

# **GENDER-NEUTRALIZING THE HAWAII REVISED STATUTES**

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Report No. 5, 1992

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## **FOREWORD**

This report on gender-neutralizing the Hawaii Revised Statutes is submitted to the Legislature pursuant to Senate Concurrent Resolution No. 199 (1991). This is the second and final report on that subject as requested by the Legislature. The preliminary report is appended to this report as Appendix B without the original appendices to that report, which included a copy of S.C.R. No. 199 and computer-generated listings of gender-specific words in the Hawaii Revised Statutes.

The Bureau extends its appreciation to Kathleen McRae, Executive Director of the Commission on the Status of Women, and to the members and staff of the Commission, for their suggestions concerning the replacement of gender-specific language in the statutes.

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November 1992

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## I. INTRODUCTION

Senate Concurrent Resolution No. 199, adopted by the Legislature during the 1991 regular session,<sup>1</sup> requested that the Legislative Reference Bureau (Bureau) review the Hawaii Revised Statutes (HRS) and identify and substitute, where appropriate, gender-neutral language for gender-specific language to ensure the gender neutrality of the HRS.

S.C.R. No. 199 (1991) requested that the Bureau submit a preliminary report to the Legislature prior to the 1992 regular session regarding instances where substitutions could not be appropriately made.<sup>2</sup> The resolution specifically requested that the Bureau:

- (a) Identify all gender-specific terms in the HRS;
- (b) Consult with the Hawaii State Commission on the Status of Women (Commission) to determine appropriate terms to substitute for those gender-specific terms;<sup>3</sup> and
- (c) Substitute appropriate terms for gender-specific terms pursuant to section 23G-15(8), HRS,<sup>4</sup> provided that the substitutions did not:
  - (1) Alter substantive meaning;
  - (2) Require recasting of sentences or make changes that cannot be made by word-for-word substitution;
  - (3) Make provisions unduly cumbersome;
  - (4) Replace the gender-specific term with an ambiguous term; and
  - (5) Change references that correctly refer to a particular sex, or references that when referenced with other terms, make the actual usage gender neutral.

The resolution further requested the Bureau to submit a final report to the Legislature prior to the convening of the 1993 regular session.

After consultation with the Commission and after further research, this final report identifies gender-specific terms used throughout the HRS and suggests gender-neutral replacement words. The report further discusses the implementation of S.C.R. No. 199 (1991) with respect to the 1992 HRS supplement and various difficulties encountered. Finally, the report makes recommendations for gender-neutralizing the HRS in its entirety.

## II. GENDER-NEUTRAL LANGUAGE SUBSTITUTION

### 1. Generally

As noted in S.C.R. No. 199 (1991), the removal of stereotyped language from the HRS is consistent with the state constitutional guarantee of equality of rights under the law. Article I, section 3 of the Hawaii Constitution provides:

Equality of rights under the law shall not be denied or abridged by the State on account of sex. The legislature shall have the power to enforce, by appropriate legislation, the provisions of this section.

As noted by the New Jersey Commission on Sex Discrimination in the Statutes in recommending that all proposed legislation and administrative regulations be written in sex-neutral language:

In keeping with contemporary standards of equality, it is no longer appropriate to use sex-based terms such as the generic "man". Using sex-neutral language demonstrates a commitment to the elimination of the legal inequities that have occurred because of differential treatment on the basis of sex.<sup>5</sup>

Under S.C.R. No. 199 (1991), the Bureau is asked to remove gender-specific language from the HRS, particularly masculine pronouns and other gender-specific terms that perpetuate gender-based stereotypes or work to deny equality of rights under the law, to ensure the facial neutrality of the HRS.

It is important, however, to outline the scope of this report and to delineate the authority of the Revisor of Statutes in implementing these changes. This report does not purport to review the HRS to determine the compliance of statutory law with the equal rights amendment in the state constitution, nor should it be construed to do so. Such a report was conducted in 1979 by the Bureau and the State Commission on the Status of Women, entitled "Equality of Rights: Statutory Compliance."<sup>6</sup> In that report, the Bureau and Commission identified statutes that made reference to a classification or distinction on the basis of sex, analyzed each such statute to determine if it had a disproportionately adverse impact on members of one sex, and, if determined to be discriminatory, either facially or in its impact, made a determination as to whether the discrimination was constitutionally permissible.<sup>7</sup>

In contrast to the 1979 study, the Bureau in the current study was directed to undertake a more ministerial, less policy oriented task, namely, to identify gender-specific terms in the HRS and determine appropriate substitutes, and to make direct word-for-word substitutions for gender-specific terms pursuant to section 23G-15(8), HRS.<sup>8</sup> Unlike the earlier study, it is beyond the scope of S.C.R. No. 199 (1991) for the Bureau to make

recommendations as to whether such statutes containing gender-specific language are discriminatory or constitutionally permissible.<sup>9</sup>

However, while the Bureau does not purport to make policy determinations with respect to the discriminatory impact of the statutes, it is nevertheless implicitly asked to make policy determinations with respect to appropriate gender-neutral word choices to ensure the facial neutrality of the HRS in carrying out S.C.R. No. 199 (1991). The Bureau recognizes that there is a wide range of opinions and options regarding appropriate gender-neutral word substitutions, and that the selection of one neutral content word over another often represents a subjective choice:

There is imperfect agreement today on which words are sexist and on what constitutes an adequate substitute for those that are. For example, some people believe the words master, fellow, and their compounds and derivatives are sexist; others do not. Still others accept fellow, but not master. Some people believe that no word should be gender-specific--for example, that we should use words like member of congress and sales representative instead of congresswoman and salesman even when we are speaking of a woman and a man. Other people are not at all bothered by this convention.<sup>10</sup>

The lack of uniformity of opinion in this area is reflected not only in the Commission's list of possible word choices for identified gender-specific words in Appendix C but in representative sources in this field.<sup>11</sup>

In order to ensure that the substitution of a gender-neutral term for a gender-specific one will not alter the "sense, meaning, or effect of any act" in accordance with section 23G-15(8), HRS, the Bureau has divided the list of word substitutions into two distinct groups. The first list, contained in section 2 of this part ("Gender-neutral substitution list"), consists of those terms that the Bureau feels may be used in making gender substitutions, bearing in mind the context in which the term appears. The second list, in section 3 of this part ("Historical or common usage"), contains terms considered by the Bureau to have an accepted historical or common meaning and which, if substituted for a gender-neutral term, may have the effect of altering the substantive meaning of an act. While all words have, to some extent, an accepted common or historical usage, the Bureau feels that, currently, the alternative gender-neutral substitutes for the words in this second group may not adequately capture the original intent or meaning of the gender-specific word. For example, the term "juryman", while having an established historical meaning, has an accepted, commonly used gender-neutral substitute in the word "juror". On the other hand, there are no commonly accepted substitute terms for such words as "longshoreman" and "ombudsman". However, alternative words are also provided in the second list as examples of the types of words that may come to be accepted over time or through legislative determination.

The first list may be used in replacing existing gender-specific language in the HRS, as well as in providing gender-neutral substitutes for words not currently found in the HRS but

that are most likely to be added thereto. It is emphasized that the list is a starting point for the replacement of gender-specific language. The list is intended to be flexible and remains subject to amendment to conform to recognized changes in usage and custom reflecting the evolution of language in general and the growing acceptance of nonsexist language in particular. For example, the word "chairperson" was not a recognized substitution for "chairman" thirty-five years ago, but is acceptable today.<sup>12</sup> Because the Legislature has requested that the Bureau, in consultation with the Commission, propose such a list of substitute gender-neutral words, the Legislature implicitly requests that the Bureau make the many, often subtle, value determinations inherent in selecting substitute words. Of course, the Legislature remains the final arbiter of word choice.

In creating the list, every attempt was made to limit the possible gender-neutral word choices to one or two substitute words to ensure that both the Bureau in gender-neutralizing the HRS, as well as other persons relying on the list in drafting legislation, will have a fairly uniform set of replacement words to use. Of course, care must be taken in drafting to review both the section in question and any applicable definition sections, as well as the larger unit of organization within the HRS to be amended (part, chapter, etc.) to ensure that the substitute word is being used uniformly throughout that unit. It must also be stressed that the gender-neutral words are to be used as substitutes where appropriate and as the context requires. The list is not exhaustive, but contains those masculine or feminine gender words that are found in, or most likely to be added to, the HRS.

