

Health Care Surrogacy Laws Do Not Adequately Address Needs of Minors

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List of State Surrogacy Statutes (Modified and Updated from Default Surrogate Consent Statutes)¹

State	Citation	Priority order or list of alternatives	Applies to
Alabama	Ala. Code 1975 §§22-8A-1 to -14 (2017)	Spouse > adult child > parent > adult sibling > nearest adult relative > attending physician or ethics committee	Not specified
Alaska	Alaska Stat. §§13.52.010 to .395 (West 2017)	Individual orally designated by patient > spouse > adult child > parent > adult sibling > close friend	Not specified
Arizona	Ariz. Rev. Stat. Ann. §§36-3201 to -3231 (West 2017)	Spouse > adult child > parent > domestic partner > sibling > close friend > attending physician with ethics consultant or second physician	Adult
Arkansas	Ark. Code Ann. §§20-6-101 to -118 (2017)	Specified by health care provider with consideration of adult designated orally or in writing > spouse > adult child > parent > adult sibling > adult relative > close friend	Adult, emancipated minor
California	Cal. Probate Code §§4711-4727 (West 2017)	Orally designated surrogate for medical decisions only (other laws for medical research and nursing homes)	Adult
Colorado	Colo. Rev. Stat. Ann. §§15-18-101 to 15-18.7-110 (West 2017)	Decided between the following: spouse, parent, adult child, sibling, adult grandchild, close friend, physician decided by attending physician	Adult
Connecticut	Conn. Gen. Stat. Ann. §§19a-570 to -580g (West 2017)	Physician and next of kin: spouse > adult son or daughter > either parent > adult brother or sister > grandparent	Adult
Delaware	Del. Code Ann. 16 Del. Code §§2501 to 2518 (2017)	Orally designated > spouse > adult child > parent > adult sibling > adult grandchild > adult niece or nephew > adult aunt or uncle > close friend	Adult
District of Columbia	DC Code §§21-2201 to -2213 (2017)	Spouse or domestic partner > adult child > parent > adult sibling > religious superior if in religious order > close friend > nearest living relative	Adult
Florida	Fla. Stat Ann. §§765.101 to .113 (West 2017)	Spouse > adult child or majority of adult children > parent > adult sibling or majority of adult siblings > close friend > licensed clinical social worker selected by ethics committee for forgoing life-sustaining therapies with ethics review > for persistent vegetative state, guardian	Adult
	Fla. Stat Ann. §743.0645	Designated individual > stepparent > grandparent > brother or sister > adult aunt or uncle	Minors
Georgia	Ga. Code Ann. §§31-9-1 to -7 (West 2017)	Spouse or any parent (adult or minor) of minor child > person standing in loco parentis for minor child or ward > adult child > parent > adult sibling > grandparent > adult first-degree relative (niece, nephew, aunt, uncle) > close friend	Adult, minor
	Ga. Code Ann. §§31-39-1 to -9 (West 2017)	Spouse > guardian > adult child > parent > sibling > physician concurring with second physician and ethics committee	Adult
	Ga. Code Ann. §§31-36A-1 to -7 (West 2017)	Spouse > adult child > parent > sibling > grandparent > adult grandchild > aunt or uncle > niece or nephew	Adult, minor
Hawaii	Hawaii Rev. Stat. §§327E-1 to -16 (West 2014)	Orally designated surrogate > spouse > reciprocal beneficiary > adult child > parent > adult sibling > adult grandchild > close friend	Adult, emancipated minor
Idaho	Idaho Code §§ 39-4501 to -4515 (West 2017)	Spouse > adult child > parent > person named in a delegation of parental authority under law > relative representing self as appropriate, responsible person > other individual representing self to be responsible for the person's health care > in emergency, attending physician	Adult, minor
	Idaho Code §15-5-104	Parent can designate a grandparent, sibling, aunt, or uncle.	Minor
Illinois	75 ILCS §§ 40/1 to 40/65 (West 2017)	Guardian of the person > spouse > adult son or daughter > either parent > adult brother or sister > adult grandchild > close friend > guardian of estate > temporary custodian under Juvenile Court Act (list of possible temporary custodians cited in the Children and Family Services Act)	Adult, minor
	20 ILCS §505/7	Without a priority order specified, grandparent, sibling, great-grandparent, aunt or uncle, niece or nephew, first or second cousin, godparent, great aunt or uncle, spouses of named, step relatives of named, other kin	Minor (guardians to be considered)

