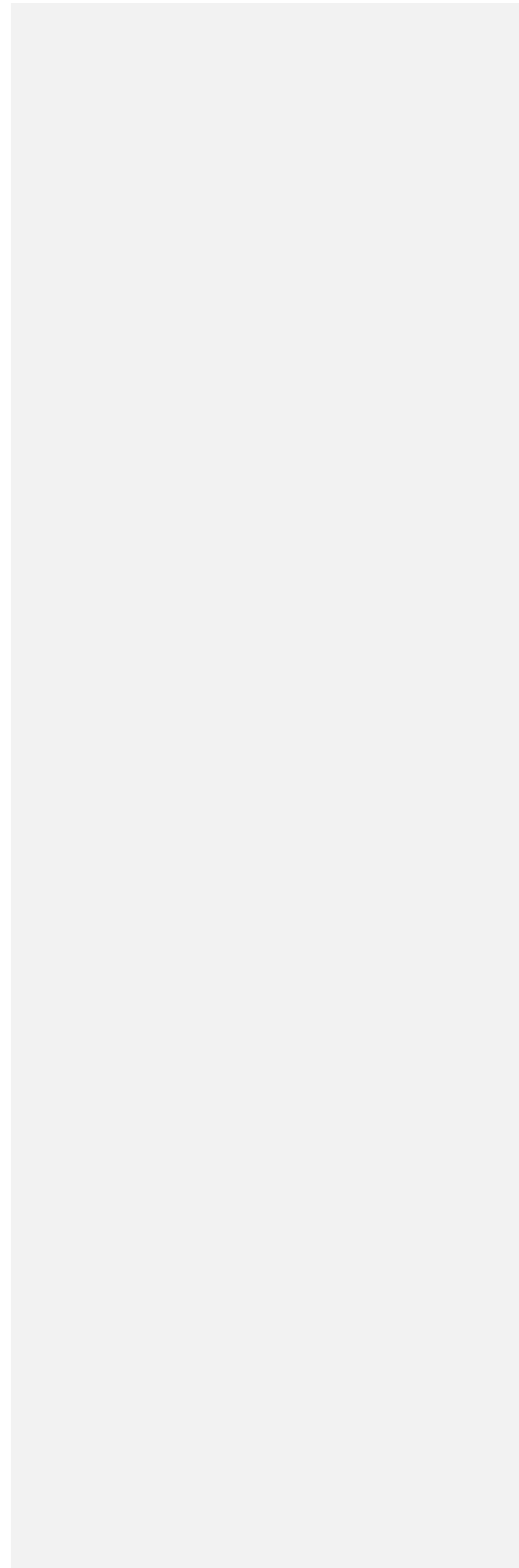


THE LEGAL PARENTAGE PERMITTED INTERACTION GROUP'S

PROPOSED DRAFT BILL

JULY 19, 2024



SECTION 1. This measure enacts appropriate portions of the Uniform Parentage Act of 2017 (UPA) to replace the Uniform Parentage Act of 1973. The UPA seeks to do the following: ensures the equal treatment of children born to same-sex couples, establishes a de facto parent as a legal parent, includes surrogacy provisions to reflect developments in that area, and addresses the rights of children born through assisted reproductive technology.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

UNIFORM PARENTAGE ACT

PART I. GENERAL PROVISIONS

§ -A **Short title.** This chapter may be cited as the Uniform Parentage Act.

§ -B **Definitions.** In this chapter:

"Acknowledged parent" means an individual who has established a parent-child relationship under part III and IV.

"Adjudicated genetic parent" means an individual who has been adjudicated to be a parent of a child by a court with jurisdiction after genetic testing.

"Adjudicated parent" means an individual who has been adjudicated to be a parent of a child by a court with jurisdiction.

"Alleged genetic parent" means an individual who is alleged to be, or alleges that the individual is, a genetic parent or possible genetic parent of a child whose parentage has not been adjudicated. The term does not include a presumed parent; an individual whose parental rights have been terminated or declared not to exist; or a donor.

"Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes intrauterine or intracervical insemination, donation of gametes, donation of embryos, in-vitro fertilization and transfer of embryos, and intracytoplasmic sperm injection.

"Birth" includes stillbirth.

"Birthing center" means any facility outside a hospital that provides maternity services.

"Birthing hospital" means any hospital with licensed obstetric-care units, any hospital licensed to provide obstetric services, or any licensed birthing center associated with a hospital.

"Child" means an individual of any age whose parentage may be determined under this chapter.

"Child support enforcement agency" means a state agency created pursuant to chapter 576D.

"Combined relationship index" means the product of all tested relationship indices.

"De facto parent" means an individual who meets the criteria set out in -Z(d).

"Determination of parentage" means establishment of a parent-child relationship by a judicial or administrative proceeding or signing of a valid acknowledgment of parentage under part IV.

"Donor" means an individual who provides gametes intended for use in assisted reproduction, whether or not for consideration. The term does not include an individual who gives birth to a child conceived by assisted reproduction, except as otherwise provided in part IX, or a parent under part VIII or an intended parent under part IX.

"Ethnic or racial group" means for the purpose of genetic testing, a recognized group that an individual identifies as the individual's ancestry or part of the ancestry or that is identified by other information.

"Facility" means a birthing hospital or a birthing center.

"Gamete" means sperm, egg, or any part of a sperm or egg.

"Genetic parent" means an individual whose relationship to a child has been determined by genetic testing.

"Genetic testing" means an analysis of genetic markers to identify or exclude a genetic relationship.

"Hypothesized genetic relationship" means an asserted genetic relationship between an individual and a child.

"Individual" means a natural person of any age.

"Intended parent" means an individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction.

"Parent" means an individual who has established a parent-child relationship under section -F.

"Parentage" or "parent-child relationship" means the legal relationship between a child and a parent of the child.

"Presumed parent" means an individual who under section -H is presumed to be a parent of a child, unless the presumption is overcome in a judicial proceeding, a valid denial of parentage is made under part VI, or a court adjudicates the individual to be a parent.

"Probability of parentage" means, for the ethnic or racial group to which an individual alleged to be a parent belongs, the probability that a hypothesized genetic relationship is supported, compared to the probability that a genetic relationship is supported between the child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship, expressed as a percentage

incorporating the combined relationship index and a prior probability.

"Professed parent" means an individual who is not the genetic parent of a child but who, along with agreement from the birthing parent, professes an intent to be legally bound as a parent of a child where the identity of the possible genetic parent is unknown. A professed parent may not be related by consanguinity or marriage to the birthing parent. The professed parent must reside with the birthing parent and the child, including any period of temporary absence, and the parties must hold themselves out as a family unit. A professed parent does not include any individual who has provided monetary compensation in exchange for the birthing parent's agreement.

"Relationship index" means a likelihood ratio that compares the probability of a genetic marker given a hypothesized genetic relationship and the probability of the genetic marker given a genetic relationship between the child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship.

"Signatory" means an individual who signs a record.

"Transfer" means a procedure for assisted reproduction by which an embryo or sperm is placed within the reproductive tract of the individual who will give birth to the child.

Commented [CLK1]: This definition of "professed parent" is not in the UPA. The intent of this addition is to increase equity between unmarried, non-heterosexual-cisgender couples and unmarried, heterosexual couples. However, a professed parent can only be adjudicated by a court to be a parent; a professed parent cannot establish parentage by simply filing a Voluntary Establishment of Parentage form. But the court can decide to waive a hearing if it is satisfied that parentage should be established with the professed parent.

"Witnessed" means that at least one individual who is authorized to sign and has signed a record to verify that the individual personally observed a signatory sign the record.

PART II. JURISDICTION

§ -C Jurisdiction; venue. (a) Without limiting the jurisdiction of any other court, the family court has jurisdiction over an action brought under this chapter, chapter 583A, or chapter 576B. The action may be joined with an action for divorce, annulment, separate maintenance, or support.

(b) An individual who has sexual intercourse, undergoes or consents to assisted reproductive technology, or consents to assisted reproductive technology agreements in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this chapter with respect to a child who may have been conceived by that act of intercourse or assisted reproductive technology, regardless of where the child is born. A court of this state with jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or a guardian or conservator of the individual, if the conditions prescribed in section 576B-201 are satisfied. In addition to any other method provided by statute, personal jurisdiction over a resident and non-resident individual may be acquired by personal service within or outside this State or by

service by certified or registered mail, postage prepaid, with return receipt requested.

(c) In addition to any other method of service provided by statute or court rule, if the respondent is not found within the circuit, service may be effectuated by registered or certified mail, with request for a return receipt and direction to deliver to addressee only. The return receipt signed by the respondent shall be prima facie evidence that the respondent accepted delivery of the complaint and summons on the date set forth on the receipt. For service effectuated by registered or certified mail, an electronic copy or facsimile of the signature of the served individual or certified mailers provided by the United States Postal Service shall constitute valid proof of service on the individual. Actual receipt by the respondent of the complaint and summons sent by registered or certified mail shall be the equivalent to personal service on the respondent by an authorized process server as of the date of the receipt.

(d) If it appears that the respondent has refused to accept service by registered or certified mail or is concealing oneself or evading service, or the petitioner does not know the address or residence of the respondent and has not been able to ascertain the same after reasonable and due inquiry and search, the court may authorize notice of the parentage action and the time and date of hearing by publication or by any other manner

that is reasonably calculated to give the party actual notice of proceedings and an opportunity to be heard, including the following:

- (1) When publication is authorized, the summons shall be published once a week for four consecutive weeks in a publication of general circulation in the circuit. The publication of general circulation shall be designated by the court in the order for publication of the summons. Notice by publication shall have the same force and effect as such individual having been personally served with the summons; provided that the date of the last publication shall be set not less than twenty-one days prior to the return date stated in the summons. Proof of service shall be satisfied by an affidavit or declaration by the authorized representative for the publication that the notice was given in the manner prescribed by the court;
- (2) When posting to an online publication website is authorized, proof of service shall be satisfied by an affidavit or declaration by the authorized representative for the publication that the notice was given in the manner prescribed by the court;
- (3) When service by electronic mail or posting to a social networking account is authorized, proof of service

shall be satisfied by an affidavit or declaration by the process server that the notice was given in the manner prescribed by the court; and

- (4) When service is made by posting to a public bulletin board, proof of service shall be satisfied by an affidavit or declaration by the process server that the notice was given in the manner prescribed by the court.

(e) The action may be brought in the county in which the child, any parent as defined above reside, or in which the child was born or, if a parent is deceased, in which proceedings for probate of the parent's estate have been or could be commenced, in which assisted reproductive technology was performed, or as specified in the choice of law provision of a surrogacy agreement, if any.

§ -D Parentage determinations from other states and territories. Parentage determinations from other states and territories, whether established through voluntary acknowledgement or through administrative or judicial processes, shall be treated the same as a parentage adjudication in this State. A determination addressing parentage only in another State does not preclude a court in this State from addressing other related issues.

§ -E Who may bring action; when action may be brought; process, warrant, bond. (a) A child or guardian ad litem of the child, an individual who is the child's parent under this chapter, an individual whose parentage of the child is to be adjudicated, a personal representative of a deceased parent of the child, the personal representative of a deceased individual who otherwise would be entitled to maintain a proceeding, or the child support enforcement agency may bring an action for the purpose of declaring the existence or nonexistence of a parent-child relationship in accordance with the following:

- (1) If the child is the subject of an adoption proceeding, action may be brought:
 - (A) Within thirty days after the date of the child's birth in any case when a parent relinquishes the child for adoption during the thirty-day period;
or
 - (B) Any time prior to the date of execution by a parent of a valid consent to the child's adoption, or prior to placement of the child with adoptive parents;
- (2) If the child has not become the subject of an adoption proceeding, within three years after the child reaches the age of majority or any time after that for good cause; provided that any period of time during which

the individual whose parentage is to be adjudicated is absent from the State or is openly cohabitating with a parent of the child or is contributing to the support of the child, shall not be computed;

- (3) This section shall not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise; and
- (4) A personal representative in this section may be appointed by the court upon a filing of an ex parte motion by one of the parties entitled to file a parentage action. Probate requirements need not be met. However, appointment of the personal representative in this section is limited to representation in proceedings under this chapter.

