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2011 Edition

Child Visitation Actions in Connecticut

A Guide to Resources in the Law Library

- **U.S. Supreme Court:** “The liberty interest at issue in this case — the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court.” [Troxel v. Granville](#), 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L.Ed. 49 (2000).
- “**Connecticut courts** likewise have recognized the constitutionally protected right of parents to raise and care for their children When legislation affects a fundamental constitutional right, it must be strictly scrutinized.” [Fish v. Fish](#), 285 Conn. 24, 41 (2008). (emphasis added).
- **Third Party:** “The term ‘third party’ refers to any private individual other than a parent of the child, as distinguished from the state.” [Fish v. Fish](#), 285 Conn. 24, 27, fn 1 (2008).
- “Accordingly, any third party, including a grandparent or a great-grandparent, seeking visitation must allege and establish a parent-like relationship as a jurisdictional threshold in order both to pass constitutional muster and to be consistent with the legislative intent.” [Roth v. Weston](#), 259 Conn. 202, 225, 789 A.2d 431 (2002).
- **Parent-Child Relationship:** “First, the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship.
- **Harm:** The petition must also contain specific, good faith allegations that denial of the visitation will cause real and significant harm to the child. As we have stated, that degree of harm requires more than a determination that visitation would be in the child’s best interest. It must be a degree of harm analogous to the kind of harm contemplated by §§ 46b-120 and 46b-129, namely, that the child is ‘neglected, uncared-for or dependent.’ The degree of specificity of the allegations must be sufficient to justify requiring the fit parent to subject his or her parental judgment to unwanted litigation. Only if these specific, good faith allegations are made will a court have jurisdiction over the petition.” [Roth v. Weston](#), 259 Conn. 202, 234-35, 789 A.2d 431 (2002).
- **Proof:** “Second, once these high jurisdictional hurdles have been overcome, the petitioner must prove these allegations by clear and convincing evidence. Only if that enhanced burden of persuasion has been met may the court enter an order of visitation. These requirements thus serve as the constitutionally mandated safeguards against unwarranted intrusions into a parent’s authority.”
- “We can envision circumstances in which a nonparent and a child have developed such substantial emotional ties that the denial of visitation could cause serious and immediate harm to that child.” [Roth v. Weston](#), 259 Conn. 202, 225 (2002).

Table of Contents:

<i>Section 1: Child Visitation Action</i>	3
Table 1: Practice Book Section 25-4.....	9
Table 2: ALR Annotations on Child Visitation	10
<i>Section 2: Third Party Visitation Actions</i>	12
<i>Section 3: Temporary or Pendente Lite Visitation Orders</i>	17
<i>Section 4: Preference of the Child in Visitation Actions</i>	19
<i>Section 5: Modification of Child Visitation Orders</i>	21
<i>Section 6: Contempt of Visitation Orders</i>	24
<i>Section 7: Habeas Corpus Proceedings in Child Visitation Matters</i>	27
<i>Section 8: Relocation and Child Visitation Orders — Effective 10/1/06</i>	30
Table 3: P.A. 06-168 (An Act Concerning Relocation of Parents).....	32
<i>Section 8A: Relocation and Child Visitation Orders Effective —Prior to 10/1/06</i>	33
Table 4: Sibling Visitation in Connecticut.....	36
<i>Section 9: Out of State Child Custody Orders</i>	37
Table 5: Uniform Child Custody Jurisdiction and Enforcement Act.....	40
<i>Appendix A: House Debate on Passage of H.B. 5536</i>	43

Web Sites: -

<http://ctlawhelp.org/self-help-guides/family/visitation>

http://www.law.cornell.edu/wex/Child_custody

<http://www.nolo.com/legal-encyclopedia/child-custody>

These guides are provided with the understanding that they represent only a beginning to research.

View our other pathfinders at

<http://www.jud.ct.gov/lawlib/selfguides.htm#Pathfinders>

**This guide links to advance release slip opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar.
The online versions are for informational purposes only.**

Section 1: Child Visitation Action

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to actions seeking court ordered visitation.