## 2. Gender-Neutral Substitution List

**Note:** An asterisk (\*) preceding a gender-specific word denotes that the word is not found in the Hawaii Revised Statutes. In some of these instances, such as "fireman" and "policeman", the terms were previously used in the HRS but replaced with gender-neutral equivalents (in these cases "firefighter" and "police officer") by specific legislative action.

### Do not use:

businessman  
chairman  
clergyman  
\*congressman, congresswoman  
councilman  
\*draftsman  
\*fireman  
fisherman  
flagman  
foreman  
journeyman  
  
juryman  
\*lawman

### Use:

business person  
chairperson<sup>13</sup>  
clergy  
member of Congress, representative  
council member  
drafter  
firefighter  
commercial marine licensee<sup>14</sup>  
flagperson  
foreperson  
journey worker, journey + (relevant noun,  
e.g., plumber)<sup>15</sup>  
juror  
law enforcement officer



layman	layperson, laymember
maid	domestic worker
maiden name	birth name
*mailman	mail carrier, postal worker
man (noun)	person, individual, human, humanity
man (verb)	staff, operate
man-hour	worker hour
man-induced	artificially or synthetically induced
*mankind	humanity, humans, human beings, people, persons
manlift	elevator, lift
manmade	artificial, synthetic
manpower	personnel, work force, labor force, human resources
*middleman	intermediary
nurseryman	nursery worker or operator
*patrolman	patrol officer
*policeman	police officer
*repairman	repair person
salesman	salesperson
serviceman (military)	service member <sup>16</sup>
*serviceman (nonmilitary)	service person
spokesman	spokesperson
statesman	diplomat, leader
*statesmanlike	diplomatic
*statesmanship	diplomacy, leadership
vice-chairman	vice-chairperson
warehouseman	warehouse worker
*watchman	guard, security guard
woman	person, individual, human, humanity
workman	worker
workmanlike	skillful, efficient

### 3. Historical or Common Usage

The Bureau considers the following list of words to have a commonly accepted or historical usage, and that changing these words to a gender-neutral form in the HRS may have the effect of altering the sense, meaning, or effect of an act within the meaning of section 23G-15(8), HRS. The Bureau therefore recommends that these words should not be changed to alternative gender-neutral terms until such time as the Legislature makes a determination as to the acceptability of the gender neutral alternative. This determination could be made implicitly through the passage of legislation that, among other amendments, uses a gender-neutral alternative, or explicitly through housekeeping legislation changing the term throughout the HRS. In either case, the Bureau recommends that, until the language evolves to provide greater acceptance of these alternatives, the original gender-specific terms should be retained.

Although the Bureau does not recommend their usage at this time, it offers the following examples of alternative gender-neutral terms to give an idea of the types of replacement words that may be used.

**Gender-specific word:**

**Potential gender-neutral replacement:**

airman (nonmilitary)	aircraft worker, pilot, aviator
bachelor's degree	baccalaureate, undergraduate degree, B.A., B.S.
bandsmen	band members
beachboy	beach attendant <sup>17</sup>
*bondsman	bonding institution, bonding agent, guarantor, surety
brotherhood	fellowship
craftsman	crafter, artisan, skilled worker
fellow	colleague, associate, distinguished member
fellowship	association, organization, society
fraternal	mutual aid or benefit <sup>18</sup>
fraternity	association, organization, society
harbor master	harbor supervisor or foreperson
husbandry	farming, agriculture, livestock breeding
kinsman	relative, relation, kin, kindred
longshoreman	longshoreworker
*manhole	utility access hole, sewer access hole
master	special representative (judiciary); principal, employer (agency)
master's degree	first graduate degree, M.A., M.S.
matron	superintendent, warden, supervisor
midwife	birth attendant, birthing assistant <sup>19</sup>
ombudsman	public advocate <sup>20</sup>
paymaster	payroll agent, treasurer, bursar
salesmanship	sales ability or technique
seaman (nonmilitary)	sailor, mariner
*sisterhood	association, organization, society
sorority	association, organization, society
*sportsman	sports person, sports enthusiast
*sportsmanship	fair play, sporting conduct
*tradesman	merchant, skilled worker

#### 4. Occupational and Military Titles

**Occupational Titles.** Certain titles, such as "draftsman", "flagman", "foreman", "journeyman", "repairman", "warehouseman", "workman", and other terms generally ending in the suffix "-man" have been replaced by the federal government in favor of gender-neutral terms in the latest revision of its *Dictionary of Occupational Titles*.<sup>21</sup> The State of Hawaii has also eliminated gender specific-job titles for state positions.<sup>22</sup> Although some private industries and the military still retain various gender-specific occupational titles, references to

specific occupations should be in gender-neutral form, unless (1) specifically referring to a job title in common usage in the private industry or military, or (2) if the prevailing legal, historical, or common usage varies from the gender-neutral form.

On occasion, it may be more appropriate to substitute a specific type or example of a term than its generic counterpart, e.g., using "electrician" or "plumber" for the term "repairman" rather than the more generic "repair person" in the event that the specific type is known. Examples include the following:

businessman	executive, manager, entrepreneur
*middleman	representative, agent, wholesaler, broker, jobber
*repairman	electrician, plumber, etc.
salesman	sales representative, sales agent, sales associate
serviceman (nonmilitary)	electrician, plumber, etc.

**Military Titles.** Examples of the use of gender-specific titles in the military include "airman", "seaman", and "serviceman". The terms "airman" and "seaman" are accurate with respect to specific titles or ranks as used in the United States armed forces. "Airman" is used by the U.S. Air Force to refer to enlisted persons, either male or female, of one of the three lowest ranks (airman basic, airman, and airman first class), while "seaman" refers to an enlisted person, male or female, in the U.S. Navy ranking below petty officer.<sup>23</sup> Until the respective branches of the armed forces change these titles, the terms should be retained when referring to one of these military ranks.

Similarly, "serviceman" refers to a member of the armed forces of the United States or other country.<sup>24</sup> Although the term is more generic in its application than "airman" and "seaman", and has been replaced by "service member" in a portion of the HRS,<sup>25</sup> the Bureau recommends that the term "serviceman" continue to be used until that term is changed in federal legislation,<sup>26</sup> except where the term "service member" is specifically defined in terms of the federal Servicemen's Act or other applicable act.<sup>27</sup>

## 5. Legal Terminology

The Bureau recommends that the following gender-specific words having a recognized legal meaning should not be substituted.

**"Landlord".** The landlord and tenant relationship denotes the legal relation existing between the lessor and lessee of real estate, in which the landlord, as the owner of an estate in land or rental property, has leased it to the tenant; there must be a reversion in the landlord, an estate in the tenant, the transfer of possession and control of the premises and, generally, an express or implied contract.<sup>28</sup> While the terms "lessor" and "lessee" are often

substituted for "landlord" and "tenant", respectively, the substitution of the term "lessor" for "landlord" could create substantial confusion in the HRS.<sup>29</sup>

**"Manslaughter".** A person commits the crime of manslaughter (a class B felony) if that person *recklessly causes the death of another person or intentionally causes another person to commit suicide*.<sup>30</sup> The crime has been recognized by Hawaii's courts dating back from the Kingdom, Republic, and Territory of Hawaii.<sup>31</sup> Using a gender-neutral term in place of "manslaughter" could change the established legal meaning of this word.<sup>32</sup>

**"Master".** The common law relationship of master and servant exists where one person, for pay or other valuable consideration, enters into the service of another and devotes personal labor for an agreed period.<sup>33</sup> In this sense, the term should not be replaced in the HRS with a gender-neutral substitute.<sup>34</sup> However, "master" should be replaced by a gender-neutral term when reference is made to that term in a different context. For example, when referring to a "special master" appointed by a court, the term "special representative" should be used. When using "master" in terms of an employment or agency relationship, the term "employer" or "principal" should be used, as appropriate. Other terms, such as "harbor master" and "master plan", should not be changed as a matter of commonly accepted or historical usage, until such time as the Legislature determines otherwise.

**"Materialman".** Many of the references to this term in the HRS are to "materialman's lien".<sup>35</sup> This lien, created by statute in most states, refers to the person who furnishes material for the construction or repair of a building or other structure (the "materialman") who has a priority for payment as a supplier of the materials.<sup>36</sup> Substituting "material supplier" for "materialman" in this context could change the established legal meaning of that term.

