there are two intended parents, each one jointly and severally, immediately on birth will be the exclusive parent or parents of the child regardless of number, gender, or mental or physical condition of the child.

(5) Except as otherwise provided in Sections 811, 814, and 815, the intended parent or, if there are two intended parents, each one jointly and severally, immediately on birth will assume responsibility for the financial support of the child regardless of number, gender, or mental or physical condition of the child.

(6) The agreement must include information disclosing how each intended parent will cover the surrogacy-related expenses of the surrogate and the medical expenses of the child. If health-care coverage is used to cover the medical expenses, the disclosure must include a summary of the health-care policy provisions related to coverage for surrogate pregnancy, including any possible liability of the surrogate, third-party liability liens, other insurance coverage, and any notice requirements that could affect coverage or liability of the surrogate. Unless the agreement expressly provides otherwise, the review and disclosure do not constitute legal advice. If the extent of coverage is uncertain, a statement of that fact is sufficient to meet the requirements of this section.

(7) The agreement must permit the surrogate to make all health and welfare decisions regarding herself and her pregnancy. This [act] does not enlarge or diminish the surrogate's right to terminate her pregnancy.

(8) The agreement must include information about each party's right under this [article] to terminate the surrogacy agreement.

(b) A surrogacy agreement may provide for:

(1) payment of consideration and reasonable expenses; and

(2) reimbursement of specific expenses if the agreement is terminated under this [article].

(c) A right created under a surrogacy agreement is not assignable and there is no third party beneficiary of the agreement other than the child.

SECTION 805. SURROGACY AGREEMENT: EFFECT OF SUBSEQUENT CHANGE OF MARITAL STATUS.

(a) Unless a surrogacy agreement expressly provides otherwise:

(1) the marriage of a surrogate after the agreement has been signed by all parties does not affect the validity of the agreement, her spouse's consent to the agreement is not required, and her spouse is not a presumed parent of a child conceived by assisted reproduction under the agreement; and

(2) the [divorce, dissolution, annulment[, legal separation, or separate maintenance]] of the surrogate after the agreement has been signed by all parties does not affect the validity of the agreement.

(b) Unless a surrogacy agreement expressly provides otherwise:

(1) the marriage of an intended parent after the agreement has been signed by all parties does not affect the validity of a surrogacy agreement, the consent of the spouse of the intended parent is not required, and the spouse of the intended parent is not a parent of a child conceived by assisted reproduction under the agreement based on the agreement; and

(2) the [divorce, dissolution, annulment[, legal separation, or separate maintenance]] of an intended parent after the agreement has been signed by all parties does not affect the validity of the agreement, and except as otherwise provided in Section 814, the intended parents are the parents of the child.

SECTION 806. INSPECTION OF DOCUMENTS. Unless the court orders otherwise, a petition and other documents related to a surrogacy agreement filed with the clerk of the court under this [part] are not open to inspection by any individual other than the parties to the proceeding, a child conceived by assisted reproduction under the agreement, their attorneys, and [the relevant state agency]. A judge of the [court having jurisdiction] may not authorize an individual to inspect a document related to the agreement, except if required by exigent circumstances. The individual seeking to inspect the documents may be required to pay the

expense of preparing copies of the documents to be inspected.

Legislative Note: A state should review the state's open records law to determine if this section needs to be included.

SECTION 807. EXCLUSIVE, CONTINUING JURISDICTION. During the period from the execution of a surrogacy agreement until 90 days after the birth of a child conceived by assisted reproduction under the agreement, the court of this state conducting a proceeding under this [act] has exclusive, continuing jurisdiction over all matters arising out of the agreement. This section does not give the court jurisdiction over a child-custody or child-support proceeding if jurisdiction is not otherwise authorized by law of this state other than this [act].

[PART] 2

SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENT

SECTION 808. TERMINATION OF GESTATIONAL SURROGACY AGREEMENT.

(a) A party to a gestational surrogacy agreement may terminate the agreement at any time before an embryo transfer by giving notice of termination in a record to all other parties. If an embryo transfer does not result in a pregnancy, a party may withdraw consent any time before a subsequent embryo transfer.

(b) Unless a gestational surrogacy agreement provides otherwise, on proper termination of the agreement under subsection (a), the parties are released from the obligations recited in the agreement except that each intended parent remains responsible for expenses that are reimbursable under the agreement and incurred by the gestational surrogate through the date of termination.

(c) Except in a case involving fraud, neither a surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a penalty, or liquidated

damages, for terminating the agreement under this section.

SECTION 809. PARENTAGE UNDER GESTATIONAL SURROGACY AGREEMENT.

(a) Except as otherwise provided in subsection (c) and Section 812, on birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, each intended parent is, by operation of law, a parent of the child.

(b) Except as otherwise provided in subsection (c) and Section 812, neither a gestational surrogate, nor the surrogate's spouse or former spouse, if any, is a parent of the child.

(c) If a child is alleged to be a genetic child of the woman who agreed to be a gestational surrogate, the court shall order genetic testing of the child. If the child is a genetic child of the woman who agreed to be a gestational surrogate, parentage must be determined based on [Articles] 1 through 6.

(d) Except as otherwise provided in subsection (c) and Section 812, if, due to a clinical or laboratory error, a child conceived by assisted reproduction under a gestational surrogacy agreement is not genetically related to the intended parent or parents, or if due to a clinical or laboratory error the child is not genetically related to a donor who donated to the intended parent or parents, each intended parent, and not the gestational surrogate and the surrogate's spouse or former spouse, if any, is a parent of the child, subject to other claims of parentage.

SECTION 810. GESTATIONAL SURROGACY AGREEMENT: PARENTAGE OF DECEASED INTENDED PARENT.

(a) Except as otherwise provided in Section 812, on birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, each intended parent is, by operation of law, a parent of the child, notwithstanding that an intended parent died during the period between

the transfer of a gamete or embryo and the birth of the child.

(b) Except as otherwise provided in Section 812, an intended parent is not a parent of the child if the intended parent dies before the transfer of a gamete or embryo unless:

(1) the agreement provides otherwise; and

(2) the transfer of a gamete or embryo occurs not later than [36] months after the death of the intended parent, or birth of the child occurs not later than [45] months after the death of the intended parent.

SECTION 811. GESTATIONAL SURROGACY AGREEMENT: ORDER OF PARENTAGE.

(a) Except as otherwise provided in Sections 809(c) and 812, before or after the birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, a party to the agreement may commence a proceeding in the [appropriate court] for an order or judgment:

(1) declaring that each intended parent is the parent of the child and ordering that parental rights and duties vest immediately on the birth of the child exclusively in each intended parent;

(2) declaring that the gestational surrogate and the surrogate's spouse or former spouse, if any, are not the parents of the child;

(3) designating the content of the birth record in accordance with [cite applicable law of this state other than this [act]] and directing the [agency maintaining birth records] to designate each intended parent as a parent of the child;

(4) declaring that the court record is not open to inspection except as authorized under Section 806 to protect the privacy of the child and the parties;

(5) if necessary, that the child be surrendered to the intended parent or parents;

and

(6) for other relief the court determines necessary and proper.

(b) The court may issue an order or judgment described in subsection (a) before the birth of the child. The court shall stay enforcement of that order or judgment until the birth of the child.

(c) Neither this state nor the [agency maintaining birth records] is a necessary party to a proceeding under subsection (a).

SECTION 812. EFFECT OF GESTATIONAL SURROGACY AGREEMENT.

(a) A gestational surrogacy agreement that complies with Sections 802, 803, and 804 is enforceable.

(b) If a child was conceived by assisted reproduction under a gestational surrogacy agreement that does not comply with Sections 802, 803, and 804, the court must determine the respective rights and duties of the parties to the agreement consistent with the intent of the parties at the time of execution of the agreement. Each party to the agreement and any individual who was a spouse of a party to the agreement at the time of the execution of the agreement has standing to maintain a proceeding to adjudicate issues related to the enforcement of the agreement.

(c) Except as expressly provided in a gestational surrogacy agreement and subsections (d) and (e), if the agreement is breached by the gestational surrogate or one or more intended parents, the non-breaching party is entitled to the remedies available at law or in equity.

(d) Specific performance is not a remedy available for breach by a gestational surrogate of a provision in the agreement that the gestational surrogate be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures.

(e) Except as otherwise provided in subsection (d), if the intended parents are determined to be the legal parents of the child, specific performance is a remedy available for:

(1) breach of the agreement by a gestational surrogate which prevents an intended parent from exercising immediately on birth of the child the full rights of parentage; or

(2) breach by an intended parent which prevents the intended parent's acceptance immediately on birth of a child conceived by assisted reproduction under the agreement of the duties of parentage.

[PART] 3

SPECIAL RULES FOR GENETIC SURROGACY AGREEMENT

SECTION 813. REQUIREMENTS TO VALIDATE GENETIC SURROGACY AGREEMENT.

(a) To be enforceable, a genetic surrogacy agreement must be validated by [the appropriate] court. The proceeding to validate the agreement must be commenced before assisted reproduction related to the surrogacy agreement.

(b) The court shall issue an order validating a genetic surrogacy agreement if the court finds that:

(1) the requirements of Sections 802, 803, and 804 are satisfied; and

(2) all parties have entered into the agreement voluntarily and understand its terms.

(c) An individual who terminates a genetic surrogacy agreement under Section 814 shall file notice of the termination with the court. On receipt of the notice, the court shall vacate the order under subsection (b). An individual who does not notify the court of the termination of the agreement is subject to sanctions.

SECTION 814. TERMINATION OF GENETIC SURROGACY AGREEMENT.

(a) A party to a genetic surrogacy agreement may terminate the agreement as follows:

(1) An intended parent who is a party to the agreement may terminate the agreement at any time before a gamete or embryo transfer by giving notice of termination in a record to all other parties. If a gamete or embryo transfer does not result in a pregnancy, a party may withdraw consent any time before a subsequent gamete or embryo transfer. The notice of termination must be attested by a notarial officer or witnessed by at least one individual.

(2) A genetic surrogate who is a party to the agreement may withdraw consent to the agreement any time before 72 hours after the birth of a child conceived by assisted reproduction under the agreement. To withdraw consent, the genetic surrogate must execute a notice of termination in a record of the surrogate's intent to terminate the agreement. The notice of termination must be attested by a notarial officer or witnessed by at least one individual and delivered to each intended parent any time before 72 hours after the birth of the child.

(b) On termination of the genetic surrogacy agreement under subsection (a), the parties are released from all obligations under the agreement except that each intended parent remains responsible for all expenses incurred by the surrogate through the date of termination which are reimbursable under the agreement. Unless the agreement provides otherwise, the surrogate is not entitled to any non-expense related compensation paid for serving as a surrogate.

(c) Except in a case involving fraud, neither a genetic surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a penalty, or liquidated damages, for terminating a genetic surrogacy agreement as provided in this section.

SECTION 815. PARENTAGE UNDER VALIDATED GENETIC SURROGACY AGREEMENT.

(a) Unless a genetic surrogate exercises the right under Section 814 to terminate a genetic surrogacy agreement, each intended parent is the parent of a child conceived by assisted reproduction under an agreement validated under Section 813.