- DEFINITIONS:**
- “We recognize that, in many households, grandparents, as well as people who have no biological relationship with a child, undertake duties of a parental nature and that states have sought to ensure the welfare of children by protecting those relationships.” [Roth v. Weston](#), 259 Conn. 202, 220, 789 A.2d 431 (2002).
 - “Therefore, we acknowledge that a person other than a blood relation may have established a more significant connection with a child than the one established with a grandparent or some other relative. Conversely, we recognize that being a blood relation of a child does not always translate into that relative having significant emotional ties with that child. Indeed, as § 46b-59 implicitly recognizes, it is not necessarily the biological aspect of the relationship that provides the basis for a legally cognizable interest. Rather, it is the nature of the relationship that determines standing.” [Ibid.](#), 221
 - “Proof of the nature of a **parent-like relationship** between a person seeking visitation and the child would provide the jurisdictional safeguard necessary to prevent families from having to defend against unjustified petitions for visitation.” (emphasis added). [Ibid.](#) 22-222
 - **Petition for visitation:** “First, the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that denial of the visitation will cause real and significant harm to the child. As we have stated, that degree of harm requires more than a determination that visitation would be in the child’s best interest. It must be a degree of harm analogous to the kind of harm contemplated by §§ 46b-120 and 46b-129, namely, that the child is ‘neglected, uncared-for or dependent.’ The degree of specificity of the allegations must be sufficient to justify requiring the fit parent to subject his or her parental judgment to unwanted litigation. Only if these specific, good faith allegations are made will a court have jurisdiction over the petition.
Second, once these high jurisdictional hurdles have been overcome, the petitioner must prove these allegations by clear and convincing evidence. Only if that enhanced burden of persuasion has been met may the court enter an order of visitation. These requirements thus serve as the constitutionally mandated safeguards against unwarranted intrusions into a parent’s authority.” [Roth v. Weston](#), 259 Conn. 202, 234-235, 789 A.2d 431 (2002).
 - **Custody vs. Visitation:** “Specifically, visitation petitions challenge the decision of a fit parent who is presumed to be acting in the child’s best interest to deny or limit the petitioner’s request for visitation . . . The harm alleged in a visitation petition results from the child’s lack of access to the petitioner rather than from the parent-child relationship” [Fish v. Fish](#), 285 Conn. 24, 61 (2008). [Fish v. Fish](#), 285 Conn. 24, 47 (2008).
 - “. . . the parent-child relationship itself is at issue in a custody dispute, whereas it is not in a visitation dispute, in which the third party merely seeks the right to visit the child and the parents are presumed to be loving and caring.” [Ibid.](#) 61.

SEE ALSO: [Best Interest of the Child Standard in Connecticut](#)

Child Custody Actions in Connecticut

STATUTES:

CONN. GEN. STAT. (2011)

- § [45a-604](#). Definitions
- § [45a-606](#). Father and mother joint guardians
- § [46b-54](#). Counsel for minor children. Duties.
- § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
- § [46b-57](#). Third party intervention re custody of minor children. Preference of the child
- § [46b-59](#). **Court may grant right of visitation to any person.**
- § [46b-59a](#). Mediation of disputes re enforcement of visitation rights
- § [46b-61](#). Orders re Children where parents live separately. Commencement of proceedings
- § [46b-64](#). Orders of court prior to return day of complaint
- §§ [46b-115 to 46b-115gg](#) *Uniform Child Custody Jurisdiction & Enforcement Act*

OLR REPORTS:

- Saul Spigel, Chief Analyst, [Department of Children and Families Visitation Criteria](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2004-R-0799 (October 5, 2004).
“You asked about the Department of Children and Families (DCF) criteria for deciding whether a child in foster care can visit overnight with a biological parent.”

COURT RULES

CONNECTICUT PRACTICE BOOK (2011)

- [Chapter 25. Superior Court - Procedure in Family Matters](#)
 - § 25-4. Action for visitation of minor child
 - § 25-5. Automatic orders upon service of complaint
 - § 25-7. Pleadings in general; Amendments to complaint or application
 - § 25-9. —Answer, cross complaint, claims for relief by defendant
 - § 25-23. Motions, requests, orders of notice, and short calendar
 - § 25-24. Motions
 - § 25-26. Modification of custody, alimony or support
 - § 25-27. Motion for contempt
 - § 25-28. Order of notice
 - § 25-30. Statements to be filed
 - § 25-38. Judgment files
 - § 25-50. Case management
 - § 25-57. Affidavit concerning children
 - § 25-59. Closure of courtroom in family matters
 - § 25-59a. Sealing files or limiting disclosure of documents in family matters
 - § 25-60. Family Division evaluations and studies
 - § 25-61. Family Division
 - § 25-62. Appointment of Guardian Ad Litem

