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And Surrogacy Makes 3

In New York, a Push for Compensated Surrogacy

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David Sigal, left, a filmmaker, and Brad Hoylman, a New York State senator, with their daughter, Silvia Hoylman-Sigal, now 3. Nicole Bengiveno/The New York Times

A month before their baby's due date, Brad Hoylman and David Sigal got a call from the woman they had hired to have their child.

She was having contractions; come right away.

Mr. Sigal, a filmmaker, had the more flexible schedule. So after a sleepless night, he hopped on a plane to San Diego while Mr. Hoylman stayed in New York and frantically oversaw the dusty conversion of their TV room into a nursery.

The contractions turned out to be a false alarm, but Mr. Sigal stayed. And stayed, touching up his documentary in his hotel room, going to family outings — a picnic, a cheerleading event — with the surrogate and her daughters, and calling Mr. Hoylman “every 10 minutes” with updates.

Four weeks later, the baby was induced, and Mr. Hoylman flew in for the birth.

“The timing was perfect,” Mr. Hoylman said. “I cut the cord and David —”

“Held her,” Mr. Sigal finished the sentence.

Such is the world of gestational surrogacy, in which a woman is paid to go through the pregnancy and birth of a child who is not genetically related to her and then promises to give that child away. To anyone who has had a baby, or known someone who has, the couple’s tireless zest for reciting their daughter’s birth story will bring a knowing smile, maybe a jaded shrug. But for Mr. Sigal and Mr. Hoylman, two gay men, the birth narrative carries with it an extra frisson of the illicit that seems to them more than a little archaic and unfair in the post-marriage-equality world.



Silvia was conceived via a gestational surrogate in San Diego, with both men contributing sperm. Compensated surrogacy is prohibited in New York, but Mr. Hoylman is trying to change that with a new bill. Nicole Bengiveno/The New York Times

They had their baby in California because if they had had her in New York, they would have been breaking a 1992 New York law that bars commercial surrogacy contracts and equates them with baby-selling — a legacy of the notorious Baby M case of the 1980s.

Now Mr. Hoylman, as a novice state senator, is in a position to do something about it. He is the co-sponsor of a proposed law that would overturn the current law and make compensated surrogacy legal in New York State.

Surrogate baby-making has long been a path taken by the affluent and celebrities, partly because it takes good legal advice and money to accomplish. But in recent years, it has been growing among gay men, who in a fundamentally conservative embrace of family values, see having children and building a family as the logical next step after getting married.

“Not to be cliché, but you know how the phrase goes — first comes love, then comes marriage, then comes the baby and the baby carriage,” said Allison Steinberg, a spokeswoman for the Empire State Pride Agenda, which has endorsed the bill.

The bill’s supporters argue that it makes no sense for New York, which has a large number of fertility clinics, not to mention a flourishing gay community, not to be able to offer commercial surrogacy to those who want it. And they say that making surrogacy more widely available could reduce the exorbitant costs, easily as much as \$100,000 per baby.

In Mr. Hoylman and Mr. Sigal’s case, neither of their parents expected them to have children. “Now they think he’s a family man,” Mr. Sigal said, grinning at his husband.

“It’s a funny phrase,” Mr. Hoylman said. “This is what it takes for people to relate to you.”

Mr. Hoylman says views on his Facebook page spike when he puts up pictures of their daughter, Silvia, now 3, but not when he puts up photographs of him and his husband without her.

The bill’s co-sponsors could hardly offer a more perfect vision of the surrogacy constituency. Mr. Hoylman, who took his Senate office last year, represents the heart of gay New York, in the Village, Chelsea and Hell’s Kitchen. The Assembly sponsor, Amy Paulin, who actually originated the bill, is from wealthy Scarsdale.

When a constituent approached her on the issue, Ms. Paulin said, she was intrigued because she had had her own fertility issues and was able to conceive her second child only after three years of arduous fertility treatments.

Ms. Paulin still cringes when remembering that people tried to console her by saying, “Well, you already have one,” which did not help. “All those remarks, they’re ingrained in you,” she said. “Any opportunity I would have in my position to help couples have a family would be something I could give back.”



The Baby M case, in which Mary Beth Whitehead, left with her husband, Richard, refused to give up custody of a baby girl she agreed to bear for a New Jersey couple, led to a New York law prohibiting paid surrogacy. Mike Derer/Associated Press

Mr. Hoylman asked to be the Senate sponsor, and when she learned he had a daughter, “obviously he was the natural choice,” she said. “We’re a very strong team.”

Surrogate births are a small but growing part of the in vitro fertilization industry. Conservatively, about 1,600 babies a year in the United States are born through gestational surrogacy (which now accounts for almost all surrogacies), more than double the number in 2004, according to the American Society for Reproductive Medicine.

Celebrities who have used surrogates have gone a long way toward normalizing the process. The list is long, including Angela Bassett and Courtney B. Vance, Sarah Jessica Parker and Matthew Broderick, Neil Patrick Harris and David Burtka, Elton John and David Furnish, Nicole Kidman and Keith Urban, and Ricky Martin as a gay single father.

But driven by the law of supply and demand, a first-time egg donor could be paid \$8,000 to \$10,000, and a first-time surrogate \$30,000 and up, bringing the cost of a no-frills contract to \$75,000 to \$120,000 with medical, legal and agency fees.

“You basically have to take out a loan to have a child,” Mr. Hoylman said.

Agencies prefer to contract with surrogates who are married with children, because they have a proven ability to have a healthy baby and are less likely to have second thoughts about giving up the child.

Conversely, gay couples are popular among surrogates. “Most of my surrogates want same-sex couples,” said Darlene Pinkerton, the owner of A Perfect Match, the agency in San Diego that Mr. Hoylman used. Women unable to become pregnant often go through feelings of jealousy and loss, she said. But with gay men, that is not part of the dynamic, so “the experience is really positive for the surrogate.”

