TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA ʻOIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023

ON THE FOLLOWING MEASURE:
H.B. NO. 384, RELATING TO PARENTAGE .

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 8, 2023 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Mark T. Nugent, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) appreciates the intent of the bill and provides the following comments.

The purpose of this bill is to update the Uniform Parentage Act of 1973, which is codified as chapter 584, Hawaii Revised Statutes (HRS), by replacing it with appropriate portions of the Uniform Parentage Act of 2017 (Model UPA). The Department makes the following comments and suggests the following amendments to this bill.

§ -21 Jurisdiction; venue. (Page 5, line 5, to page 9, line 3).

Section -21(e)(2) on page 8, lines 16 through 18, allows an action to be brought in the county in which "either parent of the child resides." Section -2 on page 3, lines 17 and 18, defines "parent" as "an individual who has established a parent-child relationship under section -31." Because parentage actions seek to establish a parent-child relationship, we recommend that this section be amended to read as follows on page 8, line 18:

(2) Either acknowledged parent, adjudicated parent, alleged genetic parent, de facto parent, genetic parent, or presumed parent of the child resides;

§ -53 Action to declare parent-child relationship. (Page 26, lines 12 to 14).

This section appears to contradict the terms of section -23 of the bill as it relates to who may bring an action to declare a parent-child relationship. While section -53 allows "any interested party" to bring an action to determine the existence or nonexistence of a parent-child relationship, section -23 (page 9, lines 13 through 21) specifies that only "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."

To avoid confusion, we suggest that section -53 be amended as follows on page 26, lines 12 to 14:

> **§ -53 Action to declare parent-child relationship.** [~~Any interested party~~] 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 to determine the existence of or nonexistence of a parent-child relationship.

§ -57 Modification of judgment or order. (Page 31, line 19, to page 33, line 8).

The court does not always have continuing jurisdiction to modify a child support order. If one or all the parties have left the State, the court and the Child Support Enforcement Agency are bound by the provisions of section 576B-205, HRS, with regards to modification. Therefore, we suggest adding the following wording on page 31, lines 19-21:

> (a) [~~The~~] Subject to section 576B-205, the court shall have continuing jurisdiction to modify or revoke a judgment or order:

§ -62 Adjudicating parentage of child with presumed parent. (Page 38, line 7, to page 40, line 7).

This section allows a proceeding to determine whether a presumed parent is a parent of a child to be commenced (1) within three years after the child reaches the age of majority or (2) after the child becomes an adult, but only if the child initiates the proceeding. (Page 38, lines 8 through 13). These two situations may be confusing because paragraph (1) seems to prohibit the commencement of proceedings after the child turns 21, while paragraph (2) allows proceedings at any time after age 18. Additionally, section -23 of this bill on page 10, lines 11 to 18, limits the proceedings to within three years after the child reaches the age of majority, or any time after that for good cause. For clarity, we suggest the following amendment on page 38, lines 12 and 13:

> (a) A proceeding to determine whether a presumed parent is a parent of a child may be commenced:
> (1) Within three years after the child reaches the age of majority; or
> (2) After the child [~~becomes an adult~~] reaches age twenty-one, but only if the child initiates the proceeding.

§ -66 Adjudicating competing claims of parentage. (Page 45, line 10, to page 47, line 7).

Subsection (c) of this section allows the court to 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. There are many practical issues and concerns that may arise if the court were to adjudicate a child to have more than two parents. Some of the areas that may be affected would be the issuance of birth certificates, determinations of custody and visitation, the calculation of child support, and the enforcement of Hawaii's orders by other states.

The Model UPA offers another alternative, which is that "the court may not adjudicate a child to have more than two parents under this [act]." We suggest that this alternative be used. Therefore, we suggest the following amendment on page 46, line 18, to page 47, line 7:

(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 shall 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.~~] not adjudicate a child to have more than two parents under this chapter.

§ -75 Genetic testing results; challenge to results. (Page 52, line 14, to page 54, line 9).