LEGISLATIVE HISTORY:

- 1983 CONN. ACTS 96. An act concerning visitation rights. “as initially enacted . . . permitted only grandparents to petition for visitation. [Castagno v. Wholean](#) [239 Conn. 336, 684 A.2d 1181], supra, 239 Conn. 347-48. In 1983, however § 49-59 . . . was amended to its current form to allow ‘any person’ to petition for visitation “ [Roth v. Weston](#), 29 Conn. 202, 219,

- 789 A.2d 431(2002).
- 1974 CONN. ACTS 169, § 12, 17 H.R. Proc., Pt. 6, 1974 Sess., p. 2805 [§ 46b-61] “...expands the jurisdiction of the superior court involving minor children and further states that the section can be used in controversies not only involving a husband and wife but in controversies involving parents of minor children or children if they are no longer married or were never married.”

FORMS:

Official Forms

- [JD-CL-12](#). Appearance
- [JD-FM-75](#). Application for Waiver of Fees
- [JD-FM-160](#). Answer
- [JD-FM-161](#). Custody / Visitation Application
- [JD-FM-158](#). Notice of Automatic Orders
- [JD-FM-164](#). Affidavit Concerning Children
- [JD-FM-164A](#). Addendum to Affidavit Concerning Children
- [JD-FM-167](#). Motion for Notice by Publication or Mail in Family Cases
- [JD-FM-168](#). Order of Notice by Publication or Mail in Family Cases
- [JD-FM-176](#). Motion for Orders Before Judgment (Pendente Lite)
- [JD-FM-6](#). Financial Affidavit (With automatic calculations)
- [JD-FM-173](#). Motion for Contempt
- [JD-FM-174](#). Motion for Modification
- [JD-FM-183](#). Custody/Visitation Agreement
- [JD-FM-185](#). Motion for Intervention in Family Matters
- [JD-FM-202](#). Request for leave

CASES:

- [Fish v. Fish](#), 285 Conn. 24 (2008) “. . . a court could exercise jurisdiction over a petition for third party visitation against the wishes of a fit parent only if the petition contains ‘specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that denial of the visitation will cause real and significant [emotional] harm to the child. As we have stated, that degree of harm requires more than a determination that visitation would be in the child’s best interest. It must be a degree of harm analogous to the kind of harm contemplated by §§ 46b-120 and 46b-129, namely, that the child is `neglected, uncared-for or dependent.’ The degree of specificity of the allegations must be sufficient to justify requiring the fit parent to subject his or her parental judgment to unwanted litigation. Only if these specific, good faith allegations are made will a court have jurisdiction over the petition.”
- [Raffino v. Bottass](#), FA054019188S (April 11, 2006, J.D. Hartford), 41 Conn. L. Rptr. 181, 183 (June 12, 2006), 2006 WL 1149131 (Conn. Super. 2006). “This court recognizes the anguish that the grandparents are suffering in not being able to spend as much time with their grandchildren as they previously did and their concern that the children will suffer too. However, the court also recognizes that the father must devote his energies to re-establishing his family unit with the children, and, as the courts have indicated, there is a presumption that he is acting in the best interests of the children. It is that very principle that is so protected that the Connecticut Supreme Court has declared that a very high standard must be met so as to appropriately protect the father’s right to not have to defend his decisions in a court of law. While adherence to the underlying principle may be very

difficult for the grandparents at this time, the grandparents might consider that just as parents must give their children two things — roots and wings, grandparents must continue to do that for the parents of their grandchildren.”