(b) When an action is brought under this section, process shall issue in the form of a summons and an order directed to the individual whose parentage of the child is to be adjudicated, requiring each to appear and to show cause why the action should not be brought. The court, in its discretion, may waive a hearing on an uncontested parentage complaint submitted by an individual who gave birth to a child, an alleged genetic

parent of the child, a presumed parent of the child, or a professed parent of the child with proof provided by affidavit.

If, at any stage of the proceedings, there appears probable cause to believe that the individual whose parentage is to be adjudicated will fail to appear in response thereto or will flee the jurisdiction of the court, the court may issue a warrant directed to the sheriff, deputy sheriff, or any police officer within the circuit, requiring the individual to be arrested and brought for pre-trial proceedings before the family court. Upon such pre-trial proceedings, the court may require the individual to enter into bond with good sureties to the State in a sum to be fixed by the court for each individual's appearance and the trial of the proceeding in the family court. If the individual whose parentage is to be adjudicated fails to give the bond required, the court may immediately commit that individual to the custody of the chief of police of the county, there to remain until that individual enters into the required bond or otherwise is discharged by due process of law. If the individual whose parentage is to be adjudicated fails to appear in any proceeding under this chapter, any bond for that individual's appearance in any proceeding under this chapter shall be forfeited; but the trial of, or other proceedings in, the action shall proceed as though that individual were present,

Commented [CLK2]: This addition will make it possible for the courts to adjudicate uncontested parentage cases without having a hearing, similar to how they handle uncontested divorces. But courts could decide that the documentation submitted is not sufficient and still order a hearing in their discretion.

and the court shall make such orders as it deems proper upon the findings as though that individual were in court.

In case of forfeiture of any appearance bond, the money collected upon the forfeiture shall be applied in payment of the judgment against the individual if they are adjudicated to be a parent under this chapter.

(c) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section -L(a)(2), between a parent and the individual whose parentage is to be adjudicated shall not bar an action under this section.

(d) Except as otherwise provided in section -DDD, if an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

(e) Subject to the requirements of section -H(a), with respect to a child conceived who was not conceived through assisted reproduction, where a married individual has not had sexual contact with their spouse nor resided in the same house with the spouse for at least three hundred days prior to the birth of the child and the spouse cannot be contacted after due diligence, the court may accept an affidavit by the married individual, attesting to their diligent efforts to contact their

spouse and providing clear and convincing evidence to rebut the presumption of the parentage of the subject child, and upon the court's satisfaction, notice of the spouse may be waived and the spouse need not be made a party in the parentage proceedings. The court, after receiving evidence, may also enter a finding of non-parentage of the spouse.

(f) With respect to a child who was not conceived through assisted reproduction, where a married individual has not had sexual contact with their spouse nor resided in the same house with the spouse for at least three hundred days prior to the birth of the child, and the biological parent is known, parentage in the married spouse may be disestablished by submission of affidavits of both spouses, and the biological parent stating the name and birthdate of the child and acknowledgement that the spouse is not the parent and that biological parent should be adjudicated as the legal parent.

PART III. PARENT-CHILD RELATIONSHIP

§ -F Establishment of parent-child relationship. A parent-child relationship is established between an individual and a child if:

- (1) The individual gives birth to the child, except as otherwise provided in part IX;
- (2) There is a presumption under section -H of the individual's parentage of the child, unless the

presumption is overcome in a judicial proceeding or a valid denial of parentage is made under part VI;

- (3) The individual is adjudicated a parent of the child under part V;
- (4) The individual adopts the child;
- (5) The individual acknowledges parentage of the child under part IV, unless the acknowledgment is rescinded under section -K(de) or successfully challenged under part IV or V;
- (6) The individual's parentage of the child is established under part VIII; or
- (7) The individual's parentage of the child is established under part IX.

§ -G Relationship not dependent on marriage. A parent-child relationship extends equally to every child and parent, regardless of the marital status of the parent.

§ -H Presumption of parentage. (a) An individual is presumed to be a parent of a child if:

- (1) Except as otherwise provided under part IX or the law of this State other than this chapter:
 - (A) The individual and the individual who gave birth to the child are married to each other and the child is born during the marriage, regardless of

whether the marriage is or could be declared invalid and regardless of the sex of the individuals;

(B) The individual and the individual who gave birth to the child were married to each other and the child is born not later than three hundred days after the marriage is terminated by death, divorce, annulment, or after a decree of separation, regardless of whether the marriage is or could be declared invalid; or

(C) The individual and the individual who gave birth to the child married each other after the birth of the child, regardless of whether the marriage is or could be declared invalid, the individual at any time asserted parentage of the child, and:

(i) the assertion is in ~~a record~~ an acknowledgment of parentage as defined in Part IV that is filed with the department of health; or

(ii) the individual agreed to be and is named as a parent of the child on the birth certificate of the child; or

(2) The individual resided in the same household with the child prior to the child reaching the age of majority,

Commented [CLK3]: This clarifies that a separate record doesn't have to be filed; the voluntary acknowledgment of parentage is sufficient.

including any period of temporary absence, and openly held out the child as the individual's child.

(3) Pursuant to section - GG, they submit to court ordered genetic testing and the results, as stated in a report prepared by the testing laboratory, do not exclude the possibility of their parentage of the child, provided the results of the testing disclose the individual has at least a ninety-nine percent probability of parentage, using a prior probability of .50 as calculated by using the combined relationship index obtained in the testing; and a combined relationship index of at least one hundred to one.

(b) A presumption of parentage under this section may be overcome, and competing claims to parentage may be resolved, only by an adjudication under part V or VI or a valid denial of parentage under part VI.

Commented [CLK4]: This provision was added at the request of the Child Support Enforcement Agency (CSEA).

PART IV. VOLUNTARY ESTABLISHMENT OF PARENTAGE

§ -I Acknowledgment of parentage. An individual who gave birth to a child and an alleged genetic parent of the child, intended parent under part VIII, or presumed parent may sign an acknowledgment of parentage to establish the parentage of the child.

§ -J Execution of acknowledgment of parentage. (a) An acknowledgment of parentage under section -I shall:

- (1) Be in a record signed by the individual who gave birth to the child and by the individual seeking to establish a parent-child relationship, and the signatures must be attested by a notarial officer or witnessed;
- (2) State that the child whose parentage is being acknowledged:
 - (A) Does not have a presumed parent other than the individual seeking to establish the parent-child relationship ~~or has a presumed parent whose full name is~~ stated; and
 - (B) Does not have another acknowledged parent or adjudicated parent, or individual who is a parent of the child under part VIII or IX other than the individual who gave birth to the child; and
- (3) State that the signatories understand that the acknowledgment is the equivalent of an adjudication of parentage of the child and that a challenge to the acknowledgment is permitted only under limited circumstances ~~and is barred two years after the effective date of the~~ acknowledgment.

Commented [CLK5]: This deleted section was part of the 2017 UPA because the UPA allows a presumed parent to deny parentage and for another person to establish parentage all within the administrative Voluntary Acknowledgment of Parentage process. We propose allowing denials of parentage, but only in the context of a parentage proceeding before a judge.

Commented [LC6]: Deleted because we intend that the deadlines for challenging final judgments as found in the Hawaii Rules of Family Court (HRFC) should apply instead. HRFC 60 allows a motion for relief from a judgment to be made either "within a reasonable time" or within one year from the judgment, depending on the reason for the motion.

(b) An acknowledgment of parentage is void if, at the time of signing:

- (1) An individual other than the individual seeking to establish parentage is a presumed parent, ~~unless a denial of parentage by the presumed parent in a signed record is filed with the department of health;~~ or
- (2) An individual, other than the individual who gave birth to the child or the individual seeking to establish parentage, is an acknowledged or adjudicated parent or a parent under part VIII or IX.

Commented [LC7]: Again, we intend to allow denials of parentage, just not in the context of voluntary acknowledgments. A denial of parentage will have to be filed with the court in the context of a proceeding to establish parentage.

§ -K Expedited process of parentage. (a) To expedite the establishment of parentage, each public and private birthing hospital or center, the child support enforcement agency, the midwives authorized by the department of health, and the department of health shall provide parents the opportunity to voluntarily acknowledge the parentage of a child during the period immediately prior to or following the child's birth.

However, an individual who is a presumed parent under § - H(a) (1) (C) or § -H(a) (2) may only submit their voluntary acknowledgment directly to the department of health. The voluntary acknowledgment of parentage shall be in writing and shall consist of a single form signed under oath, or electronic version as allowed by statute, by the individual who gave birth to the child and the individual seeking to establish a parent-

Commented [LC8]: A presumption of parentage under these sections only attaches at some point after the child is born. Thus, a person asserting parentage under these sections couldn't fill out a voluntary acknowledgment with the hospital/birthing center/midwife, but will have to send it directly to the DOH instead.

child relationship and signed by a witness. The voluntary acknowledgment of parentage form shall include the social security number of each signatory. Prior to the signing of the voluntary acknowledgment of parentage form, designated staff members of such facilities shall provide to both the individual who gave birth to the child and the other signatory, if either are present at the facility:

- (1) Written materials regarding parentage establishment;
- (2) Forms necessary to voluntarily acknowledge parentage; and
- (3) Oral, video, or audio, and written descriptions of the alternatives to, the legal consequences of, and the rights and responsibilities of acknowledging parentage, including, if one parent is a minor, any right afforded due to minority status; and
- (4) The opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about parentage establishment.

The completed voluntary acknowledgment forms shall clearly identify the name and position of the staff member who provides information to the parents regarding parentage establishment. The provision by designated staff members of the facility of the information required by this section shall not constitute the

unauthorized practice of law. Birthing facility staff, midwives authorized by the department of health, and department of health staff shall not be subject to civil, criminal, or administrative liability for a negligent act or omission relative to the accuracy of the information provided or for filing the declaration with the appropriate state or local agencies. Each facility shall send to the department of health the original acknowledgment of parentage, or an electronic version as allowed by statute, containing the social security numbers, dates of birth, places of birth, and ethnic backgrounds, if available, of both signatories, with the information required by the department of health so that the birth certificate issued includes the names of the signatories, which shall be promptly recorded by the department of health.

- (b) The child support enforcement agency shall:
 - (1) Provide to any individual or facility the necessary:
 - (A) Materials and forms and a written description of the rights and responsibilities related to voluntary acknowledgment of parentage; and
 - (B) Training, guidance, and written instructions regarding voluntary acknowledgment of parentage;
 - (2) Annually assess each facility's parentage establishment program; and

(3) Determine if a voluntary acknowledgment has been filed with the department of health whenever it receives an application for parentage establishment services.

(c) Notwithstanding sections 338-17.7 and 338-18(b), the department of health shall disclose to the child support enforcement agency, upon request, all voluntary acknowledgment of parentage forms on file with the department of health.

(d) The signed voluntary acknowledgment of parentage shall constitute a legal finding of parentage, subject to the right of any signatory to rescind the acknowledgment:

- (1) Within sixty days of signature; or
- (2) Before the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order to which the signatory is a party, whichever is sooner.

(~~e~~) Following the sixty-day period referred to in subsection (~~d~~), a signed voluntary acknowledgment of parentage may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof on the challenger. The legal responsibilities of any signatory arising from the acknowledgment, including child support obligations, shall not be suspended during the challenge, except for good cause shown.