(b) Unless a genetic surrogate exercises the right under Section 814 to terminate the genetic surrogacy agreement, on proof of a court order issued under Section 813 validating the agreement, the court shall make an order:

(1) declaring that each intended parent is the parent of a child conceived by assisted reproduction under the agreement and ordering that parental rights and duties vest exclusively in the intended parent or parents;

(2) declaring that the gestational surrogate and the surrogate's spouse or former spouse, if any, are not the parents of the child;

(3) designating the contents of the birth certificate in accordance with [cite to applicable law of the state other than this [act]] and directing {the [agency maintaining birth records] to designate each intended parent as a parent of the child;

(4) declaring that the court record is not open to inspection except as authorized under Section 806 to protect the privacy of the child and the parties;

(5) if necessary, that the child be surrendered to the intended parent or parents;
and

(6) for other relief the court determines necessary and proper.

(c) If a genetic surrogate withdraws consent under Section 814(a)(2), parentage of the child must be determined under [Articles] 1 through 6 of this [act].

(d) If a child born to a genetic surrogate is alleged not to have been conceived by assisted reproduction, the court shall order genetic testing to determine the genetic parentage of the child. If the child was not conceived by assisted reproduction, parentage must be determined under [Articles] 1 through 6 of this [act]. Unless the genetic surrogacy agreement provides otherwise, the surrogate is not entitled to any non-expense related compensation paid for serving as a surrogate if the child was not conceived by assisted reproduction.

(e) Unless a genetic surrogate exercises the right under Section 814 to terminate the agreement, if an intended parent fails to file notice required under Section 814(a), the genetic surrogate or [the appropriate state agency] may file notice with the court not later than 60 days after the birth of a child conceived by assisted reproduction under the agreement that the child has been born to the genetic surrogate. Unless the genetic surrogate has properly exercised the right to withdraw consent to the agreement under Section 814, on proof of a court order issued under Section 813 validating the agreement, the court shall order that each intended parent is a parent of the child.

SECTION 816. EFFECT OF NONVALIDATED GENETIC SURROGACY AGREEMENT.

(a) A genetic surrogacy agreement, whether or not in a record, that is not validated under Section 813 is enforceable only to the extent provided in this section and Section 818.

(b) If all parties agree, a court may validate a genetic surrogacy agreement after assisted reproduction has occurred but before the birth of a child conceived by assisted reproduction under the agreement.

(c) If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under Section 813 is born and the genetic surrogate withdraws her consent to the

agreement before 72 hours after the birth of the child consistent with Section 814(a)(2), the court must adjudicate the parentage of the child based on [Articles] 1 through 6.

(d) If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under Section 813 is born and a genetic surrogate does not withdraw her consent to the agreement before 72 hours after the birth of the child consistent with Section 814(a)(2), the genetic surrogate is not automatically a parent and the court shall adjudicate parentage of the child based on the best interest of the child, taking into account the factors in Section 613(a) and the intent of the parties at the time of the execution of the agreement.

(e) All of the parties to the agreement have standing to maintain a proceeding to adjudicate parentage under this section.

SECTION 817. GENETIC SURROGACY AGREEMENT: PARENTAGE OF A DECEASED INTENDED PARENT.

(a) Except as otherwise provided in Sections 815 and 816, on birth of a child conceived by assisted reproduction under a genetic surrogacy agreement, each intended parent is, by operation of law, a parent of the child, notwithstanding the death of an intended parent during the period between the transfer of a gamete or embryo and the birth of the child.

(b) Except as otherwise provided in Sections 815 and 816, an intended parent is not a parent of a child conceived by assisted reproduction under a genetic surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

(1) the agreement provides otherwise; and

(2) the transfer of the gamete or embryo occurs not later than [36] months after the death of the intended parent, or birth of the child occurs not later than [45] months after the death of the intended parent.

SECTION 818. BREACH OF GENETIC SURROGACY AGREEMENT.

(a) Subject to Section 814(b), if a genetic surrogacy agreement is breached by a genetic surrogate or one or more intended parents, the non-breaching party is entitled to the remedies available at law or in equity.

(b) Specific performance is not a remedy available for breach by a genetic surrogate of a requirement of a validated or non-validated genetic surrogacy agreement that the surrogate be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures.

(c) Except as otherwise provided in subsection (b), specific performance is a remedy available for:

(1) breach of a validated genetic surrogacy agreement by a genetic surrogate of a requirement which prevents an intended parent from exercising the full rights of parentage 72 hours after the birth of the child; or

(2) breach by an intended parent which prevents the intended parent's acceptance of duties of parentage 72 hours after the birth of the child.]

[ARTICLE] 9

INFORMATION ABOUT DONOR

SECTION 901. DEFINITIONS. In this [article]:

(1) "Identifying information" means:

(A) the full name of a donor;

(B) the date of birth of the donor; and

(C) the permanent and, if different, current address of the donor at the time

of the donation.

(2) "Medical history" means information regarding any:

- (A) present illness of a donor;
- (B) past illness of the donor; and
- (C) social, genetic, and family history pertaining to the health of the

donor.

SECTION 902. APPLICABILITY. This [article] applies only to gametes that are collected after [the effective date of this [act]].

SECTION 903. COLLECTION OF INFORMATION. A gamete bank or fertility clinic licensed in this state shall collect from a donor the donor's identifying information and medical history at the time of the donation. If the gametes of a donor are sent to another gamete bank or fertility clinic, a sending gamete bank or fertility clinic also shall forward any identifying information and medical history of the donor, including the donor's signed declaration under Section 904 regarding identity disclosure, to a receiving gamete bank or fertility clinic. A receiving gamete bank or fertility clinic licensed in this state must collect and retain the information about the donor and the sending gamete bank or fertility clinic.

SECTION 904. DECLARATION REGARDING IDENTITY DISCLOSURE.

(a) A gamete bank or fertility clinic licensed in this state that collects gametes from a donor shall:

(1) provide the donor with information in a record about the donor's choice regarding identity disclosure; and

(2) obtain a declaration from the donor regarding identity disclosure.

(b) The gamete bank or fertility clinic shall give the donor the choice to sign a declaration, attested by a notarial officer or witnessed by at least one individual, that either:

(1) states that the donor agrees to disclose the donor's identity to a child

conceived by assisted reproduction with the donor's gametes on request once the child becomes 18 years of age; or

(2) states that the donor presently does not agree to disclose the donor's identity to the child.

(c) The gamete bank or fertility clinic shall permit a donor who has signed a declaration under subsection (b)(2) to withdraw the declaration by signing a declaration under subsection (b)(1) at any time.

SECTION 905. DISCLOSURE OF IDENTIFYING INFORMATION AND MEDICAL HISTORY.

(a) On request of a child conceived by assisted reproduction who is at least 18 years of age, a gamete bank or fertility clinic licensed in this state which collected, stored, or released for use the gametes used in the assisted reproduction shall make a good-faith effort to provide the child with identifying information of the donor who provided the gametes, unless the donor signed and did not withdraw a declaration under Section 904(b)(2). If the donor signed and did not withdraw the declaration, the gamete bank or fertility clinic must make a good-faith effort to notify the donor, who may elect to withdraw the donor's declaration under Section 904(c).

(b) Regardless of whether a donor signed a declaration under Section 904(b)(2), on request by a child conceived by assisted reproduction who is at least 18 years of age, or, if the child is a minor, by a parent or guardian of the child, the gamete bank or fertility clinic shall make a good faith effort to provide the child or, if the child is a minor, the parent or guardian of the child, access to nonidentifying medical history of the donor.

SECTION 906. RECORDKEEPING. A gamete bank or fertility clinic licensed in this state which collects, stores, or releases gametes for use in assisted reproduction shall collect and

maintain identifying information and medical history about each gamete donor. The gamete bank or fertility clinic shall collect and maintain records of gamete screening and testing and comply with reporting requirements, in accordance with federal law and applicable law of this state other than this [act].

[ARTICLE] 10

MISCELLANEOUS PROVISIONS

SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1002. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1003. TRANSITIONAL PROVISION. This [act] applies to a pending proceeding to adjudicate parentage commenced before [insert the effective date of this [act]] for issues on which a judgment has not been entered.

[SECTION 1004. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

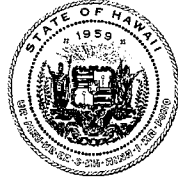
Legislative Note: Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

SECTION 1005. REPEALS; CONFORMING AMENDMENTS. The following are repealed:

- (1) [Uniform Act on Paternity (1960)];
- (2) [Uniform Parentage Act (1973)];
- (3) [Uniform Putative and Unknown Fathers Act (1988)];
- (4) [Uniform Status of Children of Assisted Conception Act (1988)];
- (5) [Uniform Parentage Act (2002)]; and
- (6) [other inconsistent statutes].

SECTION 1006. EFFECTIVE DATE. This [act] takes effect on

DAVID Y. IGE
GOVERNOR



CLARE E. CONNORS
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

DANA O. VIOLA
FIRST DEPUTY ATTORNEY GENERAL

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Honorable Jessi L. K. Hall
Judge, District Family Court
Family Court of the First Circuit
4675 Kapolei Parkway
Kapolei, Hawaii 96707

RE: Request for comments on proposal to amend Hawaii's Uniform Parentage Act.

Thank you for sharing with us the Judiciary's anticipated legislative submission regarding the Uniform Parentage Act (UPA), proposed to be codified as chapter 584A, Hawaii Revised Statutes (HRS) (proposed UPA). The amendments the Judiciary seeks are quite extensive and involved. Thank you for the opportunity to review and comment on this advance copy.¹

This memo includes comments from the Department of the Attorney General's Child Support Enforcement Agency (CSEA) and the Health Division.

Generally, it appears that the proposed UPA would modernize traditional paternity establishment to include gender neutral parentage establishment and expand parental relationships and roles in our State, primarily based on the Uniform Parentage Act (2017) which was approved by the National Conference of Commissioners on Uniform State Laws in July 2017. The proposed UPA includes gender neutral terminology; expands the voluntary establishment of paternity (VEP) process to include assisted reproduction cases; and defines more specifically how parentage can be established and by whom. It would expand the classic biological mother/father cases to include assisted reproduction and surrogacy cases.

Chapter 584, HRS, is the only Hawaii law that addresses non-marital parentage establishment, and it is applied to all conception situations: biological paternity, assisted reproduction, and surrogacy. It also addresses presumptions of parentage, including those from marriage. Parentage based on adoption is addressed elsewhere (chapter 578, HRS). Chapter 584 has no specific provisions that explicitly govern assisted reproduction or surrogacy. Instead, chapter 584 provides broad guidelines and some factors for the court to consider in addressing all

¹ Our comments are based primarily on the draft of the proposed UPA that Judge Hall submitted to the Health Division of our Department on September 14, 2020. However, we have also considered two additional similar drafts that Judge Hall provided to the Child Support Enforcement Agency in September.

parentage situations. The proposed UPA attempts to specifically address how parentage may be established given the three major conception scenarios: sexual intercourse; assisted reproduction; and surrogacy. And it also attempts to address presumptions of parentage that do not arise from biological relationships or heterosexual marriage.

The proposed UPA introduces new assisted reproduction and surrogacy laws to the state of Hawaii which raise some concerns as stated in our Report on Surrogacy and Gestational Carrier Agreements submitted to the 2018 Legislature. Please see attached report. To adequately vet those concerns and attempt to answer some questions raised by the various conception scenarios, we continue to recommend the Legislature consider requesting that a two-year working group be convened under the direction of the Attorney General or the Attorney General's designee, to consider whether to amend Hawaii laws to include regulation and protection of rights of all parties involved in surrogacy arrangements and, if so, the best way to do so. The group could include community partners from the Department of Health, the Department of Human Services, the Judiciary, the bar, and advocates or representatives of the affected groups.

In consideration of the possibility that the Judiciary will want to propose legislation for the 2021 legislative session, without the convening of a working group, we have the following general comments and suggestions regarding the proposed UPA and other drafts we have received from the Judiciary. The suggested wording is recommended to assist the Judiciary in making its proposal internally consistent and to include all aspects of parental relationships. Please note that we have not had the benefit of the comments and viewpoints of others in the community.

