

Surrogacy / Gamete Donation Bill

Senator Liz Krueger

Summary of Bill Provisions

Medical advances in assisted reproductive technology (ART) make family building possible today for intended parents who would otherwise be unable to conceive or sustain a successful pregnancy. Gamete donors¹ and surrogates enable intended parents who are single, LGBTQ, cancer survivors, or experiencing infertility issues to have the children they want.

Gamete donation and surrogacy arrangements are complex, however, because they involve third-parties who provide their gametes and undergo surrogate pregnancy and delivery, but are not the legal parents of the resulting children. Furthermore, gamete donors and surrogates assume significant health, fertility, legal, and financial risk. The short- and long-term health impacts of fertility medication and ART on egg donors, surrogates, and donor-conceived and surrogate-born children are insufficiently known due to lack of research. Intended parents incur high costs and assume legal and financial risk in their journey to have children using ART, surrogacy in particular. It is crucial, therefore, to ensure that state law affords rights and protections for all parties, including donor-conceived and surrogate-born children.

The Child-Parent Security Act (CPSA), which legalized gestational surrogacy in 2021, established a legal and regulatory framework under which eligible intended parents may enter into a surrogacy agreement and obtain a judgment of parentage that grants them legal parental rights of any children conceived through surrogacy immediately upon birth. The legal framework also allows eligible intended parents to obtain a judgment of parentage that grants legal parental rights of any children conceived through assisted reproduction². These judicial processes establish legal parental rights for intended parents without having to undergo an adoption process. The CPSA built in protections by establishing a Surrogates' Bill of Rights and regulation of surrogacy agreements, surrogacy programs, and clinical practices.

This new legislation would strengthen and build upon the current framework by: enhancing the rights and protections afforded surrogates; establishing a comprehensive informed consent process for gamete donors, surrogates, and intended parents; creating a Gamete Donors' Bill of Rights and a Bill of Rights of Donor-Conceived and Surrogate-Born Children; providing for regulation of gamete donation agreements, marketing, and clinical practices; establishing timely gamete donation policies; and establishing the Central Assisted Reproduction Registry (CARR) to make possible enforcement of state policies and to facilitate research.

The following is a summary of key provisions.

Ensuring Fully Informed Consent

Before a potential gamete donor, a potential surrogate, or an intended parent executes a gamete donation or surrogacy agreement, it is critical that they fully understand how gamete donation or surrogacy works in New York, the terms of the agreement, their legal rights and responsibilities, the fertility medications and medical procedures that are involved, and the associated health and fertility risks.

¹ Gamete donors for purposes of this legislation refer to egg and sperm donors who receive compensation for time and effort to produce their gametes for use in assisted reproduction by an intended parent or parents who are unknown to the donor at the time of the gamete donation.

² "Assisted reproduction" is defined in law as a method of causing pregnancy other than sexual intercourse and includes but is not limited to: 1. intrauterine or vaginal insemination; 2. donation of gametes; 3. donation of embryos; 4. in vitro fertilization and transfer of embryos; and 5. intracytoplasmic sperm injection.

This legislation would establish a comprehensive informed consent process that will help to ensure that parties are fully informed, that judicial processes and agreement proceedings have fewer complications, and that parties are prepared to enter into a gamete donation or surrogacy agreement by:

- Establishing a uniform, comprehensive informed consent process, which includes medical and legal informed consent procedures for intended parents, potential surrogates, and potential gamete donors;
- Ensuring that parties provide fully-informed consent to enter into a surrogacy or gamete donation agreement after they review the required information with qualified professionals and have an opportunity to ask questions; and
- Clarifying that the informed consent process shall be completed and documented before parties execute a surrogacy or gamete donation agreement.

Requiring Medical Best Practices and Protections

Even though ART has advanced greatly, egg donors and surrogates, in particular, assume significant health and fertility risks when they enter into gamete donation and surrogacy agreements. Egg donors undergo daily injections of fertility medications, as well as medical and surgical procedures, which have the potential to cause Ovarian Hyper-Stimulation Syndrome (OHSS), infection, stroke, ovarian torsion, and other mild-to-severe short-term health conditions.

