

The Child-Parent Security Act and Compensated Surrogacy

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On February 21, 2021 New York's long-time ban on compensated gestational surrogacy ended as the New York Child-Parent Security Act ("CPSA" or the "Act") became effective, providing those New Yorkers who relied upon assisted reproductive technology ("ART") in order to have children, a far easier path to establishing their legal parental rights.ⁱ

The Act is detailed and comprehensive, providing clear procedural requirements (which must be followed) to ensure the legality of the gestational surrogacy, and therein secure, in the simplest manner possible, the legal relationship between infant and intended parent. In gestational surrogacy, the gestational carrier cannot be biologically related to the child she is carrying, and, in New York surrogacy arrangements where the surrogate provides/provided the egg, continue to be prohibited.

Prior to the passage of the CPSA, future parents needing the assistance of a compensated surrogate to have a child had no choice but to engage a surrogate who resided and gave birth to the child outside of New York. Costly adoption proceedings were thereafter necessary to secure the legal relationship between the new parents and their child.

The CPSA replaces all that with a simple procedure to obtain a pre-birth judgment of parentage, thereby establishing and fixing the legal relationship between parent and child from birth.

The Act is gender and marriage neutral (closing old gaps in the law), and determines parentage by reference to the intention to parent rather than a genetic connection that may or may not exist. The Act also addresses disputes arising as a result of cryopreserved embryos that remain after the dissolution of a marriage or non-marital relationship and provides a clear means for the couple to address the issue. The Act additionally creates a novel process, wherein a single intended parent conceiving with donor genetic material may obtain a judgment of parentage declaring him or her to be the only legal parent of the child.

Last but far from least, the Act protects not only the child and intended parent(s), but importantly creates a "surrogate's bill of rights," setting a new standard for the protection of gestational surrogates, giving them: access to their own independent legal counsel; the right to make health and welfare decisions concerning themselves and the pregnancy; the right to health insurance coverage, life insurance, and psychological counseling; and, the right to decide not to proceed with the pregnancy without any penalties.

New Yorkers considering the use of a gestational surrogate should be aware of the expansive changes in law provided by the CPSA, and retain Counsel well versed in the new law, its requirements and complications in order to ensure as trouble-free a process as possible.

i Until the passage of the CPSA (signed into law on April 2, 2020), gestational surrogacy was illegal in the state, and punishable by criminal penalties.