

BECOMING A PARENT



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Fertility Equality

Fertility Equality is the belief that the ability to create a family should not be determined by one's wealth, gender, marital status or biology

New York State moved closer to making Fertility Equality a reality by passing the IVF and Fertility Preservation Law (in effect in 2020) and Child Parent Security Act (in effect in 2021)

IVF and Fertility Preservation Law expanded health insurance coverage for IVF and fertility preservation

The CPSA lifted the ban on surrogacy and provided pathways to parentage for parents who rely upon assisted reproduction and/or surrogacy

Fertility Law Basics

Assisted Reproduction- the method of achieving pregnancy other than sexual intercourse including sperm donation, artificial insemination, egg donation, embryo donation, in-vitro fertilization and transfer of embryos.

Infertility- disease of the reproductive system that impairs the body's ability to perform the basic function of reproduction

In-Vitro Fertilization- the process of combining egg and sperm in a laboratory. Resulting embryo can be transferred to a woman's uterus

Fertility Preservation- the process of saving or protecting eggs, sperm, or reproductive tissue so that a person can use them to have biological children in the future

Fertility Law Basics

Gestational Surrogacy- surrogate has no genetic connection to the child and gestates for the intended parent(s)

Traditional Surrogacy- surrogate provides her egg and gestates the child for intended parent(s)

Commercial Surrogacy- compensated surrogacy arrangement whereby the surrogate receives compensation beyond reimbursement for direct expenses

Compassionate Surrogacy- uncompensated surrogacy arrangement whereby the surrogate receives only reimbursement for direct expenses

Reasons for Assisted Reproduction, Fertility Preservation and Surrogacy

Infertility- lack of viable eggs,
sperm or unidentified
endometrial factor; medically
induced infertility due to
cancer treatment, etc.

Same Sex Intended Parents-
requiring either donor
sperm, donor eggs, surrogate

Single Parents- may require
use of donor egg, donor
sperm, oocyte
cryopreservation (egg
freezing), surrogate

IVF and Fertility Preservation Law Enacted in 2020

Requires large group (more than 100 employees) health insurance policies and contracts that provide medical, major medical, or similar comprehensive coverage to cover three cycles of IVF for infertility

Requires individual, small and large group insurance policies to cover fertility preservation services for people with infertility caused by another medical intervention (radiation, chemotherapy, surgery, etc.)

Child Parent Security Act

The CPSA was signed into law on April 3, 2020, and went into effect on February 15, 2021.

Amends current laws regarding judgments of parentage of children conceived through assisted reproduction or pursuant to surrogacy agreements

Allows intended parents to secure legal relationship prior to child's birth regardless of marital status

Overtures NYS ban on compensated gestational surrogacy

Establishes guidelines for payment to donors and persons acting as surrogate

Establishes Surrogates' Bill of Rights

Surrogacy

- Prior to CPSA Surrogacy Agreements were deemed void and unenforceable in NYS
- Under CPSA a woman (surrogate) carries a baby she has no genetic connection to with the intent that someone else (intended parent(s)) will be the parents
- The CPSA allows intended parents (“IPs”), regardless of whether one or both has a genetic connection to the child, to enter into a legal contract to compensate a surrogate to carry their baby and to obtain a pre-birth order of parentage
- If the surrogate has a genetic connection to the child (“genetic or traditional surrogate”), the agreement is unenforceable (regardless of whether she’s compensated) and there are criminal penalties if she is compensated



Surrogate's Bill of Rights

Surrogate's Bill of Rights enumerates the rights of a person acting as a surrogate. Any written or verbal agreement to waive or limit any of the surrogate's rights will be unenforceable and considered void as against public policy.

Health and Welfare Decisions: Surrogate has the right to make all health and welfare decisions regarding themselves and their pregnancy, including but not limited to whether to consent to multiple embryo transfer, whether or not to consent to a c-section, whether or not to terminate or continue pregnancy, selective reduction and medical provider choice.

Surrogate's Bill of Rights

Independent legal counsel of their own choosing paid for by IP'

Health insurance and medical costs- throughout the pregnancy and for twelve months after the birth, stillbirth, miscarriage or elective termination paid for by IP

Counseling-psychological counseling to address issues related to participation in surrogacy paid for by IP

Life Insurance-takes effect prior to taking any medication or treatment for embryo transfer. \$750k (or max qualified) paid by IP (may be waived if not compensated)

Right to terminate agreement prior to becoming pregnant

Surrogacy Process

IPs select a surrogate either independently or through surrogacy center

- *Surrogacy program screen surrogates*
- *IPs matched with Surrogate*

Clearances

- *Medical at fertility clinic*
- *Psychological by social worker*
- Insurance review to ensure surrogate has medical coverage

Surrogacy Agreement negotiated and executed

Independent Escrow Agent selected and escrow account created and funded

- *Insurance Purchased (medical, life, disability)*
- *Wills executed by IPs; Health Care Proxy/Living Will executed by Surrogate*

Legal Clearance issued to the fertility clinic

Embryo transfer occurs

Parentage Proceeding (typically during the 2nd trimester) results in Judgment of Parentage

Hospital made aware of the surrogacy arrangement and order of parentage

Surrogacy Agreement

Name and contact information for IPs, Surrogate (and Spouse), Attorneys, known gamete/embryo donor (or indicate anonymous), surrogacy program

Compensation-funds to be deposited with independent escrow agent prior to the start of medications

Disclosure-how medical costs will be covered including a review of the Surrogate's medical insurance

Agreement by Surrogate to undergo embryo transfer

Surrogacy Agreement

Agreement by Surrogate and spouse to surrender custody of the child at birth

IPs to accept custody and financial responsibility regardless of number, gender, mental/physical condition of children or lab error

Acknowledge receipt of the Surrogate's Bill of Rights

Surrogate makes all health and welfare decisions, including c-section, whether to allow a double embryo transfer, termination/continuation of the pregnancy

