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December 28, 2017

The Honorable Ronald D. Kouchi
President of the Senate
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker and Members of the House of
Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi and Speaker Saiki:

For your information and consideration, I am transmitting one (1) copy for each of you of the Department of the Attorney General's Report on Surrogacy and Gestational Carrier Agreements as required by House Concurrent Resolution Number 56, Senate Draft 1. In accordance with Section 93-16, HRS, I am also informing you that the report may be viewed electronically at <http://ag.hawaii.gov/publications/reports/reports-to-the-legislature/>. If you have any questions or concerns, please feel free to call me at 586-1282.

Sincerely,

Douglas S. Chin
Attorney General

c: David Y. Ige, Governor
Shan S. Tsutsui, Lieutenant Governor
Legislative Reference Bureau (Attn.: Karen Mau)
Leslie Kondo, State Auditor
Wesley K. Machida, Director of Finance, Department of Budget and Finance
Stacey Aldrich, State Librarian, Hawaii State Public Library System
David Lassner, PhD., President, University of Hawaii

Enclosure

State of Hawai‘i
Department of the Attorney General



**REPORT ON SURROGACY AND
GESTATIONAL CARRIER AGREEMENTS**

Requested by House Concurrent Resolution No. 56, S.D. 1,
Regular Session of 2017

***Submitted to
The Twenty-Ninth State Legislature
Regular Session of 2018***

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REPORT ON SURROGACY AND GESTATIONAL CARRIER AGREEMENTS

I. Introduction

This report is made in response to House Concurrent Resolution No. 56, S.D. 1 (HCR 56), adopted during the regular session of 2017, which requested the Department of the Attorney General to conduct a study on gestational and carrier agreements and, at a minimum, determine (1) whether Hawai'i law currently authorizes surrogacy and gestational carrier agreements, (2) whether payment of financial consideration to a surrogate or gestational carrier is unconstitutional or otherwise illegal, (3) whether the Hawaii Revised Statutes ought to be amended to address surrogacy and gestational carrier agreements, and if so, (a) whether these amendments ought to be modeled after laws of other states, (b) what is the best way to protect the rights of surrogates, gestational carriers, intended parents, and children, and (c) whose name or names ought to appear on the birth certificate of a child born as a result of a surrogacy or gestational carrier agreement. It included a request to the Department of the Attorney General to prepare a report, including findings, recommendations, and any proposed legislation, and submit it to the Legislature before the convening of the regular session of 2018.

The Legislature identified the following information in framing its resolution:

- (1) Modern technology allows a woman to carry and give birth to a child as a surrogate or gestational carrier following the artificial insemination of an egg or the implantation of an already fertilized egg;
- (2) Surrogacy is a contractual relationship between two or more consenting adults in which a woman agrees to act as the surrogate or gestational carrier for the child of another person;
- (3) While surrogacy does occur in Hawaii, it is not regulated;
- (4) In light of the fact that the Hawaii Revised Statutes do not make specific reference to surrogacy or gestational carrier agreements, there may be ambiguity regarding the issue of legal custody in such agreements;
- (5) Thirteen other states have enacted laws regarding surrogacy or gestational carrier agreements;
- (6) In some states, children born as the result of surrogacy agreements are considered the legal children of the surrogates until the intended parents obtain court orders regarding custody;
- (7) In other states, the intended parents are automatically the legal parents of children born as the result of surrogacy agreements; and

- (8) Some states prohibit surrogacy altogether because policymakers have determined that compensation for the carrying of a child is the sale of a person.

II. Definitions¹

Assisted reproduction means a method of causing pregnancy other than sexual intercourse. The term includes: (A) intrauterine or intracervical insemination; (b) donation of gametes; (C) donation of embryos; (D) in-vitro fertilization and transfer of embryos; and (E) intracytoplasmic sperm injection. (Definition is based on Uniform Parentage Act (2017).²)

Birth mother refers to a woman who carries and delivers a child and, if the woman carries and delivers a child for some other intended parent(s), she is a surrogate but still a birth mother.

