Expansion of Voluntary Parentage Eligibility

The Permitted Interaction Group (PIG) on Legal Parentage would like to ask the Task Force at large to weigh in on two questions:

1. 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
2. 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).

Under HRS § 584-3.5, unwed parents may voluntarily establish parentage during the period immediately prior to or following a child’s birth through an expedited process which avoids the necessity of a court proceedings. Under this process, the parents sign a voluntary acknowledgment of paternity form under oath. The form is then sent by the birthing center to the Department of Health (DOH), which will issue a birth certificate with the names of both parents. In practice, the Voluntary Establishment of Paternity form is signed after a child’s birth.

Currently, this process is **only** available to the natural mother and natural father. The task force may decide to expand the availability of a voluntary expedited paternity process (or at least, a process that accomplishes similar goals) to **unwed** birthing parents and their partners of any gender, regardless of whether the partner is genetically related to the child or not. This would include other females or even males who are not the biological father of the child. Note however, that even if eligibility is expanded, eligibility would not include situations where neither partner gives birth to the child (e.g., same-sex male couples or couples using a surrogate). Such couples would instead establish parentage through the procedures we intend to recommend governing surrogacy or would go through the adoption procedure.

The pros and cons of expanding eligibility for unwed partners to voluntarily establish parentage, as well as two possible options to expand eligibility, are described below.

**Pros and Cons of *not* expanding eligibility.** The Task Force may decide not to expand eligibility to voluntarily establish parentage beyond what is already provided in HRS § 584-3.5. As described, currently, only the natural mother and natural father are allowed to utilize this process. The PIG determined that the following were pros and cons of not disturbing current eligibility.

**Pros:**

1. A system is already in place.

2. Limiting the people who are allowed to voluntarily acknowledge parentage to the natural mother and natural father is easy for lay people (both parents and birthing center staff) to understand.

3. By requiring the male parent to attest that he is the natural father, the likelihood that there is another male somewhere who is actually the natural father and has a competing claim to paternity is decreased.

**Cons**

1. Even if an unmarried birthing parent’s partner intends to parent the child, they are not able to voluntarily establish parentage if they are not the natural father.

2. Any male could be mistaken in the attestation of paternity, but would still be the child’s legal parent unless and until he rescinds acknowledgment or there is a court decision determining that he is not the father. So in practice, the current process still allows non-genetically related males to voluntarily establish parentage. However, a non-male does not even have this opportunity.

**Pros and Cons of *expanding* eligibility to all partners of unwed birthing parents.**

**Pros**

1. Promotes inclusivity, and all language could comply with being gender neutral.

2. Reduces number of cases needing to go through time and expense of a court hearing (although it should be noted that the time and expense of court may not be very great in uncontested cases in the first place).

3. Method could be created to have documentation of biological heritage, if known, (information should be held in confidential status). Further discussion will be needed regarding the agency responsible for keeping such records.

4. Intended to allow the person who intends to parent the child and hold them out as their own to voluntarily establish parentage, regardless of their marital status, gender, or genetic relation to the child.

**Cons**

1. New forms, procedures, and systems would need to be created, and time will need to be given to create.

2. Some state agencies will need additional funding to amend systems and create new forms and procedures.

3. Unless there are procedural protections, a natural father may not receive notice that another person has been voluntarily established as the child’s parent.

4. Expansion would explicitly create the possibility of a non-biological parent being the legal parent, meaning that it is possible that the biological father of the child may never be legally identified.

5. It’s possible (although we are not aware of data to support this) that by allowing a person who is not married to the birthing mother and is not genetically related to the child to use this process, it may result in more cases where that parent then attempts to rescind the voluntary establishment of parentage or the biological parent may bring a paternity action.

6. There could be confusion with birthing center workers and midwives as to who is eligible if it is not limited to males.

\* As already noted, neither the current nor hypothetically expanded expedited process could be utilized by a couple where neither gave birth to the child. If the couple is using a surrogate, that would be covered separately in the surrogacy section. If the couple are the intended parents of a child conceived naturally by a third person, they would have to go through the adoption process.

**Options to Expand Voluntary Parentage Eligibility**

If the task force is in favor of expanding the eligibility to voluntarily establish parentage, the following are two options we would recommend.

Explicitly Expanding Eligibility to All “Professed Parents”

* A definition would be added to the voluntary establishment of parentage section to the effect that a “professed parent” is someone not necessarily genetically related to the child and who expresses an intent to be legally responsible as the child’s parent. The professed parent could be of any gender.
  + Note that the Task Force will have to decide on the definition of a “partner.” However, the intent is not to extend eligibility to family members of the birthing parent who want to help raise the child.
* Does not apply to situations involving assisted reproduction (which would be governed by Part VIII of draft UPA) or surrogacy (which would be governed by Part IX of the draft UPA).
* As with the existing expedited establishment of paternity process, a professed parent and the birthing parent could expedite the establishment of paternity by signing a voluntary acknowledgement of parentage at the hospital or birthing center.
* **Outline of Process**:
  + Professed parent can only sign if there is no other person who is a presumed or known genetic parent.
  + If the professed parent is not the genetic parent, then the birthing mother must attest that she does not know who the genetic parent is (again, note that this process would not apply to children conceived through the use of donor sperm).
  + If the birthing parent identifies a genetic/presumed parent, parentage as between the professed parent and the genetic/presumed parent must be established in a court proceeding.
  + Expedited forms should inform the birthing parent of the importance of identifying any genetic/presumed parent, especially regarding possible future claims to parentage.

Uncontested Parentage

* If explicitly expanding the expedited establishment of paternity process to all “professed parents” is too difficult, another option is to create a separate process by which professed parents can easily establish parentage without having to go through adoption.
* **Outline of Process:**

I. Steps

A. Complaint or Petition filed to create case

B. Set of documents prepared by the parties and filed (detailed instructions for the forms should be created)

C. Proposed Judgment of Parentage submitted for Court review

D. Judge reviews and either signs or sets for hearing if there are issues with the documents

E. Notice must be given to CSEA, and CSEA will need to be a party if public assistance benefits are involved

II. Documents needed

A. Information regarding parties- could use current Paternity Information Sheet

B. Affidavit of Birthing Parent

C. Affidavit of Professed Parent

D. Any other documents deemed necessary (PIG will need to discuss)