Part I - Jurisdiction.

1. HRS §584A-1 – Definitions.

a. For clarity and ease of interpretation, consider consolidating all definitions throughout the proposed UPA in HRS §584A-1. For example, the definitions in part VI, part VIII, and part IX should be moved to HRS §584A-1.

b. In addition, the following terms should be added to or amended to the definitions section:

"Acknowledged parent": refers to Part II which relates to the Parent-Child Relationship; should this also refer to part III, Voluntary Establishment of Parentage?

"Alleged genetic parent": The terms "Genetic parent" and "Possible genetic parent" should be distinguished and defined.

"Assisted reproduction": The list should be non-exclusive to accommodate future scientific breakthroughs, by adding, "but is not limited to:"

"Donor": It is unclear what "whether or not for consideration" means and we suggest this be defined. Examples should be provided to identify situations where consideration (payment) is allowed. The word "individual" under section (A) has a spelling error.

"Transfer": We suggest that a term be provided for the "the individual who will give birth to the child."

"Witnessed": The wording is awkward and should be clarified for ease of interpretation.

2. HRS §584A-2 – Jurisdiction; venue.

a. HRS §584A-2(a) includes a reference to 583A, Uniform Child-Custody Jurisdiction and Enforcement Act. Consider adding a reference to chapter 576B, HRS, the Uniform Interstate Family Support Act (UIFSA).

SUGGESTED EDIT HRS §584A-2(a)

Jurisdiction; venue. (a) Without limiting the jurisdiction of any other court, the family court has jurisdiction over an action brought under this chapter, chapter 583A or chapter 576B. The action may be joined with an action for divorce, annulment, separate maintenance, or support.

b. The Uniform Parentage Act (2017) added UIFSA section 201 regarding personal jurisdiction. Consider including this in the proposed UPA.

SUGGESTED EDIT HRS §584A-2(b)

A court of this state with jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the [guardian or conservator] of the individual, if the conditions prescribed in section 576B-201 are satisfied.

c. Subsection (b) refers to "Assisted reproductive technology" and "assisted reproductive technology agreements." We suggest broadly defining those terms and including them in HRS §584A-1. Also, the proposal as written may preclude jurisdiction over a person in situations where technology is not used, there is no consent, or individuals use their own creative ways to conceive.

d. Subsection (c) -- consider amending this to reflect the wording in HRS §584-8(c).

e. "Paternity" should be replaced with "parentage" everywhere it appears throughout the proposed UPA. Paternity should be replaced in (d) of this section.

SUGGESTED EDIT HRS §584A-2(a) and (b)

Jurisdiction; venue. (a) Without limiting the jurisdiction of any other court, the family court has jurisdiction over an action brought under this chapter, chapter 583A or chapter 576B. The action may be joined with an action for divorce, annulment, separate maintenance, or support.

(b) A individual who has sexual intercourse, undergoes or consents to assisted reproductive technology, or consents to assisted reproductive technology agreements in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this chapter with respect to a child who may have been conceived by that act of intercourse or assisted reproductive technology, regardless of where the child is born. A court of this state with jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or guardian or conservator of the individual, if the conditions prescribed in section 576B-201 of the Uniform Interstate Family Support Act are satisfied. In addition to any other method provided by statute, personal jurisdiction over a resident and non-resident individual may be acquired by personal service within or outside this State.

(c) In addition to any other method of service provided by statute or court rule, if the respondent is not found within the circuit, [~~the court may authorize service~~] service may be effectuated by registered or certified mail, with request for a return receipt and direction to deliver to addressee only. The return receipt signed by the respondent shall be prima facie evidence that the respondent accepted delivery of the complaint and summons on the date set forth on the receipt. For service effectuated by registered or certified mail, an electronic copy or facsimile of the signature of the served individual or certified mailers provided by the United States Postal Service shall constitute valid proof of service on the individual. Actual receipt by the respondent of the complaint and summons sent by registered or certified mail shall be the equivalent to personal service on the respondent by an authorized process server as of the date of the receipt.

f. HRS §584A-3 – Parentage determinations from other states and territories.

Section 584A-3 – Consider clarifying to make clear that where only a determination of parentage has been made in another state, it does not preclude a court in this state from addressing other related issues.

SUGGESTED EDIT HRS §584A-3

Parentage determinations from other states and territories. Parentage determinations from other states and territories, whether established through voluntary acknowledgment or through administrative or judicial processes, shall be treated the same as a parentage adjudication in this State. A determination addressing parentage only in another State does not preclude a court in this State from addressing other related issues.

3. HRS §584A-4 - Who may bring action; when action may be brought; process, warrant, bond etc.

- a. Correct typographical and grammatical errors.

SUGGESTED EDIT HRS §584A-4(a)

(a) A child, or guardian ad litem of the child, [~~and~~] an individual who is the child's parent under this chapter, [~~and~~] an individual whose parentage of the child is to be adjudicated . . .

- b. ", etc." should be removed from the title.

- c. Subsection (a)(4) states "paternity," but should be replaced with "parentage."

Part II - Parent-Child Relationship.

4. HRS §584A-10 - Presumption of parentage.

- a. Consider clarifying subsection (a)(1)(A) by adding "regardless of the sex of the individuals."
- b. Consider adding a subsection (b) that requires a finding of "clear and convincing evidence to rebut a presumption of paternity" in order to establish a legal standard of proof. This would be consistent with existing law, HRS §584-4(b).

Part III – Voluntary Establishment of Parentage.

5. HRS §584A-15 - Execution of Acknowledgment of Parentage.

- a. Subsection (a)(2)(A) - The phrase "or has a presumed parent whose full name is stated" could lead to confusion by birthing clerks and clerks at the Department of Health who record birth certificates, especially if there are 2 or

more presumed parents. This process could raise judgment calls that would be better suited for a legal determination.

b. Subsection (a)(3) – This subsection bars any challenge to a signed acknowledgment, "two years after the effective date of the acknowledgment." Consider adding wording such as "unless good cause is shown" to avoid a complete time bar to allow for extraordinary circumstances.

SUGGESTED EDIT HRS §584A-15(a)

Execution of Acknowledgment of Parentage. (a) An acknowledgment of parentage under section 584A-8 must:

- (1) be in a record signed by the individual who gave birth to the child and by the individual seeking to establish a parent-child relationship, and the signatures must be attested by a notarial officer or witnessed;
- (2) state that the child whose parentage is being acknowledged:
 - (A) does not have a presumed parent other than the individual seeking to establish the parent-child relationship [~~er has a presumed parent whose full name is stated~~] and
 - (B) does not have another acknowledged parent, adjudicated parent, or individual who is a parent of the child under Part VII or VIII other than the individual who gave birth to the child; and
- (3) state that the signatories understand that the acknowledgment is the equivalent of an adjudication of parentage of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred two years after the effective date of the acknowledgment, unless good cause is shown.

c. Subsection (b)(1) – This subsection states, "unless a denial of parentage by the presumed parent in a signed record is filed with the department of health." There is no current system that authorizes a denial of parentage to be filed at the Department of Health, and this would appear to create an additional responsibility for the Department of Health. It is unclear how this information would be provided to parents or whether it would be confidential. This section would impact the agencies that rely on the voluntary establishments of paternity for performance of their duties. There is currently no statutory provision that authorizes this filing, and it would be helpful to allow the impacted agencies to develop a new system.

There is a typographical error in the first line: the word "of" is missing between the words "time" and "signing."

SUGGESTED EDIT HRS §584A-15(b)

- (b) An acknowledgment of parentage is void if, at the time of signing:
- (1) an individual other than the individual seeking to establish parentage is a presumed parent [~~;- unless a denial of parentage by the presumed parent in a signed record is filed with the department of health;~~] or
 - (2) an individual, other than the individual who gave birth to the child or the individual seeking to establish parentage, is an acknowledged or adjudicated parent or a parent under Part VII or VIII.

6. HRS §584A-16 - Expedited process of parentage.

a. Subsection (a): In anticipation of a need to enact legislation to allow for electronic filing and an electronic version of an acknowledgment of parentage, it may be prudent to include wording such as "or electronic version as allowed by statute."

"Immediately" should be quantified.

b. Subsection (a) also states: "Each facility shall send to the department of health the original acknowledgment of parentage containing the social security numbers, if available, of both signatories, with the information required by the department of health so that the birth certificate issued includes the name of signatories, which shall be promptly recorded by the department of health." The DOH also collects statistical data and date of birth, so consider writing the law to include other statistical data

c. Subsection (b) - There are typographical errors in subsection (a), sixth line, the word "the" should be added between the words "by" and "individual." The second to the last line in subsection (a) should include an "s" after the word "name" and the word "the" between the words "of" and "signatories."

d. Subsection (d) Adding a definition of birthing hospital should be considered. "Birthing hospital" means any hospital with licensed obstetric services, or any licensed birthing center associated with a hospital. (Originally from HRS §584-3.5). This definition should be moved to HRS §584A-1.

e. Subsection (h) For clarity, Subsection (h) should also include the current section 584-4(a)(6) wording: "A voluntary, written acknowledgment of parentage signed by the individuals and filed with the department of health shall be the basis for establishing and enforcing a support obligation through a judicial or administrative proceeding." HRS §584-4(a)(6).

f. In addition to the list of procedural requirements in HRS §584A-16(a), federal regulation 45 CFR 303.5(g)(2)(i)(D) requires "[t]he opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment." The other requirements from 45 CFR 303.5(g)(2)(i) are already included in HRS §584A-16, and this requirement should also be considered for the proposed UPA.

SUGGESTED EDIT HRS §584A-16

Expedited process of parentage. (a) To expedite the establishment of parentage, each public and private birthing hospital or center and the department of health shall provide parents the opportunity to voluntarily acknowledge the parentage of a child during the period immediately prior to or following the child's birth. The voluntary acknowledgment of parentage shall be in writing and shall consist of a single form signed under oath by the individual who gave birth to the child and the individual seeking to establish a parent-child relationship and signed by a witness. The voluntary acknowledgment of parentage form shall include the social security number of each signatory. Prior to the signing of the voluntary acknowledgment of parentage form, designated staff members of such facilities shall provide to both the individual who gave birth to the child and the other signatory, if either are present at the facility:

- (1) Written materials regarding parentage establishment;
- (2) Forms necessary to voluntarily acknowledge parentage;
- (3) Oral, video, or audio, and written descriptions of the alternatives to the legal consequences of, and the rights and responsibilities of acknowledging parentage, including, if one parent is a minor, any right afforded due to minority status; and
- (4) The opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment.

The completed voluntary acknowledgment forms shall clearly identify the name and position of the staff member who provides information to the parents regarding parentage establishment. The provision by designated staff members of the facility of the information required by this section shall not constitute the unauthorized practice of law. Each facility shall send to the department of health the original acknowledgment of parentage or electronic version as allowed by statute containing the social security numbers, if available, of both signatories, with the information required by the department of health so that the birth certificate issued includes the names of the signatories, which shall be promptly recorded by the department of health.

- ...
- (d) As used in this section:
"Agency" means the child support enforcement agency.

"Birthing center" means any facility outside a hospital that provides maternity services.

"Birthing hospital" means any hospital with licensed obstetric-care units, any hospital licensed to provide obstetric services, or any licensed birthing center associated with a hospital.

"Facility" means a birthing hospital or a birthing center.

...

