

JOSH GREEN, M.D.
GOVERNOR



ANNE E. LOPEZ
ATTORNEY GENERAL

MATTHEW S. DVONCH
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
Ka 'Oihana O Ka Loio Kuhina
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

**NOTICE OF MEETING
OF THE
ACT 156 TASK FORCE ON PARENTAGE LAWS**

DATE: January 12, 2024
TIME: 1:00 p.m.
PLACE: Department of the Attorney General, Hale Auhau
425 Queen Street, Honolulu, HI 96813; 2nd Floor &
Online via Zoom: <https://us02web.zoom.us/j/85026912240>
To join by telephone: Dial +1 253 205 0468
Webinar ID: 850 2691 2240

A. Call to Order; Public Notice; Roll Call and Quorum Determination.

1. Roll Taking and Quorum Determination

00:00:00 – 00:00:54

Chair Chun calls the meeting to order at 1:09 p.m.

The following members are present and constitute a quorum:

- 1. Lauren Chun (in person)*
- 2. Laurel Johnston (in person)*
- 3. Mark Nugent (via Zoom)*
- 4. Jeff Esmond (via Zoom)*
- 5. Deirdre Marie-Iha (via Zoom)*
- 6. Thaddeus Pham (via Zoom)*
- 7. Lorrin Kim (via Zoom)*
- 8. Hon. Jessi Hall (via Zoom)*
- 9. Dr. John Frattarelli (via Zoom) (appears at 0:00:17)*

None of the members appearing via Zoom have a need to make the disclosure required by HRS § 92-3.7(a).

B. Action Items

- 1. Discussion and decision-making on the report of the Legal Parentage Permitted Interaction Group (PIG) regarding the possibility of expanding the scope of individuals who are eligible to voluntarily establish parentage through an expedited process.**

The Legal Parentage PIG would like to ask the Task Force at large to weigh in on two questions:

- (a) Whether the Task Force is in favor of expanding the eligibility to voluntarily establish parentage through an expedited process to all unwed birthing parents and their partners of any gender, regardless of whether the partner is genetically related to the child; and if so**
- (b) What option the Task Force prefers to accomplish such an expansion (i.e., whether to expand the definition of who may utilize the currently available voluntary acknowledgment of parentage process, or to instead create a separate process for uncontested paternity cases which would accomplish the same goal).**

00:00:54 – 00:36:30

Chair Chun explains that just because this is an action item, the Task Force does not need to take action, but they may if they decide to.

This item is a report from the Legal Parentage Permitted Interaction Group which has been discussing the voluntary establishment of parentage sections in the draft bill. The PIG wanted to ask the Task Force at large to weigh in on two questions regarding the voluntary establishment of parentage process. The report was circulated to the Task Force ahead of the meeting.

Chair Chun explains that under the current law, any spouse of the birthing mother is assumed to be the parent and can sign the birth certificate. This doesn't depend on the gender of the spouse. But for unwed partners, only a biological male partner can sign the birth certificate to voluntarily establish parentage. He says that he is the biological father, but doesn't have to prove anything. The PIG wants to ask the Task Force what they think about allowing unwed partners of any gender to voluntarily establish parentage. This would include unwed, same-sex female couples. If the Task Force is in favor of expanding eligibility, the PIG's report describes two ways that could be accomplished. However, the Task Force does not necessarily need to choose between the two options, they could select both. For example, we could expand eligibility to utilize the current expedited voluntary establishment of parentage process to unwed partners of either gender, as long as the birthing mother attests that she doesn't know who the natural father of the child is, and we could also provide an expedited court process for

situations in which the natural father is known but he is fine giving up his parental rights to the unwed birthing mother's partner.

Chair Chun opens discussion up to the first question: whether the Task Force is in favor of allowing the partners of unwed birthing mothers to be eligible to voluntarily establish parentage through an expedited process regardless of their gender.

Judge Hall clarifies that this process would help female-female couples but would not apply to male-male couples. Chair Chun adds that this is because this process only applies when one of the parents is the birthing mother.

Mark Nugent also clarifies that presently, the VEP form does not have a question requiring the unwed partner to attest that they are the biological father. Chair Chun adds that this demonstrates how men and women are not treated equally under this process because a male can sign the birth certificate even if he is not the biological parent, but another female cannot sign, even though she is not the biological parent either.