Regarding the admissibility of genetic testing results, section 466(a)(5)(F) of the Social Security Act requires the State to have in effect procedures requiring the admission into evidence, for purposes of establishing paternity, the results of any genetic test that is of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary of Health and Human Services and performed by a laboratory approved by such an accreditation body, and making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made. These procedures are currently codified in state law under section 584-11(e), HRS. We suggest that the following wording be added to this bill on page 52 before line 15:

In any hearing or trial brought under this chapter, a report of the facts and results of genetic tests ordered by the court under this chapter shall be admissible in evidence by affidavit of the person whose name is signed to the report, attesting to the procedures followed in obtaining the report. A report of the facts and results of genetic tests shall be admissible as evidence of parentage without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made. The genetic testing performed shall be of a type generally acknowledged as reliable by accreditation bodies designated by the United States Secretary of the Health and Human Services.

We also suggest that the following wording be added to this bill after page 54, line 9:

> (d) Should an original test result be contested, the court shall order further genetic testing with payment of the testing to be advanced and paid for by the contesting party.

Additionally, the term "paternity" should be replaced with "parentage" for consistency on page 53, line 15:

> An alleged parent or party to the [~~paternity~~] 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.

§ 576E-2 Attorney general; powers. (Page 71, line 6 to page 74, line 13).

On page 71, lines 8 and 13, it is not necessary to add the words "child support enforcement" before agency because section 576E-1, HRS, already defines "agency" as the child support agency established by section 576D-2.

Adding a section to the Uniform Parentage Act

Finally, this bill should also consider including the wording currently codified in state law under section 584-9, HRS, to ensure that appropriate individuals are notified of the action and that minors may be represented by a guardian ad litem. We suggest that the following wording be added to this bill after section 23 on page 14 after line 11:

> **§ -24 Parties; guardian ad litem for minor; notice to parents.**
> (a) The child may be made a party to the action and may be represented by the child's general guardian or a guardian ad litem appointed by the court. The child's acknowledged parent, adjudicated parent, alleged genetic parent, de facto parent, genetic parent, presumed parent, or parent shall not represent the child as guardian or otherwise. Subject to section -23(e), the acknowledged parent, adjudicated parent, alleged genetic parent, de facto parent, genetic parent, presumed parent, parent and the child support enforcement agency, if public assistance moneys are or have been paid for the support of the subject child, shall be made parties, or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard.
> (b) If it appears to the satisfaction of the court that the acknowledged parent, adjudicated parent, alleged genetic parent, de facto parent, genetic parent, presumed parent, or parent is a minor, the court shall also cause notice of the

pendency of the proceedings and copies of the pleadings on file to be served upon the legal parent or guardian who has physical custody of the minor. The court may appoint a guardian ad litem to represent the minor in the proceedings. If the legal parent or guardian of any such minor cannot be found, the notice may be served in such manner as the court may direct pursuant to sections 634-21 to 634-24. The court may align the parties.

(c) Fees may be charged of the applicant for child support enforcement agency's services as provided for by chapter 576D.

The Department respectfully requests that the recommended changes be accepted. Thank you for the opportunity to provide testimony.

The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second State Legislature
2023 Regular Session

Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, February 8, 2023 at 2:00 p.m.
State Capitol, Conference Room 325 & Videoconference

by:

Jessi L.K. Hall
Judge, Family Court of the First Circuit

Bill No. and Title: House Bill No. 384, Relating to Parentage.

Purpose: Enacts portions of the Uniform Parentage Act of 2017 to replace the Uniform Parentage Act of 1973. Takes effect 1/1/2024.

Judiciary's Position:

The Judiciary strongly supports House Bill No. 384 that repeals the existing Uniform Parentage Act (UPA) and replaces it with portions of the Uniform Parentage Act of 2017. This bill will ensure the equal treatment of all keiki from both heterosexual and same-sex couples. It also allows for the establishment of a *de facto* parent as a legal parent, which is permitted under existing case law and embraced by our community's culture.

In 2002, a draft UPA was created by the Uniform Laws Committee, but Hawai‘i did not adopt the 2002 version. Hawai‘i has made some amendments over the years to HRS Chapter 584, including the addition of an "expedited process of paternity" in 1996. In general, however, the statute has not kept up with the changes in the make-up of our families.