**"Workmanship".** This term is retained since possible gender-neutral substitutions (e.g., "handicraft", "construction", and "skilled work") may not sufficiently reflect case law interpreting "workmanship".<sup>37</sup>

## 6. Family Status

Except when specifically referring to or where the intent is that the context applies to only one sex or a specific individual, the following gender-specific words should be neutralized:

### Do not use:

daughter, son  
\*stepdaughter, \*stepson  
sister, brother  
mother, father  
stepmother, stepfather

### Use:

child  
stepchild  
sibling  
parent  
stepparent

wife, husband  
widow, widower  
grandmother, grandfather

spouse  
surviving spouse  
grandparent

## 7. "-Ess" and "-Trix" Endings

The feminine gender suffixes "-ess" and "-trix" should be avoided. Among the objections to these terms are that they perpetuate the notion that the male is the norm and the female is a deviation or secondary classification, and that they specify a person's sex where gender is irrelevant.<sup>38</sup>

### Do not use:

\*administratrix  
\*benefactress  
\*executrix  
\*heiress  
\*mediatrix  
\*prosecutrix  
\*stewardess  
\*testatrix  
waitress

### Use:

administrator  
benefactor  
executor  
heir  
mediator  
prosecutor  
flight attendant  
testator  
waiter

## 8. Multiple Contexts

Certain gender-specific terms, such as the word "manhood", illustrate the problem of assigning a word substitution in which the choice of word to be substituted is dependent on the context in which the word appears. For example, the word "manhood" can alternately mean, depending on the context: (1) the condition of being human; (2) human beings; (3) such stereotyped masculine qualities as strength or virility; or (4) the condition of being an adult male human being.<sup>39</sup> The only occurrence of this word in the HRS is in section 442-9(a)(7), in which meaning number (3) appears to be the most relevant. Other gender-specific words that may appear in more than one context are "man" (used as a noun), "mankind", and "woman". Of course, care must be taken to ensure that intentionally gender-specific references, such as "pregnant woman", are retained without neutralization.

### III. HAWAII REVISED STATUTES

#### 1. 1992 HRS Supplement

The revisor of statutes has substituted gender-neutral terms for gender-specific terms in preparing the 1992 supplement in accordance with the criteria set forth in section 23G-15(8), HRS, and S.C.R. No. 199 (1991). Most of these changes involved either a direct word-for-word substitution of an appropriate gender-neutral noun for a gender-specific pronoun (he, his, him, etc.), or the substitution of a gender-neutral noun (e.g., "salesperson") for a gender-specific noun ("salesman"). In those sections of the HRS that met the criteria for making gender changes, a "Revision Note" was added immediately following those sections in which a gender substitution was made, which reads: "Gender change made pursuant to §23G-15(8)." Many sections containing gender-specific language could not be changed in that making such a change required more than a direct word-for-word substitution.

In addition to the criteria contained in section 23G-15(8), HRS, and S.C.R. No. 199 (1991), substitutions were also not made in the following circumstances:

- (a) Where the entire section was not set out in the HRS Supplement; or
- (b) Where a gender-specific word occurred in a definition section.

Sections that were not set out in the Supplement in their entirety were not amended in order to prevent internal inconsistencies. For example, if the word "salesman" was changed to "salesperson" in a section printed in the Supplement in which only one subsection was set out, the possibility existed that the word "salesman" might appear in other subsections of that section in the main (1985 replacement) volume. Changing an occurrence in the Supplement would create an inconsistency, as well as a potential ambiguity, with respect to the remaining subsections of that section in which the word "salesman" had not been so amended. Care was also taken to ensure that a gender-specific term was not amended in a section, even though set out in full in the Supplement, in which other sections of the same part or chapter appearing in the HRS main volume (and not in the Supplement) contain references to the same gender-specific language.

Under similar reasoning, gender-specific words were not changed if they occurred in definition sections to prevent internal inconsistencies and potential ambiguities. For example, if the word "chairman" was defined in a definition section, changing that word to "chairperson" would require the replacement of all references to "chairman" in a particular chapter (or part, etc., as appropriate) to the term "chairperson". In the event that not all of the sections in the chapter were set out in the Supplement, an internal inconsistency and potential ambiguity is created in those sections containing the word "chairman" (in the main volume) that were not amended and those in the Supplement that were. Similarly, gender-

specific words found in the body of the definition itself were not changed under the same reasoning, i.e., to prevent ambiguity.

## 2. Replacement Volumes

In the next replacement volumes of the HRS, the Bureau considers that appropriate substitutions of gender-neutral terms for gender-specific terms are those made in accordance with the criteria set forth in section 23G-15(8), HRS, and S.C.R. No. 199 (1991), which may use the list of gender-neutral substitutions set forth in this report, as appropriate and as the context requires.

For example, appropriate changes to section 344-1, HRS, utilizing the gender-neutral substitution list, might be the following:

[[§344-1]] **Purpose.** The purpose of this chapter is to establish a state policy which will encourage productive and enjoyable harmony between [man] humans and [his] their environment, promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of [man] humanity, and enrich the understanding of the ecological systems and natural resources important to the people of Hawaii.

An example of an inappropriate change, in that it requires more than a direct word-for-word substitution, would be the following amendments to section 708-822, HRS:

**§708-822 Criminal property damage in the third degree.** (1) A person commits the offense of criminal property damage in the third degree if:

- (a) [He] The person recklessly damages property of another person, without [his] the other person's consent, by the use of widely dangerous means; or
- (b) [He] The person intentionally damages property of another person, without [his] the other person's consent, in an amount exceeding \$100.

(2) Criminal property damage in the third degree is a misdemeanor.

In the second example above, if the Revisor was required to make a gender-neutral substitution, the Revisor would need to determine that "his" consent in subsection (1)(a) and (b) refers to "the other person's" consent. Such a substitution not only involves more than a direct word-for-word substitution but also requires the Revisor to make a substantive determination. The Bureau feels that making such a determination would be an inappropriate assumption of authority by the Revisor in that it could affect the substantive operation of the law. Section 708-822 would therefore not be amended by the revisor in preparation of the replacement volumes. Instead, the proposed amendment to this section would be included in

a bill composed of sections that require more than direct word-for-word substitutions and others for which the substance of the section could be altered by making a gender-neutral replacement.

Another example of the need for a close reading of a section prior to making a gender-neutral replacement is in the Hawaii Rules of Evidence, section 626-1, HRS, rule 802.1:

**Rule 802.1 Hearsay exception; prior statements by witnesses.**  
The following statements previously made by witnesses who testify at the trial or hearing are not excluded by the hearsay rule:

\* \* \*

(3) Prior identification. The declarant is subject to cross-examination concerning the subject matter of the declarant's statement, and the statement is one of identification of a person made after perceiving [the declarant] that person; or

\* \* \*

The above change was made by L 1992, c 191, §2(8). As originally enacted by L 1980, c 164, pt of §1, rule 802.1(3) used the word "him" in place of the above amended language. The word "him" was changed to "the declarant" by the Revisor pursuant to section 23G-15(8), HRS, and a revision note to that effect was added immediately following the section. However, in 1991, the Committee on Hawaii Rules of Evidence recommended as a non-substantive amendment that the term "the declarant" be replaced by "that person" to make it consistent with the gender change made to the analogous federal rule of evidence, Fed. R. Evid. 801(d)(1)(C), and to restore the original meaning of that provision.<sup>40</sup>

These examples are included to show that there is a need for a close reading of the statutes before any changes are to be made, and that the operation of law may be affected, often in subtle ways that may not be apparent absent a close inspection.



