SURROGACY AGENCIES — GUIDE

Gestational vs Traditional Surrogacy: Key Differences

Explains the medical, legal, and practical differences between gestational surrogacy (surrogate has no genetic link) and traditional surrogacy (surrogate is the egg donor). Covers legal risk, availability, and why most agencies only offer gestational.

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Definitions

Feature	Gestational surrogacy	Traditional surrogacy
Genetic link	Surrogate has **no genetic relationship** to the child. Embryo created from intended parents' or donors' gametes.	Surrogate **is the egg donor**; she is the genetic mother. Conception via IUI or IVF with her own eggs.
Medical process	IVF required. Embryo transferred to surrogate's uterus.	IUI (intrauterine insemination) or IVF using surrogate's eggs.
Legal parentage	Intended parents can often obtain pre-birth orders (in supportive states) establishing legal parentage before birth.	Surrogate is legal mother at birth. Intended parents typically must adopt or obtain parentage order post-birth; process resembles adoption.
Surrogate's rights	No genetic claim; legal framework in many states supports intended parents' parentage.	Genetic + gestational mother; stronger legal claim to the child in many jurisdictions.
Availability	Standard offering at nearly all US surrogacy agencies.	Rare. Most agencies do not offer it. Some states prohibit or restrict it.
Cost	Higher (IVF + agency fees + surrogate compensation).	Lower medical costs (no IVF if IUI), but legal complexity may increase attorney fees.
Emotional dynamics	Clear boundary: surrogate is "carrier only".	Blurred boundary: surrogate is genetic mother, which can create attachment and conflict.

Why gestational surrogacy is the standard

1. **Legal clarity**: In gestational surrogacy, the intended parents (or donors) provide the genetics. The surrogate has no genetic link. Many US states have statutes specifically recognising gestational carrier agreements and allowing pre-birth parentage orders.

1. **Reduced legal risk**: Traditional surrogacy often falls under adoption law because the surrogate is the genetic mother. This can require termination of her parental rights post-birth, which she may contest. Some states void traditional surrogacy contracts entirely.

1. **Professional guidelines**: ASRM (American Society for Reproductive Medicine) and SEEDS (Society for Ethics in Egg Donation and Surrogacy) recommend gestational surrogacy as the preferred model. Most US agencies follow these guidelines.

1. **Egg donor separation**: If intended parents need an egg donor, using a separate donor (not the surrogate) keeps roles distinct. The donor has no gestational role; the surrogate has no genetic role.

Legal status by jurisdiction (summary)

Jurisdiction	Gestational surrogacy	Traditional surrogacy
California	Explicitly permitted; pre-birth orders routine	Permitted but treated as adoption; higher risk
New York	Permitted under CPSA 2021; pre-birth orders available	Not addressed by CPSA; adoption pathway
Michigan	Permitted under the Assisted Reproduction and Surrogacy Parentage Act (2024 PA 24, effective 2 April 2025; checked 2026-11-01)	The Act also covers "genetic surrogacy agreements" under the same framework (2024 PA 24, s. 103) — ask a Michigan attorney how it applies
Canada (AHRA)	Altruistic only; expenses reimbursement	Altruistic only; same expense rules apply
UK (SAA 1985)	Altruistic only; unenforceable agreement	Altruistic only; same law applies
Australia (states)	Altruistic only; parentage orders post-birth	Altruistic only; some states explicitly restrict

Check current law in the specific state/province with a licensed attorney.

Medical considerations

Aspect	Gestational	Traditional
IVF required	Yes	Optional (IUI possible)
Egg retrieval	From intended mother or egg donor	From surrogate
Embryo transfer	Required	Only if IVF used
Genetic testing (PGT-A)	Available on embryos	Not applicable (IUI) or available (IVF)
Multiple pregnancy risk	Controlled by number of embryos transferred	Higher with IUI (less control)
Cycle synchronisation	Required (donor/IM + surrogate)	Not required (surrogate's own cycle)

Cost comparison (US, approximate)

Cost component	Gestational	Traditional
Agency fee	$15K–$50K	Similar or N/A (few agencies)
Surrogate compensation	$35K–$70K base	Often lower (no IVF burden)
Medical (IVF, meds, monitoring)	$7K–$50K+	Lower if IUI; IVF-level if IVF is used
Legal	$6K–$10K	Often higher (adoption-type work)
Typical total	**$58K–$220K**	No reliable published range; usually lower than gestational but legally riskier

Source: CNY Fertility 2022 cost breakdown for the gestational column. Few providers publish traditional surrogacy pricing; the traditional column is qualitative, not a published figure. Confirm costs with an attorney or clinic.

Questions to ask your attorney

1. "Does my state have a gestational surrogacy statute? Does it cover traditional surrogacy?"
2. "What is the process to establish parentage for each type?"
3. "Can the surrogate challenge parentage in either scenario?"
4. "How does the surrogate's genetic link affect her rights in my state?"
5. "What are the adoption requirements if we pursue traditional surrogacy?"

Recommendation

For most intended parents, **gestational surrogacy is the recommended path** due to:

- Clearer legal parentage process
- Lower risk of surrogate asserting parental rights
- Wider availability of agencies and legal frameworks
- Alignment with ASRM/SEEDS ethical guidelines

If you are considering traditional surrogacy (e.g., for cost or simplicity), engage a family-law attorney **before** proceeding to understand the specific risks in your state and the surrogate's state.

Sources:

- ASRM, "Recommendations for practices using gestational carriers: a committee opinion", Fertil Steril. 2022;118(1):65-74.
- SEEDS, "Ethical Standards for Surrogacy Agencies", accessed 2026-11-01.
- CNY Fertility, "Surrogacy Cost – The True Price of Using a Surrogate Mother", 2022-03-11.
- Uniform Law Commission, "Uniform Parentage Act (2017)".

Frequently asked questions

Is traditional surrogacy legal in the US?

It varies by state. Some states prohibit it or treat it as adoption. Many states' surrogacy statutes only cover gestational surrogacy. Consult a family-law attorney in the relevant state.

Why do most agencies only offer gestational surrogacy?

Gestational surrogacy separates the genetic and gestational roles, reducing legal and emotional complexity. The surrogate has no genetic claim to the child, which simplifies parentage establishment.

Can a traditional surrogate change her mind and keep the baby?

In many jurisdictions, a traditional surrogate is the legal and genetic mother at birth, giving her stronger parental rights than a gestational carrier. This is a primary reason most professionals recommend gestational surrogacy.