Ka ʻOihana O Ka Loio Kuhina

FINAL REPORT OF THE TASK FORCE TO RECOMMEND AMENDMENTS TO HAWAII PARENTAGE LAWS

Pursuant to Act 156, Session Laws of Hawaii 2023

Submitted to the Thirty-Third State Legislature
Regular Session of 2025

I. Executive Summary

Act 156, Session Laws of Hawaii (SLH) 2023 requires the Department of the Attorney General to convene a task force to recommend amendments to the Hawaii Revised Statutes (HRS) to update existing parentage laws. The members of the task force, including representatives from the Department of Health (DOH), the Child Support Enforcement Agency (CSEA), family law experts, and medical professionals submit this final report summarizing the policy choices and reasoning behind the proposed bill, attached as Appendix A, which seeks to replace Hawaii's current Uniform Parentage Act of 1973 (chapter 584, HRS) with a new chapter incorporating portions of the Uniform Parentage Act of 2017 (UPA (2017)). The driving goal behind the proposed bill is to update Hawaii's existing parentage laws to align with modern concepts of family and parenthood, and to respond to the advancements in technology that make family building possible for heterosexual-cisgender couples, non-heterosexual/non-cisgender couples, and single people seeking to become parents.

II. Background

Act 201, SLH 2021 required the DOH to convene a task force to recommend amendments to the HRS to update existing parentage laws "that reflect outdated, cisheteronormative concepts of families, parenthood, and parental rights." The Act 201 task force submitted its report to the legislature on December 21, 2021. Due to the COVID-19 situation and time constraints, the Act 201 task force was not able to complete a recommendation for amendments to the HRS.

Act 156, SLH 2023, created a new task force, the composition of which differed from the Act 201 task force. Act 156 required the Department of the Attorney General to convene a task force to recommend amendments to the HRS to "update existing

parentage laws that reflect outdated concepts of families, parenthood, conception and gestation, and parental rights." The task force was created, and an interim report was filed before the 2024 legislative session. A final report of the task force's findings and recommendations, including any proposed legislation, is due no later than forty days prior to the convening of the regular session of 2025. The task force will be dissolved on December 31, 2025.

III. Task Force Members

The task force consists of the following individuals who were appointed pursuant to the requirements of Act 156:

(1) A representative from the department of the attorney general, who shall serve as chairperson: Lauren Chun, Deputy Solicitor General;

(2) The director of health, or the director's designee: Lorrin Kim, Chief, Office of Planning, Policy, and Program Development, DOH, and Thaddeus Pham, Viral Hepatitis Prevention Coordinator, Harm Reduction Services Branch, DOH, a second designee of the director of health;

(3) A member of the Hawaii state commission on the status of women (this position is currently vacant, as the Commission has not designated a representative to serve on the task force)[1];

(4) A member of the Hawaii state commission on fatherhood: Jeff Esmond, Chair, Hawaii State Commission on Fatherhood;

(5) A family court judge: the Honorable Jessi L. K. Hall, Judge, District Family Court of the First Circuit, State of Hawai‘i;

(6) A family law attorney: Carol E. Lockwood;

(7) A health care professional familiar with hospital and birthing center procedure experience: Dr. John Frattarelli, M.D., Fertility Institute of Hawaii & Advanced Reproductive Medicine & Gynecology of Hawaii, Inc.;

(8) A mental health professional familiar with post-adoption experience: Dr. Cheryl Andaya, Psy.D., Director, Family Strengthening Center;

(9) An individual with personal knowledge of adoption-related health and medical issues: Laurel Johnston, Adoption Circle of Hawaii;

[1] The Chairperson of the task force contacted the chairperson of the Hawaii State Commission on the Status of Women for the Commission's appointed designee. As of the date of this report, the Commission has not designated a representative to serve on the task force.

(10) An individual with personal knowledge of surrogacy: Sean Taylor, attorney; and

(11) Any other member as recommended by the task force, as follows:

(A) Mark Nugent, Deputy Attorney General, Oahu Family Support Branch Manager, Child Support Enforcement Agency;

(B) Geraldine Hasegawa, Deputy Attorney General, Branch Manager, Child Support Enforcement Agency;

(C) Mihoko Ito, attorney;

(D) Deirdre Marie-Iha, attorney;

(E) Sianha M. Gualano, Deputy Solicitor General (vice-chairperson).