~~(f)~~ The courts and office of child support hearings of this State shall give full faith and credit to affidavits for the voluntary acknowledgment of parentage signed in any other state and these affidavits shall constitute legal findings of parentage subject to subsections (e) and (f).

~~(g)~~ Judicial and administrative proceedings shall not be required or permitted to ratify an unchallenged acknowledgment of parentage. A voluntary acknowledgment of parentage signed by the individuals and filed with the department of health shall be the basis for establishing and enforcing a support obligation through a judicial or administrative proceeding.

PART V. PROCEEDING TO ADJUDICATE PARENTAGE

§ -L Pretrial recommendations. (a) On the basis of the information produced at the pretrial hearing, the judge conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the parent-child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child pursuant to section 571-46. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

- (1) That the action be dismissed with or without prejudice;

- (2) That the matter be compromised by an agreement among the parent and the individual who is seeking to have their parentage adjudicated, and the child, in which the individual seeking to be adjudicated to be a parent is not adjudicated to be a parent but in which a defined economic obligation is undertaken by the individual whose parentage is to be adjudicated in favor of the child and, if appropriate, in favor of the parent, subject to approval by the judge conducting the hearing. In reviewing the obligation undertaken by the individual whose parentage is to be adjudicated in a compromise agreement, the judge conducting the hearing shall consider the best interest of the child, in light of the factors enumerated in section 576D-7, discounted by the improbability, as it appears to the judge, of establishing the parentage or nonparentage of the individual whose parentage is to be adjudicated in a trial of the action; or
- (3) That the individual whose parentage is to be adjudicated voluntarily acknowledges parentage of the child.

(b) If the parties accept a recommendation made in accordance with subsection (a), judgment shall be entered accordingly.

(c) If a party refuses to accept the final recommendation made under subsection (a) and genetic tests have not been taken, if practicable, the court may order the parties to submit to genetic tests. Thereafter the judge shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(d) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(e) The informal hearing may be terminated and the action set for trial if the judge conducting the hearing finds it unlikely that all parties would accept a recommendation the judge might make under subsection (a) or (c).

§ -M Civil action. (a) An action under this chapter shall be a civil action governed by the Hawaii rules of civil procedure or the Hawaii family court rules. The individual who gave birth to the child and the individual whose parentage is to be adjudicated shall be competent to testify and may be compelled to testify; provided that no criminal prosecution, other than a prosecution for perjury, shall afterwards be commenced against the individual who gave birth to the child or the individual whose parentage is to be adjudicated on account

of any transaction, matter, or thing concerning which they may testify or produce evidence under this chapter, documentary or otherwise. Part VII shall apply in any action brought under this chapter.

(b) Testimony relating to sexual access to the individual who gave birth to the child by an unidentified individual at any time or by an identified individual at a time other than the probable time of conception of the child shall be inadmissible in evidence, unless offered by the individual who gave birth to the child.

(c) In an action against an individual whose parentage is to be adjudicated, evidence offered by the individual whose parentage is to be adjudicated with respect to an individual who is not subject to the jurisdiction of the court concerning sexual intercourse or assisted reproduction with the individual who gave birth to the child at or about the probable time of conception of the child shall be admissible in evidence only if the individual offering the evidence has undergone and made available to the court genetic tests, including genetic tests the results of which do not exclude the possibility of the individual's parentage of the child.

§ -N Action to declare parent-child relationship. Any interested party may bring an action to determine the existence or nonexistence of a parent-child relationship.

§ -O Judgment or order. (a) The judgment or order of the court determining the existence or nonexistence of the parent-child relationship shall be determinative for all purposes.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued under section -U.

(c) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. Upon neglect or refusal to give this security, or upon default of a parent or a parent's surety in compliance with the terms of the judgment, the court may order the forfeiture of any such security and the application of the proceeds thereof toward the payment of any sums due under the terms of the judgment and may also sequester a parent's personal estate, and the rents and profits of a parent's real estate, and may appoint a receiver thereof, and may cause a parent's personal estate, including any salaries, wages, commissions, or other moneys owed to them and the rents and profits of the parent's real estate, to be applied toward the meeting of the terms of the judgment, to the extent

that the court, from time to time, deems just and reasonable. The judgment or order may direct a parent to pay the reasonable expenses of the pregnancy and confinement, including but not limited to medical insurance premiums, such as for MedQuest, that cover the periods of pregnancy, childbirth, and confinement. The court may further order the noncustodial parent to reimburse the custodial parent, the child, or any public agency for reasonable expenses incurred prior to entry of judgment, including support, maintenance, education, and funeral expenses expended for the benefit of the child.

(d) Support judgments or orders ordinarily shall be for periodic payments that may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the obligor parent's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(e) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall use the guidelines established under section 576D-7. Provision may be made for the support, maintenance, and education of an adult or minor child and an incompetent adult

child, whether or not the petition is made before or after the child has attained the age of majority.

(f) Whenever a parent of a child is a minor, unmarried, and not able to provide full support, the court may order one or both parents of the minor to support the child until the minor reaches the age of majority, is otherwise emancipated, or is financially able to fully support the child, whichever occurs first. For this purpose:

- (1) The judgment or order for support shall be made against the parent or parents of the minor to the extent that the minor is unable to support the child;
- (2) The resources, standard of living, and earning ability of the parent or parents of the minor shall be considered under subsection (d) in determining the amount of support; and
- (3) The parent or parents of the minor shall be an obligor under this chapter and chapter 571 and any action against the obligor to collect support may be pursued against the parent or parents of the minor.

§ -P Costs. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pre-trial proceedings, including genetic tests, subject to section -HH, to be paid by the parties in proportions and at times determined by the court.

§ -Q Enforcement of judgment or order. (a) If existence of the parent-child relationship is declared, or parentage or a duty of support has been acknowledged or adjudicated under this chapter or under prior law, the obligation of a parent may be enforced in the same or other proceedings by the other parent, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other individual, including a private agency, to the extent the individual has furnished or is furnishing these expenses.

(b) The court may order support payments to be made to a parent or an adult child, or through the child support enforcement agency as its rules permit, or through an individual, corporation, or agency designated to administer support payments for the benefit of the child under the supervision of the court.

(c) Willful failure to obey the judgment or order of the court shall be a civil contempt of the court. All remedies for the enforcement of judgments shall apply to this chapter. When a court of competent jurisdiction issues an order compelling a parent to furnish support, including child support, medical support, or other remedial care, for the parent's child, it shall constitute prima facie evidence of a civil contempt of court upon proof that:

- (1) The order was made, filed, and served on the parent or proof that the parent was present in court at the time the order was pronounced; and
- (2) The parent did not comply with the order. An order of civil contempt of court based on prima facie evidence under this subsection shall clearly state that the failure to comply with the order of civil contempt of court may subject the parent to a penalty that may include imprisonment or, if imprisonment is immediately ordered, the conditions that must be met for release from imprisonment. A party may also prove civil contempt of court by means other than prima facie evidence under this subsection.

§ -R Modification of judgment or order. (a) The court shall have continuing jurisdiction to modify or revoke a judgment or order:

- (1) For future education and support; and
- (2) With respect to matters listed in section -O(c) and (d) and section -Q(b), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under section -O(d) may specify that the judgment or order may not be modified or revoked.

(b) In those cases where child support payments are to continue due to the adult child's pursuance of education, the child support enforcement agency, at least three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child, to the child support enforcement agency, prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college, or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court. In addition, if applicable, the child support enforcement agency, hearings officer, or court may issue an order terminating existing assignments against the responsible parent's income and income assignment orders.

(c) The need to provide for the child's health care needs through health insurance or other means shall be a basis for petitioning for a modification of the support order.

§ -S Hearings and records; confidentiality. (a)

Notwithstanding any other law concerning public hearings and

records, any hearing or trial held under this chapter shall be held in closed court without admittance of any individual other than those individuals necessary to the action or proceeding. All papers and records pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the department of health or elsewhere, shall be subject to inspection only upon consent of the court and all interested individuals, or in exceptional cases only upon an order of the court for good cause shown.

(b) Upon parentage being established, the confidentiality requirement shall not extend to the judgment and all subsequently filed documents that are used in good faith for support and medical expenses, insurance, or enforcement purposes, except that the confidentiality requirement shall continue to apply to any references to a non-adjudicated alleged or presumed parent.

(c) Subsections (a) and (b) shall only apply to cases filed before January 1, 2024 and parts VIII, IX, and X of this chapter.

§ -T Court filings; minutes of proceedings; posting requirement. The judiciary shall post on its website the titles of all court filings and the minutes of court proceedings in cases brought under this chapter except for actions filed pursuant to part VIII or IX; provided that the judiciary shall

redact information that has been made confidential by any statute, rule of court, or court order; and provided further that, on request of a party and for good cause, the court may close a proceeding and records to the public except that the titles of all court filings for the case and the contents of a final order shall be available for public inspection, with other papers and records available for public inspection only with the consent of the parties or by court order.

§ -U Birth records. (a) Upon order of a court of this State or upon request or order of a court of another state, or following acknowledgment as provided in section -I, the department of health shall prepare a new certificate of birth consistent with the findings of the court or in cases of acknowledgment under section -I, consistent with the acknowledgment, and shall substitute the new certificate for the original certificate of birth.

(b) The fact that a parent-child relationship was declared or acknowledged after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

(c) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent

of the court and all interested individuals, or in exceptional cases only upon an order of the court for good cause shown.

§ -V Parentage judgment, acknowledgment, support order; social security number. The social security number of any individual who is subject to a parentage judgment or acknowledgment, or a support order issued under this chapter, shall be placed in the records relating to the matter in compliance with any other court rule or law.

§ -W Filing of acknowledgments and adjudications with department of health. All voluntary acknowledgments and adjudications of parentage by judicial process shall be filed with the department of health for comparison with information in the state case registry. Filing of the adjudications of parentage shall be the responsibility of the natural parent or such individual or agency as the court shall direct.

**PART VI. SPECIAL RULES FOR PROCEEDINGS
TO ADJUDICATE PARENTAGE**

§ -X Adjudicating parentage of child with alleged genetic parent. (a) A proceeding to determine whether an alleged genetic parent who is not a presumed parent is a parent of a child may be commenced:

- (1) Before the child becomes an adult; or
- (2) After the child becomes an adult, but only if the child initiates the proceeding.

(b) Except as otherwise provided by law, this subsection applies in a proceeding described in subsection (a) if the individual who gave birth to the child is the only other individual with a claim to parentage of the child. The court shall adjudicate an alleged genetic parent to be a parent of the child if the alleged genetic parent:

- (1) Is identified under section -HH as a genetic parent of the child and the identification is not successfully challenged under section -HH;
- (2) Admits parentage in a pleading, when making an appearance, or during a hearing; the court accepts the admission; and the court determines the alleged genetic parent to be a parent of the child;
- (3) Declines to submit to genetic testing ordered by the court or the child support enforcement agency, in which case the court may adjudicate the alleged genetic parent to be a parent of the child even if the alleged genetic parent denies a genetic relationship with the child;
- (4) Is in default after service of process and the court determines the alleged genetic parent to be a parent of the child; or
- (5) Is neither identified nor excluded as a genetic parent by genetic testing and, based on other evidence, the

court determines the alleged genetic parent to be a parent of the child.

(c) If in a proceeding involving an alleged genetic parent at least one other individual in addition to the individual who gave birth to the child has a claim to parentage of the child, the court shall adjudicate parentage under section -DD, unless a valid denial of parentage is filed in accordance with section - ***.

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Commented [LC9]: As discussed, our intent is to allow alleged genetic parents or presumed parents to validly deny parentage and have parentage established in another person if all parties agree and the court is satisfied that a hearing is not necessary. But if not, a court can order a hearing and decide competing claims of parentage based on the best interests of the child.

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§ -Y Adjudicating parentage of child with presumed parent.