Surrogates also undergo injections of fertility medications and medical procedures prior to carrying the surrogate pregnancy, the latter of which is associated with increased risks of multiple births, cesarean section, pre-eclampsia, gestational diabetes, postpartum hemorrhage, and other health complications.

Much less is known about the long-term health implications for egg donors and persons who act as surrogates, as well as the short- and long-term health impacts on donor-conceived and surrogate-born children. This reflects a significant gap in research that needs to be addressed in order to identify specific health risks and inform ART medical best practices.

This bill would strengthen medical protections for egg donors, surrogates, and donor-conceived and surrogate-born children by stipulating that screening and clinical practices utilized for gamete donation and surrogacy shall adhere to medical best practices recommended by the American Congress of Obstetricians and Gynecologists (ACOG), including:

- Eligibility criteria to screen potential egg donors, including age limits; risk level of developing ovarian hyperstimulation; history of ovarian stimulation; and history of OHSS, polycystic ovarian syndrome, or endometriosis; testing for relevant communicable disease agents and diseases, as specified by the US Food & Drug Administration; and eligibility criteria under sections 52-8.5 and 52-3.4 of the public health regulations;
- Conservative low stimulation medication protocols aiming to produce no more than 20-25 eggs in a single cycle in compliance with best medical practice and cancelation of egg retrieval cycles when necessary to prevent OHSS;
- Eligibility criteria that health care practitioners use to screen potential sperm donors, including age limits; testing for relevant communicable disease agents and diseases, as specified by the US Food & Drug Administration; and eligibility criteria under sections 52-8.5 and 52-3.4 of the public health regulations;

- Eligibility criteria to screen potential surrogates, including age limits, pregnancy/delivery history, and medical or psychological preexisting conditions that would qualify them as being high risk during pregnancy; and
- Counseling for surrogates about immunizations.

Strengthening Legal Protections for Gamete Donors, Surrogates, and Intended Parents

People who are thinking about donating their gametes may not be aware of important legal considerations or know whether a gamete donation agreement fully protects their interests. Although surrogacy agreements are often carried out without incident, there is significant potential for exploitation, disputes over agreement terms, and more serious legal issues to arise due to the complexity of these arrangements.

This bill would help strengthen legal protections for gamete donors, persons acting as surrogates, and intended parents who are considering entering into a gamete donation or surrogacy agreement by:

- Enabling gamete donors to consult with a NYS-licensed attorney prior to executing a gamete donation agreement, the cost of which will be covered by the agent, gamete agency, gamete bank, fertility program, health care practitioner, or surrogacy program that facilitates the agreement;
- Clarifying that surrogates and intended parents shall have legal representation by separate independent legal counsel of their own choosing from the initiation of and throughout the contractual process. This representation must continue through the duration of the surrogacy agreement until all of the acts contemplated by the surrogacy agreement have been fulfilled; and
- Amending current statute to require that both a person acting as surrogate and an intended parent or parents shall have been residents of New York State for at least six months at the time the surrogacy agreement is executed, and shall maintain New York State residency during the surrogate pregnancy and for at least one month after delivery, which will facilitate enforcement of surrogacy agreement and judgment of parentage proceedings.

Strengthening Surrogates' Rights and Protections

The State of New York demonstrated leadership by establishing a Surrogates' Bill of Rights as part of the CPSA, which is vital because surrogates may have limited financial resources, have children to support, and could experience serious health problems as a result of undergoing surrogate pregnancy. Health complications could cause loss of wages and hefty health care costs. In order to provide effective protections, however, the rights afforded surrogates under NYS law must be meaningfully accessible.