- [Foster v. Foster](#), 84 Conn. App. 311, 320, 853 A.2d 588 (2004). “As the plaintiff has no constitutionally protected right to counsel in a custody or visitation proceeding, we decline to require the court, in every custody or visitation dispute confronted with a pro se litigant, to grant a continuance simply because the request is founded on a parent’s right to raise a child without undue interference. Although we recognize the value of family integrity, we acknowledge also that the state has an interest in the orderly presentation of cases and the ability of the court to manage its docket. We therefore conclude that, balancing all the interests, the court’s refusal to grant a continuance did not result in a constitutional deprivation.”
- [Roth v. Weston](#), 259 Conn. 202, 789 A.2d 231 (2002). *Petition for visitation by maternal grandmother and maternal aunt pursuant to Conn. Gen. Stat. § 46b-59.*
 “In the absence of a threshold requirement of a finding of real and substantial harm to the child as a result of the denial of visitation, forced intervention by a third party seeking visitation is an unwarranted intrusion into family autonomy. Accordingly, in the absence of any such requirement of harm, § 46b-59 does not justify interference with parental rights.” (229)
 “... the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that the denial of the visitation will cause real and significant harm to the child... Second, the petitioner must prove these allegations by clear and convincing evidence.” (235)
- [Laspina-Williams v. Laspina-Williams](#), 46 Conn. Supp. 165, 171, 742 A.2d 840 (1999). *Petition for visitation rights with the biological child of the defendant; the child was conceived through alternative insemination and had been jointly raised by the plaintiff and defendant who were same-sex partners.* “... the defendant allowed, even encouraged, the plaintiff to assume a significant role in the life of the child such that she is a party entitled to seek visitation with the child.”
- [Temple v. Meyer](#), 208 Conn. 404, 544 A.2d 629 (1988).
- [Ridgeway v. Ridgeway](#), 180 Conn. 533, 541, 429 A.2d 801 (1980). “In this case, the evidence showed ... that the plaintiff’s psychological instability was such that it posed a threat to the children’s well-being.” *Visitation limited to one day per week*
- [Raymond v. Raymond](#), 165 Conn. 735, 742, 345 A.2d 48 (1974). “It has never been our law that support payments were conditioned on the ability to exercise rights of visitation or vice versa. The duty to support is wholly independent of the right of visitation.”

WEST KEY NUMBERS:

- *Child Custody*
 - # 175. In general
 - # 176. Discretion
 - # 177. Grounds in general
 - # 178. Welfare and best interest of child
 - # 179. Existence of factors other than best interest of the child
 - # 180. Right of biological parent as to third persons in general
 - # 181. Ability of parties to cooperate
 - # 182. Person entitled in general

- # 183. Custody of siblings
- # 184. Geographic considerations
- # 185. Religion
- # 186. Primary caregiver
- # 187. Rewarding or punishing party
- # 188. Behavior of parties in general
- # 189. Motives
- # 190. Litigation conduct
- # 191. Sexual behavior or preference of party
- # 192. —In general
- # 193. —Homosexuals
- # 194. —Effect on child
- # 195. Cohabitation with third party
- # 196. Previous interference with lawful custody or visitation
- # 197. Abuse or neglect of child
- # 198. Physical condition of custodian
- # 199. Use of drugs or alcohol
- # 200. Commission of crime
- # 201. Mental condition
- # 202. Previous abandonment or relinquishment by custodian
- # 203. Agreements, contracts, or stipulations
- # 204. Child preference
- # 205. Age of child
- # 206. Health and physical condition of child
- # 207. Mental health or condition of child
- # 208. Performance of child in school
- # 209. Physical custody arrangement
- # 210. —In general
- # 211. —Hours
- # 212. —Holidays
- # 213. Transporting and transferring child
- # 214. Placement of child with third parties
- # 215. Visitation conditions
- # 216. —In general
- # 217. —Supervised visitation
- # 218. —Payment of child support, attorney’s fees, alimony
- # 219. —Excluding other persons from being present during visitation
- # 220. —Place of visitation
- # 221. —Notice to custodial parent
- # 222. —Counseling
- # 223. —Restriction on conduct
- # 224. —Bond
- # 225. Control and authority of parties
- # 226. —In general
- # 227. —Religion
- # 228. —Education
- # 229. —Extracurricular choices
- # 230. —Discipline or punishment
- # 231. Employment status
- *Children out of Wedlock*
 - # 20.9. Visitation and joint custody

TEXTS &

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND](#)

TREATISES:

[PRACTICE WITH FORMS](#) (2010).