(a) A proceeding to determine whether a presumed parent is a parent of a child may be commenced:

- (1) Before the child becomes an adult; or
- (2) After the child becomes an adult, but only if the child initiates the proceeding.

(b) A presumption of parentage under section -H cannot be overcome after the child attains two years of age unless the court determines:

- (1) The presumed parent is not a genetic parent, never resided with the child, and never held out the child as the presumed parent's child; or
- (2) The child has more than one presumed parent.

(c) Except as otherwise provided by law, the following rules apply in a proceeding to adjudicate a presumed parent's parentage of a child if the individual who gave birth to the

child is the only other individual with a claim to parentage of the child;

- (1) If no party to the proceeding challenges the presumed parent's parentage of the child, the court shall adjudicate the presumed parent to be a parent of the child;
- (2) If the presumed parent is identified under section -HH as a genetic parent of the child and that identification is not successfully challenged under section -HH, the court shall adjudicate the presumed parent to be a parent of the child; and
- (3) If the presumed parent is not identified under section -HH as a genetic parent of the child and the presumed parent or the individual who gave birth to the child challenges the presumed parent's parentage of the child, the court shall adjudicate the parentage of the child in the best interest of the child based on the factors under section -DD(a) and (b).

(d) If in a proceeding to adjudicate a presumed parent's parentage of a child, another individual in addition to the individual who gave birth to the child asserts a claim to parentage of the child, the court shall adjudicate parentage

under section -DD, unless a valid denial of parentage is filed in accordance with section -***.

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§ -Z Adjudicating claim of de facto parentage of child.

(a) A proceeding to establish parentage of a child under this section may be commenced only by an individual who:

- (1) Is alive when the proceeding is commenced; and
- (2) Claims to be a de facto parent of the child.

(b) An individual who claims to be a de facto parent of a child must commence a proceeding to establish parentage of a child under this section:

- (1) Before the child attains eighteen years of age; and
- (2) While the child is alive.

(c) The following rules govern standing of an individual who claims to be a de facto parent of a child to maintain a proceeding under this section:

- (1) The individual must file an initial verified pleading alleging specific facts that support the claim to parentage of the child asserted under this section. The verified pleading must be served on all parents and legal guardians of the child and any other party to the proceeding;
- (2) An adverse party, parent, or legal guardian may file a pleading in response to the pleading filed under

paragraph (1). A responsive pleading must be verified and must be served on parties to the proceeding; and

- (3) Unless the court finds a hearing is necessary to determine disputed facts material to the issue of standing, the court shall determine, based on the pleadings under paragraphs (1) and (2), whether the individual has alleged facts sufficient to satisfy by a preponderance of the evidence the requirements of paragraphs (1) through (7) of subsection (d). If the court holds a hearing under this subsection, the hearing shall be held on an expedited basis.

(d) In a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child, if there is only one other individual who is a parent or has a claim to parentage of the child, the court shall adjudicate the individual who claims to be a de facto parent to be a parent of the child if the individual demonstrates by clear and convincing evidence that:

- (1) The individual resided with the child as a regular member of the child's household for a significant period;
- (2) The individual engaged in consistent caretaking of the child;

- (3) The individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;
- (4) The individual held out the child as the individual's child;
- (5) The individual established a bonded and dependent relationship with the child which is parental in nature;
- (6) Another parent of the child fostered or supported the bonded and dependent relationship required under paragraph (5); and
- (7) Continuing the relationship between the individual and the child is in the best interest of the child.

(e) Subject to other limitations in this part, if in a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child, there is more than one other individual who is a parent or has a claim to parentage of the child and the court determines that the requirements of subsection (d) are satisfied, the court shall adjudicate parentage under section -DD, **unless a valid denial of**

parentage is filed in accordance with section - *.**

§ -AA Adjudicating parentage of child with acknowledged parent. (a) If a child has an acknowledged parent, a proceeding to challenge the acknowledgment of parentage ~~or a~~

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~~denial of parentage~~, brought by a signatory to the acknowledgment ~~or denial~~, is governed by section -K(~~ef~~).

(b) If a child has an acknowledged parent, the following rules apply in a proceeding to challenge the acknowledgment of parentage ~~or a denial of parentage~~ brought by an individual, other than the child, who has standing under section -E and was not a signatory to the acknowledgment ~~or denial~~:

- (1) The individual shall commence the proceeding not later than two years after the effective date of the acknowledgment;
- (2) The court may permit the proceeding only if the court finds permitting the proceeding is in the best interest of the child pursuant to section 571-46; and
- (3) If the court permits the proceeding, the court shall adjudicate parentage under section -DD.

§ -BB Adjudicating parentage of child with adjudicated parent. (a) If a child has an adjudicated parent, a proceeding to challenge the adjudication, brought by an individual who was a party to the adjudication or received notice under section -C, is governed by the rules governing a collateral attack on a judgment.

(b) If a child has an adjudicated parent, the following rules apply to a proceeding to challenge the adjudication of parentage brought by an individual, other than the child, who

has standing under section -E and was not a party to the adjudication and did not receive notice under section -C:

- (1) The individual shall commence the proceeding not later than two years after the effective date of the adjudication;
- (2) The court may permit the proceeding only if the court finds permitting the proceeding is in the best interest of the child pursuant to section 571-46; and
- (3) If the court permits the proceeding, the court shall adjudicate parentage under section -DD.

§ - Adjudicating parentage of child with professed parent. (a) A proceeding to establish parentage of a child under this section may be commenced only by an individual who:

- (1) Is alive when the proceeding is commenced; and
- (2) Claims to be a professed parent of the child.
- (b) An individual who claims to be a professed parent of a

child must commence a proceeding to establish parentage of a child under this section:

- (1) Before the child attains eighteen years of age; and
- (2) While the child is alive.
- (c) Except as otherwise provided by law, if the birthing

parent and all possible presumed parent(s) have been served notice of the proceedings and no party to the proceeding challenges the professed parent's parentage of the child, the

Commented [LC10]: The lettering of the sections will have to be adjusted from this point on.

Commented [LC11]: This is a new section not found in the 2017 UPA. As discussed, the intent is to allow unmarried, non-heterosexual-cisgender couples a way to establish parentage in limited circumstances, to create as much equity as possible with unmarried heterosexual couples. Whether to establish parentage with or without a hearing will still be within the discretion of the court.

court may adjudicate the professed parent to be a parent of the child;

(d) If in a proceeding to adjudicate a professed parent's parentage of a child, another individual in addition to the individual who gave birth to the child asserts a claim to parentage of the child, the court shall adjudicate parentage under section -DD, unless a valid denial of parentage is filed in accordance with section -***.

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§ -CC Adjudicating parentage of child of assisted reproduction. (a) An individual who is a parent under part VIII or the individual who gave birth to the child may bring a proceeding to adjudicate parentage. If the court determines the individual is a parent under part VIII, the court shall adjudicate the individual to be a parent of the child.

(b) In a proceeding to adjudicate an individual's parentage of a child, if another individual other than the individual who gave birth to the child is a parent under part VIII, the court shall adjudicate the individual's parentage of the child under section -DD, unless a valid denial of parentage is filed in accordance with section -***.

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§ -DD Adjudicating competing claims of parentage. (a) Except as otherwise provided by law, in a proceeding to adjudicate competing claims of, or challenges under section -Y, -AA, or -BB to, parentage of a child by two

or more individuals, the court shall adjudicate parentage in the best interest of the child, based on:

- (1) The age of the child;
- (2) The length of time during which each individual assumed the role of parent of the child;
- (3) The nature of the relationship between the child and each individual;
- (4) The harm to the child if the relationship between the child and each individual is not recognized;
- (5) The basis for each individual's claim to parentage of the child; and
- (6) Other equitable factors arising from the disruption of the relationship between the child and each individual or the likelihood of other harm to the child.

(b) If an individual challenges parentage based on the results of genetic testing, in addition to the factors listed in subsection (a), the court shall consider:

- (1) The facts surrounding the discovery that the individual might not be a genetic parent of the child; and
- (2) The length of time between the time that the individual was placed on notice that the individual might not be a genetic parent and the commencement of the proceeding.

(c) The court may adjudicate a child to have more than two parents under this chapter if the court finds that failure to recognize more than two parents would be detrimental to the child. A finding of detriment to the child does not require a finding of unfitness of any parent or individual seeking an adjudication of parentage. In determining detriment to the child, the court shall consider all relevant factors, including the harm if the child is removed from a stable placement with an individual who has fulfilled the child's physical needs and psychological needs for care and affection and has assumed the role for a substantial period.

§ -*** Denial of Parentage. A presumed parent or alleged genetic parent may sign a denial of parentage in a record with the court. The denial of parentage is valid only if:

(a) another individual other than the individual who gave birth to the child agrees to have their parentage of the child established under this part, and such agreement is in an affidavit filed with the court;

(b) the signature of the presumed parent or alleged genetic parent is attested by a notarial officer or witnesses; and

(c) the presumed parent or alleged genetic parent has not previously:

Commented [LC12]: The lettering of sections will have to be adjusted from this point on.

Commented [LC13]: This section largely follows Section 303 of the 2017 UPA. As discussed, under the 2017 UPA, denials of parentage can be filed as part of the administrative Voluntary Acknowledgment of Parentage process. We propose allowing denials, but only in the context of an adjudication of parentage before the courts.

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Commented [LC14]: The language "other than the individual who gave birth to the child" is not in Section 303 of the 2017 UPA. However, this was added so that a child is not left with just one parent after a denial of parentage is accepted.

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(1) completed a valid acknowledgement of parentage, unless the previous acknowledgment was rescinded under section -K(d) or challenged successfully under section -K(e); or
(2) been adjudicated to be a parent of the child.

PART VII. GENETIC TESTING

§ -FF Scope of part; limitation on use of genetic testing. (a) This part governs genetic testing of an individual in a proceeding to adjudicate parentage, whether the individual:

- (1) Voluntarily submits to testing; or
 - (2) Is tested under an order of the court or the child support enforcement agency.
- (b) Genetic testing may not be used:
- (1) To challenge the parentage of an individual who is a parent under part VIII or IX; or
 - (2) To establish the parentage of an individual who is a donor.

§ -GG Authority to order or deny genetic testing. (a) Except as otherwise provided in this part or part V, in a proceeding under this chapter to determine parentage, the court shall order the child and any other individual to submit to genetic testing if a request for testing is supported by the sworn statement of a party:

(1) Alleging a reasonable possibility that the individual is the child's genetic parent; or

(2) Denying genetic parentage of the child and stating facts establishing a reasonable possibility that the individual is not a genetic parent.

(b) A child support enforcement agency may order genetic testing only if there is no presumed, acknowledged, or adjudicated parent of a child other than the individual who gave birth to the child.

(c) The court or child support enforcement agency may not order in utero genetic testing.

(d) If two or more individuals are subject to court-ordered genetic testing, the court may order that testing be completed concurrently or sequentially.

(e) Genetic testing of an individual who gave birth to a child is not a condition precedent to testing of the child and an individual whose genetic parentage of the child is being determined. If the individual who gave birth to the child is unavailable or declines to submit to genetic testing, the court may order genetic testing of the child and each individual whose genetic parentage of the child is being adjudicated.

(f) In a proceeding to adjudicate the parentage of a child having a presumed parent or an individual who claims to be a parent under section -Z, or to challenge an acknowledgment of

parentage, the court may deny a motion for genetic testing of the child and any other individual after considering the factors in section -DD(a) and (b).

(g) If an individual requesting genetic testing is barred under section -K([ef](#)) from establishing the individual's parentage, the court shall deny the request for genetic testing.

(h) An order under this section for genetic testing is enforceable by contempt.