## IV. RECOMMENDATIONS AND CONCLUSION

In conclusion, the Bureau makes the following recommendations:

### 1. Section 1-17, HRS

The Bureau recommends that the rule of statutory construction with respect to gender as stated in section 1-17, HRS, be amended as provided in Appendix D. This section currently provides, in relevant part, that "[w]ords in the masculine gender signify both the masculine and feminine gender...." Although it is not uncommon in statutes for masculine pronouns to be used generically to refer to both sexes,<sup>41</sup> such usage is no longer acceptable.<sup>42</sup> In particular, the use of masculine terms, notably the use of the pronoun "he" to signify antecedent nouns of either gender, has been discredited as a "false generic", i.e., one that purports to include all members of a group, as does a true generic term, but that in reality does not.<sup>43</sup> Recent studies indicate that definitions of "man" and "men" meaning humans or the human race have to a great extent become inoperative at a subliminal level; "such phrases as economic man and political man, or statements like "Man domesticated animals" and "Man is a dreamer," it turns out, tend to call up images of male people only, not female people or females and males together."<sup>44</sup>

The amended version of section 1-17, HRS, does not change the substance or intent of that section, but simply expresses the rule of construction in gender-neutral language.<sup>45</sup> It also conforms in part to the wording of section 4 of the Uniform Statutory Construction Act.<sup>46</sup> The amended version also includes additional language not contained in the uniform act to clarify that the rule of construction applies except in cases where it is clear that the Legislature intended otherwise.

### 2. Legislative Review

With respect to words for which there may be ambiguity, uncertainty, or disagreement, or to reflect changes in language usage (e.g., if "longshoreworker" at some point in the future becomes an acceptable gender-neutral replacement for "longshoreman"),<sup>47</sup> the Bureau recommends that the Legislature assign the matter for review to a legislative committee having jurisdiction over the relevant subject area, and that a bill incorporating the committee's changes be introduced to resolve any ambiguity or uncertainty.<sup>48</sup>

### 3. HRS Replacement Volumes

The Bureau reiterates its recommendation from the preliminary report<sup>49</sup> that the most efficient and cost-effective means of substituting gender-neutral terms in the HRS as a whole is in conjunction with the publication of the HRS replacement volumes. The revisor, under section 23G-15(8), currently has the authority to change masculine or feminine gender terms to gender-neutral terms in the replacement volumes of the HRS. However, under the terms of S.C.R. No. 199 (1991), the revisor may not recast sentences or rewrite gender-specific language, other than making direct word-for-word substitutions. Therefore, gender changes that can be made through direct word-for-word substitutions, as appropriate, will be included in the next set of replacement volumes to the HRS. In preparing the replacement volumes, each section of the HRS will be reviewed separately to ensure that all gender-neutral substitutions conform to the context of each particular section to prevent ambiguities from arising. All gender changes that cannot be made through direct substitution would be proposed in one or more bills drafted by the Bureau.

### ENDNOTES

1. See Appendix A.
2. "Response to Senate Concurrent Resolution No. 199 (1991) re Gender-Neutral Terms in the Hawaii Revised Statutes", hereinafter cited as the "preliminary report", and set forth as Appendix B (appendices from the preliminary report, which included S.C.R. No. 199 (1991) and occurrences of gender-specific words in the Hawaii Revised Statutes, have been omitted).
3. See Appendix C. The Commission is established pursuant to section 367-2, HRS.
4. Section 23G-15(8), HRS, provides: "In preparing the supplements and replacement volumes, the revisor of statutes may: . . . [c]hange any male or female gender term to a term which is neutral in gender when it is clear that the statute is not applicable only to members of one sex and without altering the sense, meaning, or effect of any act. . ."
5. New Jersey, Commission on Sex Discrimination in the Statutes, Toward Economic Equity: Recommendations for the Elimination of Sex Discrimination in the Credit, Housing, Insurance, Pensions, Probate, Property, Public Obligations and Tax Statutes (Trenton, NJ: 1985) (Third Report), at ii.
6. See Legislative Reference Bureau, Equality of Rights: Statutory Compliance (Honolulu: 1979) (Report No. 3). See also Preliminary Report at 2 (in Appendix B). Other states have conducted similar studies of statutory sex discrimination. See, e.g., the study conducted by the New Jersey Commission on Sex Discrimination in the Statutes, supra note 5; Utah, Office of Legislative Research, Statutory Sex Discrimination in the Utah Code (Research Report No. 11, December, 1976).
7. Id. The study was conducted pursuant to House Resolution No. 19 (1977), "House Resolution Requesting a Review and Study of Hawaii Statutes to Determine Compliance With the Equal Rights Amendment".
8. In addition, the Bureau has for some time used alternative means to avoid the use of gender-specific

language in drafting proposed legislation. For example, alternatives to using gender-specific pronouns include recasting a sentence in the plural (avoiding "they" with singular antecedents), editing out the pronoun; repeating the antecedent noun where appropriate; using "one" or "oneself"; and using "he or she" or "she or he" when no other alternative suggests itself. See, e.g., Frank & Treichler at 153-181; Marie Shear, "Solving the Great Pronoun Problem: 14 Ways to Avoid the Sexist Singular" in Maggio at 200-204; Miller & Swift at 47-58. The Bureau will continue to use these alternatives in drafting legislation and will add specific references and examples in future editions of the Hawaii Legislative Drafting Manual.

9. The possibility therefore exists that, in the event that a statute enacted after the 1979 study is in violation of the state constitutional guarantee of equality of rights (either facially or in its impact), the Revisor would nevertheless be limited to substituting gender-neutral terms for gender-specific terms in that statute, and could not identify that statute as discriminatory. However, because a gender-substitution in such a statute would most likely alter the "sense, meaning, or effect" of the statute under section 23G-15(8), HRS, such a substitution would not be made.
10. Rosalie Maggio, The Nonsexist Word Finder: A Dictionary of Gender-Free Usage (Boston: Beacon Press, 1988), at xiii (emphasis in original) (hereinafter cited as "Maggio").
11. See, e.g., Maggio, supra note 10; Fields' Reference Book of Non-Sexist Words and Phrases (Raleigh, N.C.: Fields Enterprises, Inc., 1987) (hereinafter, "Fields' Reference Book"); Francine Wattman Frank and Paula A. Treichler, Language, Gender, and Professional Writing: Theoretical Approaches and Guidelines for Nonsexist Usage (New York: The Modern Language Association of America, 1989) (hereinafter, "Frank & Treichler"); Casey Miller and Kate Swift, The Handbook of Nonsexist Writing (New York: Harper & Row, 1988) (hereinafter, "Miller & Swift").
12. See Random House Webster's College Dictionary (New York: Random House, 1991) (hereinafter, "Random House Dictionary"), at 224, citing approximate date of first attestation of "chairperson" as 1970-1975.
13. The preferred usage in the HRS is "chairperson". Although other equally acceptable options exist, e.g., "chair" and "moderator", the term "chairperson" (and "vice-chairperson") has come to be the favored gender-neutral replacement term in the HRS. The only state agency using "chairman" is the Department of Hawaiian Home Lands. See section 202(a) of the Hawaiian Homes Commission Act of 1920, as amended; section 26-17, HRS.
14. See section 187A-1, HRS. Currently, the only references to "fishermen" in the HRS are in a commercial context. See section 189-41, HRS; the contents of chapter 189, part III ("Fisherman Training") were repealed by L 1973, c 79, §1. An alternative to "commercial marine licensee" is "fisher", although this term has yet to gain widespread acceptance. "Angler" is an acceptable alternative to "fisherman" when used in a noncommercial, i.e., recreational or sporting context.
15. "Journeyman" was replaced by "journeyworker" in L 1992, c 202, §80 (amending section 448E-4, HRS). However, "journeyman" has not been similarly changed throughout the remainder of the HRS, creating a potential ambiguity regarding the interpretation of these terms.
16. See text accompanying notes 25 to 27, infra.
17. "Beachboy" (in section 102-2(b)(8), HRS) has a traditional or common usage in Hawaii, usually referring to a male beach attendant who provides surfing, canoeing, and related instruction.
18. See also Equality of Rights: Statutory Compliance, supra note 6, at 56-7.

