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

DATE: March 8, 2024
TIME: 2:30 p.m.
PLACE: Department of the Attorney General, Hale Auhau
425 Queen Street, Honolulu, HI 96813; 3rd Floor &
Online via Zoom:
<https://us02web.zoom.us/j/84755509738>
To join by telephone: Dial +1 346 248 7799
Webinar ID: 847 5550 9738

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

[00:00:00–00:03:31]

Chair Chun called meeting to order at 2:32 p.m.

Members constituting quorum:

1. Chairperson Lauren Chun (in person)
2. Laurel Johnston (in person)
3. Hon. Jessi Hall (via Zoom)
4. Mark Nugent (via Zoom)
5. Geraldine Hasegawa (via Zoom)
6. Carol Lockwood (via Zoom)
7. Lorrin Kim (via Zoom)
8. Jeff Esmond (via Zoom)
9. Dr. John Frattarelli (via Zoom)

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

B. Non-Action Items

1. Discussion regarding setting internal Task Force deadlines.

[00:03:31–00:24:10]

Chair Chun took agenda item B.2 out of order. Noting that the schedule is the most pressing matter, Chair Chun reported that the Legislative Division of the Attorney General's Office will need the report by end of October, by the very latest, for them to conduct a review for the report to be complete by the Legislature's December 6 deadline. Chair Chun asked how long the existing PIGs will need to finish their proposed draft and how long would the new drafting PIG need to complete its own review?

Chair Chun noted that legal parentage PIG has been making edits and bringing the revisions to the whole group for feedback, asked whether this kind of review is feasible for other PIGs.

Ms. Johnston expressed appreciation for deadlines but expressed hesitation about each PIG making revisions and attempting to create a coherent outline, particularly using multiple drafting steps as a process.

Chair Chun noted that she hadn't done legislative drafting before and is open to suggestions.

Ms. Lockwood asked whether Ms. Johnston had any alternative suggestions.

Ms. Johnston noted that she is personally comfortable proposing concepts particularly given the Uniform Law Commission's (ULC's) revisions.

[00:09:20 Thaddeus Pham joins the meeting via Zoom]

Chair Chun asked whether other PIGs anticipate big changes.

[00:09:48 Dr. Cheryl Andaya joins the meeting via Zoom]

Chair Chun noted for newcomers that the group is discussing agenda item B.2 to ensure final draft is completed by end of October.

Judge Hall commented that legal parentage PIG is making changes and expressed hope that each PIG would come up with proposed language and present it to the group so that drafting PIG can synthesize in a cohesive manner.

Chair Chun asked whether each PIG needs to exchange with each other PIG.

Judge Hall noted that the changes could be considered in the large group. Ms. Lockwood agreed.

Ms. Lockwood expressed appreciation for deadlines for both work within PIGs and within larger group.

Chair Chun noted that agenda item on future task force meetings bleeds into this discussion as she proposed monthly set meetings so that PIGs knew when they would be able to bring edits to the whole group for discussion. Chair Chun proposed a July deadline for PIGs to have all proposed language and section of report finished. Judge Hall and Ms. Lockwood expressed verbal agreement.

Chair Chun asked if anyone on the Assisted Reproduction PIG had thoughts. Ms. Lockwood noted that she is also on that PIG and agreed that the deadline worked for Assisted Reproduction as well.

Chair Chun then asked whether the PIGs anticipated extensive edits. Ms. Lockwood anticipated that most will be tweaks.

Chair Chun asked whether the group wanted to set additional interim deadlines.

Judge Hall noted agreement with deadlines as proposed in order to foster discussion during the process. She anticipated the group will have to have discussion on new changes to donor identification from the ULC.

Chair Chun commented that if issues in the form of policy determinations are discovered, they should be brought up sooner than later i.e. the discussion on expanding voluntary establishment of parentage. Ms. Johnston noted that the area of law is so technical that it makes it difficult to weigh in, she would like revisions to be consistent with other laws but it is unclear whether it is. Chair Chun noted that the Legislative Division of the Attorney General's office would be able to review material for consistency with the Hawaii Revised Statutes and can be a resource with that aspect of drafting.

Mr. Pham expressed agreement with the proposed timeline and noted that it would be helpful to include examples to contextualize the changes that are being made so that the impact on the people could be considered. Ms. Johnston agreed that reporting is important and that concepts are important to include for the Legislature. Chair Chun agreed that it would be helpful for the Legislature to understand the choices being made and noted that the Legislature will have to do their own legal review anyway.