§ -HH Requirements for genetic testing. (a) Genetic testing shall be of a type reasonably relied on by experts in the field of genetic testing and performed in a testing laboratory accredited by:

- (1) The AABB, formerly known as the American Association of Blood Banks, or a successor to its functions; or
- (2) An accrediting body designated by the Secretary of the United States Department of Health and Human Services.

(b) A specimen used in genetic testing may consist of a sample or a combination of samples of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

(c) Based on the ethnic or racial group of an individual undergoing genetic testing, a testing laboratory shall determine the databases from which to select frequencies for use in

calculating a relationship index. If an individual or the child support enforcement agency objects to the laboratory's choice, the following rules apply:

(1) Not later than 30 days after receipt of the report of the test, the objecting individual or the child support enforcement agency may request the court to require the laboratory to recalculate the relationship index using an ethnic or racial group different from that used by the laboratory.

(2) The individual or the child support enforcement agency objecting to the laboratory's choice under this subsection shall:

(A) if the requested frequencies are not available to the laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

(B) engage another laboratory to perform the calculations.

(3) The laboratory may use its own statistical estimate if there is a question which ethnic or racial group is appropriate. The laboratory shall calculate the frequencies using statistics, if available, for any other ethnic or racial group requested.

(d) If, after recalculation of the relationship index under sub-section -JJ(c) using a different ethnic or racial group, genetic testing does not identify an individual as a genetic parent of a child, the court may require an individual who has been tested to submit to additional genetic testing to identify a genetic parent.

§ -II Report of genetic testing. (a) A report of genetic testing shall be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report complying with the requirements of this part is self-authenticating.

(b) Documentation from a testing laboratory of the following information is sufficient to establish a reliable chain of custody and allow the results of genetic testing to be admissible without testimony:

- (1) The name and photograph of each individual whose specimen has been taken;
- (2) The name of the individual who collected each specimen;
- (3) The place and date each specimen was collected;
- (4) The name of the individual who received each specimen in the testing laboratory; and
- (5) The date each specimen was received.

§ -JJ Genetic testing results; challenge to results.

(a) Subject to a challenge under subsection (b), an individual

is identified under this chapter as a genetic parent of a child if genetic testing complies with this part and the results of the testing disclose:

- (1) The individual has at least a ninety-nine percent probability of parentage, using a prior probability of 0.50, as calculated by using the combined relationship index obtained in the testing; and
- (2) A combined relationship index of at least one hundred to one.

(b) An individual identified under subsection (a) as a genetic parent of the child may challenge the genetic testing results only by other genetic testing satisfying the requirements of this part which:

- (1) Excludes the individual as a genetic parent of the child; or
- (2) Identifies another individual as a possible genetic parent of the child other than:
 - (A) The individual who gave birth to the child; or
 - (B) The individual identified under subsection (a).
- (3) An alleged genetic parent or party to the parentage action who objects to the admission of the report concerning the genetic test results must file a motion no later than twenty days after receiving a copy of the report and shall show good cause as to why

a witness is necessary to lay the foundation for the admission of the report as evidence. The court may, sua sponte, or at a hearing on the motion determine whether a witness shall be required to lay the foundation for the admission of the report as evidence. The right to call witnesses to rebut the report is reserved to all parties.

(c) If more than one individual other than the individual who gave birth is identified by genetic testing as a possible genetic parent of the child, the court shall order each individual to submit to further genetic testing to identify a genetic parent.

§ -KK Genetic testing when specimen not available. (a) Subject to subsection (b), if a genetic-testing specimen is not available from an alleged genetic parent of a child, an individual seeking genetic testing demonstrates good cause, and the court finds that the circumstances are just, the court may order any of the following individuals to submit specimens for genetic testing:

- (1) A parent of the alleged genetic parent;
- (2) A sibling of the alleged genetic parent;
- (3) Another child of the alleged genetic parent and the individual who gave birth to the other child; and

(4) Another relative of the alleged genetic parent necessary to complete genetic testing.

(b) To issue an order under this section, the court shall find that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

§ -LL **Deceased individual.** If an individual seeking genetic testing demonstrates good cause, the court may order genetic testing of a deceased individual.

PART VIII. ASSISTED REPRODUCTION

§ -MM **Scope of part.** This part does not apply to the birth of a child conceived by sexual intercourse or assisted reproduction under a surrogacy agreement under part IX.

§ -NN **Parental status of donor.** A donor is not a parent of a child conceived by assisted reproduction.

§ -OO **Parentage of child of assisted reproduction.** An individual who consents under section -PP to assisted reproduction by an individual with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.

§ -PP **Consent to assisted reproduction.** (a) Except as otherwise provided in subsection (b), the consent described in section -OO shall be in a record signed by an individual giving birth to a child conceived by assisted reproduction and an individual who intends to be a parent of the child.

(b) Failure to consent in a record as required by subsection (a), before, on, or after the birth of the child does not preclude the court from finding consent to parentage if:

(1) The individual giving birth to a child or the other individual proves by clear and convincing evidence the existence of an express agreement entered into before conception that the individual and the individual giving birth intended they both would be parents of the child; or

(2) The individual giving birth to the child and the other individual for the first two years of the child's life, including any period of temporary absence, resided together in the same household with the child and both openly held out the child as the individual's child, unless the individual dies or becomes incapacitated before the child attains two years of age or the child dies before the child attains two years of age, in which case the court may find consent under this subsection to parentage if a party proves by clear and convincing evidence that the individual giving birth to the child and the other individual intended to reside together in the same household with the child and both intended the individual would openly hold out the child as the individual's child, but the individual was prevented from carrying out that intent by death or incapacity.

§ -QQ Limitation on spouse's dispute of parentage. (a)

Except as otherwise provided in subsection (b), an individual who, at the time of the child's birth, is the spouse of an individual who gave birth to the child by assisted reproduction may not challenge the individual's parentage of the child unless:

- (1) Not later than two years after the birth of the child or the date of which the individual first learns of the birth of the child, whichever is later, the individual commences a proceeding to adjudicate the individual's parentage of the child; and
- (2) The court finds the individual did not consent to the assisted reproduction, before, on, or after the birth of the child, or withdrew consent under section -SS.

(b) A proceeding to adjudicate a spouse's parentage of a child born by assisted reproduction may be commenced at any time if the court determines:

- (1) The spouse neither provided a gamete for, nor consented to, the assisted reproduction;
- (2) The spouse and the individual who gave birth to the child have not cohabited since the probable time of assisted reproduction; and

(3) The spouse never openly held out the child as the spouse's child.

(c) This section applies to a spouse's dispute of parentage even if the spouse's marriage is declared invalid after assisted reproduction occurs.

§ -RR Effect of certain legal proceedings regarding marriage. If a marriage of an individual who gives birth to a child conceived by assisted reproduction is terminated through divorce or dissolution, subject to legal separation or separate maintenance, declared invalid, or annulled before transfer of gametes or embryos to said individual, a former spouse of said individual is not a parent of the child unless the former spouse consented in a record that the former spouse would be a parent of the child if assisted reproduction were to occur after a divorce, dissolution, annulment, declaration of invalidity, legal separation, or separate maintenance, and the former spouse did not withdraw consent under section -SS.

§ -SS Withdrawal of consent. (a) An individual who consents under section -PP to assisted reproduction may withdraw consent any time before a transfer that results in a pregnancy, by giving notice in a record of the withdrawal of consent to the individual who agreed to give birth to a child conceived by assisted reproduction and to any clinic or health-care provider facilitating the assisted reproduction. Failure

to give notice to the clinic or health-care provider does not affect a determination of parentage under this part.

(b) An individual who withdraws consent under subsection (a) is not a parent of the child under this part.

§ -TT Parental status of deceased individual. (a) If an individual who intends to be a parent of a child conceived by assisted reproduction dies during the period between the transfer of a gamete or embryo and the birth of the child, the individual's death does not preclude the establishment of the individual's parentage of the child if the individual otherwise would be a parent of the child under this chapter.

(b) If an individual who consented in a record to assisted reproduction by an individual who agreed to give birth to a child dies before a transfer of gametes or embryos, the deceased individual is a parent of a child conceived by the assisted reproduction only if:

(1) Either:

(A) The individual consented in a record that if assisted reproduction were to occur after the death of the individual, the individual would be a parent of the child; or

(B) The individual's intent to be a parent of a child conceived by assisted reproduction after the

individual's death is established by clear-and-convincing evidence; and

(2) Either:

(A) The embryo is in utero not later than thirty-six months after the individual's death; or

(B) The child is born not later than forty-five months after the individual's death.

PART IX. SURROGACY AGREEMENT

§ -UU Definitions. In this part:

"Genetic surrogate" means an individual who is capable of carrying a pregnancy to term and giving birth to a child, who is not an intended parent and who agrees to become pregnant through assisted reproduction using their own gamete, under a genetic surrogacy agreement as provided in this part.

"Gestational surrogate" means an individual who is capable of carrying a pregnancy to term and giving birth to a child, who is not an intended parent and who agrees to become pregnant through assisted reproduction using gametes that are not their own, under a gestational surrogacy agreement as provided in this part.

"Surrogacy agreement" means an agreement between one or two intended parents and an individual who is capable of carrying a pregnancy to term and giving birth to a child and who is not an

intended parent in which said individual agrees to become pregnant through assisted reproduction and which provides that any intended parent is a parent of a child conceived under the agreement. Unless otherwise specified, the term refers to both a gestational surrogacy agreement and a genetic surrogacy agreement.

§ -VV Eligibility to enter gestational or genetic surrogacy agreement. (a) To execute an agreement to act as a gestational or genetic surrogate, an individual who is capable of carrying a pregnancy to term and giving birth to a child shall:

- (1) Have attained twenty-one years of age;
- (2) Previously have given birth to at least one child;
- (3) Complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;
- (4) Complete a mental health consultation by a licensed mental health professional; and
- (5) Have independent legal representation of their choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

(b) To execute a surrogacy agreement, each intended parent, whether or not genetically related to the child, shall:

- (1) Have attained twenty-one years of age;

- (2) Complete a mental health consultation by a licensed mental health professional; and
- (3) Have independent legal representation of the intended parent's or parents' choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

§ -WW Requirements of gestational or genetic surrogacy agreement; process. A surrogacy agreement shall be executed in compliance with the following rules:

- (1) At least one party shall be a resident of this State or, if no party is a resident of this State, at least one medical evaluation or procedure or mental health consultation under the agreement shall occur in this State;
- (2) A surrogate and each intended parent shall meet the requirements of section -VV;
- (3) Each intended parent, the surrogate, and the surrogate's spouse, if any, shall be parties to the agreement;
- (4) The agreement shall be in a record signed by each party listed in paragraph (3);

- (5) The surrogate and each intended parent shall acknowledge in a record receipt of a copy of the agreement;
- (6) The signature of each party to the agreement shall be attested by a notarial officer or witnessed in accordance with the laws of the jurisdiction in which the agreement is signed;
- (7) The surrogate, surrogate's spouse, if any, and the intended parent or parents shall have independent legal representation throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement, and each counsel shall be identified in the surrogacy agreement;
- (8) The intended parent or parents shall pay for independent legal representation for the surrogate and surrogate's spouse, if any; and
- (9) The agreement shall be executed before a medical procedure, to include the taking of medication, occurs related to the surrogacy agreement, other than the medical evaluation and mental health consultation required by section -VV.