(h) Judicial and administrative proceedings shall not be required or permitted to ratify an unchallenged acknowledgment of parentage. A voluntary, written acknowledgment of parentage signed by the individuals and filed with the department of health shall be the basis for establishing and enforcing a support obligation through a judicial or administrative proceeding.

Part IV – Proceeding to Adjudicate Parentage.

7. HRS §584A-19 - Pretrial Recommendations.

a. Subsections (a) and (b) seems to follow the best interest standard in HRS §584-13, however, there are concerns about determining the parent and child relationship based on whether a "judicial declaration of the relationship would be in the best interest of the child." For example, Bill Gates could be determined to be a better parent for a child than Joe Schmoe, even though Joe Schmoe is the biological father. Instead of the best interests of the child as the sole criteria, it might be fairer and easier to apply a standard of preponderance of the evidence. Absent that, consider providing criteria to determine the best interests of the child.

b. Subsection (a)(2) - Replace "individual whose parentage is to be adjudicated" to "alleged parent" for consistency.

c. Subsection (a)(3) - Replace "individual whose parentage is to be adjudicated" to "alleged parent." Additionally, there is a typographical error and "their" should be removed.

d. Subsection (c) - Consider adding wording that would allow the court to order the parties to submit to a genetic test, when not previously taken. See §584-13(c).

SUGGESTED EDIT HRS §584A-19

Pretrial recommendations. (a) On the basis of the information produced at the pre-trial hearing, the judge conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the parent and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate

recommendation for settlement shall be made to the parties, which may include any of the following:

- (1) That the action be dismissed with or without prejudice;
- (2) That the matter be compromised by an agreement among the parent and the ~~[individual who is seeking to have their parentage adjudicated]~~ alleged parent, and the child, in which the alleged parent is not adjudicated to be a parent but in which a defined economic obligation is undertaken by the alleged parent in favor of the child and, if appropriate, in favor of the parent, subject to approval by the judge conducting the hearing. In reviewing the obligation undertaken by alleged parent in a compromise agreement, the judge conducting the hearing shall consider the best interest of the child, in light of the factors enumerated in section 576D-7, discounted by the improbability, as it appears to the judge, of establishing the alleged parent's parentage or nonparentage of the child in a trial of the action. In the best interest of the child the court may order that the identity of the alleged parent be kept confidential. In that case, the court may designate an individual or agency to receive from the alleged parent and disburse on behalf of the child all amounts paid by the alleged parent in fulfillment of obligations imposed on the alleged parent; or
- (3) That the alleged parent ~~[individual who is seeking to have their parentage adjudicated]~~ voluntarily acknowledges ~~[their]~~ parentage of the child.
 - (b) If the parties accept a recommendation made in accordance with subsection (a), judgment shall be entered accordingly.
 - (c) If a party refuses to accept a recommendation made under subsection (a) and genetic tests have not been taken, if practicable, the court may order the parties to submit to genetic tests. Thereafter the judge shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.
 - (d) The guardian ad litem may accept or refuse to accept a recommendation under this section.
 - (e) The informal hearing may be terminated and the action set for trial if the judge conducting the hearing finds it unlikely that all parties would accept a recommendation the judge might make under subsection (a) or (c).

8. HRS §584A-20 - Civil action.

a. Subsection (a) Consider replacing "individual whose parentage is to be adjudicated" with "alleged parent."

Subsection (c) Consider replacing the last sentence "their parentage" with "of the individual's parentage" for clarity.

b. Subsection (c) only refers to "concerning sexual intercourse" but "concerning sexual intercourse or assisted reproduction" would be more inclusive,

and would account for other methods of causing pregnancy.

SUGGESTED EDIT HRS §584A-20

Civil action. (a) An action under this chapter shall be a civil action governed by the Hawaii rules of civil procedure or the Hawaii family court rules. The individual who gave birth to the child and the alleged parent [~~individual whose parentage is to be adjudicated~~] shall be competent to testify and may be compelled to testify, provided that no criminal prosecution, other than a prosecution for perjury, shall afterwards be had against the individual who gave birth to the child or the individual whose parentage is to be adjudicated of or on account of any transaction, matter, or thing concerning which they may testify or produce evidence, documentary or otherwise. Part VI and section 584-8 shall apply in any action brought under this chapter.

...

(c) In an action against an individual whose parentage is to be adjudicated, evidence offered by the individual whose parentage is to be adjudicated with respect to an individual who is not subject to the jurisdiction of the court concerning sexual intercourse or assisted reproduction with the individual who gave birth to the child at or about the probable time of conception of the child shall be admissible in evidence only if said individual has undergone and made available to the court genetic tests, including genetic tests the results of which do not exclude the possibility of the individual's [~~their~~] parentage of the child.

9. **HRS §584A-23 - Enforcement of Judgment or order.**

- a. Subsection (a) Consider replacing "a parent" with "the other parent."
- b. Subsection (b) refers to child support payments going to an adult child. (Currently, CSEA may collect payments for an adult child, but does not enforce child support paid to an adult child.) As to the CSEA, collection may be made only as its rules permit. The second line should read, "or through, the child support enforcement agency, as its rules permit."

SUGGESTED EDIT HRS §584A-23

Enforcement of judgment or order. (a) If existence of the parent and child relationship is declared, or parentage or a duty of support has been acknowledged or adjudicated under this chapter or under prior law, the obligation of a parent may be enforced in the same or other proceedings by the other [a] parent, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other individual, including a private agency, to the extent the individual has furnished or is furnishing these expenses.

(b) The court may order support payments to be made to a parent, an adult child, [~~the child support enforcement agency~~] or through the child support enforcement agency as its rules permit, or an individual, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

10. New section HRS §584A- - Action to declare parent and child relationship.

We suggest you consider a section be added to allow any interested party to bring an action. See HRS §584-21 Action to declare mother and child relationship.

SUGGESTED ADDITION

584A- Action to declare parent and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a parent and child relationship.

11. HRS §584A-24 – Modification of judgment or order.

If child support payments are to continue due to the adult child's pursuance of education, and an eighteen year old adult child or the custodial parent does not present proof that the adult child is enrolled as a full-time student in school, then the child support should not continue. To best implement the timing of continuing support beyond the age of eighteen, the statute should be changed to require that notice be provided "at least three months prior to the child's nineteenth birthday," and that child support payments may be automatically suspended upon the child reaching eighteen years of age.²

If changes are made to this section, the Judiciary should consider amending HRS §576E-14 and HRS §580-47 to be consistent.

SUGGESTED EDIT HRS §584A-24

(b) In those cases where child support payments are to continue due to the adult child's pursuance of education, the child support enforcement agency, at least three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child, to the child support enforcement agency, prior to the child's nineteenth

² Being enrolled as a full-time student does not always equate to the pursuit of higher education. Many adult children complete high school after reaching the age of 18. CSEA can be more specific about notice requirements in administrative rules, but a statute that requires notice at least three months prior to the nineteenth birthday will assist in preventing inadvertent overpayments of support.

birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court [~~upon the child reaching the age of nineteen years~~]. In addition, if applicable, the agency, hearings officer, or court may issue an order terminating existing assignments against the responsible parent's income and income assignment orders.

12. HRS §584A-27 - Promise to render support.

This section is not in the Uniform Parentage Act (2017). Although it is in existing 584-22, and was in the 1973 version of the Uniform Parentage Act, it is not in either the 2002 or 2017 versions of the Uniform Parentage Act. If the goal is consistency with the Uniform Parentage Act (2017), it should be removed.

SUGGESTED EDIT HRS §584A-27

Promise to render support.

~~[Promise to render support. (a) Any promise in writing to furnish support for a child, growing out of a supposed or alleged parent and child relationship, shall not require consideration and shall be enforceable according to its terms.~~

~~(b) In the best interest of the child or the natural parent, the court may, and upon request shall, order the promise to be kept in confidence and designate an individual or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.]~~

Part V – Special Rules for Proceedings to Adjudicate Parentage.

13. HRS §584A-36 - Adjudicating parentage of child with alleged genetic parent.

"Before the child becomes an adult" implies emancipation which is age 18, that may be in conflict with 584A-4(a)(2) where the parents may bring a parentage action "within three (3) years after the child reaches the age of majority..."

14. HRS §584A-37 - Adjudicating parentage of child with presumed parent.

a. A similar issue is raised above regarding HRS §584A-36 - Adjudicating parentage of child with alleged genetic parent.

b. Subsection (b): A finding that the presumed parent is not a genetic parent will be problematic for same sex married parents 100% of the time it is challenged.

c. Subsection (c): It is not clear that a proceeding to adjudicate a presumed parent's parentage is necessary. Requiring this might devalue the marriage presumption (and maybe others). This would deny same sex married parents the same rights as genetic parents.

15. HRS §584A-38- Adjudicating claim of de facto parentage of child.

"De facto parent" should be defined in HRS §584A-1. Consider defining this as "De facto parent is one who meets the criteria of HRS §584A-38(d)."

16. HRS §584A-39 - Adjudicating parentage of child with acknowledged parent.

a. Consider adding wording to allow for the possibility of an action two years after the event. As an example, in situations when the acknowledgment was obtained by fraud, but the fraud was not revealed until after the expiration of two years after the effective date of the acknowledgment, the court should be allowed to deviate from the 2 year limitation.

SUGGESTED EDIT HRS §584-39(b)

(b) . . .

(1) The individual must commence the proceeding not later than two years after the effective date of the acknowledgment unless the acknowledgment was obtained by fraud.

b. Subsection (b): "Best interest of the child" is listed as the standard. For clarity, we recommend defining or quantifying, or providing a standard measure like preponderance of the evidence.

17. HRS §584A-40 - Adjudicating parentage of child with adjudicated parent.

Similar suggestion as raised above regarding HRS §584A-39 - Adjudicating parentage of child with acknowledged parent.

SUGGESTED EDIT HRS §584-40(b)(1)

Adjudicating parentage of child with adjudicated parent.

(b) . . .

(1) The individual must commence the proceeding not later than two years after the effective date of the adjudication unless the acknowledgment was obtained by fraud;

- (2) The court may permit the proceeding only if the court finds permitting the proceeding is in the best interest of the child.

18. HRS §584A-41- Adjudicating parentage of child of assisted reproduction.

The spelling of the second "individual" in the first sentence should be corrected.

19. HRS §584A-42- Adjudicating competing claims of parentage.

This section does not account for presumptions based on marriage (both same-and opposite sex).

In subsection (c) there are many practical issues and concerns that should be addressed if more than two (2) parents were made a child's legal parents. Some of the areas that it would affect would be issuing birth certificates, custody/visitation, calculating child support, enforcement of Hawaii orders by other states, etc. The Uniform Parentage Act (2017) allows two alternatives, including "The court may not adjudicate a child to have more than two parents under this [act]." We would urge the Judiciary to have a working group look at the effects of more than two parents before enacting a policy.

Part VI – Genetic Testing.

20. HRS §584A-46 – Definitions.

- a. "Ethnic or racial group" and "relationship index" included in the judiciary's version of the UPA that was provided to CSEA in September 2020 (HRS 584A-30) should be retained. These are listed in the Uniform Parentage Act (2017). Both factors are used in calculating the probability of paternity.
- b. Definitions should be moved HRS §584A-1.

SUGGESTED ADDITION TO HRS §584A-1

Definitions.

"Ethnic or racial group" means, for the purpose of genetic testing, a recognized group that an individual identifies as the individual's ancestry or part of the ancestry or that is identified by other information.

"Relationship index" means a likelihood ratio that compares the probability of a genetic marker given a hypothesized genetic relationship and the probability of the genetic marker given a genetic relationship between the child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship.