19. "Midwife" applies to a person of either sex who assists a woman giving birth; the "wife" in "midwife" refers to the sex of the person being assisted rather than the person providing the assistance. See Maggio at 97; *Random House Dictionary* at 858 for etymology of "midwife".
20. The term "public advocate" is currently used in section 348E-3(8), HRS, with respect to the Commission on Persons with Disabilities' function to "[s]erve as public advocate of persons with disabilities." Also, the term "public advocate", while capturing the public nature of the work, does not encompass the position's investigative nature. Although other possible replacement terms have been proposed, e.g., "ombudsperson", see Fields' Reference Book at 69, there does not appear to be a commonly accepted replacement term in usage at this time.
21. *United States, Department of Labor, Employment and Training Administration, Dictionary of Occupational Titles* (Washington, D.C.: U.S. Govt. Print. Off., rev. 4th ed., 1991); see also Miller & Swift at 36-40; *Random House Dictionary* at 823 (entry under "-man").
22. See State of Hawaii, Department of Personnel Services, Classification and Compensation Review Division, *Compensation Plans for the State of Hawaii* (Honolulu: 1992).
23. See *Random House Dictionary* at 30, 1209; Maggio at 3, 129.
24. See *Random House Dictionary* at 1225.
25. See HRS chapter 88, part II, subpart E (§§88-131 to 142).
26. See *Servicemen's Readjustment Act of 1944* (P.L. 346, 78th Cong.), as amended.
27. See section 88-131, HRS.
28. *Black's Law Dictionary* (West Publishing Co., 5th ed., 1979) at 790-1 (hereinafter cited as "Black's Law Dictionary").
29. For example, section 174-2, HRS, defines "lessor" to include "the lessor, landlord, seller, or State. . . ." In section 521-8, "landlord" is defined to mean "the owner, lessor, sublessor, assigns or successors in interest of the dwelling unit or the building of which it is a part and in addition means any agent of the landlord." Similarly, replacing "tenant" with "lessee" would create similar confusion; for example, section 174-2, HRS, defines "lessee" as including "the lessee, tenant, purchaser, or homesteader. . . ."
30. See section 707-702, HRS.
31. See, e.g., *The King v. Greenwell*, 1 Haw. 146, 149 (1853); *Republic of Hawaii v. Hickey*, 11 Haw. 314, 318 (1898); *Territory v. Alcantara*, 24 Haw. 197, 200 (1918).
32. See also preliminary report at 7; *Black's Law Dictionary* at 869.
33. *Black's Law Dictionary* at 879.
34. See, e.g., section 383-6, HRS, referring to "the common law relationship of master and servant".
35. See, e.g., chapter 507, part II ("Mechanic's and Materialmen's lien"), HRS.
36. *Black's Law Dictionary* at 881.

37. See Richard J. Sands and Maryann Corbett, "State Statutes and Gender", in Maggio at 205.
38. See Maggio at 178-9; Miller & Swift at 134-138. Section 281-78(a)(4), HRS, uses the phrase "waiters and waitresses". Section 5-5, HRS (state seal), refers to the "goddess of liberty"; "goddess", despite its feminine suffix, should not be changed in this context for customary and historical reasons.
39. See Maggio at 87; see also Miller & Swift at 149. Maggio recommends against the use of "manhood" in the first two meanings as a "false generic". See text accompanying notes 43 and 44, infra.
40. See Final Report of the Committee on Hawaii Rules of Evidence (December, 1991), prepared for the Hawaii Supreme Court and the Hawaii State Legislature pursuant to Senate Concurrent Resolution No. 136 and Senate Resolution No. 118 (1990) at 33.
41. Sutherland Statutory Construction §47.32 (5th ed., 1992).
42. See Robert J. Martineau, Drafting Legislation and Rules in Plain English (West Publishing Co., 1991), at 71.
43. See Maggio at 167. Other false generic terms include the terms "man", "mankind", "chairman", "forefathers", "brotherhood", and "alumni". Id.; see also Frank & Treichler at 141-153; Miller & Swift at 11-42.
44. Miller & Swift at 13, 168-9; see id. at 12-13 for historical background of "man" and "woman".
45. A similar recommendation was made in Equality of Rights: Statutory Compliance; see supra note 6 at 55-6.
46. Uniform Law Commissioners' Model Statutory Construction Act (1965) in Vol. 14 of Uniform Laws Annotated (West Publishing Co., 1990), at 397. The official comment to that Act notes that the substance of section 4 appears in the statutory construction provisions of forty-five states.
47. Currently, the only reference in the HRS to "longshoreman" is in the context of the "United States Longshoremen's and Harbor Workers' Compensation Act" in section 386A-4(h)(1)(A).
48. During the previous regular session, for example, the Legislature passed one such bill changing "salesman" to "salesperson" in the Uniform Securities Act (Modified). See Act 14, Session Laws of Hawaii 1992. §1.
49. See preliminary report at 8.

THE SENATE  
SIXTEENTH LEGISLATURE, 1991  
STATE OF HAWAII

S.C.R. NO. 199

MAR 15 1991

## SENATE CONCURRENT RESOLUTION

REQUESTING A REVIEW OF THE HAWAII REVISED STATUTES AND THE  
IDENTIFICATION AND SUBSTITUTION OF GENDER SPECIFIC TERMS TO  
ENSURE GENDER NEUTRALITY.

WHEREAS, the Legislature finds that the removal of  
stereotyped language in the Hawaii Revised Statutes (HRS) is in  
accord with the state constitutional guarantee of equality  
between sexes; and

WHEREAS, traditionally, the language in the HRS has been  
gender based, using masculine pronouns or other gender specific  
terms; and

WHEREAS, Act 90, Session Laws of Hawaii 1984, amended  
section 23G-15, HRS, by adding paragraph (8) to permit the  
Revisor of Statutes to change gender specific terms in the HRS;  
and

WHEREAS, the 1985 replacement of the HRS contains thousands  
of changes to the statutes made by the Revisor pursuant to  
section 23G-15(8), HRS; and

WHEREAS, the Legislature deems it appropriate to expand the  
substitution of gender neutral terms beyond the stage of pronouns  
to include nouns and direct the Revisor to make appropriate  
substitutions; now, therefore,

BE IT RESOLVED by the Senate of the Sixteenth Legislature of  
the State of Hawaii, Regular Session of 1991, the House of  
Representatives concurring, that the Legislative Reference Bureau  
is requested to identify all gender specific terms and consult  
with the state Commission on the Status of Women to determine  
appropriate terms to substitute for those gender specific terms;  
and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau  
is requested to substitute appropriate terms for gender specific  
terms pursuant to section 23G-15(8), HRS, provided that the  
substitutions do not:

- (1) Alter substantive meaning;

- (2) Require recasting sentences or make changes that cannot be made by direct word-for-word substitution;
- (3) Make provisions unduly cumbersome;
- (4) Replace the gender specific term with an ambiguous term; and
- (5) Change references that correctly refer to a particular sex, or references that when referenced with other terms, make the actual usage gender neutral;

and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to submit a preliminary report to the Legislature not later than twenty days prior to the convening of the Regular Session of 1992 of instances where substitutions cannot appropriately be made, and a final report not later than twenty days prior to the convening of the Regular Session of 1993; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Director of the Legislative Reference Bureau and the Chairperson of the state Commission on the Status of Women.

OFFERED BY:

Gerald T. Haynes

**Appendix B**

**RESPONSE TO SENATE CONCURRENT  
RESOLUTION NO. 199 (1991)  
RE GENDER-NEUTRAL TERMS IN  
THE HAWAII REVISED STATUTES**

**Introduction**

During the 1991 regular session, the Legislature adopted Senate Concurrent Resolution No. 199 (see Appendix A). In the Concurrent Resolution, the Legislature determined that the removal of stereotyped language in the *Hawaii Revised Statutes* is in accord with the state constitutional guarantee of equality between sexes and that the Legislature deems it appropriate to expand the substitution of gender-neutral terms beyond the stage of pronouns to include nouns.

As a result of these findings, the Legislature requested the Legislative Reference Bureau (Bureau)<sup>1</sup> to make appropriate substitutions of gender-neutral terms in the *Hawaii Revised Statutes*, and to identify all gender-specific terms and consult with the state Commission on the Status of Women to determine appropriate terms to substitute for those gender-specific terms. The Legislature also requested the Bureau to submit a preliminary report to the Legislature of instances where substitutions cannot appropriately be made, and to also submit a final report prior to the 1993 session. The following is the preliminary report.

**Authority of Revisor of Statutes**

Section 23G-15(8), *Hawaii Revised Statutes*, permits the Revisor of Statutes (Revisor) to "[c]hange any male or female gender term to a term which is neutral in gender when it is clear that the statute is not applicable only to members of one sex and without altering the sense, meaning, or effect of any act...." As a general rule, the Revisor takes a conservative approach to any delegated authority. Changes to the text of legislative enactments are not made lightly.