In 2021, Act 201 created a task force to examine this state's current parentage laws that narrowly confine concepts of family, parenthood, and parental rights to heterosexual unions. The task force was given the responsibility of recommending statutory changes to encompass the general culture's growing understanding of the diverse nature of these concepts. The task force was made up of the Department of Health, the Department of the Attorney General, Child Support Enforcement Agency, a Family Court judge, a family law attorney, representative of AF3IRM Hawaii, a representative of the Department of Health's sexual and gender minority working group, a representative of Ka Aha Mahu, and any other member as recommended by the task force. The task force commenced its work on August 27, 2021. The pandemic, time constraints, and unforeseen circumstances prevented the task from completing its task of preparing a full agreement on draft legislation.

There have been many changes to society and the law that make many of the provisions in HRS Chapter 584 obsolete or completely lacking. The language of this bill seeks to ensure the equal treatment of keiki born to all parents so that no keiki are needlessly stigmatized and left without the protections and rights that they deserve. The Judiciary strongly supports this measure.

Thank you for the opportunity to testify on this measure.

HB-384
Submitted on: 2/7/2023 9:07:35 AM
Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Elizabeth Kent	Commission to Promote Uniform Laws	Support	Remotely Via Zoom

Comments:

Aloha,

Thank you for the opportunity to submit comments on behalf of the Commission to Promote Uniform Legislation in strong **support** of HB 384. This act would provide Hawaii with updated procedures for determining the parentage of a child.

This uniform act was developed by the Uniform Law Commission with input from judges, law professors and family law practitioners. The Uniform Parentage Act (2017) has been endorsed by the National Center for Lesbian Rights, Lambda Legal, the American Civil Liberties Union, and the National Child Support Enforcement Association, among other organizations. To date, this Act has been enacted in California, Colorado, Connecticut, Maine, Rhode Island, Vermont, and Washington. These are some of the reasons I support this bill:

- **Enactment will provide clarity for and reduce unnecessary litigation regarding children born to same-sex couples.** This Act does not use gendered terms and does not presume that couples consist of one man and one woman. As a result, the provisions of the Act provide clear guidance about its application to children born to same-sex couples.
- **This Act cures 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. In *Pavan v. Smith* (2017), the Court reaffirmed that conclusion applies to rules regarding children born to same-sex spouses. After these decisions, state parentage laws that treat same-sex couples differently than different-sex couples are likely unconstitutional. By adopting This Act, Hawaii can better uphold constitutional protections.
- **This Act clarifies and codifies state law related to de facto parentage.** Most states extend at least some parental rights to people who, while not biological parents, have functioned as parents with the consent of the child's legal parent. States recognize such people under a variety of equitable doctrines or extend rights to such people through broad third-party custody and visitation statutes. This Act codifies the recognition of de facto parents in a uniform statutory scheme. This is consistent with the current trend and is consistent with a core purpose of the Uniform Parentage Act, which is to protect established parent-child relationships. At the same time, however, the Act erects safeguards to ensure that these provisions do not result in unwarranted or unjustified litigation.

- **This Act complies with federal laws tied to subsidies and financial incentives for states.** A state's receipt of federal subsidies for its child-support enforcement program is contingent on compliance with Title IV-D requirements. The federal Office of Child Support and Enforcement (OCSE) worked with the UPA (2017) Drafting Committee to ensure that the updates in UPA (2017) comply with all federal requirements. UPA (2017) also adds a new a provision that precludes the establishment of a parent-child relationship by the perpetrator of a sexual assault that resulted in the conception of the child. This provision complies with a law that the U.S. Congress adopted in 2015 – the Rape Survivor Child Custody Act. This federal statute provides financial incentives for states enacting provisions such as the one provided for in UPA (2017).

This bill will help ensure that all children and all parents have equal rights with respect to each other. I urge yuou to pass this bill.

Elizabeth Kent

HB-384
Submitted on: 2/6/2023 2:12:29 PM
Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Golojuch Jr	Stonewall Caucus of the Democratic Party of Hawaii	Oppose	Remotely Via Zoom

Comments:

Aloha Representatives,

The Stonewall Caucus of the Democratic Party of Hawai‘i; Hawai‘i’s oldest and largest policy and political LGBTQIA+ focused organization fully supports HB 384.

We hope you all will support this important piece of legislation.

