*The Judiciary, State of Hawai'i*

**Testimony to the House Committee on Finance**
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Thursday, March 28, 2019, 3:00 pm
State Capitol, Conference Room 308

by

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Deputy Chief Judge, Senior Family Judge
Family Court of the First Circuit

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**Bill No. and Title:** Senate Bill No. 723, S.D.1, H.D.1, Relating to the Uniform Parentage Act.

**Purpose:** Requires the Judiciary to post the titles of all filings and all minutes in paternity cases to the Judiciary's website after redacting any information in which an individual has a significant privacy interest, subject to certain circumstances. Establishes the same confidentiality standards for paternity cases as other cases heard by the family court.

## Judiciary's Position:

The Judiciary appreciates the intent of this bill to streamline family court processes and make them accessible where appropriate to do so, and appreciates the revisions provided by the House Committee on the Judiciary. Notwithstanding, the Judiciary has several concerns with respect to Senate Bill No. 723, S.D.1, H.D.1, and we offer the following comments and requests.

1. Financial Request: in response to S.D.1, the Judiciary requested $100,000 over and above our current budget request in order to comply with this measure. As the Legislature is aware, paternity cases are, and have been confidential since the passage of the Uniform Parentage Act in 1975. Thus, for approximately forty-four (44) years, cases were handled confidentially. While the passage of Senate Bill No. 723 will eliminate this requirement on prospectively filed cases, it will also create new requirements to ensure that certain filings, minutes, etc. are posted on the court's website. Unfortunately, such a drastic change will be at a cost and based upon the

Judiciary's estimate, the Judiciary is seeking $100,000 over and above our current budget request to ensure that website access to all newly filed cases comes to fruition. At this time, it is difficult for us to present a specific budget because we do not know what specifically would be included in this bill.

To be clear, the proposal of the bill is to provide information on the court's website that is not currently provided due to the confidentiality requirement of current law. With the elimination of this requirement and express mandate that this information be posted, the Judiciary will incur additional expenses, both internally and by third-party vendors. In summary, the Judiciary respectfully requests that an appropriation of $100,000 be effective upon the Governor's signature, over and above the budget already requested by the Judiciary.

2. Effective Date: as previously stated in response S.D.1, the Judiciary requests that the effective date of this bill should be no earlier than June 1, 2020. The additional time before this becomes effective is critical for the Judiciary IT for planning, procurement of vendor services, and completion of mandated system changes.

3. We thank the House Committee on Judiciary for including our proposed amendments in H.D.1. However, it was recently brought to our attention that there may be an ambiguity in the bill, regarding the prospective application of the posting requirements in Section 1. Therefore, we want to clarify and request that all provisions of this bill, including the requirements in Section 1, apply to those paternity cases **filed on and after the effective date of this measure.**

4. Lastly, it recently was also brought to our attention that clarification is needed regarding the confidentiality of Family Court records. We note that both committees reference, in their committee reports, establishing the same confidentiality standards for paternity cases as other cases heard by the Family Court. We want to clarify that the confidentiality standards for Family Court cases are governed by the applicable statutes and court rules. The definition of “agency” in HRS Section 92F-3 does not include the non-administrative functions of the courts of this State. Therefore, the standard of “significant privacy interest under section 92F-14” does not apply to these court records.

Thank you for the opportunity to testify on this measure.

**SB-723-HD-1**
Submitted on: 3/25/2019 9:46:17 PM
Testimony for FIN on 3/28/2019 3:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Carol E. Lockwood | Individual | Comments | No |

Comments:

Individual Testimony of Carol E. Lockwood

To the House Committee on Finance

Re: S.B. No. 723 Relating to the Uniform Parentage Act

March 28, 2019, 3:00 p.m.