21. HRS §584A-47 – Scope of Part; Limitation on use of genetic testing.

a. Subsection (b) states that genetic testing may not be used to challenge the parentage of an individual who is a parent under Part VII or VIII; or to establish the parentage of an individual who is a donor. However, that does not take into consideration the rare case of mistaken identity. This section may also conflict with HRS §584A-77, which is under Part VIII, and requires the court to order genetic testing if a child is alleged to be a genetic child of the surrogate.

b. Subsection (b) should be amended to include: "(3) except as authorized by HRS §584A-48."

22. HRS §584A-48 – Authority to order or deny genetic testing.

Subsection (g) – Consider including "unless the court finds good cause" to allow for the extraordinary situations that may arise.

SUGGESTED EDIT TO HRS §584A-48(g)

(g) If an individual requesting genetic testing is barred under section 584-10(f) from establishing the individual's parentage, the court shall deny the request for genetic testing unless the court finds good cause.

23. HRS §584A--9 - Requirements for genetic testing.

"Ethnic or racial group" and "relationship index" language included in the judiciary's version of the UPA that was provided to CSEA in September 2020 (HRS §584A-30) should be retained. These factors are used in calculating the probability of paternity.

SUGGESTED ADDITION TO HRS §584A-49

Requirements for genetic testing.

(c) Based on the ethnic or racial group of an individual undergoing genetic testing, a testing laboratory shall determine the databases from which to select frequencies for use in calculating a relationship index. If an individual or a child-support agency objects to the laboratory's choice, the following rules apply:

(1) Not later than 30 days after receipt of the report of the test, the objecting individual or child-support agency may request the court to require the laboratory to recalculate the relationship index using an ethnic or racial group different from that used by the laboratory.

- (2) The individual or the child-support agency objecting to the laboratory's choice under this subsection shall
 - (A) if the requested frequencies are not available to the laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or
 - (B) engage another laboratory to perform the calculations.
- (3) The laboratory may use its own statistical estimate if there is a question which ethnic or racial group is appropriate. The laboratory shall calculate the frequencies using statistics, if available, for any other ethnic or racial group requested.

24. HRS §584A-51 – Genetic testing results; challenge to results.

45 CFR 302.70(a)(5)(v) requires that the State has laws providing for: Procedures which provide that any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence; and if no objection is made, a report of the test results, which is reflected in a record, is admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. Accordingly, HRS 584A-51 should include this requirement. The judiciary should consider the existing language in HRS §584-11(e).

SUGGESTED ADDITION TO HRS §584A-51.

An alleged parent or party to the paternity action who objects to the admission of the report concerning the genetic test results must file a motion no later than twenty days after receiving a copy of the report and shall show good cause as to why a witness is necessary to lay the foundation for the admission of the report as evidence. The court may, sua sponte, or at a hearing on the motion determine whether a witness shall be required to lay the foundation for the admission of the report as evidence. The right to call witnesses to rebut the report is reserved to all parties.

25. HRS §584A-58 – Parental status of donor

"Uncompensated" is misspelled in the second sentence and should be corrected.

26. HRS §584A-70 – Definitions

- a. This should be moved to HRS §584A-1.
- b. HRS §584A-1 should also include definitions for "gestational surrogacy agreement" and "genetic surrogacy agreement".

27. HRS §584A-73 - Requirements of gestational or genetic surrogacy agreement: content.

a. There is no provision to govern what happens if the intended parents die before birth. This should provide for that. See HRS §584A-78.

b. Subsection (b) states that a "surrogacy agreement may provide for . . . payment of consideration." This is a policy issue, not a legal one. Consideration should be given to the ethical implications of allowing payment, e.g., baby selling; impacts on low-income women.

28. HRS §584A-74 – Surrogacy agreement: effect of subsequent change of marital status.

Consider adding a provision to direct the birthing hospital who to list on the child's birth certificate. The hospital is not equipped to sort out the legal relationships. Consider requiring a validated surrogacy agreement per 584A-81.

29. HRS §584A-79 - Gestational surrogacy agreement: order of parentage.

Subsection (a)(3) directs the Department of Health to designate each intended parent as a parent of the child, but that direction needs to go to the birthing facility too, because the birthing facility prepares the birth certificate. Unless the intent is to prepare the birth certificate as usual and then amend.

30. HRS §584A-81 – Requirements to validate genetic surrogacy agreement

It is not clear if this section is different from an order of parentage per §584A-79 or what is needed to create the birth certificate. Also, as to the requirement that the agreement be validated by the family court, the section needs to clarify the timing for this. If it's done before birth, the law could be drafted to allow the birthing facility to name the intended parents on the birth certificate.

31. HRS §584A-85 - Genetic surrogacy agreement: parentage of deceased intended parent

This section would benefit from provisions for genetic surrogacy that parallel HRS §584A-79 and HRS §584A-80.

32. HRS §584A-86 - Breach of genetic surrogacy agreement


- a. Consider specifying which court has jurisdiction over these cases.
- b. Consider adding remedies for a breach of a gestational surrogacy agreement

33. HRS §584A-91 – Definitions.

We recommend that these definitions be moved to HRS §584A-1.

Please let us know if we can be of any further assistance in this matter. You may reach Lynette Lau of CSEA at 692-7129 or Diane Taira and Andrea Armitage of the Health Division at 587-3050 if you have specific questions about the proposed bill.

Very truly yours,



Jill T. Nagamine
Deputy Attorney General
Legislative Division

Attachment

DAVID Y. IGE
GOVERNOR



DEPT. COMM. NO. 189

DOUGLAS S. CHIN
ATTORNEY GENERAL

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

December 28, 2017

The Honorable Ronald D. Kouchi
President of the Senate
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker and Members of the House of
Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi and Speaker Saiki:

For your information and consideration, I am transmitting one (1) copy for each of you of the Department of the Attorney General's Report on Surrogacy and Gestational Carrier Agreements as required by House Concurrent Resolution Number 56, Senate Draft 1. In accordance with Section 93-16, HRS, I am also informing you that the report may be viewed electronically at <http://ag.hawaii.gov/publications/reports/reports-to-the-legislature/>. If you have any questions or concerns, please feel free to call me at 586-1282.

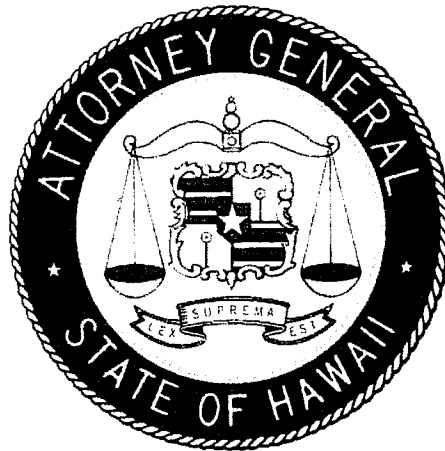
Sincerely,

Douglas S. Chin
Attorney General

c: David Y. Ige, Governor
Shan S. Tsutsui, Lieutenant Governor
Legislative Reference Bureau (Attn.: Karen Mau)
Leslie Kondo, State Auditor
Wesley K. Machida, Director of Finance, Department of Budget and Finance
Stacey Aldrich, State Librarian, Hawaii State Public Library System
David Lassner, PhD., President, University of Hawaii

Enclosure

State of Hawai'i
Department of the Attorney General



**REPORT ON SURROGACY AND
GESTATIONAL CARRIER AGREEMENTS**

Requested by House Concurrent Resolution No. 56, S.D. 1,
Regular Session of 2017

Submitted to
The Twenty-Ninth State Legislature
Regular Session of 2018

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REPORT ON SURROGACY AND GESTATIONAL CARRIER AGREEMENTS

I. Introduction

This report is made in response to House Concurrent Resolution No. 56, S.D. 1 (HCR 56), adopted during the regular session of 2017, which requested the Department of the Attorney General to conduct a study on gestational and carrier agreements and, at a minimum, determine (1) whether Hawai'i law currently authorizes surrogacy and gestational carrier agreements, (2) whether payment of financial consideration to a surrogate or gestational carrier is unconstitutional or otherwise illegal, (3) whether the Hawaii Revised Statutes ought to be amended to address surrogacy and gestational carrier agreements, and if so, (a) whether these amendments ought to be modeled after laws of other states, (b) what is the best way to protect the rights of surrogates, gestational carriers, intended parents, and children, and (c) whose name or names ought to appear on the birth certificate of a child born as a result of a surrogacy or gestational carrier agreement. It included a request to the Department of the Attorney General to prepare a report, including findings, recommendations, and any proposed legislation, and submit it to the Legislature before the convening of the regular session of 2018.

The Legislature identified the following information in framing its resolution:

- (1) Modern technology allows a woman to carry and give birth to a child as a surrogate or gestational carrier following the artificial insemination of an egg or the implantation of an already fertilized egg;
- (2) Surrogacy is a contractual relationship between two or more consenting adults in which a woman agrees to act as the surrogate or gestational carrier for the child of another person;
- (3) While surrogacy does occur in Hawaii, it is not regulated;
- (4) In light of the fact that the Hawaii Revised Statutes do not make specific reference to surrogacy or gestational carrier agreements, there may be ambiguity regarding the issue of legal custody in such agreements;
- (5) Thirteen other states have enacted laws regarding surrogacy or gestational carrier agreements;
- (6) In some states, children born as the result of surrogacy agreements are considered the legal children of the surrogates until the intended parents obtain court orders regarding custody;
- (7) In other states, the intended parents are automatically the legal parents of children born as the result of surrogacy agreements; and

- (8) Some states prohibit surrogacy altogether because policymakers have determined that compensation for the carrying of a child is the sale of a person.

II. Definitions¹

Assisted reproduction means a method of causing pregnancy other than sexual intercourse. The term includes: (A) intrauterine or intracervical insemination; (b) donation of gametes; (C) donation of embryos; (D) in-vitro fertilization and transfer of embryos; and (E) intracytoplasmic sperm injection. (Definition is based on Uniform Parentage Act (2017).²)

Birth mother refers to a woman who carries and delivers a child and, if the woman carries and delivers a child for some other intended parent(s), she is a surrogate but still a birth mother.

Commercial surrogacy generally refers to any surrogacy arrangement in which the surrogate mother is compensated for her services beyond reimbursement of medical expenses. (Definition is based on Finkelstein, McDougall, Kintominas, and Olsen, *Surrogacy Law and Policy in the U.S.: A National Conversation Informed by Global Lawmaking*, Columbia Law School Sexuality & Gender Clinic, May 2016,³ hereinafter "Surrogacy Law and Policy in the U.S.")

Genetic surrogate means an adult woman who is not an intended parent and who agrees to become pregnant, carry, and give birth to the resulting child through assisted reproduction using her own gamete, pursuant to a genetic surrogacy agreement. (Definition is based on Uniform Parentage Act (2017).)

Gestational surrogate means an adult woman who is not an intended parent and who agrees to become pregnant, carry, and give birth to the resulting child through assisted reproduction using gametes that are not her own, pursuant to a gestational surrogacy agreement. (Definition is based on Uniform Parentage Act (2017).)

Intended parent(s) means an individual(s), married or unmarried, who manifests the intent to be legally bound as the parent(s) of a child resulting from assisted reproduction. (Definition is based on Uniform Parentage Act (2017).) Being legally bound as the parent(s) includes receiving the child and bearing full responsibility for raising and supporting the child as soon as the surrogate has given birth.

¹ Definitions are based on the indicated sources, or where no source is cited, common meaning.