IV. Meetings of the Act 156 Task Force

The task force met 12 times over the course 2023-24. To guide its investigation and discussion, it identified three major topic areas to organize its review of a draft bill prepared by Judge Hall and formed Permitted Interaction Groups (PIGs) to consider policy decisions and investigate any revisions, comments, or concerns related to those topics. The three topic areas were:

(1) Legal Parentage;
(2) Assisted Reproduction and Surrogacy; and
(3) Birth Heritage (including genetic and medical information).

During its meetings, the task force considered the recommendations of the three investigative PIGs and public written and oral testimony submitted by individuals and various interest groups to the task force. Once the task force heard the final reports of each of its investigative PIGs, it deliberated and voted on its final recommendations on August 9, 2024, and August 23, 2024. It then convened a Drafting PIG to compile its policy decisions and recommendations into a final report and draft legislation.

V. Recommendations

As the task force's review was divided into three general topic areas, its recommendations are organized accordingly.

A. Legal Parentage

Federal law requires states receiving subsidies for their child-support enforcement programs to establish procedures for "a simple civil process for voluntarily acknowledging paternity." 42 U.S.C. § 666(a)(5)(C)(i). Currently, Hawai‘i provides this

through its voluntary establishment of paternity under oath form. This process, however, is only available to the "natural mother and the natural father." Section 584-3.5(a), HRS. To expand this process to comply with federal law, the proposed bill creates processes for establishing parentage that are more inclusive to non-cisgender and/or non-heterosexual couples. The proposed processes are substantially similar to those included in the UPA (2017), which has been adopted by the Uniform Law Commission (ULC) and enacted by several states. Under the proposed bill, there would be four notable changes to the establishment of legal parentage: (1) expansion of voluntary establishment of *paternity* process to voluntary establishment of *parentage* process; (2) creation of the "functional parent" as a legal parent and adjudication thereof; (3) creation of a denial of parentage process; and (4) changes to the adjudication of uncontested parentage proceedings. Each is described in more detail below.

(1) Voluntary Establishment of Parentage (Appx. A, Part IV)

The proposed Voluntary Establishment of Parentage (VEP) process takes a gender-neutral approach and allows the individual who gave birth to the child ("birthing parent") and either an "alleged genetic parent,"[2] "intended parent," [3] or "presumed parent,"[4] to establish legal parentage through the DOH without the need for adjudication by the Family Courts. As compared to current law, the new VEP process would permit a wider range of individuals (particularly female and non-cisgender partners to the birthing parent) to voluntarily establish parentage. Connecticut, Maine, Rhode Island, Vermont, and Washington currently allow for alleged genetic parents, intended parents, and presumed parents to voluntarily acknowledge parentage.

In conjunction with the proposed changes, the task force recommends that the DOH adopt forms requiring individuals asserting parentage to attest that they meet each of the legal requirements to become an alleged genetic parent, intended parent, or presumed parent.

(2) Adjudication of Functional Parentage (Appx. A, Section -603):

[2] Under the proposed bill, an individual is generally considered an "alleged genetic parent" if they are alleged to be, or allege that they are, a genetic parent or possible genetic parent of a child whose parentage has not been adjudicated. The definition of "alleged genetic parent" can be found at Appx. A, Section -102.

[3] "Intended parent" is defined as those individuals that manifest an intent to be legally bound as a parent of a child conceived by assisted reproduction. Assisted reproduction and surrogacy are governed by Parts VII and IX.

[4] Under the proposed bill, an individual is generally considered a "presumed parent" if the individual (1) was married to the birthing parent at the time the child was born; (2) was married to the birthing parent and the child was born not later than three hundred days after the marriage was terminated by death, divorce, annulment, or decree of separation; (3) was married the birthing parent after the child was born and asserted parentage of the child; or (4) resided in the same household with the child prior to the child reaching the age of majority and openly held the child out as their own. A discussion of the presumption of parentage can be found at Appx. A, Section -303.