§ -XX Requirements of gestational or genetic surrogacy agreement; content. (a) A surrogacy agreement shall comply with the following requirements:

- (1) A surrogate agrees to attempt to become pregnant by means of assisted reproduction;
- (2) Except as otherwise provided in sections -DDD, -GGG, and -HHH, the surrogate and the surrogate's spouse or former spouse, if any, have no claim to parentage of a child conceived by assisted reproduction under the agreement;
- (3) The surrogate's spouse, if any, shall acknowledge and agree to comply with the obligations imposed on the surrogate by the agreement;
- (4) Except as otherwise provided in sections -DDD, -GGG, and -HHH, the intended parent or parents, each one jointly and severally, immediately on birth will be the exclusive parent or parents of the child, regardless of the number of children born, or the gender or mental or physical condition of each child;
- (5) Except as otherwise provided in sections -DDD, -GGG, and -HHH, the intended parent or parents, each parent jointly and severally, immediately on birth will assume physical and legal custody of, and responsibility for the financial support of the child,

regardless of the number of children born, or the gender or mental or physical condition of each child;

- (6) The agreement shall include information disclosing how each intended parent will cover the surrogacy-related compensation and expenses of the surrogate and the medical expenses of the child(ren), including whether a bond or escrow account shall be required of each intended parent. If health care coverage is used to cover the medical expenses, the disclosure shall include a summary of the health care policy provisions related to coverage for surrogate pregnancy, including any possible liability of the surrogate, third-party liability liens, other insurance coverage, and any notice requirement that could affect coverage or liability of the surrogate. Unless the agreement expressly provides otherwise, the review and disclosure does not constitute legal advice. If the extent of coverage is uncertain, a statement of that fact is sufficient to comply with this paragraph;
- (7) The agreement shall permit the surrogate to make all health and welfare decisions regarding themselves and their pregnancy, but may include agreed-to health-related commitments. This chapter does not enlarge or

diminish the surrogate's constitutional right to terminate the pregnancy;

- (8) The agreement shall include information about each party's right under this part to terminate the surrogacy agreement; and
- (9) The agreement shall contain a confidentiality agreement;
- (b) A surrogacy agreement may provide for:
 - (1) Payment of consideration to, and payment or reimbursement of reasonable expenses to, the surrogate; and
 - (2) Reimbursement of specific expenses if the agreement is terminated under this part.

(c) A right created under a surrogacy agreement is not assignable and there is no third-party beneficiary of the agreement other than the child.

§ -YY Surrogacy agreement; effect of subsequent change of marital status. (a) Unless a surrogacy agreement expressly provides otherwise:

- (1) The marriage of a surrogate after the agreement is signed by all parties does not affect the validity of the agreement, their spouse's consent to the agreement is not required, and

their spouse is not a presumed parent of a child conceived by assisted reproduction under the agreement; and

- (2) The divorce, dissolution, annulment, declaration of invalidity, or legal separation, of the surrogate after the agreement is signed by all parties does not affect the validity of the agreement.

(b) Unless a surrogacy agreement expressly provides otherwise:

- (1) The marriage of an intended parent after the agreement is signed by all parties does not affect the validity of a surrogacy agreement, the consent of the spouse of the intended parent is not required, and the spouse of the intended parent is not, based on the agreement, a parent of a child conceived by assisted reproduction under the agreement; and

- (2) The divorce, dissolution, annulment, declaration of invalidity, or legal separation of an intended parent after the agreement is signed by all parties does not affect the validity of the agreement and, except as otherwise provided in section -GGG, the intended parents are the parents of the child.

§ -ZZ **Exclusive, continuing jurisdiction.** During the period after the execution of a surrogacy agreement until ninety days after the birth of a child conceived by assisted

reproduction under the agreement, a court of this State conducting a proceeding under this chapter has exclusive, continuing jurisdiction over all matters arising out of the agreement. This section does not give the court jurisdiction over a child custody or child support proceeding if jurisdiction is not otherwise authorized by a law of this State other than this chapter.

§ -AAA Termination of gestational surrogacy agreement.

(a) A party to a gestational surrogacy agreement may terminate the agreement, at any time before an embryo transfer, by giving notice of termination in a record to all other parties. If an embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent embryo transfer.

(b) Unless a gestational surrogacy agreement provides otherwise, on termination of the agreement under subsection (a), the parties are released from the agreement, except that each intended parent remains responsible for expenses that are reimbursable under the agreement and incurred by the gestational surrogate through the date of termination.

(c) Except in a case involving fraud, neither a gestational surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for

a penalty or liquidated damages, for terminating a gestational surrogacy agreement under this section.

§ -BBB Parentage under gestational surrogacy agreement.

(a) Except as otherwise provided in subsection (c), section -CCC(b), or section -EEE, on birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, each intended parent is, by operation of law, a parent of the child.

(b) Except as otherwise provided in subsection (c) or section -EEE, neither a gestational surrogate nor the surrogate's spouse or former spouse, if any, is a parent of the child.

(c) If a child is alleged to be a genetic child of the surrogate, the court shall order genetic testing of the child. If the child is a genetic child of said individual who agreed to be a gestational surrogate, parentage shall be determined based on parts I through VII.

(d) Except as otherwise provided in subsection (c), section -CCC(b), or section -EEE, if, due to a clinical or laboratory error, a child conceived by assisted reproduction under a gestational surrogacy agreement is not genetically related to either intended parent or to a donor who donated gametes to the intended parent or parents, each intended parent,

and not the gestational surrogate and the surrogate's spouse or former spouse, if any, is a parent of the child, subject to any other claim of parentage.

§ -CCC Gestational surrogacy agreement; parentage of deceased intended parent. (a) Section -BBB applies to an intended parent even if the intended parent dies during the period between the transfer of a gamete or embryo and the birth of the child.

(b) Except as otherwise provided in section -EEE, an intended parent is not a parent of a child conceived by assisted reproduction under a gestational surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

- (1) The agreement provides otherwise; and
- (2) The transfer of a gamete or embryo occurs not later than thirty-six months after the death of the intended parent or the birth of the child occurs not later than forty-five months after the death of the intended parent.

§ -DDD Gestational surrogacy agreement; order of parentage. (a) Except as otherwise provided in section -BBB(c) or -EEE, before, on, or after the birth of a child conceived by assisted reproduction under a gestational

surrogacy agreement, a party to the agreement may commence a proceeding in the appropriate court for an order or judgment:

- (1) Declaring that each intended parent is a parent of the child and ordering that parental rights and duties vest immediately on the birth of the child exclusively in each intended parent;
- (2) Declaring that the gestational surrogate and the surrogate's spouse or former spouse, if any, are not the parents of the child;
- (3) Designating the content of the birth record in accordance with chapter 338 and directing the department of health to designate each intended parent as a parent of the child;
- (4) To protect the privacy of the child and the parties, declaring that the court record is not open to inspection;
- (5) If necessary, that the child be surrendered to the intended parent or parents; and
- (6) For other relief the court determines necessary and proper.

(b) The court may issue an order or judgment under subsection (a) before the birth of the child. The court shall stay enforcement of the order or judgment until the birth of the child.

(c) Neither this State nor the department of health is a necessary party to a proceeding under subsection (a).

§ -EEE Effect of gestational surrogacy agreement. (a) A gestational surrogacy agreement that complies with sections -VV, -WW, and -XX is enforceable.

(b) If a child was conceived by assisted reproduction under a gestational surrogacy agreement that does not comply with sections -VV, -WW, and -XX, the court shall determine the rights and duties of the parties to the agreement consistent with the intent of the parties at the time of execution of the agreement. Each party to the agreement and any individual who at the time of the execution of the agreement was a spouse of a party to the agreement has standing to maintain a proceeding to adjudicate an issue related to the enforcement of the agreement.

(c) Except as expressly provided in a gestational surrogacy agreement or subsection (d) or (e), if the agreement is breached by the gestational surrogate or one or more intended parents, the non-breaching party is entitled to the remedies available at law or in equity.

(d) Specific performance is not a remedy available for breach by a gestational surrogate of a provision in the agreement that the gestational surrogate undergo an embryo

transfer, terminate or not terminate a pregnancy, or submit to medical procedures.

(e) Except as otherwise provided in subsection (d), if an intended parent is determined to be a parent of the child, specific performance is a remedy available for:

- (1) Breach of the agreement by a gestational surrogate or gestational surrogate's spouse which prevents the intended parent from exercising immediately on the birth of the child the full rights of parentage; or
- (2) Breach by the intended parent which prevents the intended parent's acceptance, immediately on the birth of the child conceived by assisted reproduction under the agreement, of the duties of parentage.

§ -FFF Requirements to validate genetic surrogacy agreement. (a) Except as otherwise provided in section -HHH, to be enforceable, a genetic surrogacy agreement shall be validated by the family court. A proceeding to validate the agreement shall be commenced before assisted reproduction related to the surrogacy agreement.

(b) The court shall issue an order validating a genetic surrogacy agreement if the court finds that:

- (1) Sections -VV, -WW, and -XX are satisfied; and

(2) All parties entered into the agreement voluntarily and understand its terms.

(c) An individual who terminates under section -GGG a genetic surrogacy agreement shall file notice of the termination with the court. On receipt of the notice, the court shall vacate any order issued under subsection (b). An individual who does not notify the court of the termination of the agreement is subject to sanctions.

§ -GGG Termination of genetic surrogacy agreement. (a)

A party to a genetic surrogacy agreement may terminate the agreement as follows:

(1) An intended parent who is a party to the agreement may terminate the agreement at any time before a gamete or embryo transfer by giving notice of termination in a record to all other parties. If a gamete or embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent gamete or embryo transfer. The notice of termination shall be attested by a notarial officer or witnessed; and

(2) A genetic surrogate who is a party to the agreement may withdraw consent to the agreement any time before seventy-two hours after the birth of a child conceived by

assisted reproduction under the agreement. To withdraw consent, the genetic surrogate shall execute a notice of termination in a record stating the surrogate's intent to terminate the agreement. The notice of termination shall be attested by a notarial officer or witnessed and be delivered to each intended parent any time before seventy-two hours after the birth of the child.

(b) On termination of the genetic surrogacy agreement under subsection (a), the parties are released from all obligations under the agreement except that each intended parent remains responsible for all expenses incurred by the surrogate through the date of termination which are reimbursable under the agreement. Unless the agreement provides otherwise, the surrogate is not entitled to and shall refund to intended parents within ten days after withdrawal of consent any non-expense related compensation paid for serving as a surrogate.

(c) Except in a case involving fraud, neither a genetic surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or liquidated damages, for terminating a genetic surrogacy agreement under this section.

§ -HHH Parentage under validated genetic surrogacy agreement. (a) Unless a genetic surrogate exercises the right under section -GGG to terminate a genetic surrogacy

agreement, each intended parent is a parent of a child conceived by assisted reproduction under an agreement validated under section -FFF.

(b) Unless a genetic surrogate exercises the right under section -GGG to terminate the genetic surrogacy agreement, on proof of a court order issued under section -FFF validating the agreement, the court shall make an order:

- (1) Declaring that each intended parent is a parent of a child conceived by assisted reproduction under the agreement and ordering that parental rights and duties vest exclusively in each intended parent;
- (2) Declaring that the gestational surrogate and the surrogate's spouse or former spouse, if any, are not parents of the child;
- (3) Designating the contents of the birth certificate in accordance with chapter 338 and directing the department of health to designate each intended parent as a parent of the child;
- (4) To protect the privacy of the child and the parties, declaring that the court record is not open to inspection including captions of filings;
- (5) If necessary, that the child be surrendered to the intended parent or parents; and

(6) For other relief the court determines necessary and proper.

(c) If a genetic surrogate terminates under section -GGG(a)(2) a genetic surrogacy agreement, parentage of the child conceived by assisted reproduction under the agreement shall be determined under parts I through VII.

(d) If a child born to a genetic surrogate is alleged not to have been conceived by assisted reproduction, the court shall order genetic testing to determine the genetic parentage of the child. If the child was not conceived by assisted reproduction, parentage shall be determined under parts I through VII. Unless the genetic surrogacy agreement provides otherwise, if the child was not conceived by assisted reproduction, the surrogate is not entitled to any non-expense related compensation paid for serving as a surrogate.