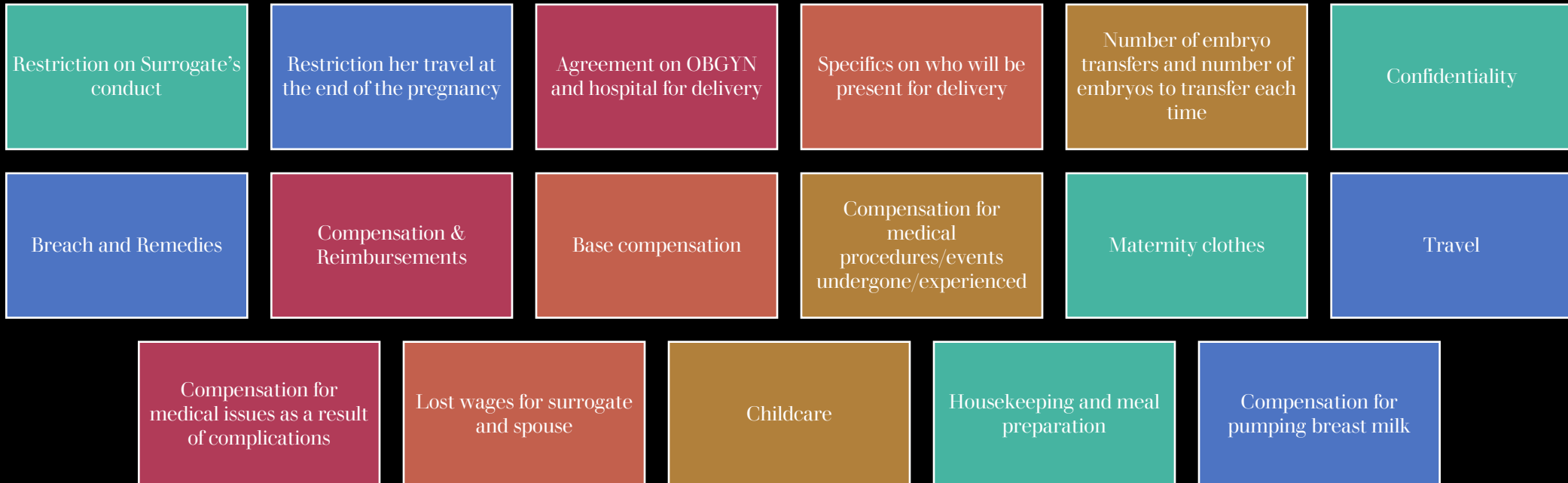
Right of Surrogate to obtain counseling

Notice that the compensation may affect eligibility for public benefits

Right to a disability insurance policy for the Surrogate

IPs to execute Wills prior to embryo transfer
Surrogate to execute living will

Additional Considerations in Surrogacy Agreement



Parentage for Children Born of Assisted Reproduction and Surrogacy

Prior to CPSA the law only addressed the presumption of paternity of children conceived by artificial insemination with donated sperm to a husband and wife

There was no protection for unmarried couples, single women, anyone using IVF

CPSA allows for intended parents to apply for a Judgment of Parentage upon conception in Supreme Court, Family Court or Surrogate's Court

Judgment of Parentage allows the intended parents to assert parental rights upon birth of the child

Parentage Proceedings

Parentage proceedings are relatively simple, and a Judgement of Parentage oftentimes is issued without a court appearance

Difficulties with parties applying for parentage:

- *When unmarried intended parents have children through assisted reproduction prior to CPSA and the gestating IP is contesting parentage for non-biologically related IP*
- *Surrogate is biologically related to child-intended parent(s) must adopt*



To Sum it Up

- New York State has expanded its laws within the last few years to support Fertility Equality
 - IVF and Fertility Preservation Law and CPSA provide additional pathways to parentage allowing NYS residence who rely upon Assisted Reproduction and Surrogacy to start a family, preserve their fertility and secure their rights as parents
 - Surrogacy is an important option for families experiencing fertility issues and/or LGBTQ families. For some it may be the only option to conceive a child biologically related to them.
 - The CPSA allows for parents and children of AR and surrogacy to secure their legal relationship regardless of biology or marital status.
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Parentage Proceedings Under the *Child - Parent Security Act*

In conjunction with the New York State budget for Fiscal Year 2020-2021, the Legislature passed the *Child - Parent Security Act*, which, for the first time, legalizes gestational surrogacy agreements in which the surrogate has not contributed genetic material. It further delineates procedures for establishing parentage for children conceived either as a result of such agreements or through assisted reproduction. See Laws of 2020, chapter 56, Part L (effective Feb. 15, 2021). Suggested forms for use in these proceedings will shortly be posted on the web-site of the New York State Unified Court System, www.nycourts.gov/forms/familycourt/parentage.shtml

The following is a summary of the key provisions of the Act:

1. Parentage Proceedings [Family Court Act Article 5-C]

The new statute contains a new Article 5-C of the Family Court Act, which sets forth a judicial procedure, governed by the Civil Practice Law and Rules, for establishing parentage in cases involving assisted reproduction except those in which “a person acting as a surrogate contributed the egg used in conception.” [FCA §§581-101, 581-201(a)]. The petition, which must be verified, may be brought by the child, a parent, a person claiming parentage, a social services agency, a person representing a minor or disabled person, or a “participant” (intended parent, surrogate, spouse of intended parent or surrogate or contributor of a gamete). [FCA §581-201(c)]. The petition may be brought in Supreme, Family or Surrogate’s Court, which may then exercise “exclusive, continuing jurisdiction” until the child reaches 180 days old. [FCA §581-206]. While intended parents need not be married, spouses of intended parents may obtain parentage judgments. [FCA §581-204]. A parentage judgment may be made prior to, but does not take effect until, the child’s birth [FCA §201(b)]. Notice of a parentage order must be sent to the NYS Department of Health or, where the child is born in New York City, the NYC Department of Health. [FCA §§581-202(g), 581-203(d)]. While the records of the court proceedings must be kept sealed, the parties and child have a right to inspect and copy the record and copies may be made available the NYS Office of Temporary and Disability Assistance, a Title IV-D child support agency in another state and local Support Collection Units to the extent necessary for the provision of child support services. [FCA §581-205].

(a). Assisted reproduction: The Court must find parentage of an intended parent if the following allegations are determined by the court to be true: (1) the intended parent is a New York resident or, if not, that the child was or will be born in New York within 90 days of filing; (2) if the intended parent is gestating, that the pregnancy resulted from assisted reproduction; (3) if the intended parent is non-gestating, a statement from both the gestating and non-gestating intended parent that the latter consented to assisted reproduction; and (4) proof that a donor does not intend to be a parent [FCA §581-202(c)]. Where the donor is anonymous, the donor’s intent may be demonstrated by a statement from the gamete storage facility or healthcare practitioner or by clear and convincing evidence of intent to be anonymous, or, where the donor is known, the donor’s intent may be demonstrated by a statement signed by the donor and gestating parent confirming that the donor “has no parental or proprietary interest in the gametes or embryos” or by providing the donor with at least 20 days prior notice of the proceeding [FCA §§581-202(d), 581-202(e)].

(b). Surrogacy Agreements: A parentage petition in a surrogacy agreement case may be brought any time after execution of the surrogacy agreement and must include allegations: (i) by the intended parents and surrogate that at least one of them has been a New York resident for at least six months and attesting to their knowing and voluntary consent to the agreement and request for a parentage judgment, and (ii) by the attorneys for all parties that the

requirements for surrogacy agreements set forth in Part 4 of the article have been satisfied. [FCA §581-203(c)]. If the attorneys' statements do not indicate full compliance, the Court may enforce the agreement if it finds "substantial compliance," or may adjudicate parentage in accordance with the child's "best interests." [FCA §581-203(e), 581-407]. The petition, which must be verified, may be brought by the child, a parent, a person claiming parentage, a social services agency, a person representing a minor or disabled person, or a "participant" (intended parent, surrogate, spouse of intended parent or surrogate or contributor of a gamete). [FCA §§581-203(e), 581-407].