While the authority of the Revisor to make these types of changes clearly does not extend to the United States Constitution and federal laws (such as the Admission Act) which are published in the *Hawaii Revised Statutes* publication along with the state statutes, the Revisor has refrained from substituting gender-neutral terms in the Hawaii Constitution and those statutes that constitute state ratification of interstate compacts. Because the authority of the Revisor is statutory rather than constitutional, the ability to make changes to state constitutional provisions is generally considered to be beyond the Revisor's authority. An exception might be made with respect to matters concerning physical changes brought about by constitutional amendments. For example, if an amendment added a new unnumbered section to an existing article of the constitution, the Revisor would likely assign the section



number (which of necessity would also affect the physical location of the item) to ensure a coherent publication.

While statutes enacting interstate compacts are legislative enactments, the Revisor has not exercised the authority to substitute gender-neutral terms because the general desire for uniformity in the enactments of ratifying states is thought to be an overriding consideration. Accordingly, despite having the statutory authority to substitute gender-neutral terms into state statutes that ratify interstate compacts, the Revisor would not exercise that authority absent specific legislative direction to do so.

## **Prior Legislative Work**

Senate Concurrent Resolution No. 199 (1991) represents the most recent effort of the Hawaii Legislature and its subordinate agencies in the drive to bring sexual equality to the State's laws. These efforts go back more than a decade, ultimately stemming from the State's adoption of its "Equal Rights Amendment" to the state Constitution in 1972.

### **1. 1979 Study**

In 1979, pursuant to the request of the House of Representatives,<sup>2</sup> the Bureau (in conjunction with the Commission on the Status of Women) issued a study entitled *Equality of Rights Statutory Compliance*. The study identified statutes that were clearly discriminatory, discriminatory in their application, or that reflected discriminatory attitudes or practices. A number of the statutory amendments recommended by the study were subsequently enacted into law. These included extending the authority of the governor to order all state and county employees (rather than just male employees) to duty with designated organizations in times of war or insurrection; and outlawing discrimination on the basis of marital status in real property contracts. The study also identified the use of gender-specific terms in state statutes as a possible reflection of discriminatory attitudes or practices, and recommended authorizing the Revisor to substitute gender-neutral terms.

### **2. Drafting Manuals for Legislative Bills and Administrative Agency Rules**

Through its drafting manual publications, the Legislative Reference Bureau has directed drafters of bills and administrative agency rules (which have the force and effect of law if properly adopted under the Hawaii Administrative Procedure Act, chapter 91, *Hawaii Revised Statutes*) to use gender-neutral terms in drafting. While the failure to use gender-neutral terms does not affect the validity of a statute,<sup>3</sup> long-term Bureau employees have noticed a distinct (if not universal) trend toward the use of gender-neutral terminology.

Directives on the use of gender-neutral terms are included in the fourth, fifth, sixth, seventh, and eighth editions of the Legislative Drafting Manual (i.e., the bill drafting manual) published in 1979, 1980, 1982, 1984, and 1989, respectively; and the first and second editions of the Hawaii Administrative Rules Drafting Manual published in 1980 and 1984, respectively.

### **3. Act 90, Session Laws of Hawaii 1984**

**Summary of committee reports on amendment to 23G-15.** Act 90, Session Laws of Hawaii 1984, amended section 23G-15, *Hawaii Revised Statutes*, by adding the present paragraph (8) to give the Revisor of Statutes limited authority to substitute gender-biased terms with gender-neutral terms. House Bill No. 1854-84 was considered by the Committee on Judiciary in both houses. Both committees found that the purpose of the bill was to enable the Revisor of Statutes to change statutory language by removing gender-specific terminology without altering the sense, meaning, or effect of any act, when the Revisor prepares supplements and replacement volumes of the *Hawaii Revised Statutes*.<sup>4</sup> The committees also found that the removal of stereotyped language in the *Hawaii Revised Statutes* is in accord with the Equal Rights Amendment of the Constitution of the State of Hawaii, which guarantees equality of the sexes.

The Chair of the Honolulu County Committee on the Status of Women also testified that giving the Revisor of Statutes this authority to make the statutes gender-neutral was preferable to a step-by-step amending of all the statutes.

#### **Changes Made to Statutes in Publication of 1985 Replacement Set of *Hawaii Revised Statutes***

Work on the 1985 replacement set of the *Hawaii Revised Statutes* (the bound volumes presently in use) began soon after the enactment of Act 90, Session Laws of Hawaii 1984. While the statutory authorization to substitute gender-neutral terms was worded broadly, the Revisor did not assume the authorizing language constituted license to make wholesale changes to statutory provisions. Changes were limited to substituting antecedent nouns in place of gender-specific pronouns (e.g., "he", "she", "him", "her", "his", "hers", "himself", "herself"). In addition, the Revisor did not make changes when:

- (1) The meaning of the law would change;
- (2) Recasting any part of a section became necessary;
- (3) It was unclear as to what antecedent or antecedents should replace the gender-specific pronoun;

- (4) The substitution would be too lengthy; or
- (5) The usage was correct, in that, "he or she", or similar terms, were used to reference a particular sex or were referenced together to make the usage neutral.

Nouns were not replaced because the Revisor did not think it appropriate to arbitrarily substitute new terms in dozens or even hundreds of instances throughout the statutes. For instance, while the term "chairperson" may be an appropriate term to substitute in place of "chairman", it is by no means the only appropriate substitute. "Chair" would be an equally appropriate (and some would argue a superior) term to substitute.

Even this conservative approach, however, ultimately resulted in the elimination of gender-specific pronouns in hundreds of instances. In reviewing the bound volumes of the 1985 replacement set, the reader will note that many sections contain a reference in the source note that reads: "am imp L 1984, c 90, §1". Every section containing that reference in the source note had at least one gender-specific pronoun eliminated as part of the 1985 replacement project. Many sections required more than one such change.

### **Work Remaining to be Done**

The Legislative Reference Bureau views S.C.R. No. 199 (1991) as direction from the Legislature to begin a project to eliminate to the extent possible all references to gender-specific terms wherever they may appear in the text of chapters 1 to 853 of the *Hawaii Revised Statutes*. Such a project has a solid foundation in the work that went into the 1985 replacement project. As indicated below, the work that remains to be done is more varied and complicated.

Appendices B, C, D, E, and F list instances in the *Hawaii Revised Statutes* where gender-specific nouns and pronouns are found. These were located through computer searches of the statutory data base and by preliminarily reading through the entire text of the *Hawaii Revised Statutes* as well. The latter was necessitated by virtue of the fact that while computer searches can identify words having a gender-specific root word (e.g., "manpower", "himself") they cannot identify words made gender-specific by syllables appearing in the middle or at the end of the word (e.g., "craftsmanship", "fisherman").

During the 1992 regular session, the Bureau will request authorization to begin work on a new replacement set of the *Hawaii Revised Statutes*. If the Legislature gives this authorization, more instances of gender-specific terms will likely be uncovered in the process of producing the new volumes. The publication of a new replacement set provides the ideal opportunity to replace existing gender-specific terms. Whether the gender-specific terms are eliminated by the Revisor acting under the authority of section 23G-15(8), or by formally enacted legislation, the changes can be reflected directly in the new bound volumes rather than adding bulk to cumulative supplements which would entail higher publication costs each year.

Appendix B lists instances in the *Hawaii Revised Statutes* that are inappropriate to neutralize through substitution of terms under section 23G-15(8) because the gender-specific pronouns refer to a long list of nouns. One of those sections is set forth below as an example of how substituting antecedent nouns for gender-specific pronouns such as "he", "him", and "himself" can make the statutory provision so cumbersome as to be impractical. It was for this precise reason that the Revisor did not make the substitutions in sections such as this during the 1985 replacement project.

**§246-7 Fiduciaries, liability.** Every personal representative, trustee, guardian, or other fiduciary shall be answerable as such for the performance of all such acts, matters, or things as are required to be done by this chapter in respect to the assessment of the real property [he] the personal representative, trustee, guardian, or other fiduciary represents in [his] the personal representative's, trustee's, guardian's, or other fiduciary's fiduciary capacity, and [he] the personal representative, trustee, guardian, or other fiduciary shall be liable as such fiduciary for the payment of taxes thereon up to the amount of the available property held by [him] the personal representative, trustee, guardian, or other fiduciary in such capacity, but [he] the personal representative, trustee, guardian, or other fiduciary shall not be personally liable. [He] The personal representative, trustee, guardian, or other fiduciary may retain, out of the money or other property which [he] the personal representative, trustee, guardian, or other fiduciary may hold or which may come to [him] the personal representative, trustee, guardian, or other fiduciary in [his] the personal representative's, trustee's, guardian's, or other fiduciary's fiduciary capacity, so much as may be necessary to pay the taxes or to recoup [himself] for the the personal representative's, trustee's, guardian's, or other fiduciary's own self for the payment thereof, or [he] the personal representative, trustee, guardian, or other fiduciary may recover the amount thereof paid by [him] the personal representative, trustee, guardian, or other fiduciary from the beneficiary to whom the property shall have been distributed.

