



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1857, RELATING TO GESTATIONAL SURROGACY.

**BEFORE THE:**

HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES

**DATE:** Wednesday, January 31, 2018      **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** Russell A. Suzuki, First Deputy Attorney General, or  
Jill T. Nagamine, Deputy Attorney General

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Chair Mizuno and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but nevertheless opposes it.

This bill would require a contract with various criteria before parties could engage in gestational surrogacy. Surrogacy in general is a process whereby a woman agrees to carry and deliver a child for someone else. In a gestational surrogacy, as addressed in this bill, the woman who carries the child is not genetically related to the child. In a genetic surrogacy, the woman who carries the child is genetically related to the child. There are many factors to consider in surrogacy, including the origin of the genetic material used to create the child, the fertilization method, the nature of the agreement between the woman who carries the child and the intended parent(s), legal presumptions of parenthood, reimbursement of costs or payment to the surrogate, women's health and rights, and protections of the rights of children and parents.

The reason we oppose this bill is that it does not address all of the important issues that relate to surrogacy and parenthood, and by not doing so, it misses an opportunity to create a comprehensive law that could address all of the issues related to this complex and developing issue. Addressing gestational surrogacy without also addressing genetic surrogacy would leave a gap in the law (whether or not both types are allowed). A provision to protect parents whose child had been born via a surrogate

from a presumption that a person with a genetic relationship to the child has parental rights superior to theirs is essential, and that requires an adjustment to chapter 584, Hawaii Revised Statutes (HRS), the Uniform Parentage Act. Providing a means to adjudicate legal parentage before or upon birth is essential to allowing birthing facilities to record the intended parents on the child's original birth certificate. There are other examples of issues that need to be addressed in any comprehensive attempt to legislate surrogacy.

As requested by House Concurrent Resolution No. 56, S.D. 1, Regular Session of 2017, our office prepared a Report on Surrogacy and Gestational Carrier Agreements and submitted it to the Legislature prior to the start of the 2018 session. ([https://www.capitol.hawaii.gov/measure\\_indiv.aspx?billtype=DC&billnumber=189&year=2018](https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=DC&billnumber=189&year=2018) is the link to Dept. Comm. No. 189, by which the report was submitted to the Legislature, and <https://ag.hawaii.gov/wp-content/uploads/2017/12/2018-Report-on-Surrogacy-and-Gestational-Carrier-Agreements.pdf> is the link to the report itself). In the process of preparing that report, we realized how complex the issues of surrogacy are, and thus we recommended that the Legislature propose a resolution that would request a two-year working group to consider whether to amend Hawaii's laws to include regulation of surrogacy arrangements and the best way to do so. We proposed that community partners involved with surrogacy participate. One of our proposals is to consider updating chapter 584, HRS. We believe these issues are important enough to hold this bill and take the necessary time to ensure Hawaii enacts a comprehensive law on this subject.

Because of the title, and in order to avoid problems with section 14, article III, of the State Constitution, which allows only one subject per bill, only those matters related to gestational surrogacy can be addressed in this bill. Therefore, comprehensive changes to the Uniform Parentage Act to address other types of surrogacy, presumptions of parenthood, parental rights of couples of the same sex, and other issues related to the general field of surrogacy would need to be addressed in another bill with an appropriate title.

Therefore, we respectfully ask this Committee to consider our report and recommendations to the Legislature, and hold this bill.

## **Individual Testimony of Carol E. Lockwood**

To the Committee on Health and Human Services

Re: HB 1857 Relating to Gestational Surrogacy

Wednesday, January 31, 2018, 9:30 a.m.

My name is Carol Lockwood. I am a real estate and family law attorney practicing in Honolulu. My family moved to Hawaii in 1970 when I was 2 years old. My life has followed a common pattern for Hawaii residents: after graduating from high school, I attended college and law school on the mainland and spent the first several years of my professional life there. I took the Hawaii bar exam in 1994 and have been a member of the Hawaii State Bar Association since that time. Eighteen years ago, my mother was diagnosed with terminal cancer and I moved back home to be with my family and assist in caring for her. I have been in Hawaii ever since.

I offer the foregoing background because, when someone is opining on something as important as laws relating to family building, particularly in Hawaii, I believe it is helpful to know who they are personally, as well as professionally. And because I offer this testimony not only as an attorney practicing in the area of family law, but also as a lifelong resident of the State of Hawaii, who appreciates the importance of family and children in our culture, and the expansive concept of 'ohana that we live.

In my professional capacity, I believe I can add a voice that has not yet been a significant part of these discussions: that of an experienced Hawaii practitioner of surrogacy law. Over the past six years, I have been involved in more than 70 gestational surrogacies involving one or more parties from Hawaii. I can attest not only to the incredible transformational power of the process – for both surrogate and intended parents – but also to the rigorous standards applied in selecting, qualifying and matching surrogates and intended parents (a process with which I am not involved), the careful preparation, review and discussion of gestational surrogacy agreements, and the meticulous finalization process confirming the child(ren)'s legal parentage. Equally importantly, I can share what I have witnessed of the pain of intended parents, who often arrive at my office after years of infertility struggles and the tragic loss of one or more child(ren), afraid even to hope that they might yet become parents. And also of the unsurpassable joy of those same parents when we reunite at the courthouse, them with a stroller (and sometimes a double) in tow, to confirm that they are and forever will be their child(ren)'s parents. I likewise can share what I have witnessed of the generosity of spirit of gestational surrogates, of their own joy in helping to create families, and of the often long-term 'ohana relationship that results from a gestational surrogacy.