This legislation would strengthen surrogates' rights and protections by establishing the aforementioned informed consent process, enhancing surrogates' rights, and addressing issues that could impede implementation of rights by:

- Creating a special enrollment period for surrogates who do not have comprehensive health insurance so that a person acting as surrogate is eligible to secure a comprehensive health insurance policy once the surrogacy agreement is executed;
- Requiring surrogate screening, ART, and obstetric services to be provided by NYS-licensed health care providers to help mitigate the risks of undergoing surrogate pregnancy and to ensure that surrogates actually receive all the medical protections to which they are entitled;

- Stipulating that a person acting as surrogate has the same right to make all behavioral decisions regarding themselves and their pregnancy as other pregnant people do in New York. Surrogacy agreements may not place restrictions on surrogates' behavior that could not be placed on other pregnant people;
- Helping to ensure that surrogates can access their rights afforded by state law by requiring that both a person acting as surrogate and an intended parent or parents maintain New York State residency prior to executing the surrogacy agreement, during the surrogate pregnancy, and for at least one month after delivery;
- Amending current statute to stipulate that surrogates are able to obtain psychological counseling to address issues that result from participating in the surrogacy agreement, without having to ask the intended parents first. If surrogates have to request counseling services, as current statute stipulates, they may go without needed mental health services; and
- Amending current statute to require intended parents to pay for a disability insurance policy for the person acting as surrogate prior to achieving pregnancy. Disability insurance policies may delay coverage or refuse to cover pregnancy-related disability if the policy is purchased after pregnancy has been achieved.

Establishing Timely Regulation of Gamete Donation and Increasing Transparency

ART is a dynamic and flourishing area of medicine. There has been extensive research and profound advancements in this area of medical technology, which we will continue to see in the coming years. These advancements provide important options for family building, but also carry significant risks, and create new social and societal considerations.

The following provisions would create necessary regulation of gamete donation agreements, marketing, and policy to protect the health, safety, and well-being of gamete donors, intended parents, and donor-conceived people by:

- Regulating the eligibility requirements, information, and terms that must be included in gamete donation agreements;
- Stipulating that gamete donors shall register with the Central Assisted Reproduction Registry (CARR);
- Requiring entities that match or recruit gamete donors in New York to make their gamete donation compensation list available to the general public;
- Requiring that advertisements for gamete donors include the same gamete donation compensation amounts as the amounts specified on the entity's gamete donation compensation list that is available to the general public;
- Establishing a maximum number of donor-conceived children who are conceived using a single donor's gametes that may be born in New York to help mitigate the possibility of half siblings unknowingly becoming romantically involved and of rare diseases being more widely spread; and
- Prohibiting nonidentified gamete donation in New York as of January 1, 2026 in order to enable donor-conceived people to have information about their origins and to facilitate access to medical information.³

³ Nonidentified gamete donation means that the gamete donor does not agree to the release of their identifying information to a donor-conceived individual who was conceived using their donor gametes and assisted reproduction, or to a legal parent or guardian if the donor-conceived person is under the age of eighteen. The donor's non-identifying medical information will be released upon request of a donor-conceived person or a legal parent or guardian.

Establishing Gamete Donors' Rights and Protections

New York State law regulates certain aspects of gamete donation; however, as more intended parents use donor gametes to have children and as more people look to gamete donation as a way to earn needed income, gamete donors require rights and protections that current law does not afford. Similar to surrogates, gamete donors may be young, lower-income, or have children to support or debts to pay. College students who may not understand the impacts of donating their gametes are frequently targets of gamete donation recruitment efforts. Egg donors have experienced serious health complications and infertility issues from undergoing ovarian stimulation and oocyte retrieval.

In addition to instituting the above-mentioned protections, this legislation would establish the Gamete Donor's Bill of Rights, which affords gamete donors the right to:

- Decide which medical records to share with intended parents and agencies, other than records that are required by law, and to obtain a copy of their medical records related to gamete donation;
- To make all health and welfare decisions. For egg donors, this includes the amount of time that transpires between gamete donation agreements and egg retrieval cycles;
- Consult with independent legal counsel prior to executing the gamete donation agreement; this consultation shall be paid for by the agent, gamete agency, gamete bank, fertility clinic, health care practitioner, or surrogacy program;
- Have a health insurance policy that covers major medical treatment, hospitalizations, and behavioral health care for egg donors that takes effect before commencing medication and medical procedures and extends for 12 months after oocyte retrieval is completed, which shall be paid for by the agency or intended parents;
- Obtain psychological counseling which shall be covered by the egg donor's health insurance policy that is paid for by the agency or intended parents; and
- Egg and sperm donors may terminate a gamete donation agreement at any time. Egg donors may cancel an egg retrieval cycle at any time and sperm donors may stop donating their gametes at any time.