My name is Carol Lockwood. I am a real estate and family law attorney practicing in Honolulu. My family law practice is focused on adoption and assisted reproductive technology, including gestational surrogacy. I am one of very few Hawaii attorneys practicing assisted reproductive technology law, and likely one of the most prolific, having been involved in more than 125 gestational surrogacies over the past several years, as well as a significant number of sperm, ova and embryo donation agreements and co-maternity agreements. I am writing to alert the Committee to what I believe would be an extremely damaging unintended consequence of S.B. No. 723. I had also hoped to appear in person, to answer any questions the Committee might have, but am out of the country this week.

Individuals and couples suffering from infertility do not make the decision to turn to assisted reproductive technology on a whim. They do it typically after years of infertility, miscarriages and stillbirths; a devastating illness causing infertility (often from chemotherapy); or the tragic loss of a spouse or one or more children at a time when the surviving partner is no longer able to conceive and/or gestate a child without medical assistance. While some clients arrive at our intake meeting happy and excited to finally be on a more promising path to parenthood, others arrive still grieving their inability to conceive and/or carry their own child and suffering feelings of inadequacy. As a result, some clients are open with family, friends and acquaintances about having turned to gestational surrogacy or other forms of assisted reproductive technology to build (or re-build) their family, whereas others are determined to keep such family matters private, out of shame or the fear that they or the resulting child(ren) will suffer public stigma or rejection by family members, friends, their religious community, or the public at large.

I take no position as to the potential impact of S.B. No. 723 on traditional paternity cases. I leave that in the capable hands of my colleagues who practice in that area. However, because Hawaii has no assisted reproductive technology laws, intended parents must turn to Chapter 584 of the Hawaii Revised Statutes to establish their legal parentage over their genetic children born via assisted reproductive technology. If, therefore, Chapter 584 is amended as proposed, previously confidential information regarding parties' infertility status and path to parenthood would become public. From the titles of court filings and the minutes of court proceedings, it would be possible to discern, for example –

• That a couple was unable to conceive and gestate a child without the assistance of a fertility clinic and a gestational carrier;

• That a woman was incapable of becoming pregnant, sustaining a viable pregnancy, or successfully delivering a baby;

• That a man was incapable of producing viable sperm;

• That a woman was incapable of producing viable ova;

• That, although a woman gestated and delivered a child, it was conceived using her partner's or former partner's ovum;

• That a child's legal father is not his/her genetic father;

• That a child's legal mother is not his/her genetic mother;

• That a child was born through gestational surrogacy and not carried in his/her mother's womb; and

• That a named party served as a gestational carrier or is the spouse of a gestational carrier.

It should be self-evident that the disclosure of this type of information to the general public could have devastating consequences for Hawaii families (many of whom have already suffered more than their fair share of tragedies). In some cases, public exposure could exacerbate feelings of shame and inadequacy suffered by intended parents. In others, it could result in the rejection or disinheriting of children by family members who discover they are not genetically related. In still others, it could result in the differential treatment or even censure of intended parents or their children by their religious community. And, in perhaps the worst case scenario, it could result in the premature disclosure to children of information regarding their conception, birth and genetic relationship to their parents (or lack thereof) before they have the intellectual and emotional maturity to process that information — a judgment call that should clearly be made by each child's parents. Moreover, gestational carriers and their spouses could

feel exposed by the disclosure, and possibly be hounded by desperate would-be parents seeking their assistance.

One might argue that, under the proposed amendment to Chapter 584, the potential harm resulting from public disclosure could be avoided or mitigated somewhat by the proposed "redact[ion of] information in which an individual has a significant privacy interest." I disagree. In the cases described above, the very fact of the subject proceedings would reveal too much, and therefore should constitute "information in which an individual has a significant privacy interest." Thus, I implore the Committee, for the sake of the many Hawaii families that now or in the future will need the help of assisted reproductive technology to have children, to expressly exclude paternity or parentage proceedings relating to assisted reproductive technology from the proposed posting requirements. Thank you.

(Please excuse any typographical errors, as this testimony is being submitted via iPhone because I have no access to a computer at the moment.)