A person may be eligible to act as a surrogate if she: (i) is at least 21 years of age, (ii) is a United States citizen or lawful permanent resident, (iii) is a New York resident for at least six months, if one of the intended parents is not a NYS resident, (iv) has not provided the egg for conception, (v) has completed a medical evaluation by a licensed health practitioner, (vi) has given informed consent after being informed of medical risks, (vii) has been represented by independent legal counsel, along with her spouse, if applicable, (viii) has or will obtain comprehensive medical insurance and life insurance policies that take effect prior to taking medication or beginning any embryo transfers, and (ix) any other criteria deemed appropriate by the Commissioner of Health [FCA §581-402(a)]. The surrogate's spouse must also provide informed consent unless they have lived apart for three years or have lived apart pursuant to an order, judgment or separation agreement acknowledged in the manner of a deed. [FCA §581-403(a)(2)].

At least one intended parent in a surrogacy agreement must be a United States citizen or lawful permanent resident and a New York resident for at least six months. Intended parents must be represented by independent legal counsel. An intended parent may be a single adult or, if a couple, may be married or in an intimate relationship. An intended parent may execute a surrogacy agreement without his or her spouse if they have lived apart for three years or if they have been separated pursuant to an order, judgment or separation agreement acknowledged in the manner of a deed. [FCA §581-402(b)]. If the intended parents are providing compensation, the funds must be placed in escrow and the agreement must also delineate how medical expenses will be covered [FCA §§581-403(f), 581-403(g)].

The surrogacy agreement must include, *inter alia*, an acknowledgment that the surrogate has received a copy of the "Surrogate's Bill of Rights," as set forth in Part 6 of FCA Article 5-c, and must provide that the surrogate has the right to make all health and welfare decisions regarding the pregnancy, to utilize medical personnel of her choosing, to be represented by independent legal counsel paid for by the intended parents and to provide or be provided with comprehensive health and life insurance policies. [FCA §§581-403(h), 581-602, 581-603, 581-604],]. It must also provide that the intended parent or parents must assume custody and responsibility for support of all children resulting from the pregnancy, responsibilities that are not assignable, and it must obligate them to execute a will prior to the embryo transfer delineating a guardian for all such children . *Id.* The agreement may be terminated on notice by the surrogate or the intended parent or parents prior to any pregnancy resulting from the embryo transfer [FCA §§581-405, 581-607].

While disputes regarding parentage may be adjudicated in Family, Surrogate's or Supreme Court, other disputes regarding surrogacy agreements may be adjudicated only in Supreme Court. The Court has discretion to utilize conferencing or mediation "at any point in the proceedings." While no specific performance remedy is available for a breach of a surrogacy agreement, all other "remedies available at law or equity." [FCA §581-409].

(c). Agreements regarding assisted reproduction: Written embryo disposition agreements between intended parents with joint dispositional control require that the parties were advised by independent legal counsel and, where the intended parents had been married, are binding upon divorce. An intended parent transferring rights to an embryo is deemed not to be a parent for any purpose, unless consenting to be a parent; such consent may be withdrawn [FCA §581-306]. If an intended parent transferring rights dies before transfer of eggs, embryos or sperm, the deceased person is not deemed a parent unless indicated in a written consent. [FCA §581-307]

(d). Compensation of donors and surrogates: As set forth in Part 5 of FCA Article 5-C, any compensation must be reasonable, must be negotiated in good faith, must not be contingent upon any characteristics of the child or children born as a result of the pregnancy and must not be paid for the “purchase of any gametes or embryos or for the release of any parental interest in a child.” Compensation may cover the period of pregnancy and a recuperative period of up to eight weeks. Compensation to donors in assisted reproduction may include economic losses resulting from the retrieval or storage of the gametes and may cover only storage fees, transportation costs and attorneys’ fees. [FCA §§581-501, 581-502].

2. Additional Family Court Act amendments:

a. Support Magistrates in Family Court: Family Court Act §439(a) is amended to make clear that, just as Support Magistrates have authority to adjudicate paternity matters, other than those involving custody, visitation or equitable estoppel, so, too, they have authority to adjudicate parentage under the new Article 5-c of the Family Court Act, with the exception of cases involving surrogacy agreements that do not conform to the statutory requirements and thus must be adjudicated in accordance with the child’s best interests pursuant to FCA §581-407.

b. Acknowledgment of Parentage and parentage references: Family Court Act §516-a is expanded to provide for “acknowledgments of parentage,” instead of “acknowledgments of paternity,” and to permit them to be signed by “intended parents.” Such acknowledgments will be deemed “void” as of the time of signing if an individual other than the signatory is a presumed or adjudicated parent or has signed a valid acknowledgment of parentage, or where the signatory was a gamete donor under FCA §581-302 or represented falsely that the child was a result of assisted reproduction. [FCA §516-a(c)]. All references to “acknowledgments of paternity” in any law are deemed to refer to “acknowledgments of parentage.” [FCA §516-a(f)]. Conforming amendments are made to refer to substitute “parentage” for “paternity” in FCA §§440 and 1017.

3. Domestic Relations Law amendments: DRL §73 is repealed, Part 8 is renamed “Genetic Surrogate Parenting Contracts” and DRL §121 is amended to make clear that genetic surrogacy agreements – those involving a surrogate who is genetically related to the child or children resulting from the pregnancy – remain contrary to public policy in New York.

4. Public Health Law amendments

a. Acknowledgments of Parentage: Sections 4135 and 4135-b of the Public Health Law are amended to substitute “alleged” for “putative” father and “acknowledgment of parentage” for “acknowledgment of paternity.” All references to “acknowledgments of paternity” are deemed to refer to “acknowledgments of parentage.” [Public Health Law §4135-b(6)]. Significantly, as in Family Court Act §516-a, *supra*, intended parents and “alleged genetic parents,” including those involved in assisted reproduction pursuant to Family Court Act §581-303, will be able to sign voluntary acknowledgments of parentage, thus immediately assuming the status of legal parents, assuming that they are “readily identifiable and available.” All existing provisions regarding acknowledgments of paternity are made applicable to these new acknowledgments of parentage.

However, such acknowledgments will be deemed “void” if an individual other than the signatory is a presumed or adjudicated parent or has signed a valid acknowledgment of parentage, or where the signatory was a gamete donor under FCA §581-302 or represented falsely that the child was a result of assisted reproduction. [Public Health Law §4135-b(1)(d)].