Commercial surrogacy generally refers to any surrogacy arrangement in which the surrogate mother is compensated for her services beyond reimbursement of medical expenses. (Definition is based on Finkelstein, McDougall, Kintominas, and Olsen, *Surrogacy Law and Policy in the U.S.: A National Conversation Informed by Global Lawmaking*, Columbia Law School Sexuality & Gender Clinic, May 2016,³ hereinafter "Surrogacy Law and Policy in the U.S.")

Genetic surrogate means an adult woman who is not an intended parent and who agrees to become pregnant, carry, and give birth to the resulting child through assisted reproduction using her own gamete, pursuant to a genetic surrogacy agreement. (Definition is based on Uniform Parentage Act (2017).)

Gestational surrogate means an adult woman who is not an intended parent and who agrees to become pregnant, carry, and give birth to the resulting child through assisted reproduction using gametes that are not her own, pursuant to a gestational surrogacy agreement. (Definition is based on Uniform Parentage Act (2017).)

Intended parent(s) means an individual(s), married or unmarried, who manifests the intent to be legally bound as the parent(s) of a child resulting from assisted reproduction. (Definition is based on Uniform Parentage Act (2017).) Being legally bound as the parent(s) includes receiving the child and bearing full responsibility for raising and supporting the child as soon as the surrogate has given birth.

¹ Definitions are based on the indicated sources, or where no source is cited, common meaning.

² http://www.uniformlaws.org/shared/docs/parentage/2017AM_Parentage_AsApproved.pdf

³ http://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/columbia_sexuality_and_gender_law_clinic_-_surrogacy_law_and_policy_report_-_june_2016.pdf

Non-commercial surrogacy, or altruistic surrogacy or compassionate surrogacy, generally refers to any surrogacy arrangement in which the surrogate mother is not compensated for her services beyond reimbursement of medical expenses. (Definition is based on Surrogacy Law and Policy in the U.S.) Note that surrogacy in general may be considered an altruistic act, whether compensated or not.

Resulting child, for purposes of this report, refers to the child or children born pursuant to a surrogacy agreement and includes all children that result from the agreed upon pregnancy, regardless of the number, gender, or mental or physical condition of the child or children.

Surrogacy, as defined by the Legislature in HCR 56, is a contractual relationship between two or more consenting adults in which a woman agrees to act as the surrogate or gestational carrier for the child of another person. However, there are varying factors to consider, including whether or not the surrogate is paid a fee and where the genetic material originated, that may trigger a need for different, more precise legal definitions in order to allow for different legal treatment in different situations. (See the definitions of commercial surrogacy, genetic surrogate, and gestational surrogate.)

Surrogacy agreement means an agreement between an adult woman and an intended parent(s) by which a woman agrees to become pregnant, carry, and give birth to the resulting child through assisted reproduction with the intention that she will relinquish the resulting child to the intended parent(s). Unless otherwise specified, the term "surrogacy agreement" refers to such an agreement regardless of the surrogate's genetic connection to the resulting child or lack thereof. (Definition is based on Uniform Parentage Act (2017).)

III. Issues and Discussion

(a) Does Hawai'i law currently authorize individuals, regardless of marital status or gender, to enter into surrogacy and gestational carrier agreements?

As the Legislature found in HCR 56, the Hawaii Revised Statutes (HRS) do not make specific reference to surrogacy or gestational carrier agreements.

There are no laws in Hawai'i relating to surrogacy, either permitting it or prohibiting it. Neither are there laws explicitly protecting parental arrangements made involving the use of a surrogate. Current law on parentage follows chapter 584, HRS, and presumes the woman who gives birth is the natural and legal parent and further presumes that, if that woman is married, her spouse is also a natural and legal parent.⁴

⁴ Despite the biological impossibility of a woman's female spouse being the natural and legal parent, the law presumes that the natural mother's spouse is the natural parent. See section 584-4, HRS. (Because section 584-4, HRS, specifically uses the wording that "a man is presumed to be the natural father of a child if he and the child's natural mother are or have been married to each other . . .", it is necessary to incorporate the requirement of section 572-1.8, HRS, that all gender-specific terminology, such as

Hawai'i law is silent on how to transfer parental rights from a surrogate parent to an intended parent and overcome the presumptions that apply upon the birth of the child, even in situations where the intended parents provided all of the genetic material. Because of this silence, petitions to the court have differed, and some intended parents who have used a surrogate decide to adopt the child that may be genetically theirs.