² http://www.uniformlaws.org/shared/docs/parentage/2017AM_Parentage_AsApproved.pdf

³ http://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/columbia_sexuality_and_gender_law_clinic_-_surrogacy_law_and_policy_report_-_june_2016.pdf

Non-commercial surrogacy, or altruistic surrogacy or compassionate surrogacy, generally refers to any surrogacy arrangement in which the surrogate mother is not compensated for her services beyond reimbursement of medical expenses. (Definition is based on Surrogacy Law and Policy in the U.S.) Note that surrogacy in general may be considered an altruistic act, whether compensated or not.

Resulting child, for purposes of this report, refers to the child or children born pursuant to a surrogacy agreement and includes all children that result from the agreed upon pregnancy, regardless of the number, gender, or mental or physical condition of the child or children.

Surrogacy, as defined by the Legislature in HCR 56, is a contractual relationship between two or more consenting adults in which a woman agrees to act as the surrogate or gestational carrier for the child of another person. However, there are varying factors to consider, including whether or not the surrogate is paid a fee and where the genetic material originated, that may trigger a need for different, more precise legal definitions in order to allow for different legal treatment in different situations. (See the definitions of commercial surrogacy, genetic surrogate, and gestational surrogate.)

Surrogacy agreement means an agreement between an adult woman and an intended parent(s) by which a woman agrees to become pregnant, carry, and give birth to the resulting child through assisted reproduction with the intention that she will relinquish the resulting child to the intended parent(s). Unless otherwise specified, the term "surrogacy agreement" refers to such an agreement regardless of the surrogate's genetic connection to the resulting child or lack thereof. (Definition is based on Uniform Parentage Act (2017).)

III. Issues and Discussion

(a) **Does Hawai'i law currently authorize individuals, regardless of marital status or gender, to enter into surrogacy and gestational carrier agreements?**

As the Legislature found in HCR 56, the Hawaii Revised Statutes (HRS) do not make specific reference to surrogacy or gestational carrier agreements.

There are no laws in Hawai'i relating to surrogacy, either permitting it or prohibiting it. Neither are there laws explicitly protecting parental arrangements made involving the use of a surrogate. Current law on parentage follows chapter 584, HRS, and presumes the woman who gives birth is the natural and legal parent and further presumes that, if that woman is married, her spouse is also a natural and legal parent.⁴

⁴ Despite the biological impossibility of a woman's female spouse being the natural and legal parent, the law presumes that the natural mother's spouse is the natural parent. See section 584-4, HRS. (Because section 584-4, HRS, specifically uses the wording that "a man is presumed to be the natural father of a child if he and the child's natural mother are or have been married to each other . . .", it is necessary to incorporate the requirement of section 572-1.8, HRS, that all gender-specific terminology, such as

Hawai'i law is silent on how to transfer parental rights from a surrogate parent to an intended parent and overcome the presumptions that apply upon the birth of the child, even in situations where the intended parents provided all of the genetic material. Because of this silence, petitions to the court have differed, and some intended parents who have used a surrogate decide to adopt the child that may be genetically theirs.

Because we were provided with courtesy copies of documents that were submitted to the Family Court of the First Circuit in 2008, our department was made aware of a few petitions that were styled as chapter 584 paternity (parenthood) cases in which the intended parents were petitioners and the surrogate parents were respondents and were served notice of the hearing.⁵ Evidence in those cases included a physician's declaration that tracked the genetic material from its origin and described the implantation process. Evidence also included the contractual agreement. The surrogate (and her husband if she was married) agreed in court or in writing with the arrangement. The process essentially was to rebut the presumption of parenthood, validate the legality of the contract, and establish the parents who contributed the genetic material as the legal parents based on medical evidence. In each of those cases, the intended mother and father had contributed the genetic material that resulted in the live birth.

Our office has heard of a few cases since then, mostly because of occasional queries by practitioners, but we have no comprehensive information about how all surrogacy cases are handled, nor do we have information about the various kinds of surrogacy that may have been granted by Hawaii's courts.

We have not seen cases where any of the genetic material was donated by anyone other than the intended parents. It is unknown whether courts would require that all donors of genetic material would have to be named parties or noticed of any hearing, and it is similarly unknown how the court would handle a case where any or all of the genetic material was donated by an unidentified or anonymous donor. Hawai'i law does not address these scenarios.

Similar to the lack of relevant laws, there are few statistics on the number or kinds of surrogacy cases that have been handled in Hawai'i.

Cases brought in Family Court pursuant to chapter 584 (parentage) and chapter 578 (adoption), tend to be closed proceedings with confidential records, so there are no

"husband" or similar terms, be construed in a gender-neutral manner when it is necessary to implement the rights, benefits, protections, and responsibilities of spouses.) There are no applicable presumptions of parenthood for men who are married to men, even when one of the men has donated the sperm that results in a live birth.

⁵ The attorney who represented the petitioners was licensed in Hawai'i but primarily practiced out of state. In a few cases where the surrogate for his clients had given birth in Hawai'i, he wanted to ensure that the Department of Health, which would ultimately produce a birth certificate to reflect parentage, was fully informed and had an opportunity to weigh in on the process, so he included us in the process and invited us to his first hearing and provided us with documents in some of his cases.

published statistics. We have learned from the Family Court of the First Circuit that it does not keep formal statistics on surrogacy cases, but estimates that there have been about eight surrogacy adoption cases filed since January 1, 2016. No statistics were gathered to determine how many may have proceeded as establishments of parentage. The details of the procedures and outcomes are not readily available. We have no information from any of the other courts or circuits.

The Department of Health is unable to track surrogacy cases because, when the Department of Health gets an order to amend a birth certificate, the order does not usually contain information that identifies it as a surrogacy case.

Thus, while the use of chapter 584 tends to authorize surrogacy via an establishment of parentage case, it is unlikely that all surrogacy cases fit within that law, e.g., a same sex couple would not be able to provide genetic evidence to establish that both members of the couple are biological parents, so the only protections for such a couple might come from adoption or contract law.

(b) Does financial consideration paid to a surrogate or gestational carrier make a surrogacy or gestational carrier agreement impermissible under the Constitution of the United States or other applicable law?

The U.S. Supreme Court has not yet addressed the issue of paid surrogacy and its constitutionality, so there is no binding precedent on this issue.

Buying or selling children for any reason related to sexually explicit conduct is illegal in federal law (18 U.S.C. § 2251A (2008)), but surrogacy is not regulated.

There may be some similarities between surrogacy and adoption law. It is not illegal to charge a fee for an adoption, but there have been publicly criticized cases in which children were stolen or fraudulently obtained and sold for purposes of adoption, which underscore that "selling children" can be problematic. Georgia Tann of the Tennessee Children's Home Society is reported to have sold thousands of children on the black market in the 1930s and 1940s. Her primary sources for these children were orphanages and homes for unwed mothers. While her actions ironically popularized adoption in this country, including to some famous Hollywood actresses, they also led to adoption reforms that included informed consent to adoption. (New York Post, This Woman Stole Children from the Rich to Give to the Poor, Poppy, June 17, 2017.⁶) Lauryn Galindo was instrumental in buying approximately 800 impoverished Cambodian children for money or rice in the late 1990s, and making over \$8 million selling those children to Americans. The adoptive parents were usually wrongfully told that the children were orphaned. Galindo pleaded guilty to conspiracy to commit visa fraud and money laundering and was sentenced to eighteen months in prison. She was never charged with anything else and denied baby trafficking. (ABC News, U.S. Families

⁶ <https://nypost.com/2017/06/17/this-woman-stole-children-from-the-poor-to-give-to-the-rich/>

Learn Truth about Adopted Cambodian Children, Goldberg and Apton, March 25, 2005.⁷⁾

Despite the unknown Constitutional status of surrogacy and the illegality of selling children for sexual purposes, there do not appear to be federal laws that prohibit a fee for surrogacy services; however, there are some states that strictly prohibit commercial surrogacy or treat surrogacy contracts as unenforceable.⁸

Hawai'i law does not address commercial surrogacy, or any other kind of surrogacy. In addition to financial considerations, any evaluation of whether Hawai'i ought to legislate to specifically allow surrogacy needs to consider the distinctions between the types of surrogacy and whether different surrogacy situations require different regulations. Women's health and rights, rights of same-sex couples, best interests of children, and ethics relating to surrogacy are also factors to consider. A non-commercial surrogacy in which a woman agrees for altruistic reasons to assist a couple who is unable to bear a child differs significantly from a commercial surrogacy where a woman is compensated for her services. Paid surrogacy raises ethical and emotional concerns about possible systematic objectification and financial exploitation of disadvantaged women. More than paying and using a woman for her ability to carry a child, genetic surrogacy also involves a woman's using her own genetic material to create a child, and if this is done for a fee it can appear that the resulting child is a human commodity to be purchased. Additionally, not all childless couples can afford the expense of assisted reproduction and hiring a surrogate to assist them with creating their family, and this tends to make surrogacy an option for the wealthy only. All imaginable scenarios arising from possible surrogacy scenarios should be considered and evaluated before enacting legislation to regulate surrogacy.

(c) Should the Hawaii Revised Statutes be amended to specifically address surrogacy and gestational carrier agreements?

This question involves a policy determination for the Legislature. Factors to consider include whether or not the State's current laws and practices create a need for a law, whether surrogacy affects sufficient numbers of people in Hawai'i to require a law, and whether there would be any problems with enacting or failing to enact a law pertaining to surrogacy.

In 1975, Hawai'i enacted the Uniform Parentage Act, with appropriate amendments, additions, and deletions to meet particular needs in Hawai'i. It was intended to provide substantive legal equality for all children regardless of the marital

⁷ <http://abcnews.go.com/2020/International/story?id=611826&page=1>

⁸ Michigan (MCL 333.2824(6) (1997)), New Jersey (case law makes all compensated surrogacy agreements unenforceable), New York (all surrogacy contracts are void as against public policy and unenforceable, but unpaid surrogacy is not strictly prohibited, Consolidated Laws of New York, Domestic Relations Code § 8-122 (McKinney's 1992)), and Washington (only compassionate, uncompensated surrogacy is allowed, all others are void and possibly criminal, Wash. Rev. Code § 26.26.210 through § 26.26.260 (1989)).

status of the parents. (S. Stand. Comm. Rep. No. 777, in 1975 Senate Journal, at page 1128.) It was codified as chapter 584, HRS, effective January 1, 1976.

The Uniform Parentage Act itself was originally promulgated in 1973, and it was that version on which Hawaii's chapter 584 is based. But chapter 584 has never been substantially updated, and it does not include laws that address parentage situations that are included in the 2002 updated version of the Uniform Parentage Act, nor does it include updates from the 2017 revised version of the Uniform Parentage Act, which was approved by the National Conference of Commissioners on Uniform State Laws in July 2017. Unaddressed provisions that are included in these updated versions include treatment of children born to same-sex couples, gender-neutral wording, and surrogacy.

It would probably be beneficial to update chapter 584, HRS, to ensure that it applies equally to children born to same-sex couples, to make it gender neutral, and to make it applicable to surrogacy situations. One means of doing that would be to evaluate and incorporate some, or all, of the 2017 revised version of the Uniform Parentage Act into chapter 584, and do as the 1975 Legislature did by making appropriate amendments, additions, and deletions to meet particular needs in Hawai'i.

The following sections address possible options if the Legislature concludes the HRS should be amended to specifically address surrogacy and gestational carrier agreements.

1. Should any amendments to the Hawaii Revised Statutes be modeled after the laws or regulations of one or more other states, and, if so, which state or states?

