

# Maine Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP – March 31, 2021

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## Custody Determination - Jurisdiction

### Initial Custody Determination

#### 19-A M.R.S. § 1745.

State has jurisdiction to make initial child custody determination only if:

- (A) Maine is child's home state (at commencement of the proceeding, or within six months prior and child is absent but at least one parent continues to reside); or
- (B) A court of another state does not have jurisdiction under paragraph (A) or a court of the child's home state declines jurisdiction on ground that Maine is the more appropriate forum, and (1) child and at least one parent has a significant connection to State other than mere physical presence; and (2) substantial evidence is available in Maine re: the child's care, protection, training and personal relationships; or
- (C) All courts having jurisdiction under (A) and (B) have declined to exercise jurisdiction based on this forum being most convenient; or
- (D) No court of any other state would have jurisdiction under (A), (B), or (C).

<https://legislature.maine.gov/statutes/19-A/title19-Asec1745.html>

#### 19-A M.R.S. § 1732(7).

Defines “home state” as the “state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than 6 months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.”

<https://legislature.maine.gov/statutes/19-A/title19-Asec1732.html>

#### Rainbow v. Ransom, 2010 ME 22, 990 A.2d 535.

Affirmed exercise of jurisdiction after Hawaii, child's home state, declined. In addition to mother's connections to Maine (incl. family and evidence of child's well-being), court found jurisdiction “entirely appropriate given the finding of domestic violence” by father in Hawaii, and jurisdiction in Maine “reflects the need to protect both [the mother] and the child from remaining in a jurisdiction that is potentially dangerous,” appropriate factors to consider under 19-A M.R.S. § 1745(B).

### Temporary Emergency Jurisdiction

19-A M.R.S. § 1748. Maine court has temporary emergency jurisdiction if child is present in Maine and has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.

<https://legislature.maine.gov/statutes/19-A/title19-Asec1748.html>

#### Campbell v. Martin, 2002 ME 112, 802 A.2d 395.

Section 1748 gives Maine jurisdiction “in urgent circumstances” to impose temporary order for protection from spousal abuse and child custody “due to threats of mistreatment or abuse.” It is designed for temporary relief until the state with jurisdiction can enter an order—here, it does not allow a Maine court to exercise jurisdiction over related complaint for paternity, permanent parental rights, and child support, because Kentucky (not Maine) was child’s home state and did not decline jurisdiction.

## **Custody Determination – Service/Notification Requirements**

### **19-A M.R.S. § 1749 (Notice; opportunity to be heard; joinder).**

Before a child custody determination can be made, notice and opportunity to be heard (per 19-A M.R.S. § 1738) must be given to “all persons entitled to notice under the law of this State as in child custody proceedings between residents of this State, any parent whose parental rights have not previously been terminated and any person having physical custody of the child.”

<https://legislature.maine.gov/statutes/19-A/title19-Asec1749.html>

**Me. R. Civ. P. 4(d)(2)** – If service is required upon a minor, personal service requires delivering a copy to both the minor and the minor’s guardian (if within the State), or to the minor’s father, mother, or caretaker or with whom the minor resides.

[https://www.courts.maine.gov/rules\\_adminorders/rules/text/MRCivPPlus/mr\\_civ\\_p\\_4\\_plus\\_2018-08-01.pdf](https://www.courts.maine.gov/rules_adminorders/rules/text/MRCivPPlus/mr_civ_p_4_plus_2018-08-01.pdf)

**Me. R. Civ. P. 101(b)** – For Family Division actions in which a party seeks to be adjudicated a de facto parent of a child, the party must serve the pleadings and an affidavit “upon all parents and legal guardians of the child and any other party to the proceeding.”

[https://www.courts.maine.gov/rules\\_adminorders/rules/text/MRCivPPlus/mr\\_civ\\_p\\_101\\_plus\\_2018-06-27.pdf](https://www.courts.maine.gov/rules_adminorders/rules/text/MRCivPPlus/mr_civ_p_101_plus_2018-06-27.pdf)

## **Paternity and Child Support Proceeding – Jurisdiction**

### **19-A M.R.S. § 1837 (Maine Parentage Act; Personal jurisdiction).**

One cannot be adjudicated to be a parent unless the court has personal jurisdiction over the individual. A Maine court with jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions in 19-A M.R.S. § 2961 are fulfilled.