Mahalo nui loa,

Michael Golojuch, Jr.
Chair and SCC Representative
Stonewall Caucus for the DPH

February 8, 2023

Representative Richard Tarnas, Chair
House Committee on Judiciary and Hawaiian Affairs

Re: **H.B. 384, Relating to Parentage**

Hearing: **Wednesday, February 8, 2023, 2:00 p.m., Room 325**

Dear Chair Tarnas and Members of the Committee on Judiciary and Hawaiian Affairs:

Hawaii Women Lawyers ("HWL") submits testimony in **supports the intent** of H.B.384, which proposes to update Hawaii law on parentage, by replacing the Uniform Parentage Act of 1973 with appropriate portions of the Uniform Parentage Act of 2017.

The mission of Hawaii Women Lawyers is to improve the lives and careers of women in all aspects of the legal profession, influence the future of the legal profession, and enhance the status of women and promote equal opportunities for all.

We support the proposal to update the Uniform Parentage Act of 1973, which was originally created in response to establish a legal framework for establishing parent-child relationships. Since that time, there have been many changes in society, law and medical technology, which has given rise to the need to update statutes. We support updating Hawaii's parentage law, to provide a more certain path and inclusion under the law for same sex couples, single parents, and children born through assisted reproductive technology. We also appreciate that this law provides long-needed clarity in Hawaii's parentage act to 1) eliminate outdated gender terms, 2) provide a clear path to establishing voluntary, expedited and de facto parentage, and 3) protect parent-child relationships of all types. In the wake of recent national trends, it is more important than ever that the Legislature take steps to protect all families in Hawaii and to recognize the diversity of ohana in our community.

We would respectfully ask that this measure be reviewed to consider whether a judicial procedure to recognize surrogacy should be included in this measure. It is our understanding that this measure does not include provisions from the Uniform Parentage Act of 2017 relating to genetic surrogacy. While the bill does provide a voluntary expedited process for parentage, the primary difference between the voluntary expedited process and a judicially recognized surrogacy process is that voluntary parentage occurs *after* birth, while a judicial surrogacy process occurs *before* the birth of the child. We would encourage the committee to review surrogacy laws of other states and consider the importance of providing certainty for parents who chose to establish parentage via surrogacy prior to the

P.O. Box 2072 • Honolulu, Hawaii 96805
Email: hawaiiwomenlawyers@gmail.com

birth of their child by being able to obtain a pre-birth order governing the rights of intended parents and surrogates. For intended parents who use surrogates, the ability to be able to establish parentage before the birth of the child has become significantly more important as the use of surrogacy has increased in recent years.

Thank you for the opportunity to submit testimony in support of this bill.

P.O. Box 2072 • Honolulu, Hawaii 96805
Email: hawaiiwomenlawyers@gmail.com

HB-384
Submitted on: 2/8/2023 12:16:08 PM
Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Wendy Kramer	Donor Sibling Registry	Comments	Written Testimony Only

Comments:

It's imperative that the needs and rights of donor-conceived people are acknowledged and addressed in this bill. The Donor Sibling Registry has more than 30 published papers on donor-conceived people, parents, donors, and their families. We also have more than 2 decades of hearing about the struggles and the experiences of more than 84,000 donors, parents, and donor-conceived people.

Anonymity is a thing of the past, as with DNA testing, no donor can expect to stay anonymous for 18 years. Laws should reflect this truth. Donor-conceived people have a right to know about their ancestry, medical backgrounds, and close genetic relatives....long before the age of 18. There is no research or evidence backing the claim that mandating a donor child to wait 18 years is in their best interests and plenty of evidence shows the importance of this information being known long before the age of 18. https://donorsiblingregistry.com/dsr-research

Wendy Kramer, Director, The Donor Sibling Registry

www.donorsiblingregistry.com

303-258-0902 (Office)

HB 384

Submitted on: 02/07/2023 at 10:05am

Testimony for House Committee on Judiciary & Hawaiian Affairs, Wed., 02/08/2023 @ 2pm

Submitted By Individual

Comments:

Aloha Chair David Tarnas, Vice Chair Baker, Gregg Takayama and Honorable Members,

I would like to submit this written testimony as a comment for consideration. I have been an RN in the State of Hawaii for over 47 years and have been directly involved with thousands of patients. Those who do not have any family medical history are at a disadvantage and at risk when specific treatments are required, e.g. anesthesia, allergies, reactions to products, chemotherapy, etc. In addition, preventively, those without family medical information are not able to anticipate potential health conditions such as cancer, diabetes, heart problems, kidney failure, high risk pregnancy conditions, immunocompromised issues, and many, many more genetically-related issues that can be mitigated early when a person is aware of their family medical history. I urge you to strongly consider this during your discussion of this bill and how the health and well being of the child will be affected for their entire life if they do not have access to their family medical history.