Indiana	Ind. Code Ann. §§16-36-1-1 to -14 (West 2017)	Judicially appointed guardian > without a priority order specified, spouse, parent, adult child, adult grandchild, adult sibling, grandparent, religious superior	Adult
		Judicially appointed guardian > parent or in loco parentis > adult sibling > grandparent	Minor
Iowa	Iowa Code Ann. §§144A1. to 12 (West 2017)	Spouse > adult child > parents or sibling > adult sibling	Not specified
Kansas	K.S.A. § 65-4974 (2017)	Spouse > adult child > parent > relative	Adult
Kentucky	Ky. Rev. Stat §§311.621 to 644 (Baldwin 2017)	Spouse > adult child > parents > nearest adult relative	Adult
Louisiana	La. Rev. Stat. Ann. §40:1151-1155 (West 2017)	Spouse > adult child > parents > sibling > other ascendant or descendant > adult friend	Adult
	La. Rev. Stat. Ann. §40.1159.4 (2017)	Spouse > adult child > parents > sibling > other ascendant or descendant (direct blood line relative) > adult friend > any person chosen by interdisciplinary team for developmental disability > attending physician with confirmation by second physician who examines patient	Adult, minor
Maine	Me. Rev. Stat. Ann. Tit 18-A §§5-801 to 817 (West 2017)	Spouse > adult in spouse-like relationship > adult child > parent > adult sibling > adult grandchild > adult niece or nephew > adult aunt or uncle > adult relative familiar with patient's values > close friend	Adult, emancipated minor
Maryland	Md. Health-Gen. Code Ann. §§5-601 to 626 (2017)	Spouse or domestic partner > adult child > parent > adult sibling > close friend or relative who has maintained regular contact with the patient	Adult, minor
Massachusetts	None		
Michigan	Mich. Comp. Laws Ann. §§333.5651 to 5661 (West 2017)	For a minor, the legal guardian; for an individual who cannot give consent but is not a minor, among member of immediate family, next of kin, and guardian, without a priority order specified	Adult, minor
Minnesota	None		
Mississippi	Miss. Code Ann. §§41-41-201 to 303 (West 2017)	Individual orally designated by patient > spouse > adult child > parent > adult sibling > close friend > owner, operator, or employee of long-term care facility, with limits	Adult, emancipated minor
Missouri	None		
Montana	Mont. Code. Ann. §§50-5-1301 to 1308 (enacted 2017)	"Interested persons" to decide between themselves: spouse, parent, adult child, sibling, adult grandchild, close friend, another physician or advanced practice nurse designated by attending physician with lack of capacity and medical ethics committee approval	Adult
	Mont. Code Ann. §§50-9-101 to 111 (2017)	Spouse > adult child > parents > adult sibling > nearest adult relative	Adult
Nebraska	Neb. Rev. St. §§ 30-601 to 619 (2019)	Spouse > adult child or emancipated minor > parents > brother or sister who is an adult or emancipated minor	Not specified
Nevada	Nev. Rev. St. §§449.535 to 690 (2017)	Spouse > adult child > parent > adult sibling > nearest adult relative > close friend (provider orders for life-sustaining treatment)	Adult
New Hampshire	N.H. Rev. St. Ann. §§137:334 to 37 (2018)	Spouse, civil union partner, common law spouse > adult child > parent > adult sibling > adult grandchild > grandparent > aunt or uncle or niece or nephew > close friend > financial agent from power of attorney or conservator > guardian of estate	Not specified
New Jersey	NJ St. §§26:14.1 to 5 (West 2017)	Spouse or civil-union partner > adult child > custodial parent > adult sibling > adult grandchild > nearest adult relative	Adult
New Mexico	N.M. Stat. Ann. 1978 §§24-7A-1 to 18 (West 2017)	Spouse > individual in long-term spouse-like relationship > adult child > parent > adult sibling > grandparent > close friend	Adult, emancipated minor
New York	N.Y. Family Health Care Decisions Act §§2994-A to U (McKinney 2017)	Spouse or domestic partner > adult child > parent > adult sibling > close friend > attending physician in certain conditions and with concurrence of another physician or with presentation to hospital	Adult
	N.Y. Family Health Care Decisions Act §§2960 to 2979 (McKinney 2017)	Spouse or domestic partner > adult child > parent > adult sibling > close friend > physician with concurrence by qualified second physician that resuscitation is futile	Adult
North Carolina	N.C. Gen. Stat. §§90-320 to 328 (2017)	Spouse > parents > adult child > siblings > close friend > attending physician	Not specified
North Dakota	N.D. Cent. Code §§23-12-01 to 19 (2017)	Must maintain significant contacts with incapacitated person: spouse > adult children > parents including stepparents > adult sibling > grandparent > adult grandchildren > close adult relative or friend	Adult, minor
Ohio	Ohio Rev. Code Ann. §§2133.01 to 16 (West 2017)	Spouse > adult child > parents > adult sibling > nearest adult relative	Adult
Oklahoma	Okla. Stat. Ann. Tit 63 §§3101 to 3102.3A	Spouse > adult child > parent > adult sibling > relative by blood or marriage	Adult

