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GOVERNOR



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December 13, 2023

The Honorable Ronald D. Kouchi
President and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Department of the Attorney General's Interim Report of the Task Force to Recommend Amendments to Hawaii Parentage Laws, as required by Act 156, Session Laws of Hawaii 2023. 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 (808) 586-1500.

Sincerely,

Anne E. Lopez
Attorney General

c: Josh Green, M.D., Governor
Sylvia Luke, Lieutenant Governor
Legislative Reference Bureau (Attn: Karen Mau)
Leslie H. Kondo, State Auditor
Luis Salaveria, Director of Finance, Department of Budget and Finance
Stacey A. Aldrich, State Librarian, Hawaii State Public Library System
David Lassner, Ph.D., President, University of Hawaii

Enclosure

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INTERIM REPORT OF THE TASK FORCE TO RECOMMEND AMENDMENTS TO HAWAII PARENTAGE LAWS

Pursuant to Act 156, Session Laws of Hawaii 2023

Submitted to the Thirty-Second State Legislature
Regular Session of 2024

I. Executive Summary

Act 156, Session Laws of Hawaii (SLH) 2023 requires the Department of the Attorney General to convene a task force to recommend amendments to the Hawaii Revised Statutes (HRS) to update existing parentage laws. There are currently fourteen members serving the task force, including representatives from the Department of Health (DOH), the Child Support Enforcement Agency (CSEA), family law experts, and medical professionals. The task force convened three meetings as of the date of this report.

The task force is currently reviewing a draft bill prepared by the Honorable Judge Jessi L. K. Hall, a member of the task force. The draft is substantively like a bill introduced in 2023 (House Bill No. 384 and its companion, Senate Bill No. 484). The draft includes sections governing assisted reproduction and surrogacy that are based on the Uniform Parentage Act (2017) drafted by the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission. The task force is actively reviewing this draft and will consider it when it recommends any amendments to the parentage laws.

The task force has created three permitted action groups (PIGs) to focus on three different topic areas. Specifically, the PIGs will investigate any revisions, comments, or concerns relating to the following three topic areas:

- (1) Assisted Reproduction and Surrogacy;
- (2) Legal Parentage; and
- (3) Birth Heritage (including genetic and medical information).

The PIGs will discuss policy recommendations within each topic area, and each PIG will also analyze the effect of any proposed revisions on the LGBTQ+ community.

II. Background

Act 201, SLH 2021 required the DOH to convene a task force to recommend amendments to the HRS to update existing parentage laws that reflect outdated, cisheteronormative concepts of families, parenthood, and parental rights (Act 201 task force). The Act 201 task force submitted its report to the legislature on December 21, 2021. Due to the COVID-19 situation and time constraints, the Act 201 task force was not able to complete a recommendation for amendments to the HRS.

During the 2023 legislative session, Senate Bill No. 944 (S.B. 944), was introduced, to amend Act 201, SLH 2021 and was subsequently enacted as Act 156, Session Laws of Hawaii on June 29, 2023 (Act 156). Act 156 created a new task force (Act 156 task force), the composition of which differed from the Act 201 task force. Act 156 established new deadlines for the Act 156 task force to submit its final report.

Act 156 requires the Department of the Attorney General to convene a task force to recommend amendments to the HRS to update existing parentage laws that reflect outdated concepts of families, parenthood, conception and gestation, and parental rights. It also requires the task force to submit an interim report of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the regular session of 2024, and a final report of its findings and recommendations, including any proposed legislation, no later than forty days prior to the convening of the regular session of 2025. The task force will be dissolved on December 31, 2025.

III. Task Force Members

The following individuals were appointed to the task force pursuant to the requirements of Act 156:

- (1) A representative from the department of the attorney general, who shall serve as chairperson: Lauren Chun, Deputy Solicitor General;
- (2) The director of health, or the director's designee: Lorrin Kim, Chief, Office of Planning, Policy, and Program Development, DOH, and Thaddeus Pham, Viral Hepatitis Prevention Coordinator, Harm Reduction Services Branch, DOH, a second designee of the director of health;
- (3) A member of the Hawaii state commission on the status of women (this position is currently vacant, as the Commission has not designated a representative to serve on the task force *);
- (4) A member of the Hawaii state commission on fatherhood: Jeff Esmond, Chair, Hawaii State Commission on Fatherhood;

- (5) A family court judge: the Honorable Jessi L. K. Hall, Judge, District Family Court of the First Circuit, State of Hawai'i;
- (6) A family law attorney: Carol E. Lockwood;
- (7) A health care professional familiar with hospital and birthing center procedure experience: Dr. John Frattarelli, M.D., Fertility Institute of Hawaii & Advanced Reproductive Medicine & Gynecology of Hawaii, Inc.;
- (8) A mental health professional familiar with post-adoption experience: Dr. Cheryl Andaya, Psy.D., Director, Family Strengthening Center;
- (9) An individual with personal knowledge of adoption-related health and medical issues: Laurel Johnston, Adoption Circle of Hawaii;
- (10) An individual with personal knowledge of surrogacy: Sean Taylor, attorney; and
- (11) Any other member as recommended by the task force, as follows:
 - (A) Mark Nugent, Deputy Attorney General, Oahu Family Support Branch Manager, Child Support Enforcement Agency;
 - (B) Geraldine Hasegawa, Deputy Attorney General, Branch Manager, Child Support Enforcement Agency;
 - (C) Mihoko Ito, attorney; and
 - (D) Deirdre Marie-Iha, attorney.

*The Chairperson of the task force contacted the chairperson of the Hawaii State Commission on the Status of Women for the Commission's appointed designee. As of the date of this report, the Commission has not designated a representative to serve on the task force.

