

Before Michigan legalized surrogacy, families found ways around the ban

July 22 2024, by Kate Wells, Michigan Public, KFF Health News



Credit: Unsplash/CC0 Public Domain

The first time Tammy and Jordan Myers held their twins, the premature babies were so fragile that their tiny faces were mostly covered by oxygen masks and tubing. Their little hands rested gently on Tammy's

chest as the machines keeping them alive in a neonatal intensive care unit in Grand Rapids, Michigan, beeped and hummed around them.

It was an incredible moment, but also a terrifying one. A court had just denied the Myers' parental rights to the twins, who were born via surrogate using embryos made from Jordan's sperm and Tammy's eggs. (Tammy's eggs had been frozen before she underwent treatment for breast cancer.)

"In the early hours of their lives, we had no lifesaving medical decision-making power for their care," Tammy Myers told lawmakers at a Michigan Senate committee hearing in March.

Instead, the state's surrogacy restrictions required the Myers to legally adopt their biological twins, Eames and Ellison.

"Despite finally being granted legal parenthood of our twins almost two years after they were born, our wounds from this situation remain raw, casting a long shadow over the cherished memories that we missed," Myers told lawmakers, her voice catching.

Until this spring, Michigan was the only state that had a broad criminal ban on surrogacy. Many families say that ban left them in legal limbo: They were compelled to leave the state to have children; find strangers on Facebook who would carry their child; or, like the Myers, be forced to legally adopt their own biological children.

Gov. Gretchen Whitmer of Michigan signed legislation in April repealing the 1988 criminal ban, legalizing surrogacy contracts and compensated surrogacy after more than three decades. But the legalization is raising fears among conservatives and religious groups, who echo Pope Francis' concerns that surrogacy exploits women and makes children "the basis of a commercial contract."

As reproductive technology advanced in recent decades, most states passed laws permitting and regulating surrogacy. But Michigan did not, said Courtney Joslin, a professor at the University of California-Davis School of Law who specializes in family law. Still, those restrictions didn't prevent Michiganders from having children via surrogacy.

"Criminal bans, or even civil bans, don't end the practice," Joslin said. "People are still engaged in surrogacy, and it's becoming more clear that the effect of a ban is just to leave the parties without any protection. And that includes the person acting as a surrogate."

In 2009, a couple in western Michigan had to surrender custody of twins after their surrogate decided to keep the babies. The surrogate claimed that she hadn't been aware of an arrest and a mental health issue in the intended mother's past. In 2013, a surrogate from Connecticut fled to Michigan to give birth, knowing state law would give her parental rights. She and the intended parents had disagreed over whether to terminate the pregnancy following the discovery of major fetal abnormalities.

The Myers family, however, thought they would be able to avoid any protracted legal fights. They had the full support of their surrogate, Lauren Vermilye, a stranger who'd volunteered to be their surrogate after seeing Tammy's posts on Facebook. Yet even with Vermilye and her husband, Jonathan, saying that the twins belonged to the Myers, Michigan judges denied the Myers' request for a prebirth order giving them parental rights.

"As a devoted family already raising our kind, inclusive and gentle-hearted 8-year-old daughter, Corryn, we were forced to prove our worthiness through invasive psychological testing, [home visits](#), and endless meetings to discuss our parenting plan to prove that we were fit to raise our twins, Eames and Ellison," Tammy Myers told lawmakers in March.

Opponents of Michigan's repeal of its surrogacy ban distinguish altruistic surrogacy—in which the surrogate mother does not receive any compensation, including for her medical and legal expenses—from a contract for a child.

Legislators in Michigan's House of Representatives passed bills late last year to allow courts to recognize and enforce surrogacy contracts. These bills allowed parents to compensate surrogates, including for medical and legal expenses. But as the legislation moved forward early this year, religious and conservative groups, and some Republican lawmakers, continued voicing their opposition.

Michigan's surrogacy laws were not preventing altruistic surrogacy in the state, argued Genevieve Marnon, the legislative director of Right to Life of Michigan, at a state Senate committee hearing in March.

"However, current law does require a legal adoption of a child who is born of one woman and then given to another person," Marnon said. "That practice is child-protective, to prevent the buying and selling of children, and to ensure children are going to a safe home."

Michigan's ban on surrogacy is "in keeping with much of the rest of the world," Marnon said in March. Several European countries ban or restrict surrogacy, including Italy, which is cracking down on international surrogacy, an arrangement involving a surrogate mother who lives in a different country than the biological parents.

"India, Thailand, and Cambodia had laws similar to those contemplated in these bills, but due to exploitation of their women caused by surrogacy tourism, they changed their laws to stop that," Marnon told the senators in March.

In January, Pope Francis called for a universal ban on surrogacy, "which

represents a grave violation of the dignity of the woman and the child, based on the exploitation of situations of the mother's material needs," he said.

Rebecca Mastee, a policy advocate with the Michigan Catholic Conference, told lawmakers that while she acknowledged the suffering of people with infertility, surrogacy can exploit women and treat babies like commodities.

"At the core of such agreements is a contract for a human being," she said.

"That made my blood boil, hearing that," said Eric Portenga. He and his husband, Kevin O'Neill, had traveled from their home in Ann Arbor to the Capitol in Lansing to attend the hearings in March.

If you've been through the surrogacy process "you know there's no commodification at all," Portenga said. "You want a family because you have love to give. And you want to build the love that you have, with your family."

When Portenga and O'Neill were trying to become fathers, they reached out to surrogacy agencies in other states but were told the process would cost \$200,000. "We would have had to have sold the house," O'Neill said.

Like the Myers, the couple turned to Facebook and social media, "just putting our story out there that we wanted to become dads," O'Neill said. A friend of a friend, Maureen Farris, reached out to the couple: She'd been wanting to help a family through surrogacy for years, she said. And Farris lived just a few hours south in Ohio, where [surrogacy](#) contracts and compensation are legal.

Farris' contract with Portenga and O'Neill was fairly standard. Both sides had to undergo psychological background checks and have legal representation. The contract also set compensation for Farris, which covered medical and legal fees. The contract stipulated Farris couldn't travel to Michigan beyond a certain point in her pregnancy because if she'd gone into labor and given birth in the state, she would be considered the legal parent of the child.

That contract, Portenga and O'Neill said, gave Farris more protection and agency than she would have had in Michigan at the time. "They're carrying a human life inside of them," O'Neill said of surrogates. "They're not able to work. Their bodies will be changed forever. They're getting compensated for the amazing gift they're giving people."

After the embryo transfer was successful, Portenga and O'Neill learned Farris was pregnant—with identical triplet girls.

"They came out and just unraveled this huge string of ultrasound photographs and, and that's when we knew our life had changed," Portenga said, sitting at home in the family's kitchen. The girls were born in Ohio—where the dads could be legally named their parents—and then the family of five returned to Michigan.

2024 KFF Health News. Distributed by Tribune Content Agency, LLC.

Citation: Before Michigan legalized surrogacy, families found ways around the ban (2024, July 22) retrieved 22 July 2024 from

<https://medicalxpress.com/news/2024-07-michigan-legalized-surrogacy-families-ways.html>

This document is subject to copyright. Apart from any fair dealing for the purpose of private study or research, no part may be reproduced without the written permission. The content is provided for information purposes only.