



The Child-Parent Security Act: Gestational Surrogacy Agreements, Acknowledgment of Parentage and Orders of Parentage

Overview

Vital Records may amend the names of the intended parents on birth records for all of New York State except New York City. It does not have these records for New York City (the boroughs of Manhattan, Kings (Brooklyn), Queens, Bronx, and Richmond (Staten Island)).

The Child-Parent Security Act

The Child-Parent Security Act (CPSA) is a law in New York State that legalizes gestational surrogacy and provides a simple path to establish legal parental rights for parents who rely on assisted reproductive technology (ART) to have children. The CPSA goes into effect on February 15, 2021.

The CPSA:

- Establishes legal criteria for gestational surrogacy agreements that provide the strongest protections in the nation for parents and surrogates, ensuring all parties provide informed consent at every step of the process;
- Creates a Surrogates' Bill of Rights, to ensure the unfettered right of surrogates to make their own healthcare decisions, including whether to terminate or continue a pregnancy, and that surrogates have access to comprehensive health insurance and independent legal counsel of their choosing, all paid for by the intended parents; and
- Creates a streamlined process for establishing parenthood when one of the individuals is a non-biological parent

The Act introduces new documentation to amend the birth certificate:

- Acknowledgement of Parentage (AoP)
- Gestational Surrogacy Agreement
- Order of Parentage



Acknowledgment of Parentage (AoP)

The following persons may sign an AoP:

- An unmarried person who gave birth to the child and another person who is a genetic parent;
- A married or unmarried person who gave birth to the child and another person who is an intended parent of the child, in accordance with the Family Court Act Section 581-303, conceived through assisted reproductive technologies

The AoP is void if the following occur:

- A person other than the parties signing the Acknowledgment of Parentage is a presumed parent of the child due to marriage under New York Domestic Relations law;
- The child has a legally recognized parent other than the parties signing the Acknowledgment of Parentage due to an assisted reproduction agreement (an agreement with a gamete donor);
- A court has already entered a judgment or order determining parentage for the child;
- Another person has voluntarily acknowledged parentage for the child;
- A person signing the Acknowledgment of Parentage was a donor in an assisted reproduction, and already signed a statement that the donation was not intended to result in parental rights and responsibilities; or
- A person signing the Acknowledgment of Parentage asserts that they have parental rights due to an assisted reproduction agreement, but a court finds that the child was not conceived through assisted reproduction.

Filing:

An AoP must be submitted to either:

- the birth registrar (or representative) in the hospital where the child is born at the time of birth; or
- the local registrar in the registration district where the child was born.
- The local registrar will forward the documentation to the State Health Department where the birth certificate will be amended to reflect the information in a valid AoP.



[LDSS Acknowledgment of Parentage \(PDF\)](#)

Use this form for adding the non-birth parent's name under the above-mentioned circumstances

Gestational Surrogacy Agreements

The first step in surrogacy is for the intended parent(s) to select a surrogate. The surrogate and intended parent(s) are screened to make sure they are healthy (both physically and emotionally) and able to participate in the surrogacy process. Once a surrogate is matched with the intended parent(s), the parties work with their separate attorneys to write, review, revise and sign the surrogacy agreement. This happens before the start of any medical procedures (other than screening tests.)

The surrogacy agreement describes the rights and responsibilities of the surrogate and the intended parent(s) and the promises (agreement) the parties are making to one another. New York State law is very specific about the requirements of the agreement (see Family Court Act § 581-403). Surrogacy matching programs and attorneys for the surrogate and intended parent(s) must ensure that all requirements are met under New York State law to ensure the agreement is legally binding and enforceable, and to best protect the interests and rights of all parties to the agreement.

After the surrogacy agreement is signed, an embryo can be transferred into the surrogate through IVF. IVF is a medical procedure where an egg is fertilized with sperm in a laboratory. This creates an embryo that is transferred into the surrogate's uterus. The surrogate usually takes medication before the embryo is transferred. This makes the IVF procedure more likely to result in a pregnancy.