Because we were provided with courtesy copies of documents that were submitted to the Family Court of the First Circuit in 2008, our department was made aware of a few petitions that were styled as chapter 584 paternity (parenthood) cases in which the intended parents were petitioners and the surrogate parents were respondents and were served notice of the hearing.⁵ Evidence in those cases included a physician's declaration that tracked the genetic material from its origin and described the implantation process. Evidence also included the contractual agreement. The surrogate (and her husband if she was married) agreed in court or in writing with the arrangement. The process essentially was to rebut the presumption of parenthood, validate the legality of the contract, and establish the parents who contributed the genetic material as the legal parents based on medical evidence. In each of those cases, the intended mother and father had contributed the genetic material that resulted in the live birth.

Our office has heard of a few cases since then, mostly because of occasional queries by practitioners, but we have no comprehensive information about how all surrogacy cases are handled, nor do we have information about the various kinds of surrogacy that may have been granted by Hawaii's courts.

We have not seen cases where any of the genetic material was donated by anyone other than the intended parents. It is unknown whether courts would require that all donors of genetic material would have to be named parties or noticed of any hearing, and it is similarly unknown how the court would handle a case where any or all of the genetic material was donated by an unidentified or anonymous donor. Hawai'i law does not address these scenarios.

Similar to the lack of relevant laws, there are few statistics on the number or kinds of surrogacy cases that have been handled in Hawai'i.

Cases brought in Family Court pursuant to chapter 584 (parentage) and chapter 578 (adoption), tend to be closed proceedings with confidential records, so there are no

"husband" or similar terms, be construed in a gender-neutral manner when it is necessary to implement the rights, benefits, protections, and responsibilities of spouses.) There are no applicable presumptions of parenthood for men who are married to men, even when one of the men has donated the sperm that results in a live birth.

⁵ The attorney who represented the petitioners was licensed in Hawai'i but primarily practiced out of state. In a few cases where the surrogate for his clients had given birth in Hawai'i, he wanted to ensure that the Department of Health, which would ultimately produce a birth certificate to reflect parentage, was fully informed and had an opportunity to weigh in on the process, so he included us in the process and invited us to his first hearing and provided us with documents in some of his cases.

published statistics. We have learned from the Family Court of the First Circuit that it does not keep formal statistics on surrogacy cases, but estimates that there have been about eight surrogacy adoption cases filed since January 1, 2016. No statistics were gathered to determine how many may have proceeded as establishments of parentage. The details of the procedures and outcomes are not readily available. We have no information from any of the other courts or circuits.

The Department of Health is unable to track surrogacy cases because, when the Department of Health gets an order to amend a birth certificate, the order does not usually contain information that identifies it as a surrogacy case.

Thus, while the use of chapter 584 tends to authorize surrogacy via an establishment of parentage case, it is unlikely that all surrogacy cases fit within that law, e.g., a same sex couple would not be able to provide genetic evidence to establish that both members of the couple are biological parents, so the only protections for such a couple might come from adoption or contract law.

(b) Does financial consideration paid to a surrogate or gestational carrier make a surrogacy or gestational carrier agreement impermissible under the Constitution of the United States or other applicable law?

The U.S. Supreme Court has not yet addressed the issue of paid surrogacy and its constitutionality, so there is no binding precedent on this issue.

Buying or selling children for any reason related to sexually explicit conduct is illegal in federal law (18 U.S.C. § 2251A (2008)), but surrogacy is not regulated.

There may be some similarities between surrogacy and adoption law. It is not illegal to charge a fee for an adoption, but there have been publicly criticized cases in which children were stolen or fraudulently obtained and sold for purposes of adoption, which underscore that "selling children" can be problematic. Georgia Tann of the Tennessee Children's Home Society is reported to have sold thousands of children on the black market in the 1930s and 1940s. Her primary sources for these children were orphanages and homes for unwed mothers. While her actions ironically popularized adoption in this country, including to some famous Hollywood actresses, they also led to adoption reforms that included informed consent to adoption. (New York Post, [This Woman Stole Children from the Rich to Give to the Poor](https://nypost.com/2017/06/17/this-woman-stole-children-from-the-poor-to-give-to-the-rich/), Poppy, June 17, 2017.⁶) Lauryn Galindo was instrumental in buying approximately 800 impoverished Cambodian children for money or rice in the late 1990s, and making over \$8 million selling those children to Americans. The adoptive parents were usually wrongfully told that the children were orphaned. Galindo pleaded guilty to conspiracy to commit visa fraud and money laundering and was sentenced to eighteen months in prison. She was never charged with anything else and denied baby trafficking. (ABC News, [U.S. Families](https://www.abcnews.com/news/2017/06/17/this-woman-stole-children-from-the-poor-to-give-to-the-rich/)

⁶ <https://nypost.com/2017/06/17/this-woman-stole-children-from-the-poor-to-give-to-the-rich/>

Learn Truth about Adopted Cambodian Children, Goldberg and Apton, March 25, 2005.⁷⁾

Despite the unknown Constitutional status of surrogacy and the illegality of selling children for sexual purposes, there do not appear to be federal laws that prohibit a fee for surrogacy services; however, there are some states that strictly prohibit commercial surrogacy or treat surrogacy contracts as unenforceable.⁸

Hawai'i law does not address commercial surrogacy, or any other kind of surrogacy. In addition to financial considerations, any evaluation of whether Hawai'i ought to legislate to specifically allow surrogacy needs to consider the distinctions between the types of surrogacy and whether different surrogacy situations require different regulations. Women's health and rights, rights of same-sex couples, best interests of children, and ethics relating to surrogacy are also factors to consider. A non-commercial surrogacy in which a woman agrees for altruistic reasons to assist a couple who is unable to bear a child differs significantly from a commercial surrogacy where a woman is compensated for her services. Paid surrogacy raises ethical and emotional concerns about possible systematic objectification and financial exploitation of disadvantaged women. More than paying and using a woman for her ability to carry a child, genetic surrogacy also involves a woman's using her own genetic material to create a child, and if this is done for a fee it can appear that the resulting child is a human commodity to be purchased. Additionally, not all childless couples can afford the expense of assisted reproduction and hiring a surrogate to assist them with creating their family, and this tends to make surrogacy an option for the wealthy only. All imaginable scenarios arising from possible surrogacy scenarios should be considered and evaluated before enacting legislation to regulate surrogacy.

(c) Should the Hawaii Revised Statutes be amended to specifically address surrogacy and gestational carrier agreements?

This question involves a policy determination for the Legislature. Factors to consider include whether or not the State's current laws and practices create a need for a law, whether surrogacy affects sufficient numbers of people in Hawai'i to require a law, and whether there would be any problems with enacting or failing to enact a law pertaining to surrogacy.

In 1975, Hawai'i enacted the Uniform Parentage Act, with appropriate amendments, additions, and deletions to meet particular needs in Hawai'i. It was intended to provide substantive legal equality for all children regardless of the marital

⁷ <http://abcnews.go.com/2020/International/story?id=611826&page=1>

⁸ Michigan (MCL 333.2824(6) (1997)), New Jersey (case law makes all compensated surrogacy agreements unenforceable), New York (all surrogacy contracts are void as against public policy and unenforceable, but unpaid surrogacy is not strictly prohibited, Consolidated Laws of New York, Domestic Relations Code § 8-122 (McKinney's 1992)), and Washington (only compassionate, uncompensated surrogacy is allowed, all others are void and possibly criminal, Wash. Rev. Code § 26.26.210 through § 26.26.260 (1989)).

status of the parents. (S. Stand. Comm. Rep. No. 777, in 1975 Senate Journal, at page 1128.) It was codified as chapter 584, HRS, effective January 1, 1976.