Deidre Marie-Iha asks whether the PIG has discussed how this process would interact with assisted reproduction laws? Chair Chun says that we envisioned this process to be separate from the laws governing assisted reproduction.

Ms. Marie-Iha asks whether the change will address a hypothetical problem or a common problem. E.g. how often are there two unmarried same-sex female couples who want to establish parentage. Judge Hall says that currently, such a couple could not establish parentage, even under adoption laws because they would have to be married. She says they could try to establish parentage as a de facto parent, but that is more difficult. Ms. Marie-Iha says that she has no problem with expanding eligibility, she just wants to make sure we are addressing a problem that actually exists.

Thaddeus Pham notes that the original intention of the bill that created this Task Force was to address situations involving same-sex female couples who cannot establish parentage in an easy way.

Jeff Esmond points out that in the PIG's report, it said that a method could be used to keep record of biological heritage. He thinks this is a very important aspect. Chair Chun says that the PIG took seriously the issue of not erasing the biological parent of the child.

Laurel Johnston wonders if CSEA funding will be affected by the change. Mark Nugent clarifies that it wouldn't be CSEA funding, but welfare funding. For children born out of wedlock, parentage must be established for at least 90% or else funding could be at risk. The majority of parentage establishments come through the VEP process. CSEA does not want to create a process that will lead to less parentage establishments. Judge Hall says that she thinks what the federal government is concerned with is having a parent "on the hook" for child support, so expanding eligibility to establish parentage should not affect

that. Chair Chun adds that in past meeting, CSEA represented that as long as two parents are established, funding wouldn't be affected.

Ms. Johnston shares that she is concerned if we expand eligibility but don't keep record of the biological parent.

Lorin Kim shares that from his department's perspective, if this is part of a comprehensive constellation of ways in which various couples can achieve parenthood, that is fine. They do not want to exclude anyone from this straightforward process. They would support the policy behind the expansion and procedurally, it sounds straightforward.

[00:21:17 – Jeff Esmond exits the meeting]

(In response to Ms. Johnston's point) Judge Hall shares that is why the PIG came up with different ways to establish parentage; if there is a known biological parent who does not want to be part of the child's life, the uncontested paternity process is intended to keep that person's information in the case file.

[00:22:19 – Geraldine Hasegawa appears by Zoom]

Ms. Marie-Iha says she is conceptually ok with the proposal, but would like to see the actual amendments we propose. Chair Chun says that the PIG wanted to get confirmation from the Task Force first before spending time drafting the actual amendments, in case the Task Force did not want to go in that direction at all.

Chair Chun asks if there are any thoughts about the two potential processes presented (expanding existing VEP process and establishing separate uncontested parentage process in court). Notes that simply expanding existing VEP process would not apply to a lot of situations, because the birthing mother would have to attest that she does not know who the biological father of her child is. Judge Hall adds that under current VEP process, birthing mother attests that she believes male is the biological father, and male says that yes, he is the father and does not need genetic testing. Chair Chun adds that under the proposed processes, if the birthing mother does know who the biological father is, and it is not the person who wants to establish parentage, the parties can go through a court process similar to an uncontested divorce to establish parentage in the professed parent.

Ms. Johnston brings up cases in other states where unmarried same-sex female couples established parentage but then had a custody dispute and court said they should have gone through an adoption. Says this may indicate that judicial process might be better. Chair Chun and Judge Hall clarify that under our voluntary establishment of paternity process, the two unwed parents would be the legal parents of the child.

Chair Chun states that it sounds like everyone is in agreement that we should at least explore the two options presented for expanding VEP eligibility. A vote is probably not

necessary, but the PIG can go back and put together more details about how each process would work.

No public testimony presented.

C. Non-Action Items

1. Status update and reports from:

a. the Legal Parentage PIG

00:36:30 – 00:37:36

Chair Chun says that their big update is the report which was just discussed. There are no other updates they need to share or ask about. They will be working on revisions to the draft bill based on today's discussion.

b. the Birth Heritage PIG

00:37:36 – 00:51:50

Chair Chun notes that the Birth Heritage PIG circulated a summary of their latest meeting to the Task Force.