A more practical approach to making this section gender-neutral would be to substitute words other than the antecedent nouns in place of the pronouns. This alternative is displayed below.

**§246-7 Fiduciaries, liability.** Every personal representative, trustee, guardian, or other fiduciary shall be answerable as such for the performance of all such acts, matters, or things as are required to be done by this chapter in respect to the assessment of the real property [he] each of them represents in [his] each of their fiduciary capacity, and [he] each shall be liable as such fiduciary for the payment of taxes thereon up to the amount of the available

property held by [him] each of them in such capacity, but [he] each of them shall not be personally liable. [He] Each of them may retain, out of the money or other property which [he] each may hold or which may come to [him] each of them in [his] each of their fiduciary capacity, so much as may be necessary to pay the taxes or to recoup [himself] for each of them for the payment thereof, or [he] each may recover the amount thereof paid by [him] each of them from the beneficiary to whom the property shall have been distributed.

This alternative approach is much simpler and results in a statutory provision that is much less cumbersome to read. Given the practicality of this alternative, the easy next step in the "seductive reasoning" would be to question when the Revisor simply did not do this very thing in 1985. The answer is that using this alternative would have resulted in stretching the Revisor's legal authority to a considerable extent. Unlike the substituting of antecedent nouns, the Revisor would have been (1) substituting words of the Revisor's own choosing that were not already in the section, and (2) additionally using other words to fit the substituted terms in different contexts ("each of them", "each of their", "each"). Conceptually, to a certain degree, the Revisor would have been exercising broad discretion unilaterally to rewrite parts of the section.

For these reasons, enacting changes such as those in the second alternative through legislation is both the most practical and soundest means of rendering statutory provisions gender-neutral when this cannot be accomplished by substituting antecedent nouns.

Appendix C lists instances in the *Hawaii Revised Statutes* where a gender-specific pronoun is used, but is either made neutral by other terms in the statute (such as the use of "he or she", "him or her", etc.) or refers specifically to a male figure such as the putative father in the parentage statutes. In such cases, no change is necessary because the provision is, in effect, already gender-neutral (albeit through the use of offsetting gender-specific terms, rather than gender-neutral terms).

Appendix D lists the relatively few statutes that use gender-specific pronouns in the decedent's estate laws, but it is unclear whether the intent was to refer specifically to males. In some of the decedent's estate statutes, the laws specifically refer to males and to females, indicating that the laws differentiate between a woman who dies and leaves an estate and a man who dies and leaves an estate. In some cases, however, the references are unclear. For example, in section 532-7, *Hawaii Revised Statutes*, the statute refers to illegitimate **persons** who die intestate, and does not differentiate between men and women, yet refers to "his **widow**" indicating that it deals specifically with males. Thus, it is unclear whether the statute should remain male-specific or changed to make it gender-neutral. The reason for the separate listing of these provisions is that for purposes of this preliminary review, it cannot be readily ascertained whether these provisions will have to be changed by legislation or need not be changed at all.

The remaining appendices list occurrences of gender-specific nouns in the *Hawaii Revised Statutes*. Appendix E lists occurrences of gender-specific nouns such as "chairman" which have been referred to the Commission on the Status of Women pursuant to S.C.R. No. 199 (1991), and possibly to other agencies which may be affected. Referring these terms to other agencies for input reduces the likelihood of the Revisor selecting arbitrary or inappropriate terms to substitute. In some instances however, the substitution and/or creation of a gender-neutral term may not be appropriate. One possible example is the term "airman" to the extent it is used to describe Air Force enlisted personnel. While "soldier", "sailor", and "marine" are gender-neutral, "airman" is not. Yet, if the United States Air Force continues to use the term, it may not be advisable to try to invent a gender-neutral term if the result would be inconsistent terminology in federal and state laws applicable to the same programs.

The final appendix, Appendix F, lists occurrences of gender-specific nouns which may have acquired independent legal significance over many years of usage in common law. An example of this type of term is "manslaughter" which is well-established as a concept describing a form of criminal homicide which is differentiated from murder on the basis of the actor's state of mind. An attempt to substitute gender-specific terms for terms such as these will of necessity result in a greater impact upon state law.

Subject to certain broad exceptions, under section 1-1, *Hawaii Revised Statutes*, "[t]he common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases...." The practical effect of this statutory provision is the incorporation of the better part of a thousand years of written legal tradition, whether in the form of judicial decisions or scholarly articles and traditions. To the extent that specific terms have acquired an independent legal significance as a result of this history and tradition, the replacement of those terms could have the effect of removing that part of the State's law from the remainder of the field. If, for example, Hawaii were to change "manslaughter" to "humanslaughter", a researcher comparing Hawaii's laws to those in other states would be able to compare the elements of the underlying offense for purposes of the analysis. But if the researcher were not aware of the terminology for comparable offenses in other jurisdictions, the task would be much harder. A computer search would likely indicate few instances in which such a term was used.

Because of the impact that the substitution of gender-neutral terms for those listed in Appendix F, the Bureau will consult with the Hawaii State Bar Association in addition to the Commission on the Status of Women.

## Findings and Recommendations

There are many occurrences of gender-specific terms in the text of the *Hawaii Revised Statutes*. Gender-neutral terms can be readily substituted in many instances. The Revisor of Statutes already has the authority to substitute appropriate gender-neutral terms pursuant to

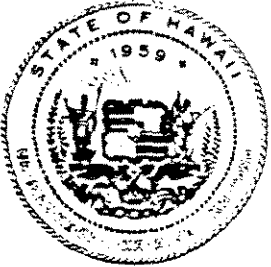
section 23G-15, *Hawaii Revised Statutes*. During the 1992 regular session, the Legislative Reference Bureau will be requesting authority to begin work on the publication of a new replacement set of the *Hawaii Revised Statutes*, which among other things, will involve the combining of the existing main volumes and supplements and publication of a new set of compiled bound volumes. Assuming this authority is given, the Bureau will view S.C.R. No. 199 (1991) as direction from the Legislature to substitute gender-neutral terms for gender-specific ones wherever such a substitution can be made appropriately within the Revisor's authority.

Accordingly, the Bureau recommends as the most efficient and cost-effective means of substituting gender-neutral terms in the text of the *Hawaii Revised Statutes*, the accomplishment of this end to the extent possible through making the substitutions as part of the publication of the new replacement set. For terms that cannot be substituted directly by the Revisor, the Bureau recommends that substitution be made by the enactment of legislation, which will be drafted by the Bureau after consultation with the Commission on the Status of Women and the Hawaii State Bar Association to determine appropriate replacement terms.

#### NOTES

1. Pursuant to section 23G-11, Hawaii Revised Statutes, the Director of the Legislative Reference Bureau is also the Revisor of Statutes.
2. House Resolution No. 19 (1977).
3. Section 1-17, Hawaii Revised Statutes (which was first enacted in 1869), provides that "[w]ords in the masculine gender signify both the masculine and feminine gender...."
4. Senate Standing Committee Report No. 635-84 on House Bill No. 1854-84, Twelfth Legislature, 1984, State of Hawaii, and House Standing Committee Report No. 85-84 on House Bill No. 1854-84, Twelfth Legislature, 1984, State of Hawaii.

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Appendix C

RECEIVED

APR - 8 1992

LEGISLATIVE  
REFERENCE BUREAU

April 7, 1992

Samuel B.K. Chang, Director  
Legislative Reference Bureau  
State Capitol  
Honolulu, Hawaii 96813

Dear Mr. Chang:

Per Ken Takayama's recent call to us to ask that we reply to your Feb. 10 letter sooner than June 10, we have reviewed the list of terms as requested. A listing of possible substitutions is enclosed. Also enclosed is some material on nonsexist language from references we use.

Due to time constraints and other deadlines, we were not able to check every citation and get this to you as quickly as desired, but did look at many. As you continue your review of the Hawaii Revised Statutes, please call on us and we will be glad to assist in any way we can.

