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**WRITTEN SUMMARY OF
THE MEETING OF THE
ACT 156 TASK FORCE ON PARENTAGE LAWS**

DATE: August 30, 2023
TIME: 9:00 a.m.
PLACE: Department of the Attorney General, Hale Auhau
425 Queen Street, Honolulu, HI 96813; 2nd Floor &
Online via Zoom

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

Chair Chun calls to order the meeting at 9:07 A.M.

1. Roll Call

00:02:12 – 00:04:34

Chair Chun calls on each member to introduce themselves and, pursuant to HRS § 92-3.7(a), if the member is at a nonpublic location, to state the name of any person eighteen years of age or older who is present at the nonpublic location with the member, or the name of a person under the age of eighteen if the person has a personal business, property, or financial interest on any issue before the Task Force at the meeting.

The following members are present:

- 1. Lauren Chun (in person)*
- 2. Thaddeus Pham (via Zoom)*
- 3. Jeff Esmond (via Zoom)*
- 4. Hon. Jessi Hall (via Zoom)*
- 5. Carol Lockwood (in person)*
- 6. Dr. John Frattarelli (via Zoom)*
- 7. Dr. Cheryl Andaya (via Zoom)*
- 8. Laurel Johnston (in person)*

No member needed to make a disclosure pursuant to HRS § 92-3.7(a).

Members Lorrin Kim and Sean Taylor were not present at the time of the roll call.

Chair Chun indicates that the Commission on the Status of Women has not yet appointed a member.

2. Quorum Determination

00:04:34 – 00:04:41

Chair Chun determines a quorum of appointed members is present.

B. Introduction of Task Force Members

00:04:41 – 00:29:47

The appointed members of the Task Force introduce themselves, and share their backgrounds, their interest in the task force, what they hope to contribute, and anything else they wish to share.

00:05:59 – Member Sean Taylor appears via Zoom

00:10:38 – Member Lorrin Kim appears via Zoom

00:24:14 – Thaddeus Pham leaves the meeting

No public testimony is offered.

C. Action Items

00:29:47 – 00:46:06

1. Recommendation and approval of the following additional Task Force members pursuant to Act 156 (June 29, 2023), § 1(b)(11).

- a. Mark Nugent – Deputy Attorney General, Child Support Enforcement Agency, Oahu Family Support Branch Manager
- b. Geraldine Hasegawa – Deputy Attorney General, Child Support Enforcement Agency, Hilo Family Support Branch
- c. Mihoko Ito – Counsel, Ashford & Wriston
- d. Deirdre Marie-Iha – Partner, Goodsill Anderson Quinn & Stifel

Chair Chun asked each prospective member to introduce themselves.

Mark Nugent introduced himself and described his work in CSEA.

No public testimony offered.

00:33:03 – Motion to add Mark Nugent as a member of the Task Force (Lockwood/Johnston)

Motion approved unanimously (Chun, Kim, Esmond, Hall, Lockwood, Frattarelli, Andaya, Taylor, Johnston)

Geraldine Hasegawa introduced herself and described the work of CSEA.

No public testimony offered.

00:39:11 – Motion to add Geraldine Hasegawa as a member of the Task Force (Lockwood/Johnston)

Motion approved unanimously (Chun, Kim, Esmond, Hall, Lockwood, Frattarelli, Andaya, Taylor, Johnston, Nugent)

Mihoko Ito introduced herself and her interest in the Task Force. She previously served on the Act 201 of 2021 task force.

No public testimony offered.

00:42:30 – Motion to add Mihoko Ito as a member of the Task Force (Kim/Lockwood)

Motion approved unanimously (Chun, Kim, Esmond, Hall, Lockwood, Frattarelli, Andaya, Taylor, Johnston, Nugent, Hasegawa)

Deirdre Marie-Iha introduced herself, her interest in the Task Force, and her background in the Attorney General's office and bill drafting.

No public testimony offered

00:45:34 – Motion to add Deidre Marie-Iha as a member of the Task Force (Hall/Johnston)

Motion approved unanimously (Chun, Kim, Esmond, Hall, Lockwood, Frattarelli, Andaya, Taylor, Johnston, Nugent, Hasegawa, Ito)

D. Non-Action Items

- 1. Briefing on the work of the previous task force created by Act 201 of 2021 and status of draft proposed statutory amendments (Hon. Judge Jessi L. Hall).**

00:46:06 – 00:58:52

Judge Hall briefed the task force on the background of the Uniform Parentage Act (UPA), the work of the previous task force created by Act 201, SLH 2021, and the status of draft statutory amendments. Hawai‘i adopted its version of the UPA in 1973. In 1996, we amended the statute to include the expedited paternity process. Although there was a proposed revision of the UPA created by the Uniform Laws Commission in 2022, Hawai‘i did not adopt that; we still have the version from 1973.

In 2020, Judge Hall prepared a draft based on the 2017 proposed UPA created by the Uniform Laws Commission and started circulating it among other agencies, including CSEA and the Attorney General’s Office, as well as the Family Law Section.