Respectfully,

Doreen Akamine, RN, MPH

HB-384
Submitted on: 2/7/2023 1:34:24 PM
Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

It should Be not more than 8 years Period!!!

HB-384
Submitted on: 2/7/2023 3:27:31 PM
Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mark Shapiro	Individual	Oppose	Written Testimony Only

Comments:

Mark Shapiro

josef.shap@gmail.com

My name is Mark Shapiro and I'm a resident of Maui. I oppose S.B. No 384 as written. It has no mechanism to record or preserve donor conceived's biological or genetic facts or how to get access to that. This bill allows the first birth certificate issued to list legal parents. The childwho becomes an adult does not have a path to access documents about how parentage was created, changed or disputed.

As early as I can remember, as a child, I felt something was deeply wrong. I turned inward as a teenager and embarked on a journey to find myself.

I studied dozens of models, methodologies, philosophies, spiritualities, etc. to try to get to the bottom of what was missing. I learned a great deal about myself, people, and reality and it's a journey I wouldn't trade for anything. However, I learned at age 47 that it could have been far easier.

Of the many things I learned about myself along the way, I had a pattern of being drawn to male authority figures who would ultimately disappoint and often betray me. It happened so often that it was clear I was the common denominator. I knew I grew up with an emotionally distant father, but somehow the father issues I worked didn't unravel the issue.

When a friend in late 2020 suggested I do 23 and Me, I was curious about genetic predispositions I had for disease as I was getting older. I was shocked to discover eight relatives I'd never heard of, one of whom reached out to me and told me our biological father was a sperm donor. He sent me a picture of that man that easily could have been a younger picture of myself.

I had little doubt, but pressed my parents the next day and they confessed that they'd kept this secret for 47 years and planned to take it to their graves. I barely slept for about ten days. It was like my entire memory, my entire being was reorganizing, updating with this new information.

It explained so much: those awkward moments I felt as a child when asking my social father how tall he was to understand how tall I would be, dinner table conversations about whether I would

inherit his poor eyesight, and all the times I kind of stared at him because something just seemed strange in a way I couldn't place.

Something in me knew all along he wasn't my father. Children sense and feel things adults cannot, and when we tell them they're imagining things it makes it worse.. It wounds us. It causes us to not trust people and reality. It makes the world unsafe.

When that information is about where we came from and who our parents are, it's my direct experience that it creates existential level wounding that is nearly impossible to outwork without having the true information. As a therapist and coach, this is my area of expertise and professional opinion.

It's just a matter of time before the impact of genetic secrecy in families becomes a mainstream understanding. It wasn't that long ago that homosexuality was considered a disease or that heroin was a healthy alternative to morphine. The fertility industry and laws related to it are unregulated and primitive.

We have a right to know where we come from. The genetic predispositions to disease alone are an open and shut case for this. Both of my social father's brothers died of Alzheimers, but it turns out I don't have to worry about that. I did discover, however, that have a genetic predisposition to blood clots. I also discovered that my biological father's passion was blending psychology and spirituality, fascinatingly a trait I inherited not seen anywhere in my social family.

It's not okay that this information was kept from me only because my parents were too uncomfortable to share the truth, and that no laws required that truth to be available to me. All of this will change as more and more people get genetic testing. It's just a matter of time at this point. Which states lead the change and which trail behind, struggling to embrace evolution?

S.B. No. 2747 allows donors to withhold their identity from the child forever. This idea stems from a flawed paradigm that says that nurture is more important than nature–that we can literally play God and move genetic material around without significant consequences that are too subtle for most people to notice.

To those who subscribe to this misguided paradigm, I say this: speak to a hundred donor-conceived children like me, who found out the truth by accident as an adult, many of whom were unable to ever find anything out about their true parent, and see if it still seems the same to you.

When I found out about my biological father, he had been dead for fifteen years. I had the fortune to know about him, but never knew him. I hold, as many people in my situation do, that it was my birthright to know who he was.

