

Here's what N.J.'s new surrogacy law means for couples and women willing to give birth to their child

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Surrogate mother Mary Beth Whitehead, seen in the 1987 photo, was embroiled in the nation's first challenge to a surrogacy contract 30 years ago. Gov. Phil Murphy signed a law Wednesday that would provide legal protections for people who agree to become gestational carriers and the parents for whom they are carrying the child. (ABC, Inc.)

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New Jersey state law caught up to medical science Wednesday, when Gov. [Phil Murphy](#) signed a bill that provides legal protection to New Jersey couples struggling with infertility and sign a contract with a woman willing to carry their child.

The New Jersey Gestational Carrier Act clarifies the law as it applies to women who, unlike surrogates, have no biological link to the fetus because the egg belongs to another woman.

A woman who wishes to be a gestational carrier must be at least 21 years old, have given birth to at least one child, completed medical and psychological evaluations and retained an attorney independent of the intended parent or parents, but who may pay the expenses, according to the legislation, ([S482](#)) The intended parents must also have undergone a psychological exam.

The agreement signed by the two parties allows the gestational carrier to choose her own medical care for the pregnancy, labor, delivery and postpartum care. The intended parents would be permitted to pay for the medical care, as well as living expenses, according to the law.

The child's birth certificate will name the intended parents as the sole legal parents of the baby, according to the law.

The law brings New Jersey's strict definition of surrogacy into the 21st century.

The Baby M case in 1988 defined the legal relationship between a surrogate, Mary Beth Whitehead using her egg and a husband, William Stern who used his sperm to conceive a child. In the nation's first court ruling on surrogacy, the New Jersey judiciary deemed the contract null and void but awarded custody to Stern.

Gestational carriers are different in that they share no DNA and have no biological connection to the child they deliver.

The gestational carrier law was drafted about six years ago, after the state Health Department told a Union County couple the wife's name would not be listed on her son's birth certificate because she had no genetic or biological tie to the infant.

The baby was conceived using an anonymous donor egg and her husband's sperm. She was forced to adopt the baby, despite a surrogacy contract recognized by a judge.

"Ignoring the legal issues that accompany technological advancements does not remove the challenges, it merely adds an additional burden on loving couples or individuals who are already struggling to have a child," said Assemblywoman Valerie Vainieri Huttle, D-Bergen, a sponsor of the bill. "With this law, intended parents and gestational surrogates will have the legal protections that were denied to them before."

New Jersey Right to Life and conservative organizations [testified against the bill](#). They said the law would create "a breeder class of women," without sufficient legal protections.

Gov. [Chris Christie](#), a Republican, vetoed the legislation in 2012 and 2015.

"While some all applaud the freedom to explore these new, and sometimes necessary, arranged births, others will note the profound change in the traditional beginnings of the family that this bill will enact. I am not satisfied that these questions have been sufficiently studied by the Legislature at this time," [according to Christie's 2012 veto statement](#).

Now that Murphy, a Democrat, has signed the bill, New Jersey joins Washington D.C. and 11 other states with similar laws: Arkansas, Delaware, Florida, Illinois, Nevada, New Hampshire, Tennessee, Texas, Utah, Virginia, Washington.

"Some couples spend years trying IVF and other fertility treatments, and it takes its toll physically and emotionally," said state Sen. Joseph Vitale, D-Middlesex, also a sponsor of the bill. "This is not a controversial issue; both liberal and conservative states already have similar laws."

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