In 2021, two bills were introduced that would have revised Hawaii's version of the UPA. One of those bills was based on a draft that Judge Hall created, but she did not introduce it. The other bill would have revised our statutes to be gender neutral, and this bill became Act 201. The task force created by Act 201 was intended to collect input on proposed revisions to the Hawai‘i UPA from interested parties. However, as mentioned, the Act 201 task force was not able to present a uniform recommendation or proposal to the Legislature because of time constraints (COVID and the Red Hill water crisis).

Judge Hall also informed the task force that during the 2023 legislative session, the judiciary submitted a proposed revision to the Hawai‘i UPA. It was different than the version introduced in 2021 because it does not address assisted reproduction and surrogacy, in part because there was a lot of discussion that had not yet occurred. Judge Hall recommended those sections be removed from the draft so that the rest of our UPA could at least be updated.

Judge Hall informed the task force that the Uniform Law Commission 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 would like for there to be laws regarding assisted reproduction and surrogacy, because Hawai‘i essentially has nothing at this time.

Judge Hall also noted that an issue which came up in the Act 201 task force as well as in the past legislative session was which individuals' names should go on a birth certificate. 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 (who may or may not be the biological mother if that person is a surrogate) and that person's spouse, whether the spouse is the actual biological parent, and 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.

Chair Chun asked about the latest version of the bill and what it does not include yet. Judge Hall replied that the assisted reproduction and surrogacy sections which are in the model 2017 UPA are not in the latest version of bill, but that it does include suggested edits from the Attorney General's office. The 2021 draft submitted to the legislature does include assisted reproduction and surrogacy sections.

Chair Chun asked about the jurisdiction of the model UPA's language regarding assisted reproduction and surrogacy; will it apply only to people who undergo procedures in Hawai'i but not to people who undergo procedures elsewhere before giving birth in Hawai'i? Judge Hall responded that this is something that any proposed language we come up with will have to specify.

Judge Hall briefly described what the Uniform Laws Commission is: a national commission which creates proposed laws in various areas. We do have statewide representatives that are on the Commission.

Sean Taylor asked for elaboration on why the assisted reproduction and surrogacy sections were removed from the latest draft bill. Judge Hall responded that she knew based on the discussions of the Act 201 task force that there still needed to be a lot more discussion on assisted reproduction and surrogacy before they could recommend something to the legislature. She is hoping we can do that as part of this Task Force.

No public testimony was offered.

2. Briefing on existing paternity laws and the role of the Child Support Enforcement Agency (Mark T. Nugent and Geraldine Hasegawa).

00:58:52 – 01:32:50

Deputy Attorneys General Mark Nugent and Geraldine Hasegawa briefed the task force on existing parentage laws and the role of the CSEA.

Mark Nugent shared that CSEA ensures that Hawaii's children have ongoing financial and medical support from both parents. To achieve that, CSEA mainly provides three services: they establish paternity through the judicial process, they establish child support and medical support either through the courts or administratively (they also track and distribute child support that comes in), and lastly, they enforce child support including through garnishments and liens.

With respect to the benefits of establishing paternity, it allows CSEA to enforce child support. Paternity also allows kids to have access to medical history. It also sometimes allows children to qualify for benefits they might not otherwise receive (e.g., military benefits or inheritance).

The voluntary establishment of paternity (VEP) process is really important for CSEA because for the kids born out of wedlock in any given year, the majority of paternity establishments occur through the VEP process. If paternity is not established at the hospital, it can be harder for CSEA to identify the father and establish paternity through the judicial process. CSEA receives the majority of its referrals through the Department of Human Services. The public can also request CSEA's services in helping to establish paternity. To establish paternity through judicial process, CSEA relies a lot on getting stipulations from parties, but if not, they use genetic testing.

Geraldine Hasegawa expanded on the VEP process. Federal law requires the states to establish VEP procedures. This is an administrative procedure. VEP creates a legal finding of paternity. Currently over 90% of paternities established in Hawai'i occur through the VEP process. The goal is to keep this process simple, avoid complications, and avoid the need for judicial proceedings. For this reason, they would propose keeping one of the signatories on the birth certificate as the birthing mother. The other signatory could be a the biological father or another female. CSEA is dependent on having a high a number of paternity establishments as possible in order to meet certain federal requirements for funding.

With respect to the establishment of parentage through judicial proceedings, they would like to address issues of service and personal jurisdiction. Would like to have jurisdictional language in the 2017 UPA included in the proposed bill.

If the Task Force considers including three people on a birth certificate, Ms. Hasegawa put forth that it should be limited to situations where you have two alleged fathers who are identical twins because even with DNA testing, it is difficult to establish the father.

Chair Chun asked if CSEA is also a record keeping agency; do they keep records of paternity once it is established? Ms. Hasegawa said that DOH receives records of paternity established both through the judicial and the VEP processes.

