

# Massachusetts Law About Surrogate Parenting

## See Also:

- [Law About Adoption](#)

## Contents:

### Massachusetts Laws

[MGL c. 46 s. 4B](#) Legitimacy of Child Conceived by Artificial Insemination

[MGL c. 210 s. 2](#) Written Consent by Certain Persons Required for Adoption

[MGL c.210 s. 11A](#) Penalties for Advertisement of Children Offered for Adoption

[MGL c. 215 s. 6](#) Probate and Family Court has Jurisdiction in Matters of General Equity

### Massachusetts Regulations

[102 CMR 5](#) Standards for Licensure or Approval of Placement Agencies Offering Adoption Services

### Forms

[Surrogate Parenting Agreement](#), All Law.Com.

### Selected Case Law

[Culliton v. Beth Israel Deaconess](#), 435 Mass. 285 (2001) Held that the Probate & Family Court has the authority to review the merits of a case where the genetic parents sought a prebirth declaration of parentage for their twins, who were delivered by a surrogate mother. The court stressed the importance of establishing the rights and responsibilities of parentage as soon as is practically possible to prevent legal controversies and furnish children with a measure of stability.

[Hodas v. Morin](#), 442 Mass. 544 (2004) Court ruled the Massachusetts Probate and Family Court had jurisdiction to issue a pre-birth order even though the gestational surrogate mother and her husband as well as the intended parents whose egg and sperm were used to create the pregnancy lived in other states. Even though none of the contracting parties lived in Massachusetts, where the agreement specified that Massachusetts law would control and the birth was to take place in a Massachusetts hospital, jurisdiction existed in the probate court.

[In the Matter of Baby M](#), 109 N.J. 396, 537 A2d 1227 (1988) The court held that a surrogacy contract was invalid and the termination of parental rights can not be based on contract under New Jersey law. It also held that a pre-conception contract by which a woman agrees to serve as a surrogate mother for a married couple for a fee violates public policy and is unenforceable. However, the court did grant custody to the biological father after applying the "best interests of the child" test. The biological mother, who was the surrogate, was allowed visitation rights.

[R.R. v. M.H. & Another](#), 426 Mass. 501 (1998) Surrogate agreement was unenforceable because mother's

consent to surrender custody of child to the biological father was given before the fourth day after the child's birth and it was made in consideration of monetary payment which was above the mother's pregnancy-related expenses.

## Print Sources

[Adoption and Reproductive Technology Law in Massachusetts](#), Susan L. Crockin, editor, MCLE, 2000.

"How to not break the maternity tie: recognizing the rights of gestational carriers & a proposal for shared legal motherhood," [Massachusetts Family Law Journal](#) October-November 2005, Vol. 23 Issue 5, p.133-149.

"Law Making for Baby Making: An Interpretive Approach to the Determination of Legal Parentage," by Marsha Garrison, 113 [Harvard Law Review](#) 835 (2000). Also **available online** to [library card holders](#) through [Hein Online](#).

[Massachusetts Practice, vol. 1 \(Family Law and Practice\)](#) West Group, 2002 with supplement, chap. 24.

"Protectionism and Freedom to Contract: The Erosion of Female Autonomy in Surrogacy Decisions," 36 [Suffolk University Law Review](#) 717 (2003). Also **available online** to [library card holders](#) through [Hein Online](#).

"R.R. vs. M.H. & Another: The Enforceability of Traditional Surrogacy Agreements," by Nancy R. Van Tine and Pamela G. Smith, 43 [Boston Bar Journal](#) 8 (Jan/Feb. 1999).

[Uniform Laws Annotated](#), Vol. 9B, West Group, 2001 with supplement, vol. 9B p. 299 "Uniform Parentage Act (2000)", Art. 7 & Art. 8.

"Validity and Construction of Surrogate Parenting Agreement," 77 [ALR4th](#) 70