

REGULATION DETAILS IN MEXICO BY STATE

Note: An “amparo” is a legal stay or federal lawsuit filed by an individual, challenging the official acts of a federal, state or municipal authority as unconstitutional.

The following states permit both traditional surrogacy (the surrogate is genetically related to the child, i.e., uses her own egg) and gestational surrogacy (egg from the intended mother or through a third-party egg donor):

Sinaloa

- The State civil law recognizes surrogacy contracts when signed by the intended parents, the surrogate, a public notary, and the director of the clinic or hospital. (Articles 68, 198, 282-297 of the Family Code of the State of Sinaloa)
- Surrogacy contracts are only recognized for Mexican citizens. (The Supreme Court has considered the limitation of nationality as unconstitutional and discriminatory [*in relation to the law of Tabasco*]; therefore foreigners could access the procedure if a judicial request [*amparo*] is submitted. Amparo en Revisión 129/2019. Tesis: 1a./J. 87/2022 (11a.). Registro digital: 2024842. Undécima Época. Fuente: Semanario Judicial de la Federación. Instancia: Primera Sala. Publicado el 17 de junio de 2022.)
- A surrogacy contract requires a medical certificate that proves the intended mother is unable to carry a pregnancy for medical reasons.
- A surrogate is required to:
 - Be 25-35 years of age. (The Supreme Court has determined on several occasions that these types of age restrictions are discriminatory, so it is possible to access the procedure without these requirements if a judicial request [*amparo*] is submitted. Amparo en Revisión 780/2017. Amparo en Revisión 602/2018. Amparo en Revisión 820/2018) [*in relation to the law of Tabasco*].
 - Have at least one healthy child of her own
 - Be in good psychosomatic health
 - Have given voluntary consent
 - Prove that she has not been pregnant in the last year before implantation
 - Have not participated in surrogacy more than two consecutive times
- Paid and altruistic surrogacy are recognized.
- The surrogate is legally entitled to bring a civil suit against the intended parents if they fail to pay for medical expenses or if pathologies arise from inadequate medical care.
- Same-sex marriages are recognized under state law. Same-sex intended parents should be able to be recognized as parents, even if neither is a genetic parent (Amparo en Revisión 553/2018. Tesis 1a. LXXXVIII/2019 (10a.))
- There are precedents in which courts have recognized the paternity of single men who have contracted with surrogates to have a child. (Sentencia 2424/2018 Juzgado Segundo de Primera Instancia Familiar de Culiacán Sinaloa. Folio: 251264400005021)

Tabasco

- The state civil law recognizes surrogacy contracts when they are signed by the intended parents, the surrogate, and a public notary and subsequently authorized by the judge. (Articles 380 bis-380 bis7 of the Civil Code for the State of Tabasco)
- For traditional surrogacy arrangements, an additional adoption procedure approved by a judge is required.