Acknowledgments must be filed, as applicable, with the NYS Department of Health or NYC Health Department, and full faith and credit must be accorded to acknowledgments of parentage executed in another state if they are signed records and comply with the laws of the other state. [Public Health Law §§4135-b(3), 4135-b(4)]. A new form Acknowledgment of Parentage (LDSS-5171) has been promulgated by the NYS Office of Temporary and Disability Assistance.

b. Gestational Surrogacy [Article 25-B]: A new section 2599-cc is added to the Public Health Law delineating regulations that the Department of Health is required to promulgate regarding gestational surrogacy. The regulations must include, but are not limited to, provisions requiring notice to surrogates of possible health risks as part of the process of obtaining informed consent, dissemination and posting of informational material, establishment of a voluntary registry of surrogates and tracking of information regarding surrogacy, protocols regarding medical screening of surrogates in consultation with the American College of Obstetricians and Gynecologists, and protocols aimed at reducing conflicts of interest. Confidentiality of information regarding surrogates must be assured. Additionally, a new subdivision four is added to Public Health Law §4365 requiring promulgation of regulations, in consultation with the Transplant Council and professional medical organizations, regarding egg donations.

5. Social Services Law amendments: Sections 111-c, 111-k and 372-c of the Social Services Law are amended to substitute “parentage” for references to “paternity.” SSL §111-k(2)(a) is amended to provide that parties in contested parentage proceedings may not be required to submit to genetic testing if a court has found that, *inter alia*, the child was conceived through assisted reproduction.

6. Regulation of Surrogacy Programs and Assisted Reproduction Service Providers [General Business Law Article 44]: A new Article 44 is added to the General Business Law to regulate surrogacy programs and assisted reproduction gamete banks, fertility clinics or other entities doing business in New York State, as well as surrogates residing in New York State and medical procedures performed in the State. It sets forth escrow requirements regarding funds, as well as conflicts of interests prohibitions regarding health care providers and attorneys representing intended and surrogate parents. [General Business Law §§1401, 1402, 1403]. In addition to submitting an annual report to the Legislature, the NYS Department of Health, in conjunction with the NYS Department of Financial Services, must promulgate regulations that provide, *inter alia*, for the surrogacy programs to monitor compliance with the surrogacy agreement requirements and for surrogacy programs and assisted reproduction providers to administer Department of Health informed consent procedures. [General Business Law §1404].

7. Insurance Law: Provisions have been added to sections 1113, 2105 of the Insurance Law with respect to indemnification of an intended parent for expenses arising out of certain acts by or death of a surrogate or for medical or hospital expenses as a result of complications experienced by a donor as a result of the gamete donation. Donor medical expense insurance is added to the list of “non-basic kinds of insurance.” [Insurance Law §§4101 and 4103].

8. Estates, Powers and Trusts Law: Section 4-1.2 of the EPTL is amended to provide that non-marital child is a legitimate child of, and may inherit from, a non-gestating intended parent, where the intended parent signed an acknowledgment of parentage, where parentage was adjudicated during the intended parent’s lifetime or where it is adjudicated by clear and

convincing evidence based upon a genetic marker test or by the parent “openly and notoriously” acknowledging the child during his or her lifetime. Additionally, section 4-1.3 of the EPTL is amended to expand the reach of the existing provisions regarding inheritance by children conceived after the death of a genetic parent to also cover inheritance after the death of an “intended parent,” as defined in FCA §581-101. Express consent must be in a written instrument executed not more than seven years prior to the intended person’s death and that if the assisted reproduction occurred after the intended parent’s death, the child was *in utero* no later than 24 months after the death or was born no later than 33 months after the death. If the intended person would be a genetic parent, the instrument must designate a person to make decisions regarding the genetic material . A template for the written instrument is set forth in subdivision (d) of the statute.

Effective: February 15, 2021

The Laws of New York Court Acts of New
York CHAPTER 686 Family Court ARTICLE
5-C Judgments of Parentage of Children
Conceived Through Assisted Reproduction or
Pursuant to Surrogacy Agreements PART 2
Judgment of Parentage
SECTION 581-201

Judgment of parentage

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 2

§ 581-201. Judgment of parentage. (a) A civil proceeding may be maintained to adjudicate the parentage of a child under the circumstances set forth in this article. This proceeding is governed by the civil practice law and rules.

(b) A judgment of parentage may be issued prior to birth but shall not become effective until the birth of the child.

(c) A petition for a judgment of parentage or nonparentage of a child conceived through assisted reproduction may be initiated by (1) a child, or (2) a parent, or (3) a participant, or (4) a person with a claim to parentage, or (5) social services official or other governmental agency authorized by other law, or (6) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor, in order to legally establish the child-parent relationship of either a child born through assisted reproduction under part three of this article or a child born pursuant to a surrogacy agreement under part four of this article.

SECTION 581-202

Proceeding for judgment of parentage of a child conceived through assisted reproduction

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 2

§ 581-202. Proceeding for judgment of parentage of a child conceived through assisted reproduction. (a) A proceeding for a judgment of parentage with respect to a child conceived through assisted reproduction may be commenced:

(1) if the intended parent or child resides in New York state, in the county where the intended parent resides any time after pregnancy is achieved or in the county where the child was born or resides; or

(2) if the intended parent and child do not reside in New York state, up to ninety days after the birth of the child in the county where the child was born.

(b) The petition for a judgment of parentage must be verified.

(c) Where a petition includes the following truthful statements, the court shall adjudicate the intended parent to be the parent of the child:

(1) a statement that an intended parent has been a resident of the state for at least six months or if an intended parent is not a New York state resident, that the child will be or was born in the state within ninety days of filing; and

(2) a statement from the gestating intended parent that the gestating intended parent became pregnant as a result of assisted reproduction; and

(3) in cases where there is a non-gestating intended parent, a statement from the gestating intended parent and non-gestating intended parent that the non-gestating intended parent consented to assisted reproduction pursuant to section 581-304 of this article; and

(4) proof of any donor's donative intent.

(d) The following shall be deemed sufficient proof of a donor's donative intent for purposes of this section:

(1) in the case of an anonymous donor or where gametes or embryos have previously been released to a gamete or embryo storage facility or in the presence of a health care practitioner, either:

(i) a statement or documentation from the gamete or embryo storage facility or health care practitioner stating or demonstrating that such gametes or embryos were anonymously donated or had previously been released; or

(ii) clear and convincing evidence that the gamete or embryo donor intended to donate gametes or embryos anonymously or intended to release such gametes or embryos to a gamete or embryo storage facility or health care practitioner; or

(2) in the case of a donation from a known donor, either: a. a record from the gamete or embryo donor acknowledging the donation and confirming that the donor has no parental or proprietary interest in the gametes or embryos. The record shall be signed by the gestating intended parent and the gamete or embryo donor. The record may be, but is not required to be, signed:

(i) before a notary public, or

(ii) before two witnesses who are not the intended parents, or

(iii) before a health care practitioner; or

b. clear and convincing evidence that the gamete or embryo donor agreed, prior to conception, with the gestating parent that the donor has no parental or proprietary interest in the gametes or embryos.