Ensuring that NYS Surrogacy and Gamete Donation Law Is Implemented Effectively

This legislation would amend certain sections of current statute and add new provisions to help facilitate implementation of judicial processes, ensure access to court documents, collect and track ART data, expand ART program administration, and promote ART research by:

- Amending current statute to stipulate that court proceedings for a judgment of parentage of a child conceived through assisted reproduction or conceived pursuant to a surrogacy agreement may be initiated any time after the first trimester of pregnancy or surrogate pregnancy;
- Amending current statute to ensure donor-conceived and surrogate-born people can access their court records, including their original birth certificates;
- Establishing the Central Assisted Reproduction Registry (CARR) and requiring collection of demographic and clinical data to help enforce state policies and promote research of ART, gamete donation, and surrogacy utilizing anonymized data. Registration shall be mandatory for surrogates, gamete donors, and intended parents who enter into surrogacy agreements;
- Establishing the New York State ART, Gamete Donation, and Gestational Surrogacy Program in the NYS Department of Health, which shall be responsible for program administration, maintaining the CARR, developing educational materials, and issuing rules and regulations; and
- Establishing regulations to facilitate ART research utilizing anonymized data from the CARR.

Establishing Donor-Conceived and Surrogate-Born Children's Rights

This bill would establish the right of donor-conceived and surrogate-born people to access permitted information about any gamete donor and person acting as surrogate who had a part in their creation.

We have learned that adoption can have psychological and emotional impacts on children and adults who might struggle with issues related to grief and loss, feelings of abandonment, not having been told as a child that they were adopted, and wanting to know their origins. Additionally, people who are adopted may not have ready access to medical information about their biological parents.

Similarly, research shows that donor-conceived people who learn about their origins in early childhood are less likely to suffer emotional or psychological difficulties related to their identity. Many donor-conceived people have expressed that they would prefer to be told that they are donor-conceived vs. finding out accidentally, and want to have some information about the gamete donor who had a part in their creation. Commercial gestational surrogacy is just in the beginning stages in New York, however, surrogate-born people, who may also be donor-conceived, are similarly likely to want to know about their origins. If donor-conceived or surrogate-born people experience health problems, it may be necessary to determine whether they have an inherited condition or a condition that may be related to a prenatal exposure. Donor-conceived and surrogate-born people must be able to access the gamete donor's or surrogate's medical information.

The following provisions would permit donor-conceived and surrogate-born people to have access to such information by:

- Establishing a Bill of Rights of Donor-Conceived and Surrogate-Born Children, which includes the right to obtain a certified copy of their original birth certificate, the right to obtain medical information about any gamete donor and person who acted as surrogate; and the right to obtain identifying information about any identified gamete donor and person who acted as surrogate;⁴
- Requiring original birth certificates to list the name of the person who acted as surrogate, if applicable, and the name or identification number of any gamete donor, if applicable. The original birth certificate shall be sealed and will only be accessible by authorized individuals, including a donor-conceived or surrogate-born person upon reaching the age of majority; and
- Prohibiting nonidentified gamete donation in New York as of January 1, 2026. Specifically, this bill requires individuals located in or who are residents of NYS to donate their gametes as identified donors, and prohibits intended parents located in or who are residents of NYS from receiving gametes from nonidentified donors, effective January 1, 2026.

⁴ Identified gamete donation or identified gamete donor means that the gamete donor agrees to the release of their identifying and medical information upon request to a donor-conceived person who was conceived using their donor gametes and assisted reproduction once the donor-conceived person attains the age of eighteen, or to a legal parent or guardian if the donor-conceived person is under the age of eighteen.