The proposed adjudication of a claim of functional parentage, known as "de facto parent" in the UPA (2017), further equalizes access to establishment of parentage procedures for non-cisgender/non-heterosexual couples. The adjudication of functional parentage process allows individuals who may not be "presumed parents" (e.g., the birthing parent's unmarried partner who has cared for the child since the child was four years-old or the birthing parent's cohabitating and committed partner who plans to parent the child) a pathway to establishing parentage.

(3) Denial of Parentage (Appx. A, Section -608)

Other than through court proceedings, Hawai‘i does not currently have a denial of parentage/paternity process. However, 24 other states have some form of a denial process, and the task force found that there is utility in adopting one. In considering a denial of parentage process, the task force consulted with the DOH and CSEA. The DOH had concerns about the increased staffing that would be required to suitably analyze the denials and accompanying VEP acknowledgements to determine whether parentage had been established. CSEA was in favor of a simple denial process, as they receive many cases where individuals agree that a non-birthing parent should be able to deny parentage so that another non-birthing parent can establish parentage over the same child.

Recognizing the utility of a denial process and the concerns of the DOH, the proposed bill includes a process that allows denials of parentage to be filed with the Family Court. Under the proposed process, a birthing parent, the person who seeks to establish parentage, and the person seeking to deny parentage would all submit affidavits to the court, which would adjudicate the respective rights of all the parties. A denial would not be effective unless another person, other than the birthing parent, agrees to have their parentage established. This ensures that the child is not left with one parent when there previously were two. The task force does not anticipate that having the Judiciary receive and resolve denials of parentage would impose burdensome costs on the Judiciary in the same way that the DOH would be burdened if it was tasked with processing denials of parentage. The Judiciary is already having to process cases where one parent denies parentage, and another wants to establish parentage. By allowing denials to be done via affidavit, the goal would be to lessen the burden on the Judiciary.

(4) Uncontested Parentage Proceedings (Appx. A, Section -203)

Currently, if a couple cannot utilize the voluntary acknowledgement of paternity process, unmarried couples must go to court to have their parentage rights adjudicated. This process can be burdensome, as it requires the parties to appear in court for a hearing even if there are no disputes to resolve. This burden unfortunately falls disproportionately on unmarried, non-heterosexual, non-cisgender couples as they are the couples that are least able to utilize the voluntary acknowledgement of parentage process. In the interest of increasing equity and decreasing the burden of establishing

parentage, the task force proposes that certain uncontested parentage claims be processed without a hearing.

The proposed uncontested parentage proceedings are akin to uncontested divorce proceedings in Family Court, which are already in use. It would allow the Family Court to adjudicate parentage rights of alleged genetic parents or presumed parents without a hearing when all parties agree and the Family Court is satisfied that a hearing is not necessary. If the Family Court is assured that the petitioning parent, the responding parent, and the parent(s) denying parentage (if applicable) have fulfilled all legal requirements and are aware of their rights, it can adjudicate parentage without a hearing. However, if it is concerned that information is missing, any requirements have not been met, or that other potential parents need to be notified and joined, the Family Court can direct the parties to go through a traditional proceeding instead.[5]

B. Assisted Reproduction

While modern medicine has brought many advances to family-building options available to heterosexual-cisgender couples, non-heterosexual/non-cisgender couples, and single people seeking to become parents, Hawai‘i law has not kept up with those advances and the legal challenges that accompany them. The proposed bill seeks to update Hawaii's laws by generally adopting the portions of the UPA (2017) that relate to assisted reproductive technologies, which include in vitro fertilization (IVF) and artificial insemination (Appx. A, Part VII), and surrogacy (Appx. A, Part IX). The task force generally feels that staying close to the UPA (2017) would afford Hawai‘i the benefit of provisions that had been thoroughly vetted and bring Hawaii's law closer to its sister states. The task force identifies below some of the key policy considerations and deviations from the UPA (2017) specifically relating to the proposed regulation of surrogacy.