(e)(1) In the absence of evidence pursuant to paragraph two of this

subdivision, notice shall be given to the donor at least twenty days prior to the date set for the proceeding to determine the existence of donative intent by delivery of a copy of the petition and notice pursuant to section three hundred eight of the civil practice law and rules. Upon a showing to the court, by affidavit or otherwise, on or before the date of the proceeding or within such further time as the court may allow, that personal service cannot be effected at the donor's last known address with reasonable effort, notice may be given, without prior court order therefore, at least twenty days prior to the proceeding by registered or certified mail directed to the donor's last known address. Notice by publication shall not be required to be given to a donor entitled to notice pursuant to the provisions of this section.

(2) Notwithstanding the above, where sperm is provided under the supervision of a health care practitioner to someone other than the sperm provider's intimate partner or spouse without a record of the sperm provider's intent to parent notice is not required.

(f) In cases not covered by subdivision (c) of this section, the court shall adjudicate the parentage of the child consistent with part three of this article.

(g) Where the requirements of subdivision (c) of this section are met or where the court finds the intended parent to be a parent under subdivision (e) of this section, the court shall issue a judgment of parentage:

(1) declaring, that upon the birth of the child, the intended parent or parents is or are the legal parent or parents of the child; and

(2) ordering the intended parent or parents to assume responsibility for the maintenance and support of the child immediately upon the birth of the child; and

(3) if there is a donor, ordering that the donor is not a parent of the child; and

(4) ordering that:

(i) Pursuant to section two hundred fifty-four of the judiciary law, the clerk of the court shall transmit to the state commissioner of health, or for a person born in New York city, to the commissioner of health of the city of New York, on a form prescribed by the commissioner, a written notification of such entry together with such other facts as may assist in identifying the birth record of the person whose parentage was in issue and, if such person whose parentage has been determined is under eighteen years of age, the clerk shall also transmit forthwith to the registry operated by the department of social services pursuant to section three hundred seventy-two-c of the social services law a notification of such determination; and

(ii) Pursuant to section forty-one hundred thirty-eight of the public health law and NYC Public Health Code section 207.05 that upon receipt of a judgment of parentage the local registrar where a child is born will report the parentage of the child to the appropriate department of health in conformity with the court order. If an original birth certificate has already been issued, the appropriate department of health will amend the birth certificate in an expedited manner and seal the previously issued birth certificate except that it may be rendered accessible to the child at eighteen years of age or the legal parent or parents.

SECTION 581-203

Proceeding for judgment of parentage of a child conceived pursuant to a surrogacy agreement

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 2

§ 581-203. Proceeding for judgment of parentage of a child conceived pursuant to a surrogacy agreement. (a) The proceeding may be commenced (1) in any county where an intended parent resided any time after the surrogacy agreement was executed; (2) in the county where the child was born or resides; or (3) in the county where the surrogate resided any

time after the surrogacy agreement was executed.

(b) The proceeding may be commenced at any time after the surrogacy agreement has been executed and the person acting as surrogate and all intended parents are necessary parties.

(c) The petition for a judgment of parentage must be verified and include the following:

(1) a statement that the person acting as surrogate or at least one of the intended parents has been a resident of the state for at least six months at the time the surrogacy agreement was executed; and

(2) a certification from the attorney representing the intended parent or parents and the attorney representing the person acting as surrogate that the requirements of part four of this article have been met; and

(3) a statement from all parties to the surrogacy agreement that they knowingly and voluntarily entered into the surrogacy agreement and that the parties are jointly requesting the judgment of parentage.

(d) Where the court finds the statements required by subdivision (c) of this section to be true, the court shall issue a judgment of parentage, without additional proceedings or documentation:

(1) declaring, that upon the birth of the child born during the term of the surrogacy agreement, the intended parent or parents are the only legal parent or parents of the child;

(2) declaring, that upon the birth of the child born during the term of the surrogacy agreement, the person acting as surrogate, and the spouse of the person acting as surrogate, if any, is not the legal parent of the child;

(3) declaring that upon the birth of the child born during the term of the surrogacy agreement, the donors, if any, are not the parents of the child;

(4) ordering the person acting as surrogate and the spouse of the person acting as surrogate, if any, to transfer the child to the intended parent or parents if this has not already occurred;

(5) ordering the intended parent or parents to assume responsibility for the maintenance and support of the child immediately upon the birth of the child; and

(6) ordering that:

(i) Pursuant to section two hundred fifty-four of the judiciary law, the clerk of the court shall transmit to the state commissioner of health, or for a person born in New York city, to the commissioner of health of the city of New York, on a form prescribed by the commissioner, a written notification of such entry together with such other facts as may assist in identifying the birth record of the person whose parentage was in issue and, if the person whose parentage has been determined is under eighteen years of age, the clerk shall also transmit to the registry operated by the department of social services pursuant to section three hundred seventy-two-c of the social services law a notification of the determination; and

(ii) Pursuant to section forty-one hundred thirty-eight of the public health law and NYC Public Health Code section 207.05 that upon receipt of a judgement of parentage the local registrar where a child is born will report the parentage of the child to the appropriate department of health in conformity with the court order. If an original birth certificate has already been issued, the appropriate department of health will amend the birth certificate in an expedited manner and seal the previously issued birth certificate except that it may be rendered accessible to the child at eighteen years of age or the legal parent or parents.

(e) In the event the certification required by paragraph two of subdivision (c) of this section cannot be made because of a technical or non-material deviation from the requirements of this article; the court

may nevertheless enforce the agreement and issue a judgment of parentage if the court determines the agreement is in substantial compliance with the requirements of this article. In the event that any other requirements of subdivision (c) of this section are not met, the court shall determine parentage according to part four of this article.

SECTION 581-301

Scope of article

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 3

§ 581-301. Scope of article. This article does not apply to the birth of a child conceived by means of sexual intercourse.

SECTION 581-302

Status of donor

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 3

§ 581-302. Status of donor. A donor is not a parent of a child conceived by means of assisted reproduction where there is proof of donative intent under subdivision (d) of section 581-202 of this article.

SECTION 581-303

Parentage of child of assisted reproduction

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 3

§ 581-303. Parentage of child of assisted reproduction. (a) An individual who provides gametes for, or who consents to, assisted reproduction with the intent to be a parent of the child with the consent of the gestating parent as provided in section 581-304 of this part, is a parent of the resulting child for all legal purposes.

(b) The court shall issue a judgment of parentage pursuant to this article upon application by any participant.

SECTION 581-304

Consent to assisted reproduction

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 3

§ 581-304. Consent to assisted reproduction. (a) Where the intended parent who gives birth to a child by means of assisted reproduction is a spouse, the consent of both spouses to the assisted reproduction is presumed and neither spouse may challenge the parentage of the child, except as provided in section 581-305 of this part.

(b) Where the intended parent who gives birth to a child by means of assisted reproduction is not a spouse, the consent to the assisted reproduction must be in a record in such a manner as to indicate the mutual agreement of the intended parents to conceive and parent a child together.

(c) The absence of a record described in subdivision (b) of this section shall not preclude a finding that such consent existed if the court finds by clear and convincing evidence that at the time of the assisted reproduction the intended parents agreed to conceive and parent the child together.