Oregon	Or. Rev. Stat. §§127.505 to 660 (2019)	Guardian of principal > spouse > adult designated by others listed > majority of adult children > either parent > majority of located adult siblings > adult relative or friend	Adult, emancipated minor
Pennsylvania	Pa. Stat. Ann. Tit 20 §§5451 to 5461 (West 2017)	Spouse > adult designated by others on list without objection > adult child > parent > adult sibling > adult grandchild > close friend	Adult
Rhode Island	None		
South Carolina	S.C. Code Ann. §§44-66-10 to 80 (2017)	Person given priority to make decisions by another statute > spouse > parent or adult child > adult sibling, grandparent, or adult grandchild > other close relative > person given authority by another statute	Adult
South Dakota	S.D. Codified Laws §§34-12C-1 to 8 (2017)	Spouse > adult child > parent > adult sibling > grandparent or adult grandchild > aunt or uncle or niece or nephew > adult cousin > close friend (A surrogate can designate the responsibility to someone in the same or the succeeding class.)	Not specified—incapacitated person
Tennessee	Tenn. Code Ann. §§68-11-1801 to 1815 (2017)	Supervising health provider selects based on priority: individual designated by patient or guardian > spouse > adult child > parent > adult sibling > other adult relative > primary physician with ethics consultant or second physician not involved in the patient's care or under the primary attending's direction; some exceptions listed	Adult, emancipated minor
	Tenn. Code Ann §34-6-216	Named durable power of attorney	Minor
Texas	Tex [Health & Safety] Code Ann. §§166.031 to 053 (Vernon 2017)	Physician and spouse > adult children > parents > nearest relative > second physician or physician member of an ethics committee	Adult
	Tex [Health and Safety] Code Ann. §§166.081 to 101 (Vernon 2017)	Physician and spouse > adult children > parents > nearest relative > second physician or physician member of ethics committee	Adult
	Tex [Health and Safety] Code Ann. §§313.001 to .008 (Vernon 2017)	Spouse > adult child with waiver from or consent of other adult children > majority of reasonably available adult children > parents > individual identified by patient > nearest living relative > clergy member	Adult
Utah	Utah Code Ann. §§75-2a-101 to 125 (2017)	Spouse > adult child > parent > adult sibling > adult grandchild > grandparent > close friend	Adult
Vermont	Vt. Stat. Ann. Tit 18 §9731 (West 2017)	"Interested persons" decide among themselves: spouse, adult child, parent, sibling, grandchild, clergy person, close friend	Adult
Virginia	Va. Code §§54.1-2981 to 2993 (West 2017)	Spouse > adult child > parents > adult sibling > other relative, in descending order of blood relationship > close friend	Not specified
Washington	Wash. Rev. Code §§ 7.70.010 to 160 (West 2017)	Spouse or registered domestic partner > adult children > parents > adult siblings	Adult
West Virginia	W. Va. Rev. Code Ann. §§16-30-1 to 25 (West 2017)	Attending physician or advanced practice nurse chooses from priority with criteria: spouse > adult child > parents > adult sibling > adult grandchild > close friend > any person permitted by Department of Health and Human Resources rules; some ineligible	Not specified
Wisconsin	Wisc. Stat. Ann. §50.06 (West 2017)	Spouse or domestic partner > adult child > parent > adult sibling > grandparent > adult grandchild > close friend	Not specified
Wyoming	Wyo. Stat. §§35-22-401 to 416 (2017)	Individual designated by informing provider > spouse > adult child > parent > grandparent > adult sibling > adult grandchild > close friend	Adult, emancipated minor

1. This table reflects a modified and updated list of surrogacy laws by state originally compiled by the American Bar Association, including those that apply to children. As stated in the text, states may have alternative laws that also apply to decision-making for children, such as kinship and standby guardianship laws. Therefore, the reader should not take this as an exhaustive list of all laws relevant to surrogacy that apply to children but rather as a reflection of how surrogacy laws regard children and the complicated ways in which state laws address decision-making for this vulnerable population.