<https://legislature.maine.gov/statutes/19-A/title19-Asec1837.html>

### **19-A M.R.S. § 2961 (Uniform Interstate Family Support Act; Jurisdiction; Bases for jurisdiction over nonresident).**

In a proceeding to establish or enforce a support order or to determine parentage of a child, a Maine court may exercise personal jurisdiction over a non-resident individual if:

A. Personal service with notice in the State;

- B. Consent to jurisdiction by consent in the record, entering a general appearance, or filing responsive document;
- C. Individual resided with child in the State;
- D. Individual resided in the State and provided prenatal expenses or support for the child;
- E. Child resides in State as a result of the individual's acts or directives;
- F. Individual engaged in sexual intercourse in the State, and child may have been conceived by that act; or
- G. There is any other basis for jurisdiction consistent with Maine and U.S. constitutions.

<https://legislature.maine.gov/statutes/19-A/title19-Asec2961.html>

### **19-A M.R.S. § 2253.**

Re: alternative methods of child support enforcement. Mirrors Maine's civil procedure provisions in 14 M.R.S. § 704-A (below). Any person who performs certain acts submits to jurisdiction as to a cause of action arising from those acts: (A) Maintaining a domicile in Maine while subject to a marital or family relationship out of which arises a claim for child support or spousal support or the commission in Maine of any act giving rise to such claim, and (B) conception resulting in parentage within the meaning of Chapter 61.

<https://legislature.maine.gov/statutes/19-A/title19-Asec2253.html>

Note: The above bases for personal jurisdiction in § 2961 may not be used to acquire personal jurisdiction for a Maine court to modify a child support order issued in another state, unless § 3253 or § 3261 are satisfied.

### **19-A M.R.S. § 3253 (Modification of child support order of another state).**

Court may modify another state's child support order that has been registered in Maine if, after notice and hearing, the court finds that: (1) neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state; (2) a nonresident petitioner seeks modification; and (3) the respondent is subject to personal jurisdiction of the Maine court. And that Maine is the child's residence, or a party is subject to Maine jurisdiction and all parties have filed consents in a record of the issuing state court for Maine to modify the support order.

<https://legislature.maine.gov/statutes/19-A/title19-Asec3253.html>

### **19-A M.R.S. § 3255 (Jurisdiction to modify child support order of another state when individual parties reside in State).**

If all parties reside in Maine, and the child does not reside in the state that issued the support order, Maine court has jurisdiction to enforce and modify the issuing state's support order in a proceeding to register that order.

<https://legislature.maine.gov/statutes/19-A/title19-Asec3255.html>

### **19-A M.R.S. § 3261 (Jurisdiction to modify child support order of foreign country).**

Maine court may assume jurisdiction to modify a child support order and bind all individuals subject to personal jurisdiction in Maine, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws.

<https://legislature.maine.gov/statutes/19-A/title19-Asec3261.html>

**19-A M.R.S. § 1602 (Additional persons subject to jurisdiction) (within Ch. 53, Paternity).**

“To ensure maximum protection to citizens of this State, the department shall apply this section to assert jurisdiction over nonresident alleged fathers to the fullest extent permitted by the due process clause of the United States Constitution, Amendment XIV.” And, (2) a person who engages in sexual intercourse with a resident of Maine in Maine “submits to jurisdiction of the department for the purpose of the commencement of a paternity proceeding.”

<https://legislature.maine.gov/statutes/19-A/title19-Asec1602.html>

**Paternity and Child Support Proceeding – Service/Notification Requirements**

**19-A M.R.S. § 1836.**

In addition to the child, all parents of the child must be joined as parties in a proceeding to adjudicate parentage.

<https://legislature.maine.gov/statutes/19-A/title19-Asec1836.html>

**19-A M.R.S. §§ 1605. (Paternity, Expedited Process for the Commencement of Paternity Actions, Notice of proceeding to commence an action).**

The DHS may commence a paternity proceeding by serving a notice on an alleged father. DHS cannot serve a notice without a sworn statement under penalty of perjury from the mother claiming the alleged father engaged in sexual intercourse with her during the possible time of conception of the child, or is a man who is presumed under Maine law to be the child’s father.

<https://legislature.maine.gov/statutes/19-A/title19-Asec1605.html>

**Child Abuse/Neglect Proceeding – Jurisdiction**

**22 M.R.S. § 4031 (Child and Family Services and Child Protection Act, Jurisdiction; venue).**

(A) District court has jurisdiction over child protection proceedings and petitions for adoption from permanency guardianship filed by DHHS.

(B) The Probate Court and Superior Court have concurrent jurisdiction over requests for preliminary child protection orders under 22 M.R.S. § 4034. As soon as action is taken by the Probate Court or the Supreme Court, the matter must be transferred to the District Court.

<https://legislature.maine.gov/statutes/22/title22sec4031.html>

**Child Abuse/Neglect Proceeding – Service/Notification Requirements**

**22 M.R.S. § 4033 (Service and notice).**

1. Petition Service. Child protection petition (and required notice of hearing) must be served:
  - (A) On the parents, legal guardian and custodians, the guardian ad litem for the child and any other party at least 10 days before the hearing date. Party may waive the time requirement if the waiver is written and voluntarily and knowingly executed in court before a judge. Service must be in accordance with Maine Rules of Civil Procedure.
  - (B) If DHHS is not the petitioner, the petitioner must also serve a copy of the petition and notice of hearing on the State.
2. Notice of Preliminary Protection Order. If there is a request for a preliminary protection order, the petitioner shall, by any reasonable means, notify the parents, legal guardian and custodians of the intent to request that order and of the court in which their counsel may file motions, including to modify or vacate any preliminary protection order issued. This notice is not required if petitioner includes in the petition a sworn statement detailing a sufficient factual basis that: (A) the child would suffer serious harm during the time needed to notify the parents, legal guardian or custodians; or (B) prior notice to the parents, legal guardian or custodians would increase the risk of serious harm to the child or petitioner.
5. Notice to foster parents, preadoptive parents and relatives providing care. DHHS must provide notice of all proceedings, in advance, to foster parents, preadoptive parents and relatives providing care.

<https://legislature.maine.gov/statutes/22/title22sec4033.html>

## **Divorce and Legal Separation – Jurisdiction**

### **14 M.R.S. § 704-A (Persons subject to jurisdiction).**

Maine authorizes jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the U.S. Constitution, Amend. XIV. Any person, Maine resident or not, who does certain acts submits to personal jurisdiction of Maine courts as to any cause of action arising from said acts, including:

- (C) “Conception resulting in parentage within the meaning of Title 19-A, chapter 61,” and
- (G) “Maintaining a domicile in this State while subject to a marital or family relationship out of which arises a claim for divorce, alimony, separate maintenance, property settlement, child support or child custody, or the commission in this State of any act giving rise to such a claim.”

<https://legislature.maine.gov/statutes/14/title14sec704-A.html>

### **19-A M.R.S. § 851 (Judicial separation).**

Court has jurisdiction to enter a separation decree upon either a joint petition, or a petition by a married person, who lives apart or desires to do so for a period of more than 60 continuous days.

<https://legislature.maine.gov/statutes/19-A/title19-Asec851.html>

### **19-A M.R.S. § 901 (Action for divorce; procedures)**

One seeking a divorce may file a complaint in District Court only if: (A) plaintiff has resided in good faith in Maine for 6 months prior; (B) plaintiff is a Maine resident and the parties were married in Maine; (C) plaintiff is a Maine resident and the parties resided in Maine when the cause of divorce accrued; or (D) the defendant is a Maine resident.

<https://legislature.maine.gov/statutes/19-A/title19-Asec901.html>

## **Divorce and Legal Separation – Service/Notification Requirements**

No separate service/notification requirements.

## **Adoption Proceeding – Jurisdiction**

### **18-C M.R.S. § 1-302 (Subject-matter jurisdiction).**

To the fullest extent permitted by law, the probate court has jurisdiction over all subject matter relating to “the protection of minors and incapacitated persons,” and “has jurisdiction over protective proceedings and guardianship proceedings.”

<https://legislature.maine.gov/statutes/18-C/title18-Csec1-302.html>

### **18-C M.R.S. § 9-103 (Adoption, Jurisdiction).**

The Probate Court has exclusive jurisdiction over the following:

- A. Petitions for adoption;
- B. Consents and reviews of withholdings of consent by persons other than a parent;
- C. Surrenders and releases;
- D. Termination of parental rights brought pursuant to section 9-204;
- E. Proceedings to determine the rights of putative parents of children whose adoptions or surrenders and releases are pending before the Probate Court; and
- F. Reviews conducted pursuant to section 9-205.

<https://legislature.maine.gov/statutes/18-C/title18-Csec9-103.html>

### **18-C M.R.S. § 5-104 (Uniform Guardianship and Protective Proceedings, Subject matter jurisdiction).**

“Except to the extent that jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act and Title 4, section 152, subsection 5-A, the court has jurisdiction over a guardianship for a minor domiciled or present in this State. The court has jurisdiction over a conservatorship or protective arrangement instead of a conservatorship for a minor domiciled in or having property located in this State.”

<https://legislature.maine.gov/statutes/18-C/title18-Csec5-104.html>

**4 M.R.S. § 251.** Giving general jurisdiction to the probate court to “grant leave to adopt children, change the names of persons, appoint guardians for minors and others according to law and has jurisdiction as to persons under guardianship, and as to whatever else is conferred by law, except in cases in which the District Court has jurisdiction over a child pursuant to section 152, subsection 5-A.”

<https://legislature.maine.gov/statutes/4/title4sec251.html>

**4 M.R.S. § 152 (5-A).** If proceedings involving custody or other parental rights with respect to a minor child (including adoption, divorce, parental rights and responsibilities, grandparents’ rights, protective custody, change of name, guardianship, paternity, termination of parental rights and protection from

abuse or harassment) are pending in the District Court, then that Court – not the Probate Court – has exclusive jurisdiction of actions for guardianship, adoption, change of name or other matters brought under Title 18-C.

If the District Court with one of these matters learns of a proceeding in the Probate Court, it shall notify the Probate Court and take appropriate action to transfer the matter from the Probate Court to the District Court.

<https://legislature.maine.gov/statutes/4/title4sec152.html>

### **Adoption Proceeding – Service/Notification Requirements**

18-C M.R.S. § 9-201(7). Notice of a hearing under § 9-201 (governing adoptions and determination of parentage) must be given to a parent, a putative parent, the attorney for the child and any other parties the court determines appropriate. Notice need not be given to a putative parent who has waived the right to notice under this section.

<https://legislature.maine.gov/statutes/18-C/title18-Csec9-201.html>

### **Domestic Violence – Jurisdiction**

#### **19-A M.R.S. § 4005 (Protection From Abuse, Commencement of proceeding).**

Authorizes a complaint by (i) an adult abused by a family or household member or a dating partner; or (ii) a minor child abused by a family or household member or dating partner of the caretaker, through a person responsible for the child or a DHHS representative.

Also authorizes a complaint when a minor has been a victim of conduct defined as stalking, sexual assault, unauthorized dissemination of prohibited private images, or sex trafficking, again through either the minor’s parent , other person responsible for the child, or a DHHS representative.

<https://legislature.maine.gov/statutes/19-A/title19-Asec4005.html>

#### **19-A M.R.S. § 4003 (Protection from Abuse, Filing of complaint; jurisdiction).**

Proceedings under this chapter must be filed in the District Court of the division in which either the plaintiff or defendant resides. If plaintiff has left his or her residence to avoid abuse, the plaintiff may bring an action in the division of the plaintiff’s previous residence or new residence.

District Court has jurisdiction over protection from abuse petitions. If a District Court judge is not available when a complaint seeking a temporary order is filed, it may be presented to another District Court Judge or to any Superior Court Justice, who has the same authority to grant or deny the temporary order.

<https://legislature.maine.gov/statutes/19-A/title19-Asec4003.html>

#### **19-A M.R.S. § 4004 (Application of other acts).**

The provisions and limitations of the Uniform Child Custody Jurisdiction and Enforcement Act apply to a proceeding under this chapter regardless of whether it is joined with another proceeding under section 4010, subsection 2.

<https://legislature.maine.gov/statutes/19-A/title19-Asec4004.html>

**19-A M.R.S. § 4010 (Procedure).**

(2) All proceedings may be independent of, or joined with, a proceeding for divorce, dissolution of marriage, legal separation or separate maintenance. A proceeding under this chapter is in addition to any other available civil or criminal remedies.

<https://legislature.maine.gov/statutes/19-A/title19-Asec4010.html>

**Domestic Violence– Service/Notification Requirements**

No separate service/notification requirements.

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