SECTION 581-305

Limitation on spouses' dispute of parentage of child of assisted reproduction

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 3

§ 581-305. Limitation on spouses' dispute of parentage of child of assisted reproduction. (a) Neither spouse may challenge the marital presumption of parentage of a child created by assisted reproduction during the marriage unless the court finds by clear and convincing evidence that one spouse used assisted reproduction without the knowledge and consent of the other spouse.

(b) Notwithstanding the foregoing, a married individual may use assisted reproduction and the marital presumption shall not apply if the spouses:

(1) are living separate and apart pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded; or

(2) have been living separate and apart for at least three years prior to the use of assisted reproduction.

(c) The limitation provided in this section applies to a spousal relationship that has been declared invalid after assisted reproduction or artificial insemination.

SECTION 581-306

Effect of embryo disposition agreement between intended parents which transfers legal rights and dispositional control to one intended pa...

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 3

§ 581-306. Effect of embryo disposition agreement between intended parents which transfers legal rights and dispositional control to one intended parent. (a) An embryo disposition agreement between intended parents with joint dispositional control of an embryo shall be binding under the following circumstances:

(1) it is in writing;

(2) each intended parent had the advice of independent legal counsel prior to its execution, which may be paid for by either intended parent; and

(3) where the intended parents are married, transfer of legal rights and dispositional control occurs only upon divorce.

(b) The intended parent who transfers legal rights and dispositional control of the embryo is not a parent of any child conceived from the embryo unless the agreement states that he or she consents to be a parent and that consent is not withdrawn consistent with subdivision (c) of this section.

(c) If the intended parent transferring legal rights and dispositional control consents to be a parent, he or she may withdraw his or her

consent to be a parent upon written notice to the embryo storage facility and to the other intended parent prior to transfer of the embryo. If he or she timely withdraws consent to be a parent he or she is not a parent for any purpose including support obligations but the embryo transfer may still proceed.

(d) An embryo disposition agreement or advance directive that is not in compliance with subdivision (a) of this section may still be found to be enforceable by the court after balancing the respective interests of the parties except that the intended parent who divested him or herself of legal rights and dispositional control may not be declared to be a parent for any purpose without his or her consent. The parent awarded legal rights and dispositional control of the embryos shall, in this instance, be declared to be the only parent of the child.

SECTION 581-307

Effect of death of intended parent

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 3

§ 581-307. Effect of death of intended parent. If an individual who consented in a record to be a parent by assisted reproduction dies before the transfer of eggs, sperm, or embryos, the deceased individual is not a parent of the resulting child unless the deceased individual consented in a signed record that if assisted reproduction were to occur after death, the deceased individual would be a parent of the child, provided that the record complies with the estates, powers and trusts law. Any rights of the child born after the death of an intended parent may be enforced by a government agency authorized by law, including but not limited to a department of social services.

SECTION 581-401

Surrogacy agreement authorized

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 4

§ 581-401. Surrogacy agreement authorized. (a) If eligible under this article to enter into a surrogacy agreement, a person acting as

surrogate, the spouse of the person acting as surrogate, if applicable, and the intended parent or parents may enter into a surrogacy agreement which will be enforceable provided the surrogacy agreement meets the requirements of this article.

(b) A surrogacy agreement shall not apply to the birth of a child conceived by means of sexual intercourse, or where the person acting as surrogate contributed the egg used in conception.

(c) A surrogacy agreement may provide for payment of compensation under part five of this article.

SECTION 581-402

Eligibility to enter surrogacy agreement

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 4

§ 581-402. Eligibility to enter surrogacy agreement. (a) A person acting as surrogate shall be eligible to enter into an enforceable surrogacy agreement under this article if the person acting as surrogate has met the following requirements at the time the surrogacy agreement is executed:

- (1) the person acting as surrogate is at least twenty-one years of age;
- (2) the person acting as surrogate is a United States citizen or a lawful permanent resident and, where at least one intended parent is not a resident of New York state for six months, was a resident of New York state for at least six months;
- (3) the person acting as surrogate has not provided the egg used to conceive the resulting child;
- (4) the person acting as surrogate has completed a medical evaluation with a health care practitioner relating to the anticipated pregnancy. Such medical evaluation shall include a screening of the medical history of the potential surrogate including known health conditions that may pose risks to the potential surrogate or embryo during pregnancy;

(5) the person acting as surrogate has given informed consent for the surrogacy after the licensed health care practitioner inform them of the medical risks of surrogacy including the possibility of multiple births, risk of medications taken for the surrogacy, risk of pregnancy complications, psychological and psychosocial risks, and impacts on their personal lives;

(6) the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, have been represented throughout the contractual process and the duration of the contract and its execution by independent legal counsel of their own choosing who is licensed to practice law in the state of New York which shall be paid for by the intended parent or parents except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay the fee for such legal counsel. Where the intended parent or parents are paying for the independent legal counsel of the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, a separate retainer agreement shall be prepared clearly stating that such legal counsel will only represent the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, in all matters pertaining to the surrogacy agreement, that such legal counsel will not offer legal advice to any other parties to the surrogacy agreement, and that the attorney-client relationship lies with the person acting as surrogate and the spouse of the person acting as surrogate, if applicable;

(7) the person acting as surrogate has or the surrogacy agreement stipulates that the person acting as surrogate will obtain a comprehensive health insurance policy that takes effect prior to taking any medication or commencing treatment to further embryo transfer that covers preconception care, prenatal care, major medical treatments, hospitalization, and behavioral health care, and the comprehensive policy has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy; the policy shall be paid for, whether

directly or through reimbursement or other means, by the intended parent or parents on behalf of the person acting as surrogate pursuant to the surrogacy agreement, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay for the health insurance policy. The intended parent or parents shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with preconception, pregnancy, childbirth, or postnatal care, that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage, or termination of the pregnancy. A person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents make such payments or reimbursements;

(8) the surrogacy agreement must provide that the intended parent or parents shall procure and pay for a life insurance policy for the person acting as surrogate that takes effect prior to taking any medication or the commencement of medical procedures to further embryo transfer, provides a minimum benefit of seven hundred fifty thousand dollars or the maximum amount the person acting as surrogate qualifies for if less than seven hundred fifty thousand dollars, and has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, with a beneficiary or beneficiaries of their choosing. The policy shall be paid for, whether directly or through reimbursement or other means, by the intended parent or parents on behalf of the person acting as surrogate pursuant to the surrogacy agreement, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay for the life insurance policy; and

(9) the person acting as surrogate meets all other requirements deemed appropriate by the commissioner of health regarding the health of the prospective surrogate.

(b) The intended parent or parents shall be eligible to enter into an enforceable surrogacy agreement under this article if he, she or they

have met the following requirements at the time the surrogacy agreement was executed:

(1) at least one intended parent is a United States citizen or a lawful permanent resident and was a resident of New York state for at least six months;

(2) the intended parent or parents has been represented throughout the contractual process and the duration of the contract and its execution by independent legal counsel of his, her or their own choosing who is licensed to practice law in the state of New York; and

(3) he or she is an adult person who is not in a spousal relationship, or adult spouses together, or any two adults who are intimate partners together, except an adult in a spousal relationship is eligible to enter into an enforceable surrogacy agreement without his or her spouse if:

(i) they are living separate and apart pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded; or

(ii) they have been living separate and apart for at least three years prior to execution of the surrogacy agreement.

(c) where the spouse of an intended parent is not a required party to the agreement, the spouse is not an intended parent and shall not have rights or obligations to the child.

SECTION 581-403

Requirements of surrogacy agreement

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 4

§ 581-403. Requirements of surrogacy agreement. A surrogacy agreement shall be deemed to have satisfied the requirements of this article and be enforceable if it meets the following requirements:

(a) it shall be in a signed record verified or executed before two

non-party witnesses by:

(1) each intended parent, and

(2) the person acting as surrogate, and the spouse of the person acting as surrogate, if any, unless:

(i) the person acting as surrogate and the spouse of the person acting as surrogate are living separate and apart pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded; or

(ii) have been living separate and apart for at least three years prior to execution of the surrogacy agreement;

(b) it shall be executed prior to the person acting as surrogate taking any medication or the commencement of medical procedures in the furtherance of embryo transfer, provided the person acting as surrogate shall have provided informed consent to undergo such medical treatment or medical procedures prior to executing the agreement;

(c) it shall be executed by a person acting as surrogate meeting the eligibility requirements of subdivision (a) of section 581-402 of this part and by the spouse of the person acting as surrogate, unless the signature of the spouse of the person acting as surrogate is not required as set forth in this section;

(d) it shall be executed by intended parent or parents who met the eligibility requirements of subdivision (b) of section 581-402 of this part;

(e) the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, and the intended parent or parents shall have been represented throughout the contractual process and the duration of the contract and its execution by separate, independent legal counsel of their own choosing;

(f) if the surrogacy agreement provides for the payment of compensation to the person acting as surrogate, the funds for base compensation and reasonable anticipated additional expenses shall have been placed in escrow with an independent escrow agent, who consents to the jurisdiction of New York courts for all proceedings related to the enforcement of the escrow agreement, prior to the person acting as surrogate commencing with any medical procedure other than medical evaluations necessary to determine the person acting as surrogate's eligibility;

(g) the surrogacy agreement must include information disclosing how the intended parent or parents will cover the medical expenses of the person acting as surrogate and the child. If comprehensive health care coverage is used to cover the medical expenses, the disclosure shall include a review and summary of the health care policy provisions related to coverage and exclusions for the person acting as surrogate's pregnancy; and

(h) it shall include the following information:

(1) the date, city and state where the surrogacy agreement was executed;

(2) the first and last names of and contact information for the intended parent or parents and of the person acting as surrogate;

(3) the first and last names of and contact information for the persons from which the gametes originated, if known. The agreement shall specify whether the gametes provided were eggs, sperm, or embryos;

(4) the name of and contact information for the licensed and registered surrogacy program handling the surrogacy agreement; and

(5) the name of and contact information for the attorney representing the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, and the attorney representing the intended

parent or parents; and

(i) the surrogacy agreement must comply with all of the following terms:

(1) As to the person acting as surrogate and the spouse of the person acting as surrogate, if applicable:

(i) the person acting as surrogate agrees to undergo embryo transfer and attempt to carry and give birth to the child;

(ii) the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, agree to surrender custody of all resulting children to the intended parent or parents immediately upon birth;

(iii) the surrogacy agreement shall include the name of the attorney representing the person acting as surrogate and, if applicable, the spouse of the person acting as surrogate;

(iv) the surrogacy agreement must include an acknowledgement by the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, that they have received a copy of the Surrogate's Bill of Rights from their legal counsel;

(v) the surrogacy agreement must permit the person acting as surrogate to make all health and welfare decisions regarding themselves and their pregnancy including but not limited to, whether to consent to a cesarean section or multiple embryo transfer, and notwithstanding any other provisions in this chapter, provisions in the agreement to the contrary are void and unenforceable. This article does not diminish the right of the person acting as surrogate to terminate or continue a pregnancy;

(vi) the surrogacy agreement shall permit the person acting as a surrogate to utilize the services of a health care practitioner of the person's choosing;

(vii) the surrogacy agreement shall not limit the right of the person acting as surrogate to terminate or continue the pregnancy or reduce or retain the number of fetuses or embryos the person is carrying;

(viii) the surrogacy agreement shall provide for the right of the person acting as surrogate, upon request, to obtain counseling to address issues resulting from the person's participation in the surrogacy agreement, including, but not limited to, counseling following delivery. The cost of that counseling shall be paid by the intended parent or parents;

(ix) the surrogacy agreement must include a notice that any compensation received pursuant to the agreement may affect the person acting as surrogate's ability for public benefits or the amount of such benefits; and

(x) the surrogacy agreement shall provide that, upon the person acting as surrogate's request, the intended parent or parents have or will procure and pay for a disability insurance policy for the person acting as surrogate; the person acting as surrogate may designate the beneficiary of the person's choosing.

(2) As to the intended parent or parents:

(i) the intended parent or parents agree to accept custody of all resulting children immediately upon birth regardless of number, gender, or mental or physical condition and regardless of whether the intended embryos were transferred due to a laboratory error without diminishing the rights, if any, of anyone claiming to have a superior parental interest in the child; and

(ii) the intended parent or parents agree to assume responsibility for the support of all resulting children immediately upon birth; and

(iii) the surrogacy agreement shall include the name of the attorney representing the intended parent or parents; and

(iv) the surrogacy agreement shall provide that the rights and obligations of the intended parent or parents under the surrogacy agreement are not assignable; and

(v) the intended parent or parents agree to execute a will, prior to the embryo transfer, designating a guardian for all resulting children and authorizing their executor to perform the intended parent's or parents' obligations pursuant to the surrogacy agreement.

SECTION 581-404

Surrogacy agreement: effect of subsequent spousal relationship

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 4

§ 581-404. Surrogacy agreement: effect of subsequent spousal relationship. (a) After the execution of a surrogacy agreement under this article, the subsequent spousal relationship of the person acting as surrogate does not affect the validity of a surrogacy agreement, the consent of the spouse of the person acting as surrogate to the agreement shall not be required, and the spouse of the person acting as surrogate shall not be the presumed parent of any resulting children.

(b) The subsequent separation or divorce of the intended parents does not affect the rights, duties and responsibilities of the intended parents as outlined in the surrogacy agreement. After the execution of a surrogacy agreement under this article, the subsequent spousal relationship of the intended parent does not affect the validity of a surrogacy agreement, and the consent of the spouse of the intended parent to the agreement shall not be required.