Chapter 42. Custody and visitation

§ 42.44. Visitation—General considerations

§ 42.45. Visitation schedules—Allocation of vacations, holidays and the like

§ 42.46. Visitation—Checklist of holidays, vacations and special events

§ 42.47. —Parental access via mail, telephone, and the like

§ 42.48. —Supervision or denial of visitation rights

§ 42.49. —With third parties

§ 42.50. Parenting education program

§ 42.52. Parenting plan

• [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996)

Chapter 10. Child custody and visitation

[10.37]. Authority to enter orders concerning visitation

[10.38]. Limitations on visitation

[10.39]. General considerations involving visitation

• 3 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007)

Chapter 16. Visitation

§ 16.01. Introduction and general considerations

§ 16.02. The right of a parent to visitation following dissolution of marriage

§ 16.03. Putative father's right to visitation

§ 16.04. Manner of visitation

§ 16.05. Child's preference

§ 16.06. Excessive or infrequent contact with the child

§ 16.07. Effect of visitation on child's emotional development

§ 16.08. Religious difference

§ 16.09. Effect of the parent's sexual conduct on visitation

§ 16.10. Behaviors and conditions affecting visitation

§ 16.11. Jurisdictional restrictions on visitation

§ 16.12. Nonparent visitation

§ 16.13. Stipulations and agreements

§ 16.14. Bibliography

• DONALD T. KRAMER, [LEGAL RIGHTS OF CHILDREN](#) (2005 Rev. 2d ed.)

Chapter 3. Visitation rights

§ 3:1. Visitation rights; Generally

§ 3:2.—Noncustodial parents

§ 3:3. —Stepparents and adoptive parents

§ 3:4. —Foster parents

§ 3:5. —Grandparents, generally

§ 3:6. —Natural grandparents of adopted grandchildren

§ 3:7. —Siblings and other family members

§ 3:8. Other third parties

§ 3:9. Factors considered in granting or denying visitation rights;
Child abuse and sexual abuse

§ 3:10. —Mental instability or physical handicap of parent

§ 3:11. —Use and abuse of alcohol or drugs

§ 3:12. —Sexual preferences or conduct of the noncustodial parent

§ 3:13. —Wishes of the child

§ 3:14. —Parent's domicile or place of residence

§ 3:15. —Previous surrender of parental rights

- § 3.16. —Parent’s incarceration
- § 3.17. —Parent’s or child’s religion
- § 3.18. Terms of visitation
- § 3.19. Modification
- § 3.20. Child’s best interest

- ENCYCLOPEDIAS:**
- 59 AM. JUR. 2D *Parent & Child* § 38-40 (2002).
 - § 38. Right to visitation
 - § 39. —Denial to noncustodial parent
 - § 40. —By third party
 - See Table 1 for ALR Annotations

- COMPILER:**
- George Booth, Connecticut Judicial Branch Law Library at Danbury, 146 White Street, Danbury, CT 06810. (203) 207-8625. [Email](#)

* Originally compiled by Lawrence Cheeseman, retired
Connecticut Judicial Branch Supervising Law Librarian.

Table 1: Practice Book Section 25-4

Action for Visitation of Minor Child

[Conn. Practice Book](#) § 25-4 (2011)

Every application in an action for visitation of a minor child, other than actions for dissolution of marriage or civil union, legal separation or annulment, shall state the name and date of birth of such minor child or children, the names of the parents and legal guardian of such minor child or children, and the facts necessary to give the court jurisdiction. The application shall comply with Section 25-5. Such application shall be commenced by an order to show cause. Upon presentation of the application and an affidavit concerning children, the judicial authority shall cause an order to be issued requiring the adverse party or parties to appear on a day certain and show cause, if any there be, why the relief requested in the application should not be granted. The application, order and affidavit shall be served on the adverse party not less than twelve days before the date of the hearing, which shall not be held more than thirty days from the filing of the application.