Before the PIG gives an update, Chair Chun shares that the Uniform Laws Commission's working group on Gamete Donor Identity Disclosure has apparently completed suggested revisions to the 2017 UPA. She will share the revisions when they are made publicly available.

Ms. Johnston thanks Mr. Kim for bringing in the vital statistics folks from DOH to explain things to the group. Sounds like DOH is willing to work with us to craft some way to keep information. DOH provided the caveat that they can only work with what people are willing to share.

Ms. Johnston shares that there are some things the PIG wanted to continue to talk about, as indicated in Item C of the written summary of their meeting. They wanted to try to figure out how to write some of the statutory language.

Ms. Johnston also shares her thoughts regarding the fact that adoption arose out of the need to give children homes. Now with adoption and ART, we are dealing more with adults' needs and wants to be parents. We should still keep children's needs in the forefront, including needs regarding birth heritage and healthcare.

With reference to the first page of the PIG's meeting summary, Chair Chun asks under what circumstances DOH issues amended birth certificates on request of the birth parent? Mr. Kim answers that it is done pursuant to administrative rules and are

generally to make corrections that can be substantiated, e.g. outdated or incorrect information. There is a level of evidence that is required. However, the identity of a parent would only change as a result of a court order. Judge Hall also adds that people can rescind a voluntary establishment of paternity within 60 days. That request would go to DOH.

With reference to the last page of the PIG's report, Chair Chun asks whether DOH would be ok with retaining donor medical information and family history. Mr. Kim says conceptually, yes, they are ok. They are interested in retaining as complete a record as possible. Mr. Kim also adds that if we expand VEP eligibility or utilize an expedited uncontested paternity process, DOH should be able to keep records of biological parents as well.

Ms. Johnston asks Dr. Frattarelli if he knows what percentage of births in Hawaii are from ART or surrogacy. He answers that in general, across the country about 2% of births are from ART and would probably be similar in Hawaii.

[00:50:08 – Thaddeus Pham exits the meeting]

Dr. Frattarelli adds that the number will increase as more people are utilizing ART.

Judge Hall would like to see what the Uniform Laws working group comes up with. From what she's heard, they recommend a process similar to adoption where the child will be able to access information about a donor once they turn 18.

c. the Assisted Reproduction and Surrogacy PIG

00:51:50 – 01:04:26

Ms. Marie-Iha shares that the PIG met recently and discussed the portions of the draft bill related to assisted reproduction and surrogacy at considerable length. Most of the things they are thinking of are additional definitions, clarifications, and wanting to see how they interact with other provisions. Not necessarily looking at conceptual changes.

Ms. Marie-Iha notes that of the states that have adopted the 2017 UPA, they have only adopted the sections related to gestational surrogacy, not genetic surrogacy. The big question is whether we want to permit both. Dr. Frattarelli had explained that genetic surrogacy does not happen much anymore. Genetic surrogacy involves potential complications because the surrogate agrees to carry a child who is biologically related to her and commits to giving the child up.

Their next intended step is to pull out the ART and surrogacy sections and do a redline based on their conversations, but they don't have something in writing to share with the group yet.

Dr. Frattarelli adds that having a genetic surrogacy complicates everything. Unknown donors make it a lot cleaner. In many states, it is illegal to do a genetic surrogacy.

Ms. Johnston wants to make sure that they do not erode hanai practice in Hawaii.

Chair Chun observes that even without allowing genetic surrogacy, the same thing could functionally be achieved if a woman undergoes ART and then adopts that child out to a couple who wants it.

Ms. Marie-Iha says she is inclined to take the path of least resistance so that it works for the most amount of people and is politically palatable. However, it would also be fair to regulate something if we feel that is better than letting it go unregulated.

Judge Hall says that at this point, she would probably lean towards not regulating genetic surrogacy; not necessarily saying its illegal but not make a specific law allowing it. Dr. Frattarelli also shares that in his 30 years of practice, he has never done a genetic surrogacy and does not know any of his colleagues who has.

No public testimony presented.

Chair Chun adds that if any PIGs want to bring an item to the Task Force for discussion, that we can add it to the agenda.

D. Adjournment

1:04:26 – *Chair Chun adjourns the meeting at 2:13 p.m.*