With so much at stake, it is critical that Hawaii approach the process of enacting surrogacy legislation in a measured, comprehensive way, with a detailed understanding of the needs and concerns of the various constituencies involved, including not only gestational carriers and intended parents, but also fertility clinics, surrogacy agencies and the community at large. While HB1857 represents a positive step in the direction of enacting surrogacy legislation, I believe it is premature, and request that this Committee consider following the recommendation of the Department of the Attorney General in its recent Report on Surrogacy and Gestational Carrier Agreements that a two-year working group be formed to study the best way to amend Hawaii's laws to protect the rights of gestational carriers, intended parents, and the children born of gestational surrogacy arrangements. Thank you.

**LATE**

**HB-1857**

Submitted on: 1/30/2018 8:58:42 PM

Testimony for HHS on 1/31/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sean Smith		Comments	No

Comments:

Chair Mizuno, Vice Chair Kobayashi & members of the committee:

I support passage of a surrogacy bill but prefer HB 2646, which is based substantially on Article 8 of the Uniform Law Commission's revised Uniform Parentage Act (2017). I urge you to amend this bill by replacing it with the language of that bill.

My husband and I had a child last year using an egg donor and a gestational surrogate. We had a surrogacy agreement with all parties acknowledging that we were the intended parents. But Hawaii's parentage law is old and outdated, and it doesn't address situations like ours. We had to hire a lawyer and go to court, and the process of establishing our rights as parents and getting our names on the birth certificate was long and expensive- it's taken over a year and thousands of dollars and we still don't have the updated birth certificate. The model UPA, upon which Hawaii's law is based, has been revised to address surrogacy and streamline the process of establishing intended parents as legal parents. It would be helpful if Hawaii's law could be similarly updated.

HB 1857 is a good start but it is flawed. It requires medical finding about the intended mother's ability to bear a child, apparently excluding same-sex male couples, like me and my husband. It also does nothing to clarify or simplify the process of establishing intended parents as legal parents.

HB 2646 is a better bill. It applies equally to same sex couples. And it establishes intended parents under a gestational surrogacy agreement as legal parents by operation of law and allows them to seek pre-birth orders directing the names that will appear on the birth certificate. This is what families like mine need.

HB 2646 is also based on the model UPA, which has been thoroughly vetted and acknowledged as a viable option by the AG in his recent Report On Surrogacy and Gestational Surrogacy Agreements. See p.7 ("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 Hawaii".)

Please consider replacing the language of HB 1857 with the language of HB 2646.

Thank you,

Sean Smith



January 30, 2018

Representative John Mizuno, Chair  
House Committee on Health and Human Services

**Re: H.B. 1857, Relating to Gestational Surrogacy**

**Hearing: Wednesday, January 31, 2018, 9:00 am, Room 329**

Dear Chair Mizuno and Members of the Committee on Health and Human Services:

Hawaii Women Lawyers (“HWL”) submits testimony in **strong support** of H.B. 1857, which establishes requirements for gestational surrogacy contracts that are executed between a gestational surrogate and a commissioning couple.

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.

HWL is in strong support of H.B. 1857. This bill reflects a first step in creating a process in Hawaii to recognize the unique nature of gestational surrogacy arrangements, where a woman agrees to become pregnant, carry and give birth to another child for intended parents. The bill aims to protect both intended parents and gestational carriers who engage in surrogacy by specifying terms that need to be a part of these agreements. For families (whether same or opposite sex, partnered or single) who get to the point of considering surrogacy, many have already experienced and exhausted fertility treatments and/or other options to grow their families.

Hawaii Women Lawyers would like to see Hawaii ultimately follow the lead of other states like California where the process for a pre-birth order is able to be obtained via a court procedure. This process would provide the most certainty for intended parents and gestational carriers, since the names of the intended parents would go on the birth certificate. However, HWL strongly supports this bill as a first step in the process of recognizing gestational surrogacy, which is becoming more common as in vitro fertilization technologies have improved.

For the above reasons, we support H.B. 1857 and respectfully request that the Committee pass this measure.



January 30, 2018

**LATE**

House's Committee on Health and Human Services  
Hawaii State Capitol  
415 South Beretania Street, Room 329  
Honolulu, HI 96813

Hearing: Wednesday, January 31, 2018 – 9:30 a.m.

RE: **SUPPORT for House Bill 1857** – RELATING TO GESTATIONAL SURROGACY.

Aloha Chairperson Mizuno, Vice Chair Kobayashi and fellow committee members,

I am writing in SUPPORT to House Bill 1857 on behalf of The LGBT Caucus of the Democratic Party of Hawaii. SB 2353 provides that gestational surrogacy is permitted only when a contract containing certain terms has been executed between a gestational surrogate and a commissioning couple.

While the LGBT Caucus supports HB 1857 we prefer the language in House Bill 2646 because it is a better bill since it is inclusive for same-sex male couples and transgender couples. We are requesting that you insert the language from HB 2646 into HB 1857 to ensure all couples are have access.

Thank you, Chair, Vice Chair and members of the committee, for your thoughtful consideration of HB 1857.

Mahalo nui loa,

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



**LATE**

**HB-1857**

Submitted on: 1/30/2018 6:16:32 PM

Testimony for HHS on 1/31/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez		Support	No

Comments: