



July 23, 2024

Hawai‘i Task Force on Parentage Laws:

Thank you for considering the Uniform Parentage Act (2017), which was promulgated by the Uniform Law Commission (ULC) in 2017 (known as the UPA (2017)).

The ULC is a non-profit organization formed in 1892 to draft non-partisan model legislation in the areas of state law for which uniformity among the states is advisable.

The ULC is composed of Commissioners from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. All commissioners are members of the bar and serve without compensation other than the reimbursement of expenses when traveling on ULC business. The governors of the states and other appointing authorities have appointed lawyers in private or public practice, judges, legislators, and law school professors as commissioners. The State of Hawai‘i has a long history of enacting uniform acts, including the Uniform Commercial Code, the Uniform Anatomical Gift Act, the Uniform Trade Secrets Act, and the Uniform Transfers to Minors Act, as well as others.

The Uniform Parentage Act, first promulgated in 1973, was updated by the ULC in 2002 to add provisions permitting a non-judicial acknowledgment of paternity procedure that is the equivalent of an adjudication of parentage in a court. The Uniform Parentage Act was updated again in 2017 to account for advancements in technology related to genetic testing and assisted reproduction and constitutional developments regarding marriage, with additional amendments made in 2023. Overall, the Uniform Parentage Act at large has been quite influential – laws in roughly half the states are based on variations of the Uniform Parentage Act. Some important reasons why Hawai‘i should adopt the current version of the UPA (2017), including the 2023 amendments to the Act, include:

- **To enact clear and comprehensive statutory provisions regarding assisted reproduction and surrogacy.** Over the last several decades, medical science has developed a wide array of assisted reproductive technology, often referred to as ART. Currently, Hawai‘i statutory law does not provide clear rules to determine parentage in a variety of situations that are common when using assisted reproductive technology. In addition, Hawai‘i has no statutes specifically permitting surrogacy agreements. The Uniform Parentage Act provides comprehensive statutory guidance that reflects the

developments that have occurred in assisted reproduction and surrogacy practice over the last twenty years.

- **To clarify and codify state law related to de facto parentage.** Most states extend at least some parental rights to people who, while not biological parents, function as parents with the consent of the child's legal parent. Some states recognize such people under a variety of equitable doctrines. Other states extend rights to such people through broad third-party custody and visitation statutes. The Uniform Parentage Act includes language that would codify the recognition of de facto parentage. This is consistent with the current trend and is consistent with a core purpose of the UPA (2017), which is to protect established parent child relationships. At the same time, however, the Uniform Parentage Act erects safeguards to ensure that these provisions do not result in unwarranted or unjustified litigation.
- **To provide clarity for and reduce unnecessary litigation regarding children born to same-sex couples.** UPA (2002) and UPA (1973) used gendered terms and its provisions presumed that couples consist of one man and one woman. As a result, the provisions did not provide clear guidance about their application to children born to same-sex couples. The UPA (2017), consistent with the charge of this Task Force, makes terms gender neutral and provides needed clarity for this group of children and their families.
- **To cure potential constitutional infirmity in existing state law.** In *Obergefell*, the United States Supreme Court held that laws barring marriage between two people of the same sex are unconstitutional. After *Obergefell*, some state parentage laws that treat same-sex couples differently than different-sex couples may be unconstitutional. By enacting language based on the UPA (2017), Hawai'i can make sure that state law does not run afoul of important constitutional protections.
- **To set forth requirements and procedures regarding access to non-identifying medical history and identifying information regarding any gamete providers by children born through assisted reproduction and their parents.** Article 9 of the UPA (2017), as amended by the Uniform Law Commission in December 2023, requires gamete banks and fertility clinics to collect and retain both identifying information and nonidentifying medical history about gamete donors. Article 9 provides that gamete banks and fertility centers shall provide non-identifying medical history to parents upon request at any time and upon request by the donor-conceived child who attains 18 years of age. With regard to identifying information Article 9 provides that a gamete bank or fertility center shall provide this information to the donor conceived child who attains 18 years of age upon their request. The focus of the Uniform Parentage Act, from its first iteration in 1973 to the modern act currently recommended for adoption in the states, has always been

to protect children. Recognizing the importance of children having access to information about their medical and genetic history is consistent with the values of the UPA (2017).

The provisions contained in the UPA (2017) provide a roadmap for modernizing parentage law in Hawai‘i. Adopting legislation based on the Uniform Parentage Act (2017) would provide comprehensive statutory guidance to individuals who wish to build their families by using assisted reproductive technology.

Thank you for your time and consideration.

A handwritten signature in black ink that reads "Libby Snyder". The signature is written in a cursive, flowing style.

Libby Snyder  
Special Counsel  
Uniform Law Commission