(e) Unless a genetic surrogate exercises the right under section § -GGG to terminate the genetic surrogacy agreement, if an intended parent fails to file notice required under section -GGG(a), the genetic surrogate or the department of health may file with the court, not later than sixty days after the birth of a child conceived by assisted reproduction under the agreement, notice that the child has been born to the genetic surrogate. Unless the genetic surrogate has properly exercised the right under section -

GGG to withdraw consent to the agreement, on proof of a court order issued under section -FFF validating the agreement, the court shall order that each intended parent is a parent of the child.

§ -III Effect of nonvalidated genetic surrogacy

agreement. (a) A genetic surrogacy agreement, whether or not in a record, that is not validated under section -FFF is enforceable only to the extent provided in this section and section -KKK.

(b) If all parties agree, a court may validate a genetic surrogacy agreement after assisted reproduction has occurred but before the birth of a child conceived by assisted reproduction under the agreement.

(c) If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under section -FFF is born and the genetic surrogate, consistent with section -GGG(a)(2), withdraws their consent to the agreement before seventy-two hours after the birth of the child, the court shall adjudicate the parentage of the child under part I or VII.

(d) If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under section -EEE is born and a genetic surrogate does not

withdraw their consent to the agreement, consistent with section -GGG(a)(2), before seventy-two hours after the birth of the child, the genetic surrogate is not automatically a parent and the court shall adjudicate parentage of the child based on the best interest of the child, taking into account the factors in section -DD(a) and the intent of the parties at the time of the execution of the agreement.

(e) The parties to a genetic surrogacy agreement have standing to maintain a proceeding to adjudicate parentage under this section.

§ -JJJ Genetic surrogacy agreement; parentage of deceased intended parent. (a) Except as otherwise provided in section -HHH or -III, on birth of a child conceived by assisted reproduction under a genetic surrogacy agreement, each intended parent is, by operation of law, a parent of the child, notwithstanding the death of an intended parent during the period between the transfer of a gamete or embryo and the birth of the child.

(b) Except as otherwise provided in section -HHH or -III, an intended parent is not a parent of a child conceived by assisted reproduction under a genetic surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

(1) The agreement provides otherwise; and

(2) The transfer of the gamete or embryo occurs not later than thirty-six months after the death of the intended parent, or the birth of the child occurs not later than forty-five months after the death of the intended parent.

§ -KKK Breach of genetic surrogacy agreement. (a)

Subject to section -GGG(b), if a genetic surrogacy agreement is breached by a genetic surrogate or one or more intended parents, the non-breaching party is entitled to the remedies available at law or in equity.

(b) Specific performance is not a remedy available for breach by a genetic surrogate of a requirement of a validated or non-validated genetic surrogacy agreement that the surrogate undergo insemination or embryo transfer, terminate or not terminate a pregnancy, or submit to medical procedures.

(c) Except as otherwise provided in subsection (b), specific performance is a remedy available for:

(1) Breach of a validated genetic surrogacy agreement by a genetic surrogate of a requirement which prevents an intended parent from exercising the full rights of parentage seventy-two hours after the birth of the child; or

- (2) Breach by an intended parent which prevents the intended parent's acceptance of duties of parentage seventy-two hours after the birth of the child.

PART X. INFORMATION ABOUT DONOR

§ -LLL Definitions. In this part:

"Identifying information" means:

- (1) The full name of a donor;
- (2) The date of birth of the donor; and
- (3) The permanent and, if different, current address of the donor at the time of the donation.

"Medical history" means information regarding any:

- (1) Present illness of a donor;
- (2) Past illness of the donor; and
- (3) Social, genetic, and family history pertaining to the health of the donor.

§ -MMM Applicability. This part applies only to gametes collected on or after the effective date of this chapter.

§ -NNN Collection of information. (a) A gamete bank or fertility clinic licensed in this State shall collect from a donor the donor's identifying information and medical history at the time of the donation.

(b) A gamete bank or fertility clinic licensed in this State which receives gametes of a donor collected by another

gamete bank or fertility clinic shall collect the name, address, telephone number, and electronic mail address of the gamete bank or fertility clinic from which it received the gametes.

(c) A gamete bank or fertility clinic licensed in this State shall disclose the information collected under subsections (a) and (b) as provided under section -000.

§ -000 Declaration regarding identity disclosure. (a) A gamete bank or fertility clinic licensed in this State which collects gametes from a donor shall:

- (1) Provide the donor with information in a record about identity disclosure; and
- (2) Obtain a declaration from the donor regarding identity disclosure.

(b) A gamete bank or fertility clinic licensed in this State shall require a donor to sign a declaration, attested by a notarial officer or witnessed, that states that the donor agrees to disclose the donor's identity to a child conceived by assisted reproduction with the donor's gametes on request once the child attains eighteen years of age.

§ -PPP Disclosure of identifying information and medical history. (a) On request of a child conceived by assisted reproduction who attains eighteen years of age, a gamete bank or fertility clinic licensed in this State which collected the gametes used in the assisted reproduction shall make a good

faith effort to provide the child with identifying information of the donor who provided the gametes.

(b) On request by a child conceived by assisted reproduction who attains eighteen years of age, or, if the child is a minor, by a parent or guardian of the child, a gamete bank or fertility clinic licensed in this State which collected the gametes used in the assisted reproduction shall make a good faith effort to provide the child or, if the child is a minor, the parent or guardian of the child, access to non-identifying medical history of the donor.

(c) On request of a child conceived by assisted reproduction who attains eighteen years of age, a gamete bank or fertility clinic licensed in this State which received the gametes used in the assisted reproduction from another gamete bank or fertility clinic shall disclose the name, address, telephone number, and electronic mail address of the gamete bank or fertility clinic from which it received the gametes.

§ -000 Recordkeeping. (a) A gamete bank or fertility clinic licensed in this State which collects gametes for use in assisted reproduction shall maintain identifying information and medical history about each gamete donor. The gamete bank or fertility clinic shall maintain records of gamete screening and testing and comply with reporting requirements, in accordance

with federal law and the applicable law of this State other than this chapter.

(b) A gamete bank or fertility clinic licensed in this State that receives gametes from another gamete bank or fertility clinic shall maintain the name, address, telephone number, and electronic mail address of the gamete bank or fertility clinic from which it received the gametes.

§ -RRR **Storage of gametes.** A gamete bank or fertility clinic may deem gametes abandoned upon the storage fee not being paid by the owner(s) of the gametes for a period of six months. The gamete bank or fertility clinic shall send a written correspondence to the last known address of the owner(s) upon the expiration of the six-month failure-to-pay period. If the owner(s) do not respond to the correspondence within thirty days of the correspondence being transmitted, the gametes shall be destroyed in a manner agreed to by the owner(s) in the original contractual agreement. The owner(s) have an affirmative duty to update the gamete bank or fertility clinic if their address changes.

PART XI. OTHERS

§ -SSS **Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general

purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SECTION 3. Section 26-14.6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Effective July 1, 1990, the functions, authority, and obligations, together with the limitations imposed thereon and the privileges and immunities conferred thereby, exercised by a "sheriff", "sheriffs", a "sheriff's deputy", "sheriff's deputies", a "deputy sheriff", "deputy sheriffs", or a "deputy", under sections 21-8, 47-18, 105-4, 134-51, 183D-11, 187A-14, 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-6, 325-9, 353-11, 356D-54, 356D-94, 383-71, 438-5, 445-37, 482E-4, 485A-202, 501-42, 501-171, 501-218, 521-78, 578-4, [~~584-6,7~~] -E, 587-33, 603-29, 604-6.2, 606-14, 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22, 651-33, 651-37, 651-51, 654-2, 655-2, 657-13, 660-16, 666-11, 666-21, 803-23, 803-34, 803-35, 804-14, 804-18, 804-41, 805-1, 806-71, and 832-23 shall be exercised to the same extent by the department of public safety."

SECTION 4. Section 338-12, Hawaii Revised Statutes, is amended to read as follows:

"§338-12 Evidentiary character of certificates.

Certificates filed within thirty days after the time prescribed therefor shall be prima facie evidence of the facts therein

stated. Data pertaining to ~~[the father]~~ a parent of a child is prima facie evidence if:

- (1) The alleged ~~[father]~~ parent is:
 - (A) The ~~[husband]~~ spouse of the ~~[mother,]~~ other parent; or
 - (B) The acknowledged ~~[father]~~ parent of the child; or
- (2) The ~~[father]~~ parent and child relationship has been established under chapter ~~[584-]~~ _____. Data pertaining to the alleged ~~[father]~~ parent acknowledging ~~[paternity]~~ parentage of the child is admissible as evidence of ~~[paternity]~~ parentage in any family court proceeding, including proceedings under chapter ~~[584-]~~ _____."

SECTION 5. Section 338-15, Hawaii Revised Statutes, is amended to read as follows:

"§338-15 Late or altered certificates. A person born in the State may file or amend a certificate after the time prescribed, upon submitting proof as required by rules adopted by the department of health. Certificates registered after the time prescribed for filing by the rules of the department of health shall be registered subject to any evidentiary requirements that the department adopts by rule to substantiate the alleged facts of birth. The department may amend a birth certificate to change or establish the identity of a

registrant's parent only pursuant to a court order from a court of appropriate jurisdiction or pursuant to a legal establishment of parenthood pursuant to chapter ~~[584-]~~ _____. Amendments that change or establish the identity of a registrant's parent that are made in accordance with this section shall not be considered corrections of personal records pursuant to chapter 92F."

SECTION 6. Section 338-21, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read as follows:

"(a) All children born to parents not married to each other, irrespective of the marriage of either natural parent to another, (1) on the marriage of the natural parents with each other, (2) on the voluntary, written acknowledgments of ~~[paternity]~~ parentage under oath signed by the ~~natural father and the natural mother~~birthing parent and alleged genetic parent, presumed parent, or intended parent under Part VIII, or (3) on establishment of the parent and child relationship under chapter ~~[584-]~~ _____, are entitled to the same rights as those born to parents married to each other and shall take the name so stipulated by their parents or, if the parents do not agree on the name, shall take the name specified by a court of competent jurisdiction to be the name that is in the best interests of the child. The original certificate of birth shall contain the name so stipulated. The child or children or the parents thereof may

petition the department of health to issue a new original certificate of birth, and not a duplicate of the original certificate that has been amended, altered, or modified, in the new name of the child, and the department shall issue the new original certificate of birth. As used in this section "name" includes the first name, middle name, or last name."

2. By amending subsection (d) to read as follows:

"(d) Nothing in this section shall be construed to limit the power of the courts to order the department to prepare new certificates of birth under section [~~584-23-~~] -U."

SECTION 7. Section 532-6, Hawaii Revised Statutes, is amended to read as follows:

"§532-6 To child born to parents not married to each other. Every child born to parents not married to each other at the time of the child's birth and for whom the parent and child relationship has not been established pursuant to chapter [~~584~~] shall be considered as an heir to the child's ~~mother~~birthing parent, and shall inherit her estate, in whole or in part, as the case may be, in like manner as if the child had been born in lawful wedlock."

SECTION 8. Section 560:2-114, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in subsections (b) and (c), for purposes of intestate succession by, through, or from a person,

an individual is the child of the child's natural parents, regardless of their marital status. The parent and child relationship may be established under chapter [~~584~~] ____."

SECTION 9. Section 571-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in sections 603-21.5 and 604-8, the court shall have exclusive original jurisdiction:

- (1) To try any offense committed against a child by the child's parent or guardian or by any other person having the child's legal or physical custody, and any violation of section 707-726, 707-727, 709-902, 709-903, 709-903.5, 709-904, 709-905, 709-906, or 302A-1135, whether or not included in other provisions of this paragraph or paragraph (2);
- (2) To try any adult charged with:
 - (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
 - (B) An offense, other than a felony, against the person of the defendant's husband or wife;
 - (C) Any violation of an order issued pursuant to chapter 586; or
 - (D) Any violation of an order issued by a family court judge.