Table 2: ALR Annotations on Child Visitation

ALR Annotations

Child Visitation

Adult Child	Andrea G. Nadel, Annotation, <i>Parent's Or Relative's Rights Of Visitation Of Adult Against Latter's Wishes</i> , 40 ALR4th 846 (1985).
AIDS	Claudia G. Catalano, Annotation, <i>Child Custody And Visitation Rights Of Person Infected With AIDS</i> , 86 ALR4th 211 (1991).
Alimony or support payment	<ul style="list-style-type: none">• Alice Wright Cain, Annotation, <i>Right To Credit Against Child Support Arrearages For Time Children Spent In Custody Of Noncustodial Parent Pursuant To Visitation Or Court Order</i>, 118 ALR5th 385 (2004).• Edward L. Raymond, Annotation, <i>Withholding Visitation Rights For Failure To Make Alimony Or Support Payment</i>, 65 ALR4th 1155 (1988).
Drugs	Mary E. Taylor, Annotation, <i>Parent's Use of Drugs as a Factor in Award of Custody of Children, Visitation Rights, or Termination of Parental Rights</i> , 20 ALR5th 534 (1994).
Extramarital sexual relationships	Diane M. Allen, Annotation, <i>Propriety Of Provision Of Custody Or Visitation Order Designed To Insulate Child From Parent's Extramarital Sexual Relationship</i> , 40 ALR4th 812 (1985).
Grandparents	<ul style="list-style-type: none">• George L. Blum, Annotation, <i>Grandparents' Visitation Rights Where Child's Parents Are Living</i>, 71 ALR5th 99 (1999).• George L. Blum, Annotation, <i>Grandparents' Visitation Rights Where Child's Parents Are Deceased, Or Where Status Of Parents Is Unspecified</i> 69 ALR5th 1 (1999).
Incarcerated parent	George L. Blum, Annotation, <i>Right of jailed or imprisoned parent to visit from minor child</i> , 6 ALR6th 483 (2005).
Interference with visitation	Debra E. Wax, Annotation, <i>Interference By Custodian Of Child With Noncustodial Parent's Visitation Rights As Ground For Change Of Custody</i> , 28 ALR4th 9 (1984).
Post Adoption	Danny R. Veilleux, Annotation, <i>Postadoption Visitation By Natural Parent</i> , 78 ALR4th 218 (1990).
Religion	George L. Blum, Annotation, <i>Religion As A Factor In Visitation Cases</i> , 95 ALR5th 533 (2002).
Relocation of custodial parent	Jay M. Zitter, Annotation, <i>Custodial Parent's Relocation As Grounds For Change Of Custody</i> , 70 ALR5th 377 (1999).

[Cont'd]

ALR Annotations

Child Visitation

[Cont'd]

Requiring presence of both parties in court	Lee R. Russ, Annotation, <i>Necessity Of Requiring Presence In Court Of Both Parties In Proceedings Relating To Custody Or Visitation Of Children</i> , 15 ALR4th 864 (1982).
Same sex relationship	Robin Cheryl Miller, Annotation, <i>Child Custody and Visitation Rights Arising From Same-Sex Relationship</i> , 80 ALR5th 1 (2000)
Sexual abused	Christopher Vaeth, Annotation, <i>Denial Or Restriction Of Visitation Rights To Parent Charged With Sexually Abusing Child</i> , 1 ALR5th 776 (1992),
Sexual conduct of parent	Robin Cheryl Miller, Annotation, <i>Restrictions on Parent's Child Visitation Rights Based on Parent's Sexual Conduct</i> , 99 ALR5th 475 (2002).
Smoking	Harriet Dinegar Milks, Annotation, <i>Smoking as Factor in Child Custody and Visitation Cases</i> , 36 ALR5th 377 (1996).
Stepparent	Wendy Evans Lehmann, Annotation, <i>Award Of Custody Of Child Where Contest Is Between Natural Parent And Stepparent</i> , 10 ALR4th 767 (1981).
Third party	Alan Stephens, Annotation, <i>Parental Rights Of Man Who Is Not Biological Or Adoptive Father Or Child But Was Husband Or Cohabitant Of Mother When Child Was Conceived Or Born</i> , 84 ALR4th 655 (1991).
Transsexuality	Michael P. Sullivan, Annotation, <i>Parent's Transsexuality As Factor In Award Of Custody Of Child, Visitation Rights, Or Termination Of Parental Rights</i> , 59 ALR4th 1170 (1988).