Judge Hall proposed a May 24 concept deadline. Chair Chun agreed that the deadline would be good to understand what the group wanted to accomplish and noted a draft deadline by June and a finalization deadline of July.

There was no public testimony.

2. Discussion regarding the scheduling of future Task Force meetings.

[00:24:13–00:29:02]

Chair Chun moved on to Agenda Item B.3. Chair Chun proposed setting monthly meetings on Friday afternoons instead of establishing dates ad hoc. The PIGs could then reach out if they felt that another meeting was needed. No objections were made.

[00:26:21 Mihoko Ito joined the meeting via Zoom]

[00:28:46 Mr. Kim is absent from the meeting]

Judge Hall asked if the Chair had any specific Friday in mind, maybe the second Friday. Chair Chun agreed that it would be the second or third Friday. Chair Chun noted that Mr. Esmond requested an earlier start time, move to 1:00 p.m. / 1:30 p.m.

3. Status update and reports from:

[00:29:11-00:51:24]

a. the Legal Parentage PIG

Chair Chun moved to Agenda Item B.1 PIG updates.

[00:29:46-00:30:14 Ms. Hasegawa is absent from the meeting]

[00:30:50 Mr. Kim returns to meeting]

[00:33:18 Mr. Kim is absent from the meeting]

[00:34:23 Mr. Kim returns to meeting]

[00:36:17 Mr. Kim leaves the meeting]

Legal Parentage PIG update provided by Chair Chun. Referenced the Legal Parentage report. She reported that building off discussion about whether the Task Force was in favor of expanding scope of legal parentage provision and the automatic establishment of parentage. She noted that people were generally in favor of expansion. The PIG considered another procedure for uncontested parentage adjudication. PIG proposed language to accomplish those goals. Chair Chun noted that there were no extensive edits but the edits would allow professed parents to use VEP or uncontested parentage process. Only persons in situations where actual genetic parent is unknown would be able to use this process. The goal is to make the VEP process gender neutral but not intended to allow birthing parent to erase the identity of a known genetic parent. Ms. Lockwood offered an example where mom got pregnant with boyfriend and has new boyfriend. She cannot cut off old boyfriend's parental rights by simply processing new boyfriend as parent. Chair Chun noted that the process would only apply to a limited amount of scenarios.

Ms. Johnston asked whether Mr. Nugent thought that this would work for child support enforcement. Mr. Nugent expressed some concerns with expansion of professed parent. While there is a desire to expand VEP application, is concerned that grandparents or other relatives may attempt to sign on. Noted that the issue is that there would be a situation

where friend of birthing parent would sign on but have no judicial review which would lead to potential abuses. Expressed desire for language to be tightened up.

Chair Chun noted that there was a discussion on how to limit definitions. Ms. Lockwood noted that terms like romantic relationships would pose a challenge where the partner was temporary.

Chair Chun noted that currently any male can sign the VEP currently so some of these issues exist without expansion.

Ms. Johnston expressed concern about informed consent. Ms. Hasegawa responded that current VEP program provides brochures to mother and alleged father and provides information as to the rights and responsibilities of parents. Ms. Johnston asked how many languages those forms are in. Ms. Hasegawa responded that only in English currently but the agency is working to add languages. Currently parties rely on friends etc. to make translations. Ms. Hasegawa noted that the timeframe that the birthing parent is in the birthing center is narrow so hospitals and staff have been provided short instruction sheet to address possible questions relating to VEP as well. It is generally implied that it is the bio father that is signing the form. Ms. Hasegawa observed that the new definition is outside the uniform parentage act and shares Mr. Esmond's concerns that the method can be used and abused by individuals that want legal access to child without much effort on their part especially if the focus is not bio parent but another interested party. Ms. Johnston also noted concern about non-genetic individuals signing form absent the legal contract of marriage.

Chair Chun noted that these issues exist under the current standard and reiterated the focus is whether to expand or even further restrict the process keeping in mind that the baseline task is to make the language gender neutral. Ms. Lockwood commented that it should be assumed that there may be buyers remorse on both sides and it happens frequently even in the marriage context.

Judge Hall commented that the PIG considered a process that provides for proceeding for judicial review but without hearings. Chair Chun clarified that the uncontested proceeding would only apply if the other genetic parent was unknown. Or if the presumed genetic parent did not sign the VEP or where all parties agreed that the presumed legal parent was not the genetic parent.

Mr. Esmond noted that if professed parent was eliminated, there would still be an expansion of VEP to female same-sex couples.