In any case within paragraph (1) or (2), the court, in its discretion, may waive its jurisdiction over the offense charged;

- (3) In all proceedings under chapter 580, and in all proceedings under chapter ~~[584,]~~ ____;
- (4) In proceedings under chapter 575, the Uniform Desertion and Nonsupport Act, and under chapter 576B, the Uniform Interstate Family Support Act;
- (5) For commitment of an adult alleged to be mentally defective or mentally ill;
- (6) In all proceedings for support between parent and child or between husband and wife;
- (7) In all proceedings for pre-trial detention or waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-13 or 571-22;
- (8) In all proceedings under chapter 586, Domestic Abuse Protective Orders; and
- (9) For the protection of vulnerable adults under chapter 346, part X.

In any case within paragraph (3), (4), or (6), the attorney general, through the child support enforcement agency, may exercise concurrent jurisdiction as provided in chapter 576E."

SECTION 10. Section 571-50, Hawaii Revised Statutes, is amended to read as follows:

"§571-50 Modification of decree, rehearing. Except as otherwise provided by this chapter, any decree or order of the court may be modified at any time.

At any time during supervision of a child the court may issue notice or other appropriate process to the child if the child is of sufficient age to understand the nature of the process, to the parents, and to any other necessary parties to appear at a hearing on a charge of violation of the terms of supervision, for any change in or modification of the decree or for discharge. The provisions of this chapter relating to process, custody, and detention at other stages of the proceeding shall be applicable.

A parent, guardian, custodian, or next friend of any child whose status has been adjudicated by the court, or any adult affected by a decree of the court, at any time may petition the court for a rehearing on the ground that new evidence, which was not known or not available through the exercise of due diligence at the time of the original hearing and which might affect the decree, has been discovered. Upon a satisfactory showing of this evidence, the court shall order a new hearing and make any disposition of the case that the facts and the best interests of the child warrant.

A parent, guardian, or next friend of a child whose legal custody has been transferred by the court to an institution, facility, agency, or person may petition the court for modification or revocation of the decree, on the ground that the legal custodian has wrongfully denied application for the release of the child or has failed to act upon it within a reasonable time, or has acted in an arbitrary manner not consistent with the welfare of the child or the public interest. An institution, facility, agency, or person vested with legal custody of a child may petition the court for a renewal, modification, or revocation of the custody order on the ground that the change is necessary for the welfare of the child or in the public interest. The court may dismiss the petition if on preliminary investigation it finds the petition without substance. If the court is of the opinion that the decree should be reviewed, it shall conduct a hearing on notice to all parties concerned, and may enter an order continuing, modifying, or terminating the decree.

Notwithstanding the foregoing provisions of this section the court's authority with respect to the review, rehearing, renewal, modification, or revocation of decrees, judgments, or orders entered in the herein below listed classes of proceedings shall be limited by any specific limitations set forth in the statutes governing these proceedings or in any other

specifically applicable statutes or rules. These proceedings are as follows:

- (1) Annulment, divorce, separation, and other proceedings under chapter 580;
- (2) Adoption proceedings under chapter 578;
- (3) ~~[Paternity]~~ Parentage proceedings under chapter ~~[584]~~ ;
- (4) Termination of parental rights proceedings under this chapter; and
- (5) State hospital commitment proceedings under chapter 334.

A decree, judgment, or order committing a child to the care of the director of human services shall be reviewable under this section at the instance of others other than duly authorized representatives of the department only after a lapse of thirty days following the date of the decree, judgment, or order, and thereafter only at intervals of not less than one year.

Notwithstanding this section the court shall not conduct a rehearing of any petition, filed under section 571-11(1), which, following a hearing, has been denied or dismissed."

SECTION 11. Section 571-52.6, Hawaii Revised Statutes, is amended to read as follows:

"§571-52.6 Child support order, judgment, or decree; accident and health or sickness insurance coverage. Each order,

judgment, or decree under this chapter or chapter 576B, 580, or [584] ___ ordering a person to pay child support shall include the following provisions:

- (1) Both the obligor and the obligee are required to file with the state case registry, through the child support enforcement agency, upon entry of the child support order and to update as appropriate, information on the identity and location of the party, including social security number, residential and mailing addresses, telephone number, driver's license number if different from social security number, and name, address, and telephone number of the party's employer; and
- (2) The liability of that person for accident and health or sickness insurance coverage when available at reasonable cost."

SECTION 12. Section 571-84, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The court shall maintain records of all cases brought before it. Except as provided in sections 571-84.6 and [~~584-20.5,~~] ___-T, in proceedings under section 571-11 and in ~~paternity~~ parentage proceedings under chapter [~~584,~~] ___, the following records shall be withheld from public inspection: the court docket, petitions, complaints, motions, and other papers

filed in any case; transcripts of testimony taken by the court; and findings, judgments, orders, decrees, and other papers other than social records filed in proceedings before the court. The records other than social records shall be open to inspection: by the parties and their attorneys, by an institution or agency to which custody of a minor has been transferred, and by an individual who has been appointed guardian; with consent of the judge, by persons having a legitimate interest in the proceedings from the standpoint of the welfare of the minor; and, pursuant to order of the court or the rules of court, by persons conducting pertinent research studies, and by persons, institutions, and agencies having a legitimate interest in the protection, welfare, treatment, or disposition of the minor."

SECTION 13. Section 571-84.5, Hawaii Revised Statutes, is amended to read as follows:

"§571-84.5 Support order, decree, judgment, or acknowledgment; social security number. The social security number of any individual who is a party to a divorce decree, or subject to a support order or ~~[paternity]~~ parentage determination, or has made an acknowledgment of ~~[paternity]~~ parentage issued under this chapter or chapter 576B, 580, or ~~[584]~~ ___ shall be placed in the records relating to the matter."

SECTION 14. Section 571-87, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The maximum allowable fee shall not exceed the following schedule:

- (1) Cases arising under chapters ~~[+]587A[+]~~ and 346, part X:
 - (A) Predisposition \$3,000;
 - (B) Postdisposition review hearing . . . \$1,000;
- (2) Cases arising under chapters 560, 571, 580, and ~~[584]~~ ____ \$3,000."

SECTION 15. Section 571-92, Hawaii Revised Statutes, is amended to read as follows:

"§571-92 Application. This part shall only apply to actions under chapters 580 and ~~[584-]~~ ____ . Nothing in this part shall supersede any provision of any existing state or federal law. The provisions in this part shall be interpreted consistently with other relevant laws and the standard of "best interest of the child" shall remain paramount."

SECTION 16. Section 574-3, Hawaii Revised Statutes, is amended to read as follows:

"§574-3 Children born to parents not married to each other. The registrar of births shall register any child born to parents not married to each other at the time of the child's birth and where either the natural parents have not married each

other or where the parent and child relationship has not been established pursuant to chapter [584-] ____, as having both a family name and given name chosen by the ~~mother~~birthing parent."

SECTION 17. Section 576B-401, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The tribunal may issue a temporary child support order if the tribunal determines that the order is appropriate and the individual ordered to pay is:

- (1) A presumed [~~father~~] parent of the child;
- (2) Petitioning to have [~~paternity~~] parentage adjudicated;
- (3) Identified as the [~~father~~] parent of the child through genetic testing;
- (4) An alleged [~~father~~] parent who has declined to submit to genetic testing;
- (5) Shown by clear and convincing evidence to be the [~~father~~] parent of the child;
- (6) An acknowledged [~~father~~] parent as provided by section [584-3.5,] ____-H;
- (7) The [~~mother of~~] individual who gave birth to the child; or
- (8) An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated."

SECTION 18. Section 576B-402, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In a proceeding to determine parentage, a responding tribunal of this State shall apply chapter ~~[584]~~ ___ and the rules of this State on choice of law."

SECTION 19. Section 576E-2, Hawaii Revised Statutes, is amended to read as follows:

"§576E-2 Attorney general; powers. Notwithstanding any other law to the contrary, the attorney general, through the child support enforcement agency and the office, shall have concurrent jurisdiction with the court in all proceedings in which a support obligation is established, modified, or enforced, including but not limited to proceedings under chapters 571, 580, ~~[584]~~___, and 576B. The attorney general, through the child support enforcement agency and the office, may establish, modify, suspend, terminate, and enforce child support obligations and collect or enforce spousal support using the administrative process provided in this chapter on all cases for which the department has a responsibility under Title IV-D of the Social Security Act, including but not limited to welfare and non-welfare cases in which the responsible parent is subject to the department's jurisdiction, regardless of the residence of the children for whom support is sought. These powers shall include but not be limited to the power to:

- (1) Conduct investigations into the ability of parties to pay support and into nonpayment of support;
- (2) Administer oaths, issue subpoenas, and require production of books, accounts, documents, and evidence;
- (3) Establish, modify, suspend, terminate, or enforce a child support order and to collect or enforce a spousal support order in conjunction with a child support order;
- (4) Determine that a party has not complied with a court or administrative order of support and make recommendations to the court or other agency with respect to contempt or other appropriate proceedings;
- (5) Establish arrearage;
- (6) Establish an order for child support for periods which public assistance was provided to the child or children by the department of human services;
- (7) Order and enforce assignment of future income under section 576E-16, chapter 571, and section 576D-14;
- (8) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court or administrative order of support issued by another state or foreign jurisdiction, except as modified or limited by this chapter;

- (9) Determine that an obligor owes past-due support with respect to a child receiving assistance under a state program funded under Title IV-A of the Social Security Act, including Aid to Families with Dependent Children and Temporary Assistance to Needy Families and petition the court to issue an order that requires the obligor to pay such support in accordance with a plan approved by the court or, if the obligor is subject to such a plan and is not incapacitated, participate in work activities, as defined in 42 U.S.C. §607(d), as the court deems appropriate;
- (10) Order genetic testing pursuant to chapter [584] ___ for the purpose of establishing [~~paternity,~~] parentage with payment of costs to be made by the agency, subject to recoupment by the State from [~~the father or the mother,~~] a parent if appropriate, if [~~paternity~~] parentage is established, and to also order additional testing in any case if an original test result is contested, upon request and advance payment by the contestant;
- (11) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court or administrative order of support issued by another state or foreign jurisdiction, except as

modified or limited by this chapter and chapter 576B;
and

- (12) Delegate the powers and authority described in this section to hearings officers and employees of the agency."

SECTION 20. Section 580-47, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"... In those cases where child support payments are to continue due to the adult child's pursuance of education, the agency, at least three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college, or vocational school.

SECTION 21. Section 607-5.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to the fees prescribed under section 607-5 for a matrimonial action where either party has a minor child, or a family court proceeding under chapter ~~584~~, _____,

the court shall collect a surcharge of \$50 at the time of filing the initial complaint or petition. In cases where the surcharge has been initially waived, the court may collect the surcharge subsequent to the filing with such surcharge to be assessed from either party or apportioned between both parties."

SECTION 21. Section 634-7, Hawaii Revised Statutes, is amended to read as follows:

"§634-37 Presumption of notice and service of process in child support cases. Whenever notice and service of process is required for child support enforcement proceedings subsequent to an order issued pursuant to chapter 571, 576B, 576E, 580, or ~~[584-]~~ ____, upon a showing that diligent effort has been made to ascertain the location of a party, notice and service of process shall be presumed to be satisfied upon delivery of written notice to the most recent residential or employer address on file with the state case registry pursuant to section 571-52.6."

SECTION 22. Chapter 584, Hawaii Revised Statutes, is repealed.

SECTION 23. In codifying this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections added by section two of this Act.

SECTION 24. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 25. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 26. This Act shall take effect on January 1, 2024.

INTRODUCED BY: