

## What is the Maine Parentage Act?

The Maine Parentage Act, or MPA, effective as of July 1, 2016, is a new set of state laws that modernized Maine's parentage laws and clarified and expanded the ways someone can legally establish that they are the parent of a child (also known as "parentage"). The MPA addresses who is able to, and how to, establish legal parentage—it does not address custody and decision making of children.

## What does parentage mean?

"Parentage" means the legal relationship between a child and a parent. When you are a legal parent, you are a parent for all purposes. Parentage comes with a host of rights (e.g. parenting time and decision making) as well as responsibilities (e.g. payment of child support, providing health insurance, providing for basic needs).

## How can Mainers establish parentage under the MPA?

The MPA states that Mainers can establish their parentage in the following ways:

- *Giving birth (excluding surrogates)*
- *Adoption*
- *Acknowledgment*
- *Presumption*
- *De facto parentage*
- *Genetic parentage (excluding donors)*
- *Assisted reproduction*
- *Gestational carrier agreement*

## What is a presumed parent?

A presumed parent is a non-birth parent that the law recognizes because of certain circumstances or relationships.

## Can a child have more than two legal parents?

Yes. A court may determine that a child has more than two parents if the court finds that it is in the child's best interest. To determine best interests vis a vis parentage, a court must consider factors such as the child's age, the length and nature of the potential parent's relationship with the child, the harm to the child if the parental relationship is not recognized, the basis for each person's claim of parentage of the child, and other equitable factors.

## What if I am not married? What if I am transgender or identify as non-binary?

The MPA explicitly states that every child has the same rights as any other child without regard to the marital status or gender of the parents or the circumstances of their birth. The MPA aims to treat all Mainers equally in respect to marital status and gender identity

## Where can I go if I need help resolving a parentage issue?

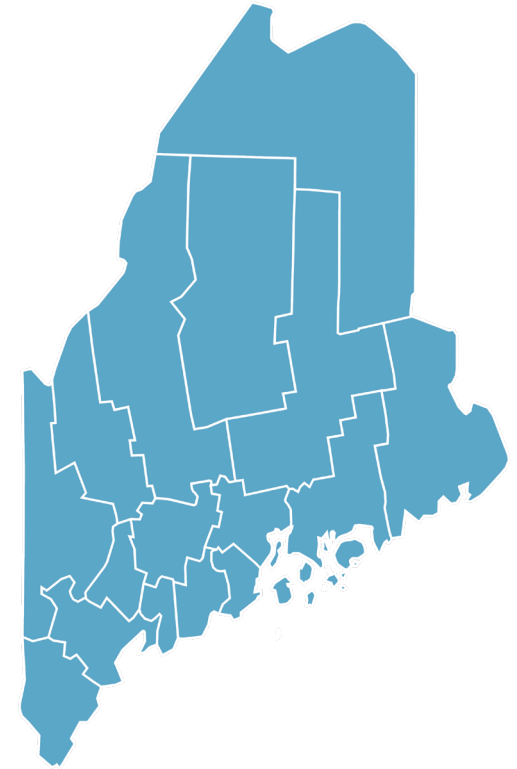
As with any family law issue, legal advice is recommended. The MPA is over 80 pages and has many detailed provisions.

Please call **GLAD Answers (800-455-GLAD)** or reach us online ([www.GLADAnswers.org](http://www.GLADAnswers.org)) for information and referrals to local practitioners.



*This document, published June 16, 2018, provides general information only and should not be taken as legal advice. If you have questions, need more information, or need help with a problem you are facing, please contact us at [GLADAnswers.org](http://GLADAnswers.org) or 800-455-GLAD.*

# MAINE PARENTAGE ACT



**LEGAL ADVOCATES  
& DEFENDERS**

*for the LGBTQ Community*

## Who can be a presumed parent?

You are a presumed parent if any of the below are true:

1. You are married to the child's birth parent when the child is born;
2. You were married to the child's birth parent, and the child is born within 300 days of the marriage being terminated by death, annulment, or divorce;
3. You attempted to marry the child's birth parent, and the child is born during the invalid marriage or within 300 days of it being terminated by death, annulment, or divorce;
4. You married the child's birth parent after the child was born, asserted parentage and are named as a parent on the birth certificate; or
5. You resided with the child in the same household, and openly held out the child as your own from the time the child was born or adopted for a period of at least 2 years and assumed personal, financial or custodial responsibilities for the child.

## What is a de facto parent?

A de facto parent is a parent recognized by the court because of their relationship with the child. You can establish de facto parentage if you can demonstrate, with clear and convincing evidence, that you have fully and completely undertaken a permanent, unequivocal, committed and responsible parental role in the child's life.

To make that finding, a court must determine that:

1. You lived with the child for a significant amount of time;
2. You consistently took care of the child;
3. A bonded and dependent relationship has been established between the child and you, the relationship was fostered or supported by another parent of the child, and you and the other parent have understood, acknowledged or accepted that or behaved as though you are a parent of the child;
4. You took full and permanent responsibility for the child without expectation of payment;
5. Continuing a relationship with the child is in the child's best interest.

## Why is it important to establish parentage quickly?

Establishing parentage quickly ensures that a child is secured to their parent(s) for all purposes and increases clarity for all involved in a child's life. This is particularly important if a problem with the child or the parents should arise; for example, established parentage will allow a parent to make any early medical decisions in a child's life, ensure that a child will receive insurance benefits or inheritance rights, and protect parents' parental rights if they separate.

## What if I am a non-biological parent? How can I establish myself as a legal parent?

The MPA has many provisions that protect non-biological parents. Non-biological parents can establish their parentage in many ways under the law, including through the marital presumption, the holding out presumption, assisted reproduction, or gestational carrier agreements. You can also become a parent through the de facto parent provisions of the MPA.

## How does the MPA help people conceiving through assisted reproduction?

The MPA provides important clarity for all involved in conceiving children through assisted reproduction (i.e., you did not have sexual intercourse or use a gestational carrier to conceive). The MPA provides that a gamete donor is not a parent of a child conceived through assisted reproduction. Also, a person who consents to assisted reproduction with the intent to be a parent of the resulting child or who provides gametes for assisted reproduction with the intent to be a parent is a legal parent. Ideally, consent is in writing, but there are other ways to establish consent.

## Can I use surrogacy to have a child?

Yes. The MPA has comprehensive provisions about how to establish parentage through gestational carrier agreements. Before starting any medical procedures to conceive a child through a carrier process, you must have a written and signed agreement that meets all of the requirements of the statute. This agreement is between you, any other intended parents, the carrier, and the spouses of any of those parties (if applicable). This agreement will establish that you are the parent(s) of the child and that the carrier and their spouse, if applicable, do not have parental rights or duties. To enter into a gestational carrier agreement, the following must be true:

- The carrier must be at least 21 and have previously given birth to a child;
- All intended parents and the carrier must have completed a medical evaluation and mental health consultation; and
- The intended parent(s) and the carrier must be represented by separate lawyers for the purposes of the agreement, and the carrier's attorney must be paid for by the parent(s).

The law requires carrier agreements to incorporate several terms to be valid, such as allowing a surrogate to make their own health and welfare decisions during pregnancy and requiring the parent(s) to pay all related healthcare costs.

## Can Mainers use genetically related gestational carriers?

Yes. If a carrier is a family member, they can serve as a gestational carrier using their own gametes or genetic material. Someone who is not a family member cannot be a genetic gestational carrier. Otherwise, the same laws, including the need for a valid agreement, apply to genetic and non-genetic carriers.