Section 2: Third Party Visitation Actions

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to right of nonparents to initiate child visitation actions or to seek visitation by intervening in a pending family action.
- SEE ALSO:** [Grandparent Rights in Connecticut](#)
- CURRENCY:**
- 2011 Edition
- DEFINITIONS:**
- **Constitutional Issues:** “The relevant statutes concerning visitation and custody are overly broad in exactly the same fashion; they fail to define with particularity those persons who may seek visitation and custody other than parents. Accordingly, we conclude that, to avoid constitutional infirmity, the standing requirement that a third party allege a parent-like relationship with the child should be applied for all of the reasons described in *Roth* [[Roth v. Weston](#), 259 Conn. 202 (2002)] to third party custody awards and to third parties seeking intervention in existing custody proceedings.” [Fish v. Fish](#), 285 Conn. 24, 44 (2008).
 - **Third Party:** “is not defined in the foregoing statutes [Table 8-2] or in any other related statutes. The legislative history of the statutes sheds no additional light on the matter. As we stated in *Castagno*, [*Castagno v. Wholean*, 239 Conn. 336, 684 A.2d 1181(1996)] ‘courts are bound to assume that the legislature intended, in enacting a particular law, to achieve its purpose in a manner which is both effective and constitutional. . . . [T]his presumption of constitutionality imposes upon the trial court, as well as this court, the duty to construe statutes, whenever possible, in a manner that comports with constitutional safeguards of liberty.’” [Fish v. Fish](#), 285 Conn. 24, 42-43 (2008).
 - **Custody vs. visitation:** “In summary, we conclude that third party custody petitions challenge the liberty interest of a parent in a way that is fundamentally different from visitation petitions” [Fish v. Fish](#), 285 Conn. 24, 55-56 (2008).
 - **Harm:** “The harm alleged in a visitation petition results from the child’s lack of access to the petitioner rather than from the parent-child relationship, which is deemed to be beneficial.” *Ibid.* p. 47.
- STATUTES:**
- CONN. GEN. STATUTES (2011)
- § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
 - § [46b-57](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
 - § [46b-59](#). Court may grant right of visitation to any person.
- OLR REPORT:**
- MARY M. JANICKI, [GRANDPARENTS’ VISITATION RIGHTS](#), Connecticut

General Assembly, Office of Legislative Research Report No. 2011-R-0079 (February 7, 2011).

“You asked for a comparison of Connecticut's law on grandparents' right to visit their grandchildren with the laws on that subject in other states.”

- SUSAN PRICE, [GRANDPARENTS' RIGHTS](#), Connecticut General Assembly, Office of Legislative Research Report No. 2006-R-0383 (September 18, 2006).
“You have asked for an explanation of Connecticut law on grandparents' custody of, and visitation with, their grandchildren.
- SAUL SPIGEL, [GRANDPARENTS' CUSTODY OF GRANDCHILDREN](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2003-R-0596 (September 22, 2003).

COURT RULES

CONNECTICUT PRACTICE BOOK (2011)

- [Chapter 25 Superior Court - Procedure in Family Matters](#)
 - § 25-1. Definitions Applicable to Proceedings on Family Matters
 - § 25-3. Action for custody of Minor Child
 - § 25-4. Action for Visitation of Minor Child
 - § 25-5. Automatic Orders upon Service of Complaint or Application
 - § 25-23. Motions, Requests, Orders of Notice, and Short Calendar
 - § 25-59. Closure of courtroom in family matters
 - § 25-59a. Sealing files or limiting disclosure of documents in family matters
 - § 25-62. Appointment of Guardian Ad Litem

Official Forms

FORMS:

- [JD-CL-12](#). Appearance
- [JD-FM-75](#). Application for Waiver of Fees
- [JD-FM-161](#). Custody / Visitation Application
- [JD-FM-162](#). Order to Attend Hearing and Notice to the Defendant
- [JD-FM-158](#). Notice of Automatic Orders
- [JD-FM-164](#). Affidavit Concerning Children
- [JD-FM-164A](#). Addendum to Affidavit Concerning Children
- [JD-FM-167](#). Motion for Notice by Publication or Mail in Family Cases
- [JD-FM-168](#). Order of Notice by Publication or Mail in Family Cases
- [JD-FM-176](#). Motion for Orders Before Judgment (Pendente Lite)
- [JD-FM-6](#). Financial Affidavit (With automatic calculations)
- [JD-FM-173](#). Motion for Contempt
- [JD-FM-174](#). Motion for Modification
- [JD-FM-183](#). Custody/Visitation Agreement
- [JD-FM-202](#). Request to leave