HB-384
Submitted on: 2/7/2023 5:30:24 PM
Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
J. Takane	Individual	Oppose	Written Testimony Only

Comments:

With regards to HB384,as an adopted person who was denied access to my own heritage, genealogy, genetic health information and knowledge of where I came from, I oppose any bill that denies this to donor conceived children.

How donor conceived children's parentage is portrayed or not discussed at all concerns me. Once again our potential laws are trying to deny the truth regarding where these babies come from and in doing so, deny those children much needed information regarding themselves.

Allowing the "legal" parents to designate who should be on the child's birth certificate will enable these individuals to wipe from existence this critical knowledge their children will want and need. The law must stand for those who have no voice, to ensure that their truth of their biological existence can never be denied or forgotten. If the parents themselves can't be truthful from the beginning, the law must ensure that the children have access to this knowledge that directly affects their lives and well being.

I hope we can learn from the past in order to better shape the future of our children by using truth and transparency to help their way.

Chair Tarnas, Vice Chair Takayama, and Members of Committee on Judiciary & Hawaiian Affairs

HB 384 attempts to modernize the generation of documents for the identification of personhood and legal parentage. The current procedure is more suited for customary ways of making a baby and for married heterosexual couples. **The current procedure for "certificate of live birth" hasn't changed to be able to record information of the person's accurate origins from assisted reproductive technology** (such as sperm or egg donation, surrogacy) nor do the current fields on certificates of live birth match well to current diverse family configurations.

The government has been the keeper of formal documentation of personhood. The **"certificate of live birth"** implies by the time and place of birth that it is **documenting the historical facts of the person's birth.** The document says **it cannot be changed under penalty of law.**

Key considerations about this complex issue follow that explain my opposition to HB 384.

1. **Children have a right and need to know their origins, from whom they were created.** Based on the experience of donor-conceived persons and from adoptees who were raised and denied knowing their genetic and biological connections, persons have a need to know this fundamental information about themselves.

Experience and research have documented consequences for persons not knowing their biological family origins and identities. By not ensuring that persons will have access to their origin information even as adults, this proposed legislation repeats known barriers and mistakes that have had harmful consequences for adopted persons. The lack of information about their genetic origins leaves the donor-conceived person with a void about their ethnicity, family lineage, family traits and medical history.

In these times where there can be more than one mother, father, or parents because of assisted reproduction and diverse family relationships, the genetic and biological origins that created the child must be recorded for the well-being of the child. This record must be preserved for the donor-conceived child (person created with assisted reproduction).

2. **Children and their families must have a way to access this identifying origin information.** At the latest, this information should be accessible to the donor-conceived adult at age 18. Provisions are needed for the child/family to access this information before age 18 for
   a) medical need,
   b) to prove Hawaiian ancestry for eligibility for Hawaiian birth rights such as Kamehameha Schools, or
   c) if the donor and receiving family are in mutual agreement.

3. The need for **transparency about one's origins and ancestry is part of the Hawaiian culture.**
   When I interviewed adults who had been raised hanai for my dissertation, almost all knew from early on who their biological parents were. As children they identified two people as their mothers and mother for each could have a different meaning. Having lived with this origin information out in the open, they were comfortable about their identity and family connections.

In closed adoptions and other circumstances when people weren't allowed access to information about who their parents were or weren't told the truth, the secrecy and not knowing information fundamental to themselves were sources of tension.

4. **One <u>obstacle</u> to achieve truth and transparency for children about their origins is the current practice of assisted reproduction often using <u>anonymous gametes</u>**. Some possible remedies are discussed later.

5. <u>Which **combination of possible OPTIONS** for documents of birth information and identification for the child and for parentage (legal parents) **will serve all parties**</u>?

A. to record and preserve the facts of a child's birth and
B. to document legal parentage and the child's identification

A. Record and preserve facts of birth

Option: Record facts as are known on **current "certificate of live birth."** However, it does not have fields to reflect current family configurations or genetic origins from assisted reproduction.
Additional fields seem necessary.

Option: **<u>Revise</u> template of "<u>certificate of live birth</u>" with**
a) fields to record biological, genetic, and gestational parents
b) additional fields compatible for parents of diverse families
Truthful and transparent with child's history and current legal parents
However, for some will be too much information to share with school, sports, etc.
Original could be sealed; an amended one with just legal parents used for school, ID, etc.