(1) Genetic Surrogacy

Genetic surrogacy—where the surrogate is not an intended parent and becomes pregnant using their own gamete—is a controversial part of assisted reproduction. Many medical and legal professionals in the field discourage its use because of the additional complexities it introduces to the surrogacy process. The task force however, finds that it would be preferable to regulate the process as opposed to banning the procedure altogether. The proposed language in the bill thus tracks the UPA (2017) on this topic.

(2) Health Insurance

The UPA (2017) requires that attorneys preparing surrogacy agreements give detailed disclosures regarding insurance coverage for surrogacy. The task force finds this requirement burdensome and impractical. To address this concern, the task force instead proposes language utilized by Connecticut, a UPA (2017) enactment state, that

[5] While the Family Courts of each respective Circuit will be responsible for adopting forms to effectuate an uncontested parentage proceeding, the task force has included proposed forms as Appendix B.

eliminates insurance summary requirements but provides clarity about the types of expenses that should be addressed in the surrogacy agreement and intended parents' liability for uncovered medical expenses. This departs from the UPA (2017) in that it avoids reliance on summaries of insurance policies that may lead to incomplete or inaccurate understandings of medical coverage.

(3) Confidentiality of Surrogacy Agreements

The UPA (2017) requires that surrogacy agreements be confidential. The task force believes that the confidentiality of surrogate agreements should clearly be permitted, but it should be left to the parties as to whether a particular surrogacy agreement is confidential. To address related confidentiality concerns, the task force also recommends that the bill provide clear authority to ensure that identifying information regarding surrogacy agreements or other matters of assisted reproduction are not included in public court dockets. This differs from the UPA (2017) standard language.

(4) Mental Health Consultation

The task force disagrees with the UPA (2017) provision that intended parents undergo mental health consultation before entering into surrogacy agreements. While the task force recognizes that reciprocal mental health consultation requirements for surrogates and intended parents create an appearance of fairness, the requirement ultimately imposes unnecessary burdens on intended parents. Intended parents already work with various professionals—doctors, nurses, agency personnel, and lawyers—in preparation for the surrogacy process. Additionally, IVF doctors already serve in a gatekeeper role, referring intended parents to mental health professionals when necessary. The task force notes that there is also concern that a lack of qualified mental health professionals in Hawai‘i would likely result in significant delays for intended parents. As a result, the task force instead proposes that the parties' expectations about intended parent mental health consultations be addressed in the surrogacy agreement.

C. Birth Heritage

A common feature of assisted reproductive technology (ART) is the use of donated gametes (ova and sperm) when intended parents' gametes are unavailable or not recommended for use in ART procedures (e.g., intrauterine insemination or in vitro fertilization). Current Hawai‘i law, however, provides no guidance regarding the use of donor gametes, the legal status of donors, or the collection and possible disclosure of information relating to gamete donors. The legal status of donors and the availability of donor information to donor-conceived children has become an increasingly important area of discussion. This area also continues to be in flux, as evidenced by the promulgation of a new UPA article regulating the handling of donor information during the task force's tenure.

The task force's discussion on this topic focused on two versions of an article in the UPA that regulates donor information—Article 9. The first version of Article 9 ("Article 9 (2017)") was promulgated in 2017 and is currently adopted in California and

Washington. The second version, which is substantially similar to the Article 9 (2017) ("Article 9 (2019)"), is currently adopted in Rhode Island and Connecticut. The most recent version ("Article 9 (2024)") was promulgated in 2024 and has not yet been adopted by any state. All iterations of Article 9 require that gamete banks and fertility clinics "licensed in the state" collect and preserve donors' "identifying information" (i.e., name, date of birth, and address) and "medical history" (i.e., present illness, past illness, and social, genetic, and family history pertaining to the health of the donor) at the time of donation. Article 9 (2024) differs substantially, however, from Article 9 (2019) and Article 9 (2017) in the applicable disclosure requirements:

- Article 9 (2019) & Article 9 (2017) require that gamete banks and fertility clinics "licensed in the state" obtain a declaration from each donor stating whether the donor agrees or does not agree to the disclosure of his/her/their identity to the donor-conceived child once the child turns eighteen. If the declaration states that the donor does not agree to disclosure, his/her/their identifying information may be released only upon withdrawal of the declaration (with the bank/clinic required to make a good faith effort to contact the donor to offer the opportunity to withdraw the declaration). Regardless of the content of the donor declaration, however, upon the request of the adult donor-conceived individual (or the legal parents of a minor donor-conceived child), the bank/clinic is required to make a good faith effort to provide the adult donor-conceived individual (or the legal parents of the minor donor-conceived child) with access to the non-identifying medical history of the donor.

- Article 9 (2024) does not provide for a declaration from donors regarding their agreement to disclose their identity to the donor-conceived child. Instead, "[o]n request of a child conceived by assisted reproduction who attains 18 years of age, a gamete bank or fertility clinic . . . which collected the gametes used in the assisted reproduction shall provide the child with identifying information of the donor who provided the gametes." Section 905(a). Additionally, gamete banks and fertility clinics are to provide the child conceived by assisted reproduction who attains 18 years of age, "or, if the child is a minor, the parent or guardian of the child, access to nonidentifying medical history of the donor" upon request. Section 905(b).

The primary difference between the two iterations of Article 9, therefore, is that Article 9 (2019) (and Article 9 (2017)) does not mandate disclosure of donor-identifying information and would therefore preserve the option for the banking and use of anonymous donor gametes in the State of Hawai‘i; whereas Article 9 (2024) mandates disclosure of donor-identifying information upon the request of the adult donor-conceived individual, and would therefore effectively prohibit the banking and use of anonymous donor gametes by banks/clinics licensed in the State of Hawai‘i.

There was clear consensus within the task force with regard to the requirement that a non-identifying medical history be released to the adult donor-conceived individual (or the legal parents of a minor donor-conceived child) upon request. With

respect to the disclosure of donor-identifying information, however, the task force contended with competing interests and policy considerations:[6]

(1) Arguments in Favor of Article 9 (2024):

- It is the current version adopted by the ULC, after its own investigation and deliberation on release of donor information;
- The donor-conceived person lacks the ability, at their birth, to provide informed consent about their donor's anonymity, and thus it balances the interests of the donor-conceived person by allowing them to seek donor information as an adult;
- Access to medical history and birth heritage information is important to the physical and mental well-being of donor-conceived children and those children should be able to directly seek information from their donor(s) as adults;
- Genetic parent and genetic family heritage, health, and medical information can be vital to the diagnosis and treatment of medical conditions in donor-conceived children and adults;
- The similar concerns of adult adoptees and donor-conceived adults suggest that, upon turning 18, donor-conceived adults should be granted the same access to birth heritage information as is guaranteed to adopted children under Hawai‘i law;
- Cultural trends are moving away from anonymity in both adoption and donor conception and toward greater transparency and information sharing. Some gamete banks have announced plans to stop offering anonymous donor gametes.
- As a practical matter, donor "anonymity" is largely a fallacy, due to the availability of commercial genetic testing, donor sibling registries, and other available databases;
- Informal methods of deriving birth heritage information (including commercial genetic testing and sibling registries) are not always accurate or complete. Planned disclosure of gamete donors' identity allows the sharing of more accurate information.

(2) Arguments in Favor of Article 9 (2019):

- Article 9 (2024) would constitute unwarranted governmental intrusion into the reproductive freedom of ~~Hawaii's **parents**~~Hawaii's Intended Parents who consider donor gametes by attempting to regulate/restrict gamete selection and imply standards for permissible/impermissible gamete use. In the process, it would regulate donor anonymity in a way that is not mirrored for known physical harms (like genetic defects, chromosomal abnormalities, and hereditary disabilities) and recognized situational risks (like family violence, neglect, and substance abuse);

Commented [JE1]: Terminology: Replace 'Hawaii's parents' with 'Hawaii's Intended Parents who consider donor gametes'.

[6] A more detailed exposition of each position can be found in the Birth Heritage PIG reports and the oral/written public testimony submitted to the task force at https://ag.hawaii.gov/act-156-task-force-on-parentage-laws/.