IV. Meetings of the Act 156 Task Force

- (a) Meeting of August 30, 2023.

The Act 156 task force convened its first meeting on August 30, 2023. All members present introduced themselves, their backgrounds, their qualifications, and what they hope to contribute to the task force. The task force voted to include Mark Nugent, Geraldine Hasegawa, Mihoko Ito, and Deirdre Marie-Iha as task force members.

Judge Hall briefed the Act 156 task force on the background of the Uniform Parentage Act (UPA), the work of the Act 201 task force, and the status of draft statutory amendments. The 1973 version of the UPA was enacted by the Legislature in 1975 and codified as chapter 584, HRS (Hawai'i UPA). Chapter 584, HRS, has been amended periodically, but the most recent amendments to the UPA, which were approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws (NCCUSL or Uniform Law Commission or ULC) in 2017, have not been enacted in Hawai'i. The Act 201 task force was intended to collect input on proposed revisions to the Hawai'i UPA from interested parties. As mentioned above, the Act 201 task force was not able to present a uniform recommendation or proposal to the Legislature.

Judge Hall also informed the task force that during the 2023 legislative session, the judiciary submitted a proposed revision to the Hawai'i UPA (House Bill No. 384 and its companion, Senate Bill No. 484). The proposed bill would have enacted portions of the 2017 NCCUSL update to the UPA. The 2023 bill did not, however, include provisions of the 2017 UPA related to assisted reproduction and surrogacy. Currently, Hawai'i does not have laws governing assisted reproduction and surrogacy. Judge Hall informed the task force that the ULC has convened a working group to consider gamete donor identity disclosure, and any proposals coming out of that working group will likely be reviewed and considered by the task force.

Judge Hall also noted that the issue of which individuals' names should go on a birth certificate was raised by the Act 201 task force. Under current law, a birth certificate is a legal document that does not necessarily reflect biological connections. Currently, the persons listed are the person who gives birth to the child and that person's spouse, whether the spouse is male or female. If the birthing parent is not married, the law currently only allows a male to voluntarily establish parentage by acknowledging that the male is the father. Without that voluntary establishment, if the parents are not married, the only way to have a non-birthing parent's name placed on the birth certificate is by court order. However, after adoption, a new birth certificate is issued listing the adoptive parents.

Deputy Attorneys General Mark Nugent and Geraldine Hasegawa briefed the task force on existing parentage laws and the role of the CSEA. They explained that the voluntary establishment of paternity (VEP) process currently codified in section 584-3.5, HRS, is an important tool that allows paternity of unmarried parents to be established without resort to the judicial process. In addition, under federal law, the states are required to have a process for the expedited establishment of paternity.

The task force then discussed issues regarding more than two parents being listed on a birth certificate. Issues were raised regarding acting in the best interests of children, including preventing emotional and mental harm, and regarding "informed consent" on behalf of children as to what information is included in their birth certificates.

The task force discussed its preference to comprehensively address issues related to the establishment of parentage, including assisted reproduction and surrogacy.

The task force also discussed the best starting point for its review of proposed amendments to the existing parentage laws. Judge Hall indicated that she could circulate a draft bill that would be substantively like House Bill No. 384/Senate Bill No. 484, but which also includes sections regarding assisted reproduction and surrogacy substantially like those included in the UPA (2017). The task force agreed that reviewing such a draft would be the best way to move forward to identify outstanding issues and inform its decision to create PIGs to address those issues.

(b) Meeting of September 30, 2023

The task force reconvened on September 30, 2023, after reviewing the draft prepared by Judge Hall, which included sections governing assisted reproduction and surrogacy. The task force discussed which PIGs should be formed and the order in which each PIG should accomplish their review and proposed edits and/or drafts. The task force identified several major topic areas that could be addressed by the PIGs, including the establishment of legal parentage, the interests of the LGBTQ+ community, assisted reproduction, surrogacy, donor identity, and the ability of children to identify their genetic parents.

The task force discussed the fact that the Act 201 task force did not resolve all possible policy disputes that could arise in revising the Hawai'i UPA, and thus, the current task force should look at the underlying policies of the parentage laws, and not simply review and revise the draft revised Hawai'i UPA.

The task force also discussed the fact that issues affecting the LGBTQ+ community cut across different topic areas, and that instead of having a separate PIG dedicated to LGBTQ+ issues, it may be best to have all PIGs analyze the ways in which LGBTQ+ individuals may be affected by any proposed revisions. The task force also discussed creating space for members in each PIG to share their lived experiences in discussions regarding policy decisions.

Three PIGs were formed to investigate any revisions, comments, or concerns relating to the following three topic areas:

- (1) Assisted Reproduction and Surrogacy;
- (2) Legal Parentage; and
- (3) Birth Heritage (including genetic and medical information).

Each group was tasked with looking at the entire draft revised Hawai'i UPA prepared by Judge Hall and with addressing concerns affecting the LGBTQ+ community.

The task force resolved to meet within each PIG at least once per month. The task force is aware of the requirement to present its final recommendations to the Legislature no later than 40 days before the Legislature's 2025 regular session.

(c) Meeting of October 27, 2023

The task force convened a short meeting on October 27, 2023, to receive updates on the progress of the PIGs and discuss scheduling of future meetings. Two of the three PIGs had already met, and the third group was working on scheduling a first meeting. None of the PIGs raised any concerns that needed the attention of the full task force. The task force agreed that it would likely be sufficient for the task force to meet every other month, if possible, while the PIGs should strive to meet at least monthly.

V. Recommendations

As described above, the task force has developed a plan to consider important topics in various areas of parentage laws. While the task force has no specific recommendations to introduce legislation in the 2024 session, it is already actively involved in reviewing potential drafts of bills.