An excellent resource on the status of surrogacy laws in the United States is Surrogacy Law and Policy in the U.S. (*supra*).⁹ This report examines surrogacy and its treatment in all of the states and some foreign countries. It provides valuable information on the differences among the types of surrogacy, and it provides comprehensive explanations of terms and issues. It should be consulted as a detailed supplement to this report.

There is no consensus regarding surrogacy among the states, nor is there consistent treatment. Some states permit surrogacy, including a pre-birth order that allows the intended parents to be listed on the initial birth certificate;¹⁰ other states prohibit compensated surrogacy contracts, deeming them void as against public

⁹ http://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/columbia_sexuality_and_gender_law_clinic_-_surrogacy_law_and_policy_report_-_june_2016.pdf

¹⁰ California (Cal. Fam. Code § 7960 (West 2016)), Connecticut (C. G. S. A. § 7-48a (2011)), District of Columbia (DC ST. § 16-401 through § 16-412 (2017)), Delaware (13 Del. C. § 8-801 through § 8-810 (2013)), Maine (19-A M.R.S.A § 1931 (2015)), New Hampshire (N.H. Rev. Stat. Ann. § 168-B (2014)), and Nevada (N.R.S. § 126.500 through § 126.810 (2013)).

policy;¹¹ the rest of the states seem to fall in the middle with variants that allow surrogacy but include legal inconsistencies and hurdles. Because Hawai'i has no laws relating to surrogacy, those cases that come in front of the court must be addressed as a matter of parenthood establishment, adoption, or contract law.

The current process in Hawai'i is that upon birth, the woman who delivers the child is the presumed mother, and if she was married, her husband is the presumed father (section 584-4, HRS), and their names both go on the birth certificate as the parents.¹² The intended parents would need to file a petition to establish parenthood pursuant to chapter 584, HRS, in Family Court, and they would need to rebut the presumptions with whatever evidence the judge requires. The disposition of the case would depend on the proclivities of the judge, the strength of the evidence, the validity of the contract, and the intent of the parties at the time of the hearing. If that would fail, the petitioners would probably need to file an adoption petition pursuant to chapter 578, HRS. There are no current protections in Hawai'i law to protect the intended parents, other than perhaps monetary damages for breach of contract if the surrogate changes her mind. Specific performance is an unlikely remedy, and it is uncertain if any particular judge would determine that a surrogacy contract is valid, because Hawai'i has no law that addresses it.

Before considering amending the HRS to regulate surrogacy, the Legislature needs to decide which, if any, of the other States' approaches Hawai'i wants to follow. Because there is no consensus or equal treatment among the states, another resource to consider if Hawai'i decides to amend its law is the Uniform Parentage Act (2017) because of its comprehensive approach to surrogacy.

2. What is the best way to protect the rights of surrogates, gestational carriers, intended parents, and children;

This is a hard question that deserves more study to fairly address. We are able to identify a few factors that need to be considered, but to fairly determine the rights of surrogates, gestational carriers, intended parents, and children, there should be input from advocates or representatives forming those groups.

We propose convening a two-year working group, under the direction of the Attorney General or the Attorney General's designee, to consider the best way to

¹¹ Louisiana--limited to heterosexual married couples (La. Rev. Stat. § 9:2713 (2016), Michigan (MCL § 333.2824(6) (1997), New Jersey (case law makes all compensated surrogacy agreements unenforceable), New York (Consolidated Laws of New York, Domestic Relations Code § 8-122 (McKinney's 1992)), and Washington (Wash. Rev. Code § 26.26.210 through § 26.26.260 (1989)).

¹² Birth mothers, even if married, can refuse to include a spouse's name on the child's birth certificate. While section 584-4, HRS, specifically uses the wording that "a man is presumed to be the natural father of a child if he and the child's natural mother are or have been married to each other . . .", it is necessary to incorporate the requirement of section 572-1.8, HRS, that all gender-specific terminology, such as "husband" or similar terms, be construed in a gender-neutral manner when it is necessary to implement the rights, benefits, protections, and responsibilities of spouses.

amend the Hawai'i laws to include regulation and protection of rights of all parties involved in surrogacy arrangements. The group could include community partners from the Judiciary, the Department of Health, the bar, and advocates or representatives of affected groups. Attached with this report is a proposed Concurrent Resolution to request that such a group be convened.

Among other considerations, the group should look at:

- (A) What kind of surrogacy should be allowed and regulated, if any?
 - (B) Should Hawai'i adopt laws of other states or from the Uniform Parentage Act?
 - (C) How can we avoid financial exploitation of women?
 - (D) What are the minimum requirements for a valid surrogacy agreement?
 - (E) Should any legal presumptions apply?
 - (F) How will presumptions of parenthood apply to parents of the same sex?
 - (G) Should a person with a genetic relationship to a child be able to rebut parentage presumptions based on marriage?
 - (H) What statistical information should be collected for the birth certificate, and which parents should be identified?
 - (I) Should the group coordinate its suggestions to overhaul chapter 584, HRS?
3. **Whose name or names should appear on the birth certificate as the parent or parents of a child born as a result of a surrogacy or gestational carrier agreement?**

Unless the law is changed in a way that allows for a legal determination of parental rights in surrogacy situations before the birth occurs,¹³ the woman who gives birth is named on the birth certificate, and, if she is married, her spouse is named as the co-parent. Based on the presumptions of section 584-4, HRS, and the gender-neutral requirements of section 572-1.8, HRS, this applies to both male and female spouses of the birth mother. (See sections 584-4 and 572-1.8, HRS.) According to the Department of Health's information, some birth mothers and intended parents have tried to force birthing hospitals to enter the intended parents' names on a surrogate child's birth certificate, but current law prohibits that. Admittedly, the Department of Health would not necessarily know if it has ever occurred.

¹³ A "pre-birth" order would involve a court determining parentage before the birth of the child.

The presumption that the woman who gives birth is the natural and legal mother of the child should not be subject to extrajudicial rebuttal. Neither birthing facilities nor hospitals nor the Department of Health should be in the position of determining the legal question of the validity of a surrogacy contract. The court has to be involved to ensure fairness and to avoid the serious risk of disregarding any of the many important factors, including (1) whether the birth mother voluntarily consented to the surrogacy arrangement, (2) whether the spouse of the birth mother voluntarily consented, (3) whether there is a legal and binding contractual agreement, and (4) whether the intended parent(s) voluntarily consented.

If the law is changed to allow a court to determine these factors in advance of the birth, then the birth certificate could be prepared with the names of the intended parents from the beginning based on a pre-birth court order. However, an important factor to consider in modifying the law is that the birth certificate is not just about identification and citizenship; it is also designed to capture public health information and, thus, information about the gestational carrier should still be part of the statistical record. The surrogate mother's statistical information is important for public health purposes, because the period of gestation is a crucial determinant of an infant's health and survival for years to come, and the Department of Health collects the information to share with the Centers for Disease Control and Prevention for use in determining trends in national health. From a statistical standpoint, the Department of Health needs information about the genetic, gestational, and intended parents to fully understand birth outcomes and the well-being of the child.

IV. Findings, Recommendations, and Proposed Legislation

Many people have a strong desire to be a parent despite being unable to bear a child. This includes same-sex couples, single people, and people suffering from disability, infertility, or other health problems.

Surrogacy arrangements seem to be common enough that Hawai'i should consider whether they ought to be regulated and whether parties to surrogacy agreements should be afforded specific protections.

We recommend that the Legislature consider requesting that a two-year working group be convened under the direction of the Attorney General or the Attorney General's designee, to consider whether to amend Hawai'i laws to include regulation and protection of rights of all parties involved in surrogacy arrangements and, if so, the best way to do so. The group could include community partners from the Department of Health, the Department of Human Services, the Judiciary, the bar, and advocates or representatives of affected groups. Attached with this report is a proposed Concurrent Resolution to request that such a group be convened.

HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO CONVENE A TWO-YEAR WORKING GROUP TO DETERMINE THE BEST WAY TO PROTECT THE RIGHTS OF SURROGATES, GESTATIONAL CARRIERS, INTENDED PARENTS, AND CHILDREN.

1 WHEREAS, many people have a strong desire to be a parent
2 despite being unable to bear a child; and
3

4 WHEREAS, surrogacy arrangements, in which a woman agrees to
5 become pregnant, carry, and give birth to a child for another
6 intended parent occur in Hawaii, but the frequency and means are
7 unknown; and
8

9 WHEREAS, there are neither prohibitions nor protections for
10 surrogate parents and intended parents with regard to surrogacy
11 or gestational carrier agreements in Hawaii; and
12

13 WHEREAS, the lack of regulation regarding surrogacy may
14 create inconsistent legal results and inadequate protections
15 among surrogates and intended parents in Hawaii; and
16

17 WHEREAS, the issue of surrogacy in Hawaii should be
18 studied, and if appropriate, laws to regulate surrogacy and
19 protect the parties to surrogacy arrangements should be passed;
20 now therefore,
21

22 BE IT RESOLVED by the House of Representatives of the
23 Twenty-ninth Legislature of the State of Hawaii, Regular Session
24 of 2018, the Senate concurring, that the Department of the
25 Attorney General is requested to convene and lead a surrogacy
26 working group for the purposes of considering whether Hawaii
27 should regulate surrogacy; and
28

29 BE IT FURTHER RESOLVED that the Department of the Attorney
30 General is requested to seek input for the surrogacy working
31 group from community partners, including the following:

- 1 (1) The Department of Health;
- 2
- 3 (2) The Department of Human Services;
- 4
- 5 (3) The Judiciary;
- 6
- 7 (4) The Hawaii bar, especially members who have handled a
- 8 surrogacy matter;
- 9
- 10 (5) Advocates or representatives of surrogates;
- 11
- 12 (6) Advocates or representatives of gestational carriers;
- 13
- 14 (7) Advocates or representatives of intended parents; and
- 15
- 16 (8) Advocates or representatives of children; and
- 17

18 BE IT FURTHER RESOLVED that the working group
19 shall consider, at a minimum:

- 20
- 21 (1) What kind of surrogacy should be allowed and
- 22 regulated, if any?
- 23
- 24 (2) Should Hawaii adopt laws of other states or
- 25 from the Uniform Parentage Act?
- 26
- 27 (3) How can we avoid financial exploitation of
- 28 women in surrogacy matters?
- 29
- 30 (4) What are the minimum requirements for a
- 31 valid surrogacy agreement?
- 32
- 33 (5) Should any legal presumptions apply?
- 34
- 35 (6) How will presumptions of parenthood apply to
- 36 parents of the same sex?
- 37
- 38 (7) Should a person with a genetic relationship
- 39 to a child be able to rebut parentage
- 40 presumptions based on marriage?
- 41
- 42 (8) What statistical information should be
- 43 collected for the birth certificate, and
- 44 which parents should be identified?

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(9) Should the group coordinate its suggestions to overhaul chapter 584, HRS?; and

BE IT FURTHER RESOLVED that the working group shall be informal and shall meet at the discretion of the Attorney General or the Attorney General's designee and shall not be subject to the requirements of chapter 92, Hawaii Revised Statutes; and

BE IT FURTHER RESOLVED that the working group shall report its progress, along with any preliminary recommendations, to the Legislature no later than twenty days before the convening of the Regular Session of 2019; and

BE IT FURTHER RESOLVED that the working group shall propose legislation or prepare a report explaining why no legislation is needed no later than twenty days before the convening of the Regular Session of 2019; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor and the Attorney General.

OFFERED BY: _____

BY REQUEST

SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO CONVENE A TWO-YEAR WORKING GROUP TO DETERMINE THE BEST WAY TO PROTECT THE RIGHTS OF SURROGATES, GESTATIONAL CARRIERS, INTENDED PARENTS, AND CHILDREN.

