

Surrogate Decision Making

Public and Private Legal Tools



Free Legal Help for Older Mainers

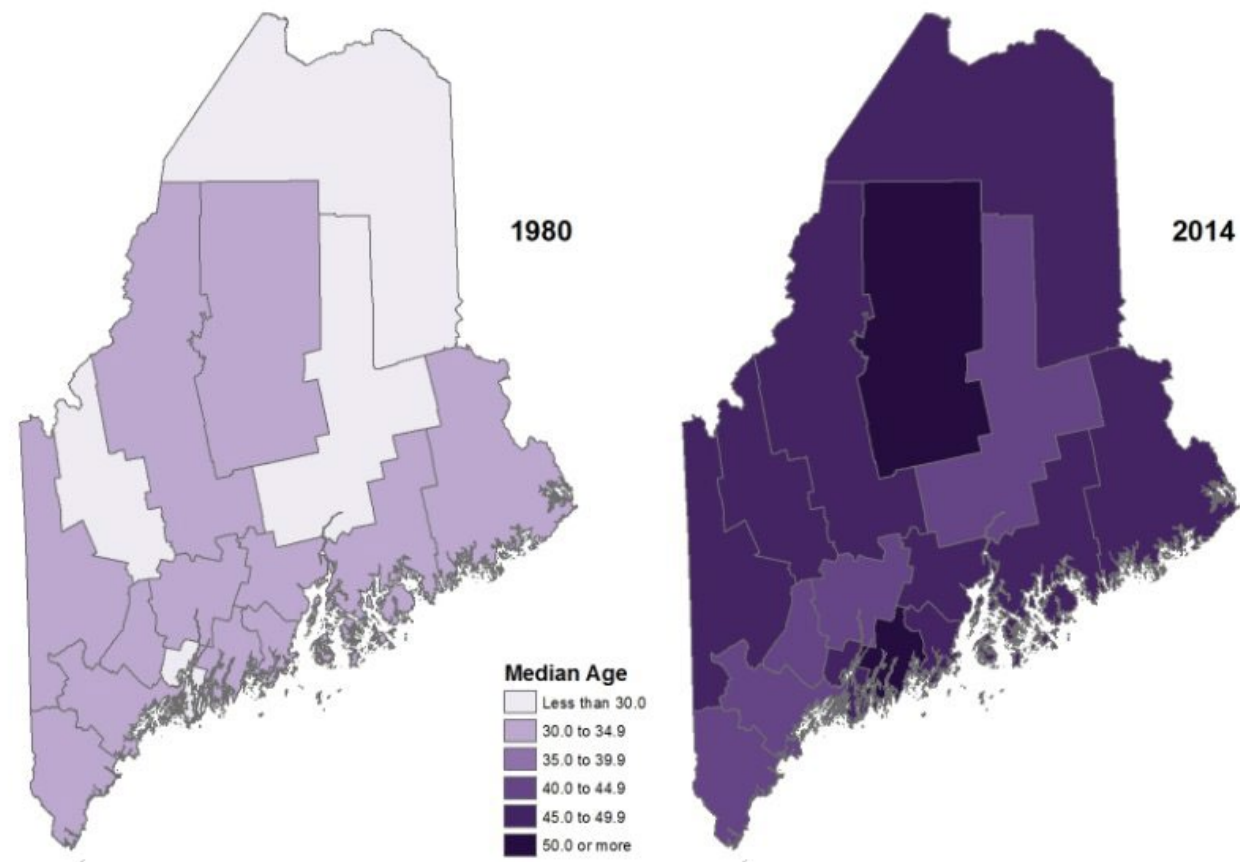
Overview

1. **Description of LSE**
2. **Snapshot of Maine's Population Trends**
3. **Discussion about Surrogate Decision Making**
 1. Financial Powers of Attorney
 2. Advance Directives
 3. Guardianship and Conservatorship
4. **LSE's Work with Adult Protective Services**
5. **Questions**

Who Are LSE Clients?