SECTION 581-405

Termination of surrogacy agreement

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 4

§ 581-405. Termination of surrogacy agreement. After the execution of a surrogacy agreement but before the person acting as surrogate becomes pregnant by means of assisted reproduction, the person acting as surrogate, the spouse of the person acting as surrogate, if applicable,

or any intended parent may terminate the surrogacy agreement by giving notice of termination in a record to all other parties. Upon proper termination of the surrogacy agreement the parties are released from all obligations recited in the surrogacy agreement except that the intended parent or parents remains responsible for all expenses that are reimbursable under the agreement which have been incurred by the person acting as surrogate through the date of termination. If the intended parent or parents terminate the surrogacy agreement pursuant to this section after the person acting as surrogate has taken any medication or commenced treatment to further embryo transfer, such intended parent or parents shall be responsible for paying for or reimbursing the person acting as surrogate for all co-payments, deductibles, any other out-of-pocket medical costs, and any other economic losses incurred within twelve months of the termination of the agreement and associated with taking such medication or undertaking such treatment. Unless the agreement provides otherwise, the person acting as surrogate is entitled to keep all payments received and obtain all payments to which the person is entitled up until the date of termination of the agreement. Neither a person acting as surrogate nor the spouse of the person acting as surrogate, if any, is liable to the intended parent or parents for terminating a surrogacy agreement as provided in this section.

SECTION 581-406

Parentage under compliant surrogacy agreement

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 4

§ 581-406. Parentage under compliant surrogacy agreement. Upon the birth of a child conceived by assisted reproduction under a surrogacy agreement that complies with this part, each intended parent is, by operation of law, a parent of the child and neither the person acting as a surrogate nor the person's spouse, if any, is a parent of the child.

SECTION 581-407

Insufficient surrogacy agreement

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 4

§ 581-407. Insufficient surrogacy agreement. If a surrogacy agreement does not meet the material requirements of this article, the agreement

is not enforceable and the court shall determine parentage based on the intent of the parties, taking into account the best interests of the child. An intended parent's absence of genetic connection to the child is not a sufficient basis to deny that individual a judgment of legal parentage.

SECTION 581-408

Absence of surrogacy agreement

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 4

§ 581-408. Absence of surrogacy agreement. Where there is no surrogacy agreement, the parentage of the child will be determined based on other laws of this state.

SECTION 581-409

Dispute as to surrogacy agreement

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 4

§ 581-409. Dispute as to surrogacy agreement. (a) Any dispute which is related to a surrogacy agreement other than disputes as to parentage shall be resolved by the supreme court, which shall determine the respective rights and obligations of the parties, in any proceeding initiated pursuant to this section, the court may, at its discretion, authorize the use of conferencing or mediation at any point in the proceedings.

(b) Except as expressly provided in the surrogacy agreement, the intended parent or parents and the person acting as surrogate shall be entitled to all remedies available at law or equity in any dispute related to the surrogacy agreement.

(c) There shall be no specific performance remedy available for a breach.

SECTION 581-501

Reimbursement

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 5

§ 581-501. Reimbursement. A donor who has entered into a valid agreement to be a donor may receive reimbursement from an intended parent or parents for economic losses incurred in connection with the donation which result from the retrieval or storage of gametes or embryos.

SECTION 581-502

Compensation

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 5

§ 581-502. Compensation. (a) Compensation may be paid to a donor or person acting as surrogate based on medical risks, physical discomfort, inconvenience and the responsibilities they are undertaking in connection with their participation in the assisted reproduction. Under no circumstances may compensation be paid to purchase gametes or embryos or for the release of a parental interest in a child.

(b) The compensation, if any, paid to a donor or person acting as surrogate must be reasonable and negotiated in good faith between the parties, and said payments to a person acting as surrogate shall not exceed the duration of the pregnancy and recuperative period of up to eight weeks after the birth of any resulting children.

(c) Compensation may not be conditioned upon the purported quality or genome-related traits of the gametes or embryos.

(d) Compensation may not be conditioned on actual genotypic or phenotypic characteristics of the donor or of any resulting children.

(e) Compensation to an embryo donor shall be limited to storage fees, transportation costs and attorneys' fees.

SECTION 581-601

Applicability

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 6

§ 581-601. Applicability. The rights enumerated in this part shall apply to any person acting as surrogate in this state, notwithstanding

any surrogacy agreement, judgment of parentage, memorandum of understanding, verbal agreement or contract to the contrary. Except as otherwise provided by law, any written or verbal agreement purporting to waive or limit any of the rights in this part is void as against public policy. The rights enumerated in this part are not exclusive, and are in addition to any other rights provided by law, regulation, or a surrogacy agreement that meets the requirements of this article.

SECTION 581-602

Health and welfare decisions

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 6

§ 581-602. Health and welfare decisions. A person acting as surrogate has the right to make all health and welfare decisions regarding them-self and their pregnancy, including but not limited to whether to consent to a cesarean section or multiple embryo transfer, to utilize the services of a health care practitioner of their choosing, whether to terminate or continue the pregnancy, and whether to reduce or retain the number of fetuses or embryos they are carrying.

SECTION 581-603

Independent legal counsel

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 6

§ 581-603. Independent legal counsel. A person acting as surrogate has the right to be represented throughout the contractual process and the duration of the surrogacy agreement and its execution by independent legal counsel of their own choosing who is licensed to practice law in the state of New York, to be paid for by the intended parent or parents.

SECTION 581-604

Health insurance and medical costs

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 6

§ 581-604. Health insurance and medical costs. A person acting as surrogate has the right to have a comprehensive health insurance policy that covers preconception care, prenatal care, major medical treatments, hospitalization and behavioral health care for a term that extends throughout the duration of the expected pregnancy and for twelve months

after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, to be paid for by the intended parent or parents. The intended parent or parents shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with pregnancy, childbirth, or postnatal care that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage, or the termination of the pregnancy. A person acting as a surrogate who is receiving no compensation may waive the right to have the intended parent or parents make such payments or reimbursements.

SECTION 581-605

Counseling

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 6

§ 581-605. Counseling. A person acting as surrogate has the right to obtain a comprehensive health insurance policy that covers behavioral health care and will cover the cost of psychological counseling to address issues resulting from their participation in a surrogacy and such policy shall be paid for by the intended parent or parents.

SECTION 581-606

Life insurance

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 6

§ 581-606. Life insurance. A person acting as surrogate has the right to be provided a life insurance policy that takes effect prior to taking any medication or commencement of treatment to further embryo transfer, provides a minimum benefit of seven hundred fifty thousand dollars, or the maximum amount the person acting as surrogate qualifying for it less than seven hundred fifty thousand dollars, and has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, with a beneficiary or beneficiaries of their choosing, to be paid for by the intended parent or parents.

SECTION 581-607

Termination of surrogacy agreement

Family Court Act (FCT) CHAPTER 686, ARTICLE 5-C, PART 6

§ 581-607. Termination of surrogacy agreement. A person acting as surrogate has the right to terminate a surrogacy agreement prior to becoming pregnant by means of assisted reproduction pursuant to section 581-405 of this article.