Or as her husband, Tom, a third-party reproductive lawyer, put it, “Imagine instead of just having one husband doting on you, you have three guys now sending you flowers.”

New York has one of the harshest surrogacy laws in the country, along with Arizona, Indiana, Michigan, Nebraska and the District of Columbia.

“The only thing you can use the contract for is to wallpaper your powder room,” said Diane Hinson, a reproductive lawyer and owner of Creative Family Connections, a surrogacy company in Chevy Chase, Md.

It is legal in New York for a volunteer to carry a baby without pay, known as altruistic or compassionate surrogacy. And New Yorkers find ways around the law by shipping frozen embryos to clinics in nearby surrogacy-friendly states — Connecticut, Maryland, Pennsylvania, Massachusetts — for implantation. In New Jersey, paid surrogacy is still considered risky because of case law going back to Baby M. In 2012, Gov. Chris Christie vetoed a law that would have permitted some types of payment, saying he wanted more discussion of such “profound change in the traditional beginnings of a family.”



Baby M with her father, William Stern. Associated Press

Historically, the legal aversion to surrogacy stems from a sort of Margaret Atwood, “Handmaid’s Tale” fear that it lends itself to unnatural social engineering and the subjugation of women. This led to an unusual alliance of feminists, civil libertarians and the Catholic church in the early 1990s, when the New York Catholic Conference joined with the New York Civil Liberties Union and the National Organization for Women to oppose surrogacy.

The Baby M case led to a pioneering court ruling on the validity of a surrogate-mother contract, and its outcome had a strong impact on New York because it played out across the river in New Jersey. Mary Beth Whitehead was a young homemaker with two children, in a rocky marriage to a sanitation worker, when she agreed in 1985 to have another man’s baby for \$10,000.

Soon after giving birth, she took the baby to Florida and renounced her fee, saying she wanted to keep the child.

On appeal, the New Jersey Supreme Court restored her parental rights while leaving custody of Baby M with her biological father and his wife. “This is the sale of a child, or at the very least, the sale of a mother’s right to her child, the only mitigating factor being that one of the purchasers is the father,” the high court said.

Helene Weinstein, the Brooklyn Democratic assemblywoman who sponsored the resulting 1992 New York law, said it sent a message that children should not be “treated as commodities to be bought and sold.”

Now Ms. Weinstein is the chairwoman of the assembly judiciary committee, which Ms. Paulin’s bill must pass through; she says she is willing to at least reconsider the law.

“So much has changed since Baby M,” said Sonia Ossorio, president of the New York City chapter of the National Organization for Women.

For one thing, Ms. Whitehead was artificially inseminated using her own egg and the prospective father’s sperm, a process now disdained as “traditional” surrogacy. Today, the pregnancy would involve a third-party egg, so the surrogate would not be genetically related to the baby.

The new technology has given rise to a whole new language — gestational carrier, instead of surrogate mother, “intended parents,” “collaborative reproduction.”

Instead of bonding with the baby, “the gestational carrier bonds to the parents, and that’s what we want to have happen,” Ms. Hinson said. “That’s the key — that it’s somebody else’s child. These women, they just renew your faith in womankind.”

In a nod to the baby-selling concerns of the Baby M case, Mr. Hoylman and Ms. Paulin’s proposed law says that the gestational carrier would be paid for her services, not for giving up parental rights to a baby.



Surrogacy has been popular with celebrities like Sarah Jessica Parker and Matthew Broderick. The couple with their twin girls, Marion Loretta Elwell Broderick, left, and Tabitha Hodge Broderick, born by surrogate, and their son, James Wilkie Broderick. Robin Layton/Associated Press

It also addresses potential concerns about social engineering, forbidding contracts to tie payment to the characteristics of the donor or the child.

Mr. Hoylman, now 48, and Mr. Sigal, 47, had not planned to have children. “But there comes a point when we were in our early 40s: well, what else is there?” Mr. Sigal said. “We were shocked that you couldn’t do surrogacy in New York.”

“It was also surprising that it was so readily available in California,” Mr. Hoylman said, in the singsong back and forth of their conversations.

They toyed with the idea of finding a female friend to have their baby, but most of them were past prime childbearing age, they said, and anyway, it seemed emotionally fraught.

They settled the quandary of who should be the biological father by each contributing sperm and choosing not to know whose DNA prevailed.

“The amazing thing about the California law is that both my husband and I are on the birth certificate as the parents,” Mr. Hoylman said, which would also happen in New York under the proposed law.

Sitting in their apartment near Washington Square, with Silvia bouncing around in a tutu, they joked about the hazards of being the child of two gay men. “She’s going to hear a lot of musicals in her life,” Mr. Hoylman said. They have compiled a baby book filled with

photographs — her first subway ride; Silvia wearing an austere brown outfit that Mr. Hoylman thinks makes her look like a Holbein painting.

“Who’s that?” Mr. Hoylman asks, pointing to a picture of a cheerful-looking blonde. “Mari!” Silvia replies, naming her gestational carrier.

Their life is a series of sleepovers, dress-up games and grilled cheese sandwiches. They have attended playgroups run by the Lesbian, Gay, Bisexual & Transgender Community Center, which also runs a monthly group called “Planning Biological Parenthood for Men.”

“Once we had entered this world, we realized that we were on the cusp of a generation that is embracing parenthood,” Mr. Hoylman said.

Mr. Sigal added, “I think in the next generation of kids now in their 20s and 30s, this will be really, really common.”

“It’s the best thing —” Mr. Sigal began.

“We’ve ever done,” Mr. Hoylman finished.

Susan Beachy contributed research.