Sincerely,

Kathleen McRae  
Executive Director

Encl.

JOHN WAIHEE  
Chair

HOLLY CHUN-MING  
Chair

KATHLEEN McRAE  
Executive Director



## Appendix E

### Gender-specific Nouns in the Hawaii Revised Statutes and Suggested Substitutions.

#### AIRMAN/MEN

If the context refers to an official military title for enlisted personnel (or enlisted men or women), the term Airman is accurate.

If the context refers to the general public, substitutions may include: aircraft worker, aircraft crew/crew member, or specific job designations where appropriate, e.g., pilot, mechanic, navigator.

#### BROTHERHOOD

In the context of the cited statute, brotherhood (and fraternity) are accurate when referring to an association of men united for a specific purpose. In this case, the terms Sisterhood and Sorority should be added to include women's organizations with the same purpose.

#### BUSINESSMAN/MEN

Substitute: "and legitimate businesses," or "and legitimate businessmen and women." Other substitutions: business people, business managers, entrepreneur. business executive.

#### CHAIRMAN/MEN/MAN'S/MEN'S/VICE-

Substitute: Chair, presider, presiding officer, convener, coordinator, leader, moderator, chairman or chairwoman.

#### CLERGYMAN/MEN

Substitute: Clergy, members of the clergy, cleric(s) or title, as appropriate, minister, priest, rabbi, pastor.

#### COUNCILMAN/MEN

Substitute: Councilmember, councilmen and councilwomen.

CRAFTSMAN/MEN

Substitute: craftspeople, artisans, craft workers, crafters.

FISHERMAN/MEN

Substitute: fisher(s), angler(s).

FLAGMAN/MEN

Substitute: Flagger(s).

FOREMAN/MEN

Substitute: supervisor(s), boss, leader, head juror.

HUSBANDRY

As in "animal husbandry," the term is accurate. (Note Section 205-1, change "...elect its chairman." Substitute "chair.")

INSTRUCTOR/S/'S/S'

Note section 580-22 where it reads "...cohabited as man and  
" recommend change to "...husband and wife."

JOURNEYMAN/MEN/MAN'S/MEN'S

Substitute: journey worker, journey electrician, etc.

JURYMAN/MEN

Substitute: jurymember, jurors. Recommend the statute read  
"...the judge may summon jurors from bystanders."

LAYMAN/MEN/MAN'S/MEN'S

Substitute: lay people, laity. Section 601-4, line 6 "chairman"  
to chair, and ..."include 'lay people' as well as judges."  
Section 633-36 recommend change to read "...understandable by a  
'lay person.'

## MAN/MEN/MAN'S/MEN'S

Regarding the use of the pronouns he, his, and him to refer to any person, female or male, in these sections and others, possible substitutions include: (1) use double-pronoun constructions he or she, his or her's; (2) where this becomes awkward, rewrite in the plural "they,"; (3) replace pronouns with nouns and articles to allow for inclusion of both sexes; (4) pronouns may be eliminated by repeating the noun they refer to, or rewrite to eliminate redundancy and delete "he/his."\*

Sections referring to "enlisted men," to be accurate (re terms of service) should refer to "enlisted men and women." The reference to "officers and men" servicing on courtmartial could be changed to "officers and enlisted" or "officer and enlisted personnel" and be accurate to the intent and inclusive of all, men and women, in the service.

Section 127-10 "...disasters caused by acts of man." Substitute "...disasters caused by human acts."

Sections referring to man, or mankind (meaning the human species) as in "unreasonable risk to man," "toxic to man," "living in man," "other than man," "function of the whole man." Substitute "human" or "humans" for "man." References to "a reasonably careful man" appear to infer any "careful individual or person", not exclusively a male.

Section 443B-1 "collection agency" reference to "salesmen," substitute "salespeople." Reference to "capacity of credit men," change to "credit men and women." (Are they creditors?)

Section 557-2(a)(3) "...men of ordinary principal..." recommend using "people."

Section 560:7-302 "a prudent man..." Recommend using "person."

Section 667-9 Does this apply to men and women? Therefore should read: "If the mortgage was executed by a man or woman having at the time no lawful spouse,...the spouse (replaces "wife")..."

Rule 804(b)(3) could not find.

Sections with references to "man and wife" should be changed to "husband and wife."

## MANHOOD

In this context, it appears that "lost manhood" refers to "loss of sex drive."

#### MAN-HOUR

Substitute: work-hours, staff hours, total hours, or in Section 159-46, use "each hour of work..." and drop "man."

#### MAN-INDUCED

Substitute: humanly-induced, -caused or -created; artificially-induced, -caused or -created.

#### MANLIFT

Substitute: life or lifter.

#### MANMADE

Substitute: of human origin, human made, artificial construction, synthetic, manmanufactured, handmade, machine made.

#### MANPOWER

Outside the area of registered trademarks (Manpower Temporary Services) or titles of official federal acts passed earlier, "manpower" is usually replaceable with personnel, staff, workforce, available workers, or human resources.

#### MIDWIFE/WIVES/WIFE'S/WIVES'/MIDWIFERY

"Midwife," like "master" (as in master of arts), has become a common-gender word. The meaning has expanded to be an accepted designation for a person of either sex trained to assist at a birth. "Midwife" initially meant "a woman" (the original meaning of wife) "with" (mid) another woman giving birth. As a person who practices midwifery does not have to be a wife in the modern sense of "married woman," so that person does not have to be a wife in the ancient sense of "woman." Today nursing school programs in nurse-midwifery actively recruit members of both sexes (dozens of men are now practicing midwifery).\*

#### OMBUDSMAN/OMBUDSMEN

Substitute: representative, spokesperson.

#### SALESMAN/MEN/MAN'S/MEN'S/SALESMANSHIP

Substitute: Salesclerk, salesperson, sales agent, sales representative, sales associate, sales force. Re salesmanship, try using a synonym: sales expertise, professional at selling. (Do not recommend substituting "salespersonship" for this term or

any other term with the "man" syllable in the middle. Synonyms can usually be found.)

#### SEAMAN/MEN

Substitute: Sailor(s), mariner(s), seafarer(s).

#### SERVICEMAN/MEN

Substitute: serviceman or servicewoman, servicemen and women.

#### SPOKESMAN/MEN

Substitute: Spokesperson, representative

#### SPORTSMAN/MEN/SPORTSMANSHIP

Substitute: Parallel treatment--sportsman and sportswoman. Re sportsmanship, try fair play, fairness, sporting, team play, sporting attitude.

#### STATESMAN/MEN

Substitute: official, diplomat, stateswoman (statesman like--diplomatic).

#### WAREHOUSEMAN/MEN/MAN'S/MEN'S

Substitute: warehouse worker(s)('s).

#### WORKMAN/MEN

Substitute: worker(s).

#### WORKMANLIKE

Substitute: efficient, skillful, in a skilled manner.

#### WORKMANSHIP

Substitute: skilled work, quality of work completed, quality control, professional work, quality work.

## APPENDIX F

### KINSMAN

If reference is to a blood relative, it may be appropriate to include "kinswoman" or "kinsfolk," "kinship."

MATERIALMAN - Material (labor) supplier/contractor.

MANSLAUGHTER - Legal term.

HEIR/S - Re "he/his" usage. See previous comments on usage of pronouns. (Under Man/Men/Man's/Men's)

\*Source: The Handbook of Nonsexist Writing - For Writers, Editors and Speakers, (Second Edition). Casey Miller & Kate Swift. Harper & Row, Publishers, New York, et al, 1988.

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## A BILL FOR AN ACT

REGARDING GENDER-NEUTRAL LANGUAGE IN THE HAWAII REVISED STATUTES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Section 1-17, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "§1-17 Number and gender. Except in cases where it is  
4 clear that the legislature intended otherwise:

5           (1) Words [in the masculine] of one gender [signify  
6           both the masculine and feminine gender, those]  
7           include the other gender;

8           (2) Words in the singular or plural number signify  
9           both the singular and plural number[,]; and

10          (3) [words] Words importing adults include youths or  
11          children."

12       SECTION 2. Statutory material to be repealed is bracketed.  
13 New statutory material is underscored.

14       SECTION 3. This Act shall take effect upon its approval.

15

16

INTRODUCED BY: \_\_\_\_\_