Option: Create a "certificate of live birth" with only the legal parents listed as HB 384 proposes without recording some facts of biological or genetic origins of the birth.
Not recommended because it does not preserve needed biological or genetic origins information for the child's well-being and HB 384 doesn't allow the donor-conceived person access to information that established parentage.

B. Child's document of identification and parentage

Option: Create an **amended "certificate of live birth"** listing the legal parents
*This would be **similar to adoption procedure** used for decades.*

Option: **Explore the possibility that a "certificate of live birth" should not be changed once the basic facts of birth (a one-time event) are recorded.**
I once saw a "certificate of live birth" of a child that listed a father, no mother, and the child and father were of different races. Would a **document of identification and parentage** make more sense than a "certificate of live birth"?
Would it be safer from identity theft to use a different type of document? We once used social security numbers on driver's licenses, checks, etc., but not now.

Option: Create a new **document of identification and parentage** with child's name, date of birth, place of birth, gender, etc. and with legal parents listed. This new document could be used for identification and age for school and sports, etc.

Option: All births would generate two documents – 1) a **"certificate of live birth"** (with facts of birth *that do not change* and with new fields to reflect current reproductive technology) and 2) a **document of identification and parentage** that reflects contemporary families.

How can donor-conceived children in Hawaii have their fundamental genetic origin information documented, preserved and released to them?

What are possible ways to strengthen protections for donor-conceived children? Since gametes used for assisted reproduction are often from anonymous donors, some changes are needed.

Option: **Require that all gametes used in Hawaii would come from donors who are willing to have their identifying information disclosed to their child** at least by age 18. This willing-to-be-identified status shall be certified by the gamete bank or fertility clinic.

Option: **Require that this identifying information be documented, securely preserved and then released to the donor-conceived person upon request.**
Determine who should be required to provide or keep this information? The gamete bank? The clinic, doctor, or medical facility? The state? The donor-conceived child's family?

This complex issue deserves more consideration to meet current needs of parents and children. The current bill does not regard the needs for children to have basic information about their origins. For this reason, I oppose this bill HB384.

I do support with amendments SB 944 that proposes a task force for further exploring this issue. My suggestion would be to add donor-conceived persons on the task force.

Thank you very much for the opportunity to share my views. Some organizations for the donor-conceived and other resources follow.

Respectfully,
Kat McGlone

Organizations that support the donor-conceived:

- **Donor Sibling Registry**

"Educating, Connecting & Supporting Donor Families" *DSR's core value is honesty, with the conviction that people have the fundamental right to information about their biological origins and identities.*
https://donorsiblingregistry.com/

Organizations that support the donor-conceived continued:

- **We are donor conceived**

"resource center for donor conceived people." "We all deserve the truth."
https://www.wearedonorconceived.com/

- **U. S. Donor Conceived Council**

"strives to increase awareness of the needs, interests, and challenges of donor conceived people and advance change that promotes and protects their health, welfare, and human rights."
https://www.usdcc.org/

- **donor conceived community**

"provides peer support, education, and resources
for people navigating donor conception & dna discoveries."
https://donorconceivedcommunity.org/about

Other resources:

Session by donor-conceived and surrogate-born at the United Nations on 30th anniversary of the Convention on the Rights of the Child. (2019).
https://www.youtube.com/playlist?list=PL3PTiHF4egBG2KaSTYLDZUpIY_f1-BYy2

Concise, powerful testimony that highlight the issues for those who are donor-conceived

Samuels, Elizabeth. (2018). An Immodest Proposal for Birth Registration in Donor-Assisted Reproduction, In the Interest of Science and Human Rights.
https://scholarworks.law.ubalt.edu/fac_articles/5

Cahn, Naomi. (2014). "Do Tell! The Rights of Donor-Conceived Offspring," *Hofstra Law Review*: Vol. 42 : Iss. 4 , Article 3. https://scholarlycommons.law.hofstra.edu/hlr/vol42/iss4/3

Cahn, N. (2011). Old Lessons for a New World: Applying Adoption Research & Experience to ART.
https://www.researchgate.net/publication/228139419_Old_Lessons_for_a_New_World_Applying_Adoption_Research_and_Experience_to_Art

United Nations. (1990). **Convention on the rights of the child**.
https://www.ohchr.org/EN/professionalinterest/pages/crc.aspx

Article 8 - States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.