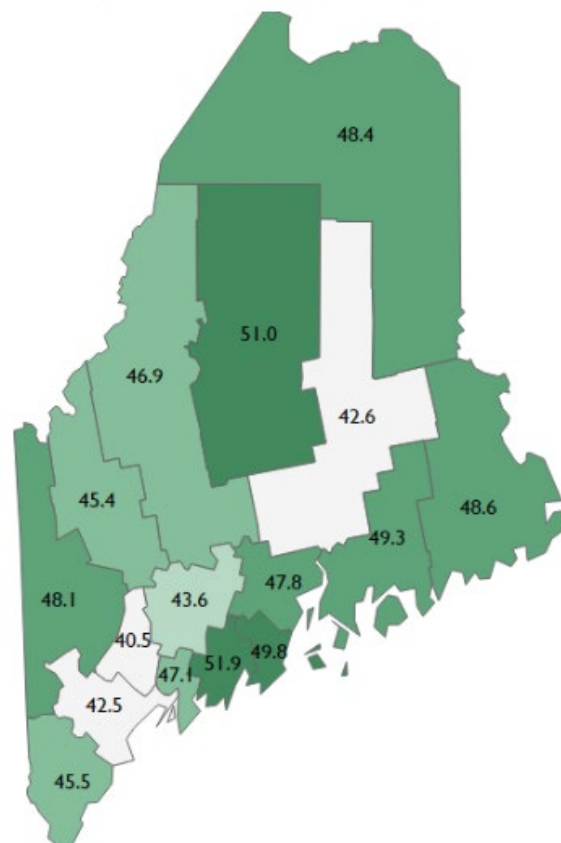
- **Maine residents age 60 and over**
- **Who are socially or economically needy**
- **Who need legal help to obtain basic needs, such as food, housing, utilities, health and medical care, public benefits, etc.**
- **Civil matters only**
- **Clients pay no fees**

Median Age



Sources: Carsey School analyses of 1980 Decennial Census & 2014 Census Population Estimates

Median Age by County, 2024



Source: U.S. Census Bureau Population Estimates, Vintage 2024

Private Tools

Created by an individual to establish an agent – potentially with help from advocate/doctor/lawyer.

These are voluntary tools put in place when an individual has capacity.

Power of Attorney (POA) - about the money and property

Advance Directive (AD) - about health and safety

For both a POA and an AD, the individual, so long as they have sufficient capacity, retains the right to make all decisions, including changing the contract, naming a new agent, and terminating the contract

Public Tools

Established in the Probate Courts
Typically, involuntary

- **Guardianship – about health and safety**
- **Conservatorship – about money and property**

Previously, a guardianship and conservatorship frequently removed all civil rights, but the new Probate Code now calls for supported decision making:

The court shall grant . . .only those powers necessitated by the limitations and demonstrated needs of the respondent and enter orders that will encourage the development of respondent's maximum self-determination and independence. 18-C section 5-301(2).

Role of the PP-505 form

Medical Surrogacy- a last option

- **MEDICAL SURROGACY (18-C M.R.S. § 5-806)**
 - Adult or emancipated minor
 - Determined by physician to lack capacity
 - No (adequate) advance directive, guardianship, or other effective legal directive in place

Adult Protective Services

From the perspective of LSE, connecting a client to APS can help client access support and resources.

APS will assess an individual and engage if that person meets the definitions of an “incapacitated adult” or a “dependent adult.”

"Dependent adult" means an adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs.

- A person, regardless of where that person resides, who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, because the person suffers from a significant limitation in mobility, vision, hearing or emotional or mental functioning.

"Incapacitated adult" means an adult who is unable to receive and evaluate information or make or communicate informed decisions to such an extent that the adult lacks the ability to meet essential requirements for physical health, safety or self-care, even with reasonably available appropriate technological assistance.

LSE Helpline

**To contact the LSE Helpline for
legal help, call:**

1-800-750-5353