The Uniform Parentage Act itself was originally promulgated in 1973, and it was that version on which Hawaii's chapter 584 is based. But chapter 584 has never been substantially updated, and it does not include laws that address parentage situations that are included in the 2002 updated version of the Uniform Parentage Act, nor does it include updates from the 2017 revised version of the Uniform Parentage Act, which was approved by the National Conference of Commissioners on Uniform State Laws in July 2017. Unaddressed provisions that are included in these updated versions include treatment of children born to same-sex couples, gender-neutral wording, and surrogacy.

It would probably be beneficial to update chapter 584, HRS, to ensure that it applies equally to children born to same-sex couples, to make it gender neutral, and to make it applicable to surrogacy situations. One means of doing that would be to evaluate and incorporate some, or all, of the 2017 revised version of the Uniform Parentage Act into chapter 584, and do as the 1975 Legislature did by making appropriate amendments, additions, and deletions to meet particular needs in Hawai'i.

The following sections address possible options if the Legislature concludes the HRS should be amended to specifically address surrogacy and gestational carrier agreements.

1. Should any amendments to the Hawaii Revised Statutes be modeled after the laws or regulations of one or more other states, and, if so, which state or states?

An excellent resource on the status of surrogacy laws in the United States is Surrogacy Law and Policy in the U.S. (*supra*).⁹ This report examines surrogacy and its treatment in all of the states and some foreign countries. It provides valuable information on the differences among the types of surrogacy, and it provides comprehensive explanations of terms and issues. It should be consulted as a detailed supplement to this report.

There is no consensus regarding surrogacy among the states, nor is there consistent treatment. Some states permit surrogacy, including a pre-birth order that allows the intended parents to be listed on the initial birth certificate;¹⁰ other states prohibit compensated surrogacy contracts, deeming them void as against public

⁹ http://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/columbia_sexuality_and_gender_law_clinic_-_surrogacy_law_and_policy_report_-_june_2016.pdf

¹⁰ California (Cal. Fam. Code § 7960 (West 2016)), Connecticut (C. G. S. A. § 7-48a (2011)), District of Columbia (DC ST. § 16-401 through § 16-412 (2017)), Delaware (13 Del. C. § 8-801 through § 8-810 (2013)), Maine (19-A M.R.S.A § 1931 (2015)), New Hampshire (N.H. Rev. Stat. Ann. § 168-B (2014)), and Nevada (N.R.S. § 126.500 through § 126.810 (2013)).

policy;¹¹ the rest of the states seem to fall in the middle with variants that allow surrogacy but include legal inconsistencies and hurdles. Because Hawai'i has no laws relating to surrogacy, those cases that come in front of the court must be addressed as a matter of parenthood establishment, adoption, or contract law.

The current process in Hawai'i is that upon birth, the woman who delivers the child is the presumed mother, and if she was married, her husband is the presumed father (section 584-4, HRS), and their names both go on the birth certificate as the parents.¹² The intended parents would need to file a petition to establish parenthood pursuant to chapter 584, HRS, in Family Court, and they would need to rebut the presumptions with whatever evidence the judge requires. The disposition of the case would depend on the proclivities of the judge, the strength of the evidence, the validity of the contract, and the intent of the parties at the time of the hearing. If that would fail, the petitioners would probably need to file an adoption petition pursuant to chapter 578, HRS. There are no current protections in Hawai'i law to protect the intended parents, other than perhaps monetary damages for breach of contract if the surrogate changes her mind. Specific performance is an unlikely remedy, and it is uncertain if any particular judge would determine that a surrogacy contract is valid, because Hawai'i has no law that addresses it.

Before considering amending the HRS to regulate surrogacy, the Legislature needs to decide which, if any, of the other States' approaches Hawai'i wants to follow. Because there is no consensus or equal treatment among the states, another resource to consider if Hawai'i decides to amend its law is the Uniform Parentage Act (2017) because of its comprehensive approach to surrogacy.

