



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Monday, March 11, 2019, 2:00 PM
State Capitol, Conference Room 325

By

Christine E. Kuriyama
Deputy Chief Judge, Senior Family Judge
Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 723, S.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. Establishes the same confidentiality standards for paternity cases as other cases heard by the family court. Effective 3/15/2094. (SD1)

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 723, S.D.1. We offer the following observations and requests.

1. The provision to allow redaction of information of “an individual [that] has a significant privacy interest under section 92F-14” may be enough to protect such interests for adults. What is needed, though, is a provision that protects the child/ren and the child’s/ren’s family. We respectfully suggest inclusion of an additional clause to Section 1 of this bill, at page 1, line 9 (note that the suggested language is based on the 2017 version of the Uniform Parentage Act, written by the Uniform Law Commission, access at <https://www.uniformlaws.org/viewdocument/final-act-with-comments-61?CommunityKey=c4f37d2d-4d20-4be0-8256-22dd73af068f&tab=librarydocuments>).

; provided further that, on request of a party and for good cause, the court may close a proceeding and records to the public except that the titles of



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all court filings for the case and the contents of a final order shall be available for public inspection, with other papers and records available for public inspection only with the consent of the parties or by court order.

2. Prior and current cases decided under the existing statute were predicated on confidentiality of the records. A wholesale lifting of the confidentiality protection will have to also provide for avenues of mitigation. The paternity calendar already has a high percentage of pro se parties. A sense of fairness would dictate that such a fundamental change should not apply retroactively. With regard to the original interests that brought about this bill (i.e., difficulty in finding a party's own case), the Judiciary has begun and will continue to work on effective dissemination of information to the public about accessing confidential records.

We strongly request that HRS Section 584-20 remain in this statute; that it will not be repealed. However, consonant with the intent of this bill, we respectfully suggest the inclusion of the following new section (c), at page 3, line 12:

(c) Provided, however, that sections (a) and (b) shall not apply to cases filed on and after the effective date of this Act.

3. The "sea change" created by this bill will require additional resources that the court does not have and did not include in our current budget requests. At this time, without further research of information technology changes required, we can provide only an estimate of the amount needed to implement S.B. 723, S.D. 1. The Judiciary therefore respectfully makes two requests in this regard.

a. The effective date should be no earlier than June 1, 2020, the estimated time needed by Judiciary IT for planning, procurement of vendor services, and completion of changes needed.

b. As a preliminary estimate, the Judiciary will need an appropriation of \$100,000 effective upon the Governor's signature in 2019, over and above the budget already requested by the Judiciary, currently House Bill 510, House Draft 2. Please note that this request is based on the bill being applied prospectively only.

Thank you for the opportunity to testify on this measure.

TESTIMONY OF THOMAS D. FARRELL
Regarding SB 723SD1, Relating to the Uniform Parentage Act
Committee on Judiciary
Representative Chris Lee, Chair
Monday, March 11, 2019, 2:00 p.m.
Conference Room 325, State Capitol

Good afternoon Representative Lee and Members of the Committee:

I support Senate Bill 723, in the form of Senate Draft I.

SB 723SD1 would put at least some information about paternity cases on the judiciary's website, *Hoohiki*. It would also repeal archaic provisions of the Uniform Parentage Act that make all information on paternity cases confidential, and instead subject them to the family court's general confidentiality rules, which provide more transparency. That's a great idea!

Every day, I do initial consultations with prospective clients---either in private practice or in a legal services scenario such as Volunteer Legal Services Hawaii. Whenever there is an ongoing case, my first mission is to figure out what is going on in that case. Often, the clients are abysmally unequipped to assist. They don't have the pleadings; they may have gone to hearings but don't really understand what happened; and they have zero knowledge of procedure. With *Hoohiki*, you can search cases by name. If there is a case in which my client is named a party, you can then see three things that are useful. First, you get to see who the other parties to the case are and who their attorneys are. Second, you can see a chronological list of all documents filed. You only see them by title and date; you can't see the actual documents. Third, you can also see a list of all hearings and the minutes. That tells you which judge did what, when she did so and who was there. If I can see the limited information on *Hoohiki*, I can usually figure out what has happened, where the case stands, and what has to be done.

Divorce and TRO cases are public record and they are on *Hoohiki*. Unfortunately, paternity cases aren't on *Hoohiki*. They're ghosts. That's because paternity cases are non-public. This is due to §584-20, HAW. REV. STAT., which makes even the existence of a paternity case top secret. This is probably a relic from the days when it was considered shameful to be an unwed mother or to be named as the father of a so-called "bastard" child. Fortunately, those attitudes are no longer prevalent. So, the time has come to repeal §584-20.

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Currently, we have the HAWAII COURT RECORDS RULES, which are somewhat clumsy to implement, but provide a reasonable balance between openness and privacy. They apply to all cases in our courts. The rules protect public disclosure of personal information, to include full social security numbers, birthdates, names of minor children (we use initials now), account numbers, medical and health records, and social service reports. In addition, there are special statutory provisions for Child Protection Act cases, and juvenile proceedings, that provide specific additional confidentiality protections, that are arguably warranted by the special nature of these cases. This bill does not change that.

The bottom line on SB 723 SD 1, is that there isn't a good reason not to treat paternity cases like divorce cases or TRO cases when it comes to confidentiality. I urge your favorable action on this bill.

SB-723-SD-1

Submitted on: 3/10/2019 2:12:01 PM

Testimony for JUD on 3/11/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

Individual Testimony of Carol E. Lockwood

To the House Committee on Judiciary

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

March 11, 2019, 2:00 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 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.

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. 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) that they lack the maturity to handle. 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.