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OFFERED BY: _____

BY REQUEST

ACH Comment and/or Proposed Edit	page	section
Preamble mentions rights of children but the child's rights are not granted as distinct from parental rights	1	1
Parentage determination/presumption	Part III, pp. 13-21	F to K
Birth Record & New Birth Certificates	pp. 33-34	U
Genetic Testing	Part VII pp. 45-46	Definitions
Role of deceased parent	pp. 56-57	TT
Role of donor parent	Part VIII	
Role of gestational parent	Part IX	

Information about donor	Part X	
Chapter 587, HRS, relating to Adoption		
Original birth record v Amended birth certificate issues with adoptive parents names, with option to include birth parents names		
Medical information on natural parents to be collected and available to adoptee and adoptive parents		
Access to family court sealed records by adoptee at age 18, and birthparents, a]upon request adoptive parents may access to ethnic and medical information		

Notes

Should there be a separate Part that articulates rights of the child that are derived from the designation of their parents

Will the health care "facility or birthing center" be required to report genetic parent/donor information on the birth registration form being submitted to Dept. of Health? Dept. of Health administrative rules should require the birth registration form include check boxes to identify donors and/or gestational parents as distinct from acknowledged or presumptive parents.

Will the "new" certificate of birth allow acknowledgement of both genetic parents/donors and non-genetic parents? Dept. of Health will maintain and seal original birth registration form with genetic parents/donors/gestational parents who are not legal parents? Who determines which "interested individuals" can access the original birth registration record?

Should a child wish to provide native Hawaii, native Alaskan or native American heritage, who do these definitions affect such their claims; especially if blood quantum is required Is this resolved somewhere else in this Part?

What is the purpose of allowing deceased non-genetic person to be named on the new birth certificate? Child support enforcement or inheritance by child?

All genetic parent/donor should be required to submit genetic, health, medical, ethnicity, nationality, family heritage, name and contact information to be available to legal parents, upon adjudication, and to child when they attain age 18. Dept. of Health administrative rules should require ART facility and attorney facilitating the donation contracts to maintain records in an accessible format for the life of the child.

The gestational parent should be named on the birth registration form from the hospital or birthing center that is submitted to the Department of Health. Gestational parent may or may not be genetically connected - how will this be recorded at birth?

All genetic parents/donors should be required to submit genetic, health, medical, ethnicity, nationality, family heritage, name and contact information to be available to legal parents, upon adjudication, and to child when they attain age 18. Genetic parents/donor do not have an opt-out once the child attains age 18. once the child attaining age 18, this is an adult to adult relationship that can be governed by myriad civil and criminal laws.

The ULP provisions with regard to birth registration, collection of genetic parent/donor information, and access to such information by legal parents and the child, should align with current adoption policy.

[See HRS 578-14 Record of Adoption, issuance of amended birth certificate, sealed original birth certificate](#)

[See HRS 578-14.5 - Medical information on natural parents, required to be collected by child placing organization](#)

[See HRS 578-15 - Secrecy of records and proceedings, access to family court sealed records is authorized for adoptee at age 18, birthparents and adoptive parents when adoptee is 18](#)

Adoption Law Reviews	E. Samuels - The Idea of Adoption
	N. Cahn - Old Lessons for a New World: Applying Adoption Research and Experience to Art

	<u>R.Scharf - Separated at Adoption: Challenges of Maintaining Sibling-Of-Origin Relationships</u>
	<u>B.Lum, Privacy v. Secrecy: The Open Adoption Records Movement and Its Impact on Hawai'i. (online subscription)</u>
US Birth Records & Adoptee Citizenship	<u>US Census - Birth Records</u>
	<u>History.com - The History of Birth Certificates</u>

	FAQ: The Adoptee Citizenship Act of 2021
	Adoptee Citizenship Act
International Policy	UNICEF - Birth Registration - Why It Matters
	UN Convention on the Rights of the Child - 1989 - see Articles 7, 8, 9

	<u>UN International Social Service - Verona Principles - For Protecting the Rights of the Child</u>
ART Law Review	<u>E. Samuels - An Immodest Proposal for Birth Registration in Donor Assisted Reproduction</u>
	<u>N.Cahn - Legal parent vs biological parent: the impact of disclosure June 2012 Journal of Law and Medicine 19(4):790-802</u>

ART Donor Sibling Registry	W. Kramer - The Donor Sibling Registry

Summary Notes

There has been in recent years and there continues to be intense debate around the country about whether to open original birth records to adult adoptees. Our understanding of the legal history relevant to the debate has been incomplete and inaccurate. According to this understanding, the state laws that closed court and birth records to the parties to adoptions generally closed these records for all time to all parties; the laws had a primary purpose of insuring lifelong anonymity for birth parents; and the laws became nearly universal by about the middle of the twentieth century. In fact, the history of adult adoptees' access to birth records differs in significant ways from this understanding. As documented in the article, a majority of the states appear to have first followed the advice of adoption experts that they seal both court and birth records (birth certificates) but preserve the right of adult adoptees to access their birth records. The rationales for sealing records were to protect adoptees from public disclosure of the circumstances of their births and to protect adoptive families from possible interference by birth parents. As late as 1960, more than forty percent of the states still had laws that allowed adult adoptees to obtain information about the identity of their birth families. Based on this more accurate history, the article analyzes what has been a complex relationship in this area of law between legal rules and social attitudes. The analysis traces how social attitudes and understandings likely affected the construction of rules, how rules in turn appear to have affected attitudes, and how, finally, attitudes have extended and perpetuated rules. The analysis sheds light on why, after 1960, states continued to pass laws closing birth records to adult adoptees, despite both a radically changing social environment and an adoptees' rights movement fostering greater openness in adoption. The analysis also helps explain the slowly but steadily developing trend today toward opening birth records to those whose births they record.

This article suggests that knowledge derived from adoption-related research and experience can be used to improve law, policy and practice in the world of assisted reproductive technologies (ART), particularly with respect to sperm, egg and embryo "donations." While there are numerous and significant differences between adoption and ART, the article identifies several areas in which adoption's lessons could be useful. These include secrecy and the withholding of information; a focus on the best interests of children; the creation of "nontraditional" families, particularly as more single, gay and lesbian adults use ART; the impact of market forces; and legal and regulatory frameworks to inform standards and procedures.

Over the past thirty years, a movement toward a more open model of adoption has gained traction across the United States, with over half of the states enacting statutes that allow birth parents and adoptive parents to enter into post-adoption contact agreements. On the whole, however, these statutes are not broad enough to address the difficulties of children adopted out of foster care who wish to maintain their relationships with their biological siblings. State statutes should broaden the description of family members who can be parties to such agreements to include biological siblings and the adopted children themselves. Moreover, they should provide mediation services for prospective adoptive families adopting children from foster care. Through such mediation the child would have an opportunity to give voice to her concerns about losing contact with her siblings permanently. Doing so could increase the willingness of the adoptive parents to enter into a post-adoptive contact agreement allowing for the real possibility of a child who is adopted out of foster care to avoid the devastating psychological effects of permanently losing contact with his siblings-of-origin.

Lum, Bobbi W. Y. "Privacy v. Secrecy: The Open Adoptions Records. Movement and Its Impact on Hawai'i." U of Hawaii Law Review. 15.1 (Summer 1993): 483–522.

The "Notification of Birth Registration" form, issued by the U.S. Census Bureau during the first half of the twentieth century, is not a birth certificate. The U.S. Census Bureau designed this form in 1924, at the request of various state vital statistics offices, to promote the accurate registration of births in the United States.

The normalization of the birth certificate process, however, was not without its societal difficulties. As the New Republic's Liza Mundy explains, the national system of issuing two birth certificates for adopted children—one listing their birth parents, one listing their adoptive parents—then sealing the original birth certificate, made the system "party to one of our culture's biggest collective lies." Adoptive parents could pretend adoptive families were biological ones—and today, children must still petition for their own original birth certificates and adoptive records in many states.

The Adoptee Citizenship Act of 2021—sometimes called ACA or ACA21 for short—are two identical bills pending in the U.S. Congress: HR1593 and S967. These bills would amend U.S. immigration law to repeal a loophole that has operated to deny automatic U.S. citizenship to thousands of intercountry adoptees who were adopted by U.S. citizen parents, some more than sixty years ago. While most people presume that children adopted by U.S. citizen parents receive automatic U.S. citizenship at the time of the adoption, this has not true for many intercountry adoptees. Many are now adults and do not have U.S. citizenship.

The Adoptee Citizenship Act of 2021 (H.R. 1593/S.967) closes the loophole to provide immediate citizenship to these children already adopted by U.S. citizens yet left out of the previous bill. This bill provides equity to these individuals who should have every legal right of any other child of a U.S. citizen. It amends the Child Citizenship Act of 2000 in order to give citizenship to individuals brought to live in the U.S. through intercountry adoption who were excluded under the current law, and ensure automatic citizenship for every full and final adoption by a U.S. citizen.

Birth registration is the process of recording a child's birth. It is a permanent and official record of a child's existence, and provides legal recognition of that child's identity. At a minimum, it establishes a legal record of where the child was born and who his or her parents are. Birth registration is required for a child to get a birth certificate - his or her first legal proof of identity.

Article 8 - States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Advances in biomedical science bring new challenges, including to children's rights. Thus, surrogacy, while providing those who have fertility problems with an opportunity to have a child, at the same time raises difficult ethical, legal and human rights questions, which have never been faced before, at least until a relatively recent time. Considering the lack of regulation or poor regulation, surrogacy often leads to serious violations of the rights of those involved, first of all, children. The "Principles for the protection of the rights of the child born through surrogacy (Verona principles)", drafted by independent experts, aim to identify the most problematic areas and to formulate procedural and safeguard requirements to ensure the protection of the rights of children born through surrogacy. Considering the lack of any comprehensive guidance on how to approach problems that children born through surrogacy face, the "Verona principles" may serve as an important tool that will help identify appropriate legislative responses to the new challenge related to the protection of children's rights. We, members of the UN Committee on the Rights of the Child, support the "Verona Principles" as an important contribution to developing normative guidance for the protection of the rights of children born through surrogacy.

Increasingly, an individual or a couple raising a newborn child may not be biologically related to the child. The child may be conceived with donated gametes -- a donated egg or sperm or both. A surrogate may gestate the child. The couple may be same-sex. Although we are aware of these developments, we are failing to collect information about them that is vital for medical, public health, and social science research as well as for protecting human rights. Information drawn from birth records is crucial for research, but it is becoming less accurate and less useful as parents who are not biologically related to their children succeed in having their names listed as the child's birth parents.

This article addresses arguments regarding disclosure of information to donor-conceived individuals, showing that disclosure is entirely different from the recognition of parental rights and responsibilities for the gamete providers. It argues that disclosure of information is not equivalent to saying: "donors are parents". Instead, information release simply provides a basis for donors, donor-conceived individuals and recipient parents to exchange information about themselves. When a jurisdiction enacts laws that provide for such information release, these statutes are distinct from any other legal rights and responsibilities for any members of the donor-conceived community. In its first section, the article briefly explains the means for determining legal parentage before reviewing research on how parents tell their children about their means of conception. Next, it explores studies of why members of the donor-conceived world search, providing an empirical basis for the claim that disclosure does not equal parenthood. The article explores concerns about information release, and, in the final section, suggests possible approaches for protecting the rights of donor-conceived people while reinforcing the legal separation between social and biological parents.

The Donor Sibling Registry's goal is to educate, connect, and support donor families. The DSR's core value is honesty, with the conviction that people have the fundamental right to information about their biological origins and identities