2. What is the best way to protect the rights of surrogates, gestational carriers, intended parents, and children;

This is a hard question that deserves more study to fairly address. We are able to identify a few factors that need to be considered, but to fairly determine the rights of surrogates, gestational carriers, intended parents, and children, there should be input from advocates or representatives forming those groups.

We propose convening a two-year working group, under the direction of the Attorney General or the Attorney General's designee, to consider the best way to

¹¹ Louisiana--limited to heterosexual married couples (La. Rev. Stat. § 9:2713 (2016), Michigan (MCL § 333.2824(6) (1997), New Jersey (case law makes all compensated surrogacy agreements unenforceable), New York (Consolidated Laws of New York, Domestic Relations Code § 8-122 (McKinney's 1992)), and Washington (Wash. Rev. Code § 26.26.210 through § 26.26.260 (1989)).

¹² Birth mothers, even if married, can refuse to include a spouse's name on the child's birth certificate. While section 584-4, HRS, specifically uses the wording that "a man is presumed to be the natural father of a child if he and the child's natural mother are or have been married to each other . . .", it is necessary to incorporate the requirement of section 572-1.8, HRS, that all gender-specific terminology, such as "husband" or similar terms, be construed in a gender-neutral manner when it is necessary to implement the rights, benefits, protections, and responsibilities of spouses.

amend the Hawai'i laws to include regulation and protection of rights of all parties involved in surrogacy arrangements. The group could include community partners from the Judiciary, the Department of Health, the bar, and advocates or representatives of affected groups. Attached with this report is a proposed Concurrent Resolution to request that such a group be convened.

Among other considerations, the group should look at:

- (A) What kind of surrogacy should be allowed and regulated, if any?
 - (B) Should Hawai'i adopt laws of other states or from the Uniform Parentage Act?
 - (C) How can we avoid financial exploitation of women?
 - (D) What are the minimum requirements for a valid surrogacy agreement?
 - (E) Should any legal presumptions apply?
 - (F) How will presumptions of parenthood apply to parents of the same sex?
 - (G) Should a person with a genetic relationship to a child be able to rebut parentage presumptions based on marriage?
 - (H) What statistical information should be collected for the birth certificate, and which parents should be identified?
 - (I) Should the group coordinate its suggestions to overhaul chapter 584, HRS?
- 3. Whose name or names should appear on the birth certificate as the parent or parents of a child born as a result of a surrogacy or gestational carrier agreement?**

Unless the law is changed in a way that allows for a legal determination of parental rights in surrogacy situations before the birth occurs,¹³ the woman who gives birth is named on the birth certificate, and, if she is married, her spouse is named as the co-parent. Based on the presumptions of section 584-4, HRS, and the gender-neutral requirements of section 572-1.8, HRS, this applies to both male and female spouses of the birth mother. (See sections 584-4 and 572-1.8, HRS.) According to the Department of Health's information, some birth mothers and intended parents have tried to force birthing hospitals to enter the intended parents' names on a surrogate child's birth certificate, but current law prohibits that. Admittedly, the Department of Health would not necessarily know if it has ever occurred.

¹³ A "pre-birth" order would involve a court determining parentage before the birth of the child.

The presumption that the woman who gives birth is the natural and legal mother of the child should not be subject to extrajudicial rebuttal. Neither birthing facilities nor hospitals nor the Department of Health should be in the position of determining the legal question of the validity of a surrogacy contract. The court has to be involved to ensure fairness and to avoid the serious risk of disregarding any of the many important factors, including (1) whether the birth mother voluntarily consented to the surrogacy arrangement, (2) whether the spouse of the birth mother voluntarily consented, (3) whether there is a legal and binding contractual agreement, and (4) whether the intended parent(s) voluntarily consented.