- Article 9 (2024) would codify unequal treatment of infertile, LGBTQ+, and single intended parents by imposing a legal ~~precondition to conception~~precondition to conception when donor gametes are considered (i.e., access to genetic father's identifying information) not imposed on fertile, heterosexual couples (noting that "one-night stands," family schisms, language barriers, illiteracy, destruction/loss of records, and other factors can also prevent access to information regarding genetic parents);
- Article 9 (2024) risks imposing additional practical and financial obstacles to parenthood on infertile, LGBTQ+, and single ~~i~~Intended ~~p~~Parents who consider donor gametes (many having already experienced years of infertility, miscarriages, invasive/painful procedures, expense, social stigma, and more), including a possible reduction in the donor pool (creating shortages, waitlists, and reduced diversity) and ~~cost prohibitive~~possible increases in gamete prices if only identifi~~ed~~able gametes are permissible;
- Adoption of Article 9 (2024) would be premature and have no legal effect, given the current lack of "gamete bank[s] or fertility clinic[s] licensed in the [State of Hawai'i]" that collect and distribute anonymous donor gametes.[7] That being the case, Hawai'i should wait and observe the actual impact of Article 9 (2024) in other states, rather than adopting it here based on assumptions about its likely impact;
- The rigorous donor screening process, extensive donor information provided to intended parents by gamete banks, and the availability of commercial genetic testing, collectively, go a long way towards mitigating ~~— or even negating —~~ the impact of donor "anonymity"; and
- Practical limitations undermine the effectiveness of the mandatory disclosure, upon the adult donor-conceived individual's request, of donor-identifying information under Article 9 (2024), because it does not compel donor engagement or communication with the donor-conceived child/adult, so positive outcomes rely on voluntary donor cooperation under either version of Article 9.

This issue was discussed at length in several task force meetings. The task force ultimately voted, ten-to-two, to recommend the adoption of Article 9 (2019), which is the version that is included in the proposed bill (*see* Part X). The majority of the task force **believes** that the adoption of Article 9 (2019) will substantially improve Hawai'i law by (i) ensuring the collection and preservation of gamete donors' identifying information, and (ii) requiring the release of donors' non-identifying medical history upon the request of adult donor-conceived individuals or the legal parents of donor-conceived minor children, without unreasonably intruding on the private procreative decision-making of Hawaii's Intended P~~p~~arents who consider donor gametes or subjecting infertile, LGBTQ+, and single ~~i~~Intended ~~p~~Parents to inequitable treatment or further burdening

[7] Per Dr. John Frattarelli, a Hawai'i reproductive endocrinologist, Founder, Medical, Practice and Laboratory Director for the Fertility Institute of Hawaii, a member of the American Society for Reproductive Medicine and the designated health care professional member of the task force.

Commented [JE2]: Terminology: Replace 'precondition to conception' with 'precondition to conception when donor gametes are considered'.

Commented [JE3]: Terminology: Replace 'intended parents' with "Intended Parents who consider donor gametes'

Commented [JE4]: "cost-prohibitive increases" is not defined. Replace with "possible increases"

Commented [JE5]: How does this *negate* donor anonymity if the donor is still anonymous? It doesn't.
Delete the phrase '-or even negating-'

Commented [JE6]: Question: Does a vote imply certain beliefs? I don't recall that the TF discussed or voted to determine if a majority *believes* this w*ill substantially improve Hawaii law*.

Recommendation: Although I did some minor editing suggestions, I believe the whole sentence starting with 'The majority of the task force' should be deleted.

their path to parenthood. However, a copy of Article 9 (2024) is also included as Appendix C for the legislature's consideration.

Commented [JE7]: Terminology re Footnote 7: For all his hard work, shouldn't Dr. Fratarelli be listed more accurately and respectfully as 'a Hawai'I reproductive endocrinologist, Founder, Medical, Practice and Laboratory Director for the Fertility Institute of Hawaii, a member of the American Society for Reproductive Medicine and the designated health care professional member of the task force'?