In New York State, the gestational surrogates **have a right to the following, to be provided and paid for by the intended parent(s):**

- the right to comprehensive health insurance coverage.¹¹ This insurance must cover the surrogate through the entire surrogacy process, from the time the surrogate takes any medications before or after the embryo transfer, throughout the pregnancy, and for 12 months after the pregnancy ends (whether resulting in the child's birth, stillbirth, or termination of the pregnancy);
- a disability insurance policy;
- a life insurance policy;
- a comprehensive health insurance policy that covers mental health counseling; and
- compensation for legal fees.



Surrogates also have the following rights under New York law:

- the right to select a health care professional of their own choosing;
- the right to terminate or continue the pregnancy;
- the right to make health and welfare decisions about themselves and the pregnancy, including the right to reduce or retain the number of fetuses or embryos they are carrying;
- the right to receive compensation for the surrogacy, which must be held in escrow with an independent escrow agent; and
- the right to be provided with a copy of the Surrogate's Bill of Rights.

The gestational surrogacy agreement is a long document, and includes additional information related to the surrogacy process.

Surrogacy matching programs and attorneys for the surrogate and intended parent(s) must refer to the full legal requirements set forth in New York law, including but not limited to the requirements for a gestational surrogacy agreement, set forth in Family Court Act Article 5-C, Part 4, and the Surrogate's Bill of Rights, set forth in Family Court Act Article 5-C, Part 6. The above lists are not intended to be exhaustive or serve as legal guidance.

Gestational surrogacy can be costly, and the price range varies. Costs can include legal fees, medical expenses, surrogacy agency fees, surrogate's compensation (payments to a person acting as surrogate are limited to the duration of the pregnancy and a recuperative period of up to eight weeks after the birth of any child), and other miscellaneous expenses. Many surrogacy arrangements cost between \$60,000 and \$150,000.

Filing:

- A gestational surrogacy agreement must be submitted to the birth registrar in the hospital where the child is born prior to or at the time of birth;
- The local registrar will forward the documentation to the State Health Department where the birth certificate will be amended to reflect the information in a gestational surrogacy agreement.

Orders of Parentage

A petition for judgment of parentage or non-parentage of a child conceived through assisted reproduction may be initiated in Family Court by:



- A child;
- A parent;
- A participant;
- A person with a claim to parentage;
- A social service official or other governmental agency authorized by other law; or
- A legal representative for the individual who would have otherwise been entitled to bring a petition to establish parentage from a child born through assisted reproduction or pursuant to a gestational surrogacy agreement - but who is deceased, incapacitated, or a minor.

Court Clerk:

Shall submit a [notification of an order of parentage](#) to the State Health Department

Filing:

In addition to the notice from the Court Clerk, an Order of Parentage must be submitted:

- To the birth registrar in the hospital where the child is born at or prior to or at the time of birth; or
- To the local registrar in the registration district where the child is born; or
- The local registrar will forward the documentation to the State Health Department where the birth certificate will be amended to reflect the information in the Order of Parentage.

Original Birth Certificate is sealed

The original birth certificate and all other documents relating to the changes will be retained in a sealed file. Only the amended birth certificate will be released upon future requests for a certified birth certificate.

Local Registrars

Training Program

Pre-recorded training is available for the [Child-Parentage Security Act / Acknowledgment of Parentage-20210211 1505-1](#).

Please Note: The Webex Player must be installed on your computer for you to attend any of the webinar presentations - recorded or live. Please see [Instructions to Access Webex Webinar Training](#) (PDF).



Documentation and Publications

Click the links below to open these PDF documents. You will need Adobe Acrobat Reader installed on your computer to view PDF documents. [Download the free Adobe Reader.](#)

- [Power Point presentation for the Child Parent Security Act Training Session for Local Registrars](#) (PDF)
- [Consolidated Question and Answers from the Training Session](#) (PDF)

Fees

The first copy of the amended new birth certificate is free to the birth parent.

For more information on the Gestational Surrogacy, Surrogacy Screening Guidelines, Surrogates' Bill of Rights and Ova and Oocyte donation

For more information on Gestational Surrogacy, Surrogacy Screening Guidelines, Surrogates' Bill of Rights and Ova and Oocyte donation please see [The Child-Parent Security Act: Gestational Surrogacy.](#)

Notes

1. A surrogate who does not receive any compensation for the surrogacy may waive the right to have the intended parent(s) pay for the health insurance policy and associated costs (e.g., co-pays). See Family Court Act § 581-402[7]); *but see* Family Court Act § 581-403(g).