Chair Chun also noted that in the proposed edits there is a small expansion of uncontested parentage proceedings where the judge can waive a hearing and that PIG is working on drafting instructions and forms. Judge Hall noted that the instructions and forms would serve as a sample but as the judiciary has discretion in this area, they may not follow the forms and instructions exactly as proposed.

Chair Chun commented that the group may need to think about the processed parentage language, whether to allow VEP expansion, keep status quo, or channel it through the courts. Judge Hall proposed that members bring their thoughts to the next meeting to get an idea where the majority lies and hopefully the Legal Parentage PIG will have draft instructions. Chair Chun also asked for the group to bring thoughts on proposed edits.

Mr. Pham offered to look at the instructions through a lens of public facing/dissemination purposes. He commented that it would be helpful to have public facing documents.

b. Birth Heritage PIG

[00:51:24–01:02:00]

Ms. Johnston reported that the PIG considered language that was submitted by ULC. She noted that it is an improvement. Shared concerns that there are some implementation issues. She commented that Ms. Lockwood noted that it would only apply to donors and recipients in Hawaii, which is a small pool. This is a similar issue with adoption records.

Ms. Lockwood clarified that the change is not likely to achieve much transparency. Dr. Frattarelli noted that only about 25% of locals are local, majority of recipients use out of state donors.

Ms. Lockwood noted that there was a consensus that where information is available, there should be a preservation of those records. I.e. in the same way adoption records are reserved. She also commented that the parents have the information. Dr. Frattarelli noted that banks are required to keep info for 30 years.

Ms. Johnston commented that a person should have agency at age 18 to be able to obtain the information without going through their parents. Wanting consistency between adoption and ARP and surrogacy. She also noted that during the PIG meeting Dr. Andaya commented that it would be helpful to have informed consent or mandated parenting classes, hoping people would think about the future.

Judge Hall asked for source of the requirement that banks should keep records for 30 years. Dr. Frattarelli responded that it is a FDA requirement also comments that the information is all electronic at this point.

[00:56:56 Mr. Esmond departs the meeting]

Ms. Lockwood noted that her son may ask the bank for access to that information when he turns 18. Judge Hall asks whether that was also a FDA requirement. Ms. Lockwood understands that it is a standard policy, similar to adoption agency policies.

Ms. Lockwood notes that there was not a consensus on the mandating. She is very sensitive to not imposing additional hurdles on infertile couples and same sex couples that are not imposed on others.

Chair Chun comments that it is good to note lack of consensus in PIGs for the Legislature.

Ms. Hasegawa followed up on the earlier VEP language question. She notes that the agencies are trying to create an electronic program that will allow the users to access other languages so that they can have it translated into their primary language.

c. the Assisted Reproduction and Surrogacy PIG

[01:02:00–01:12:26]

Ms. Lockwood reported that the PIG had not met.

Chair Chun asked whether the PIG anticipated big problems. Ms. Lockwood commented that she did not see big problems. Ms. Ito agreed, likely just addressing lack of clarity and making small tweaks.

Dr. Frattarelli noted the previous discussion of the utility of keeping genetic surrogacy in the act. Chair Chun asked whether there was a decision on whether to keep or recommend against.

Ms. Lockwood commented that it was one of the areas that will likely get push back and create legal issues, particularly the parental rights of the genetic surrogate. Dr. Frattarelli noted that it is very rarely done in practice. Ms. Lockwood noted that the concern was not to incentivize or suggest the option. Concern is that providing structure will encourage people to explore the option. Ms. Lockwood explained that a genetic surrogacy is where the surrogate is the biological mother. Explanation that there are concerns that women who want to put up their children for adoption are not allowed to do so until after giving birth. So the thought that a surrogate is more capable of making that decision is fraught. She also noted that courts do not tend to remove parental rights of genetic parent, so genetic surrogate may be given parental rights. Dr. Frattarelli commented that the reality is that it is a legal issue as doctors will suggest something different in practice. Ms. Johnston suggested whether to have provision removed. Judge Hall agreed.

Ms. Lockwood wondered whether there was room to affirm IVF here. Ms. Ito noted that there are discussions to affirm IVF so it is not unreasonable to consider. Chair Chun encouraged that people suggest additional language if those issues come up. Chair Chun noted that the task force is not necessarily bound by what is currently in the draft.

No public testimony.

[01:12:40–01:13:15]

Chair Chun noted that she will take care of scheduling and revise deadlines for circulation and confirm communication complies with sunshine laws.

C. Adjournment

[01:13:17]

Chair Chun adjourns at 3:45 p.m.