If the law is changed to allow a court to determine these factors in advance of the birth, then the birth certificate could be prepared with the names of the intended parents from the beginning based on a pre-birth court order. However, an important factor to consider in modifying the law is that the birth certificate is not just about identification and citizenship; it is also designed to capture public health information and, thus, information about the gestational carrier should still be part of the statistical record. The surrogate mother's statistical information is important for public health purposes, because the period of gestation is a crucial determinant of an infant's health and survival for years to come, and the Department of Health collects the information to share with the Centers for Disease Control and Prevention for use in determining trends in national health. From a statistical standpoint, the Department of Health needs information about the genetic, gestational, and intended parents to fully understand birth outcomes and the well-being of the child.

IV. Findings, Recommendations, and Proposed Legislation

Many people have a strong desire to be a parent despite being unable to bear a child. This includes same-sex couples, single people, and people suffering from disability, infertility, or other health problems.

Surrogacy arrangements seem to be common enough that Hawai'i should consider whether they ought to be regulated and whether parties to surrogacy agreements should be afforded specific protections.

We recommend that the Legislature consider requesting that a two-year working group be convened under the direction of the Attorney General or the Attorney General's designee, to consider whether to amend Hawai'i laws to include regulation and protection of rights of all parties involved in surrogacy arrangements and, if so, the best way to do so. The group could include community partners from the Department of Health, the Department of Human Services, the Judiciary, the bar, and advocates or representatives of affected groups. Attached with this report is a proposed Concurrent Resolution to request that such a group be convened.

HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO CONVENE A TWO-YEAR WORKING GROUP TO DETERMINE THE BEST WAY TO PROTECT THE RIGHTS OF SURROGATES, GESTATIONAL CARRIERS, INTENDED PARENTS, AND CHILDREN.

1 WHEREAS, many people have a strong desire to be a parent
2 despite being unable to bear a child; and

3
4 WHEREAS, surrogacy arrangements, in which a woman agrees to
5 become pregnant, carry, and give birth to a child for another
6 intended parent occur in Hawaii, but the frequency and means are
7 unknown; and

8
9 WHEREAS, there are neither prohibitions nor protections for
10 surrogate parents and intended parents with regard to surrogacy
11 or gestational carrier agreements in Hawaii; and

12
13 WHEREAS, the lack of regulation regarding surrogacy may
14 create inconsistent legal results and inadequate protections
15 among surrogates and intended parents in Hawaii; and

16
17 WHEREAS, the issue of surrogacy in Hawaii should be
18 studied, and if appropriate, laws to regulate surrogacy and
19 protect the parties to surrogacy arrangements should be passed;
20 now therefore,

21
22 BE IT RESOLVED by the House of Representatives of the
23 Twenty-ninth Legislature of the State of Hawaii, Regular Session
24 of 2018, the Senate concurring, that the Department of the
25 Attorney General is requested to convene and lead a surrogacy
26 working group for the purposes of considering whether Hawaii
27 should regulate surrogacy; and

28
29 BE IT FURTHER RESOLVED that the Department of the Attorney
30 General is requested to seek input for the surrogacy working
31 group from community partners, including the following:

- 1 (1) The Department of Health;
- 2
- 3 (2) The Department of Human Services;
- 4
- 5 (3) The Judiciary;
- 6
- 7 (4) The Hawaii bar, especially members who have handled a
- 8 surrogacy matter;
- 9
- 10 (5) Advocates or representatives of surrogates;
- 11
- 12 (6) Advocates or representatives of gestational carriers;
- 13
- 14 (7) Advocates or representatives of intended parents; and
- 15
- 16 (8) Advocates or representatives of children; and
- 17

18 BE IT FURTHER RESOLVED that the working group
19 shall consider, at a minimum:

- 20
- 21 (1) What kind of surrogacy should be allowed and
- 22 regulated, if any?
- 23
- 24 (2) Should Hawaii adopt laws of other states or
- 25 from the Uniform Parentage Act?
- 26
- 27 (3) How can we avoid financial exploitation of
- 28 women in surrogacy matters?
- 29
- 30 (4) What are the minimum requirements for a
- 31 valid surrogacy agreement?
- 32
- 33 (5) Should any legal presumptions apply?
- 34
- 35 (6) How will presumptions of parenthood apply to
- 36 parents of the same sex?
- 37
- 38 (7) Should a person with a genetic relationship
- 39 to a child be able to rebut parentage
- 40 presumptions based on marriage?
- 41
- 42 (8) What statistical information should be
- 43 collected for the birth certificate, and
- 44 which parents should be identified?