- Surrogacy contracts are only recognized for Mexican citizens. (The Supreme Court has considered the limitation of nationality as unconstitutional and discriminatory on the basis of nationality; therefore, foreigners could access the procedure if a judicial request [*amparo*] is submitted. ([Amparo en Revisión 129/2019](#). Tesis: 1a./J. 87/2022 (11a.). Registro digital: 2024842. Undécima Época. Fuente: Semanario Judicial de la Federación. Instancia: Primera Sala. Publicado el 17 de junio de 2022.))
- The intended mother must prove with a medical certificate that she is physically incapable of carrying out a pregnancy and be 25-40 years old. (The Supreme Court has determined on several occasions that these restrictions are discriminatory, so it is possible to access the procedure without these requirements if a judicial request [*amparo*] is submitted. [Amparo en Revisión 780/2017](#). [Amparo en Revisión 602/2018](#). [Amparo en Revisión 820/2018](#)))
- Only implantation of up to two fertilized embryos in the same procedure are permitted.
- A surrogate is required to:
 - Have a stable social environment without violence and be in adequate physical and psychological condition
 - Be 25-35 years of age. (The Supreme Court has indicated on several occasions that age restrictions are discriminatory, so it is possible to access the procedure without these requirements if a judicial [*amparo*] request is submitted. [Amparo en Revisión 780/2017](#). [Amparo en Revisión 602/2018](#). [Amparo en Revisión 820/2018](#))
 - Have given voluntary and informed consent
 - Prove she has not been pregnant in the last year before implantation
 - Have not participated in surrogacy more than two consecutive times.
- The law does not address whether the contract can be paid or altruistic. (The Supreme Court has recognized it as permitted since is not explicitly prohibited by the law, and the right to decide to be compensated or not corresponds to the surrogate who undergoes the procedure. [Acción de Inconstitucionalidad 16/2016](#). Registro digital: 30503. Undécima Época. Fuente: Semanario Judicial de la Federación. Libro 12, Abril de 2022. Instancia: Pleno.)
- The intended parents must provide an insurance policy that covers the surrogate's major medical expenses.
- The surrogate is legally entitled to bring a civil suit against the intended parents if they fail to pay for medical expenses or if pathologies arise from inadequate medical care.
- The surrogate can ask for maternity rights when one of the intended parents is incapacitated or dies. (This part of the law has been declared invalid by the Supreme Court when discussing [Acción de Inconstitucionalidad 16/2016](#). Registro digital: 30503. Undécima Época. Fuente: Semanario Judicial de la Federación. Libro 12, Abril de 2022. Instancia: Pleno)
- Same-sex marriages are recognized under state law. Same sex intended parents should be able to be recognized as parents, even if neither is a genetic parent. ([Amparo en Revisión 553/2018](#). Tesis 1a. LXXXVIII/2019 (10a.))
- There are precedents of judicial decisions where the legality of surrogacy contracts is recognized and enforced. (Folio: 271473900005521)
- The State Human Rights Commission has a record of 4 complaints without recommendation (resolution) regarding cases of surrogacy. (Folio: 270511300003221)

The following states prohibit any type of surrogacy:

Querétaro

- Surrogacy is prohibited. (Articles 399-405 of the Civil Code of the State of Querétaro)

San Luis Potosí

- Surrogacy is prohibited. (Articles 28, 236-246 Family Code for the State of San Luis Potosí)

In the following states, assisted reproduction procedures are regulated and, while there is no regulation specific to surrogacy, the regulation applies:

Coahuila

- State law only addresses assisted reproduction procedures in a general manner but does not specify requirements for surrogacy. (Articles 366-374 Law for the Family of Coahuila)
- State law only requires that the consent of the person using the assisted reproduction procedures be given before a public notary.
- Same-sex marriages are recognized under state law. Same sex intended parents should be able to be recognized as parents, even if neither is a genetic parent. (Amparo en Revisión 553/2018. Tesis 1a. LXXXVIII/2019 (10a.))

State of Mexico

- State law recognizes the use of any assisted reproduction procedures as a right for married couples. (Articles 4.16, 4.112-4.114 of the Civil Code of the State of Mexico)
- No specific requirements are established for surrogacy contracts.
- State law only mentions requirements for artificial insemination:
 - The law requires the consent of the woman, and the husband if the woman is married.
 - State law prohibits putting up for adoption a child born through artificial insemination.
- Same-sex marriages are recognized under state law. Same sex intended parents should be able to be recognized as parents, even if neither is a genetic parent. (Amparo en Revisión 553/2018. Tesis 1a. LXXXVIII/2019 (10a.))

Mexico City

- State law recognizes the use of assisted reproduction procedures as a right for married couples. (Articles 162, 293, 326 of the Civil Code for Mexico City)
- State law does not address specific requirements for surrogacy.
- Same-sex marriages are recognized under state law. Same sex intended parents should be able to be recognized as parents, even if neither of them is a genetic parent. (Amparo en Revisión 553/2018. Tesis 1a. LXXXVIII/2019 (10a.))

Michoacán

- State law recognizes the right of married couples to use assisted reproduction procedures. (Articles 149 and 327 of the Family Code for the State of Michoacán)
- No specific requirements are established for surrogacy.
- State law recognizes the paternity or maternity of the intentional parents as one of consanguinity when the child is born through an assisted reproduction procedure.

- Same-sex marriages are recognized under state law. Same sex intended parents should be able to be recognized as parents, even if none of them is a genetic parent. (Amparo en Revisión 553/2018. Tesis 1a. LXXXVIII/2019 (10a.))