Carol Lockwood asked Judge Hall if the judiciary sends judgments of paternity to the DOH; Judge Hall replied that it does not. If the case is brought by a private party, they must send the judgment to the DOH. If the case is brought by CSEA, CSEA would send the judgment.

Jeff Esmond asked for clarification as to why situations involving identical twin fathers is a priority of discussion. Ms. Hasegawa replied that the discussion was raised because in the proposed 2017 UPA, there was some discussion about creating responsibilities for more than two parents. The issue is not that having paternity established as between identical twins is common; she cannot recall any time that has happened in Hawai'i. Mr. Nugent clarified that the main issue is whether more than two parents should be listed on

the birth certificate. This is the question the Task Force will have to address. Currently, CSEA is not set up to deal with situations involving three parents.

Judge Hall also clarified that the purpose of including the possibility of three parents in the 2017 UPA is twofold. The LGBT community could use it so that same-sex couples can be part of the child's life. It could also be used by de facto fathers who are not biological parents but who help raise the child. Under the current system, we have to choose which father to list on the birth certificate in the best interest of the child.

Mihoko Ito asked Geraldine Hasegawa if CSEA has looked at how other jurisdictions have handled changes to their VEP procedures. Ms. Hasegawa replied that she has not recently looked at it but has talked to other states. Generally, in inter-state cases, there are only two parents listed on the birth certificate. States all have to follow federal requirements. Some states like Florida have a modified online program between the birthing center or midwives and the departments of health.

Carol Lockwood shared that when they do gestational surrogacies, she informs the surrogate not to list her husband on the birth certificate because he is not the genetic father. She asks Ms. Hasegawa if this has an impact on federal funding. Ms. Hasegawa replies that as long as adoption occurs, the federal government accepts this because it establishes legal responsibility for child.

No public testimony was offered.

3. Discussion regarding a plan for the work of the Task Force, including a discussion of issues to be addressed, the identification of tasks, goals, and priorities, the division of work amongst members, and the timeline for completion of tasks.

01:32:50 – 02:00:10

Chair Chun opened the topic for discussion. She noted that the Task Force could utilize permitted interaction groups or "PIGs" to discuss topics outside of Sunshine as long as they report back on their discussions to the larger Task Force. She also added that the Task Force could recommend additional people to join.

Laurel Johnston asked that the Task Force look at the recent Acts 160 and 161 of 2023 which relate to the use of gender-neutral terminology. She also noted that the legislature adopted the uniform law on probate this year which addresses some similar issues. She also commented that HRS § 578-14 does allow the names of both adoptive parents and biological parents to be placed on a birth certificate. HRS § 578-14.5 allows for keeping medical information about the biological parents of an adopted child.

Ms. Johnston also mentioned three Supreme Court cases: Obergefell, Pavan, and Box. Pavan and Box involved female-female couples where one person could not be added to the birth certificate. The Uniform Law Commission looked at these cases when creating the 2017 UPA.

Ms. Johnston identified several concepts that come to mind when thinking about parentage laws. One is informed consent on the part of the child being born. Clearly, child cannot give informed consent but something is happening relating to their life that can have lifelong consequences. Another concept is “do not harm.” This includes not only physical but also emotional and mental harm from being cut off from one’s roots. The last is the concept of parens patriae, which is the government responsibility for taking care of children.

Chair Chun asked what documents they should start working off of so as not to redo work that has already been done. Ms. Lockwood asked whether the group wanted to look at assisted reproduction and surrogacy. Judge Hall expressed that from a judiciary standpoint, she would want to discuss everything, including assisted reproduction and surrogacy. Ms. Lockwood, Mr. Taylor, Ms. Ito, Ms. Marie-Iha also agreed.

Judge Hall shared that the draft bill submitted this past legislative session did go through members of the Uniform Laws Commission. She also said she could try to merge the versions of the draft bill submitted in 2021 and 2023 so that we have one document to work from that includes assisted reproduction and surrogacy sections as well as suggested language from the Department of the Attorney General and CSEA. Chair Chun agreed that it would be good to use such a draft as a starting point for the Task Force to review. Judge Hall stated that she might already have a draft ready to circulate.

Chair Chun asked if anyone thought it would be good to add a member to represent the Uniform Laws Commission. Ms. Ito responded that it was probably unnecessary, but the Task Force should consult with the Commission.

01:56:02 – Public Testimony by P. Amazinga

Testifier stated her opinion that we should disavow notion that mommies can be good daddies and vice versa; the two sexes are different but both important to development of human beings. Concerned with whether a “paternity-based” can prevent underage daughter from having an abortion, or will be informed if child takes sex-altering medication or surgeries, or exhibits behavioral changes.

No further public testimony was offered.

Chair Chun stated that she would wait for Judge Hall’s latest bill draft before scheduling next Task Force meeting so members could review the draft before meeting again.

E. Adjournment

02:00:10 – Meeting adjourned.