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(9) Should the group coordinate its suggestions to overhaul chapter 584, HRS?; and

BE IT FURTHER RESOLVED that the working group shall be informal and shall meet at the discretion of the Attorney General or the Attorney General's designee and shall not be subject to the requirements of chapter 92, Hawaii Revised Statutes; and

BE IT FURTHER RESOLVED that the working group shall report its progress, along with any preliminary recommendations, to the Legislature no later than twenty days before the convening of the Regular Session of 2019; and

BE IT FURTHER RESOLVED that the working group shall propose legislation or prepare a report explaining why no legislation is needed no later than twenty days before the convening of the Regular Session of 2019; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor and the Attorney General.

OFFERED BY: _____

BY REQUEST

SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO CONVENE A TWO-YEAR WORKING GROUP TO DETERMINE THE BEST WAY TO PROTECT THE RIGHTS OF SURROGATES, GESTATIONAL CARRIERS, INTENDED PARENTS, AND CHILDREN.

1 WHEREAS, many people have a strong desire to be a parent
2 despite being unable to bear a child; and

3
4 WHEREAS, surrogacy arrangements, in which a woman agrees to
5 become pregnant, carry, and give birth to a child for another
6 intended parent occur in Hawaii, but the frequency and means are
7 unknown; and

8
9 WHEREAS, there are neither prohibitions nor protections for
10 surrogate parents and intended parents with regard to surrogacy
11 or gestational carrier agreements in Hawaii; and

12
13 WHEREAS, the lack of regulation regarding surrogacy may
14 create inconsistent legal results and inadequate protections
15 among surrogates and intended parents in Hawaii; and

16
17 WHEREAS, the issue of surrogacy in Hawaii should be
18 studied, and if appropriate, laws to regulate surrogacy and
19 protect the parties to surrogacy arrangements should be passed;
20 now therefore,

21
22 BE IT RESOLVED by the Senate of the Twenty-ninth
23 Legislature of the State of Hawaii, Regular Session of 2018, the
24 House concurring, that the Department of the Attorney General is
25 requested to convene and lead a surrogacy working group for the
26 purposes of considering whether Hawaii should regulate
27 surrogacy; and

28
29 BE IT FURTHER RESOLVED that the Department of the Attorney
30 General is requested to seek input for the surrogacy working
31 group from community partners, including the following:

- 1 (1) The Department of Health;
- 2
- 3 (2) The Department of Human Services;
- 4
- 5 (3) The Judiciary;
- 6
- 7 (4) The Hawaii bar, especially members who have handled a
- 8 surrogacy matter;
- 9
- 10 (5) Advocates or representatives of surrogates;
- 11
- 12 (6) Advocates or representatives of gestational carriers;
- 13
- 14 (7) Advocates or representatives of intended parents; and
- 15
- 16 (8) Advocates or representatives of children; and
- 17

18 BE IT FURTHER RESOLVED that the working group
19 shall consider, at a minimum:

- 20
- 21 (1) What kind of surrogacy should be allowed and
- 22 regulated, if any?
- 23
- 24 (2) Should Hawaii adopt laws of other states or
- 25 from the Uniform Parentage Act?
- 26
- 27 (3) How can we avoid financial exploitation of
- 28 women in surrogacy matters?
- 29
- 30 (4) What are the minimum requirements for a
- 31 valid surrogacy agreement?
- 32
- 33 (5) Should any legal presumptions apply?
- 34
- 35 (6) How will presumptions of parenthood apply to
- 36 parents of the same sex?
- 37
- 38 (7) Should a person with a genetic relationship
- 39 to a child be able to rebut parentage
- 40 presumptions based on marriage?
- 41
- 42 (8) What statistical information should be
- 43 collected for the birth certificate, and
- 44 which parents should be identified?

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