Puebla

- Surrogacy is not addressed by the state legislation; therefore, it is not explicitly allowed or prohibited. (The case law of the Supreme Court is applicable)
- State law recognizes the paternity or maternity of the intentional parents as one of consanguinity when the child is born through an assisted reproduction procedure.
- Same-sex marriages are recognized under state law. Same sex intended parents should be able to be recognized as parents, even if none of them is a genetic parent. (Amparo en Revisión 553/2018. Tesis 1a. LXXXVIII/2019 (10a.))

Sonora

- The use of assisted reproduction procedures is recognized for married couples. (Articles 206, 207, 208, 213 of the Family Code for the State of Sonora)
- No specific requirements are established for surrogacy.
- State law recognizes the paternity or maternity of the intentional parents as one of consanguinity when the child is born through an assisted reproduction procedure, and they granted their consent before the director of the clinic of hospital, public notary or by a private agreement signed before witnesses.
- Same-sex marriages are recognized under state law. Same sex intended parents should be able to be recognized as parents, even if neither of them is a genetic parent. (Amparo en Revisión 553/2018. Tesis 1a. LXXXVIII/2019 (10a.))

Zacatecas

- State law recognizes the right of married couples to use any assisted reproduction procedures. (Article 123, 246, 290 Family Code of the State of Zacatecas)
- No specific requirements are established for surrogacy.
- State law recognizes the paternity or maternity of the intentional parents as one of consanguinity when the child is born through an assisted reproduction procedure.
- It is prohibited to contest paternity or maternity of intended parents when their express consent was given for the use of assisted reproduction procedures.
- Same-sex marriages are recognized under state law. Same sex intended parents should be able to be recognized as parents, even if neither of them is a genetic parent. (Amparo en Revisión 553/2018. Tesis 1a. LXXXVIII/2019 (10a.))

In the following states, surrogacy is not addressed by state legislation; therefore, it is not explicitly allowed nor prohibited (case law of the Supreme Court is applicable; see chart below). Even though same sex marriage is now recognized in all 32 Mexican states, in these states, it may be required to submit a judicial request (amparo) for legal recognition of both parents:

Aguascalientes
Baja California
Baja California Sur
Campeche
Colima
Chiapas
Chihuahua
Durango
Guanajuato
Guerrero
Hidalgo
Jalisco
Morelos
Nayarit
Nuevo Leon
Oaxaca
Quintana Roo
Tamaulipas
Tlaxcala
Veracruz
Yucatan

Case Law [Supreme Court]

Every judge and court at the federal and the state levels has the obligation to follow the rulings of the Supreme Court, even if state and federal legislation do not regulate surrogacy. Case law applicable to every case of surrogacy in Mexico is described in the following table.

Case Law [Supreme Court]	Summary
Assisted reproduction procedures and the recognition of paternity and maternity	
<p>Right to Assisted Reproduction is the right to decide freely, responsibly and in an informed manner on the number of children, provided in Article 4 of the Constitution.</p>	<ul style="list-style-type: none"> ▪ The use of any assisted reproduction procedure is considered a constitutional right for all people.
<p>Procreational Will is a determining factor in the recognition of paternity or maternity of a child who was born through an artificial insemination procedure.</p>	<ul style="list-style-type: none"> ▪ Procreational will is the desire to have a child, whether genetically related or not. ▪ When a couple gives consent to procreate using assisted reproduction procedures (specifically artificial insemination), parental rights are recognized even if there is no genetic relationship to the child.
<p>Parental relationship of a minor born through surrogacy means it is the judge's duty to establish legal parentage, even in the absence of specific regulation.</p>	<ul style="list-style-type: none"> ▪ When there is no regulation about the parental relationship of children born through assisted reproduction procedures and surrogacy, the judge has the obligation to rule on the parent-child legal relationship in what is determined to be the child's best interest. ▪ The existence of a genetic relationship is not a requirement to decide the parent-child legal relationship; only the consent of the intended parents and the surrogate must be considered.
Paternity and maternity rights of same-sex couples	
<p>Right to Assisted Reproduction includes same-sex couples.</p>	<ul style="list-style-type: none"> ▪ The right of same-sex couples to form a family through assisted reproduction procedures, including surrogacy, is recognized.
<p>Co-maternity refers to the status of two mothers in families with same-sex female couples.</p>	<ul style="list-style-type: none"> ▪ "Co-maternity" refers to the status of two mothers in a same-sex female couple, in which both are recognized as legal parents, even if one or both do not have a genetic relationship with the child.