Unofficial Forms

- 8B AM JUR PLEADING AND PRACTICE FORMS *Divorce & Separation*
 - § 91. Petition - By Grandparent - For Visitation Rights
 - § 92. Affidavit - By Grandparent - In Support of Petition for Visitation
 - § 930. Petition or Application - By Grandparent - To Modify Child Custody Award Giving Grandparent Visitation Rights

CASES:

- [Fish v. Fish](#), 285 Conn. 24, 46 (2008). “Mindful of the parent's constitutional rights, we concluded in *Roth* [[Roth v. Weston](#), 259 Conn. 202 (2002)] that Connecticut's third party visitation statute, without a judicial gloss, was unconstitutional and interfered with the fundamental right of parents to raise and care for their children because it was too broadly written and provided no standard to guide the court in making a visitation decision, other than the best

- interests of the child.”
- [Denardo v. Bergamo](#), 272 Conn. 500, 514, 863 A.2d 686(2005). “Our conclusion that Roth applies retrospectively leads to the further conclusion that the trial court was compelled to grant the defendant's motion to terminate visitation. The plaintiffs failed to allege or attempt to prove that their relationship with the child was similar to a parent-child relationship and that denial of visitation would cause real and significant harm to the child. Without those specific, good faith allegations or such proof, either at the time of the filing of their petition or at the time of the hearing on the defendant's motion, the trial court's prior order of visitation was rendered without subject matter jurisdiction. Accordingly, the defendant's motion to modify and terminate the plaintiffs' visitation rights properly was granted.” (2004).
 - [Troxel v. Granville](#), 530 U.S. 57, 68, 120 S.Ct. 2054, 2061. (2000). “Accordingly, so long as a parent adequately cares for his or her children ... there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.”
 - [Roth v. Weston](#), 259 Conn. 202, 789 A.2d 231 (2002). *Petition for visitation by maternal grandmother and maternal aunt pursuant to Conn. Gen. Stat. § 46b-59*. “In the absence of a threshold requirement of a finding of real and substantial harm to the child as a result of the denial of visitation, forced intervention by a third party seeking visitation is an unwarranted intrusion into family autonomy. Accordingly, in the absence of any such requirement of harm, § 46b-59 does not justify interference with parental rights.” (229) “... the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that the denial of the visitation will cause real and significant harm to the child... Second, the petitioner must prove these allegations by clear and convincing evidence.” (235)
 - [Crocket v. Pastore](#), 259 Conn. 240, 246, 789 A.2d 453 (2002). *Petition for visitation by maternal grandmother* “ This case is controlled by our concurrent decision in *Roth*, wherein we overruled our previous decision in *Castagno*;...”
 - [Castagno v. Wholean](#), 239 Conn. 336, 352, 684 A.2d 1181 (1996), *overruled* by [Roth v. Weston](#), 259 Conn. 202, 789 A.2d 431 (2002).
 - [In Re Felicia B](#), 56 Conn. App. 525, 743 A.2d 1160 (2000), *cert. denied*, 252 Conn. 952 (2000). Paternal grandparents were denied both custody and visitation in a case where the father’s parental rights were terminated. “...they cannot safeguard and provide care in the children’s best interests while clinging to the hope that their son did not sexually abuse their grandchildren” (p. 527).
 - [Alexander v. Gomez](#), 34 Conn. L. Rptr. 660 (Conn. Super., Danbury, may 30, 2003) 2003 Conn. Super. Lexis 1586. “The plaintiff argues that applying Roth retroactively would be a substantial injustice to the plaintiff. This court agrees. The court in Roth noted that applying the new standard to the specific complaint allegations in the case before it would be ‘manifestly unfair, because these requirements are newly stated, and the plaintiffs could not have anticipated their adoption.’ *Id.*, 235... For the foregoing reasons, the defendant’s motion to modify and eliminate the plaintiff’s visitation rights is denied, without prejudice, and the plaintiff will be allowed an opportunity to amend her application and provide proof that it is consistent with all the

requirements of Roth.”

- Pivnick v. Lasky, 34 Conn. L. Rptr. 426 (Conn. Super., Hartford, Mar. 24, 2003), 2003 Conn. Super. Lexis 944. “The question presented by this motion is whether the standard articulated in *Roth v. Weston*, invalidates the prior orders in this case which have allowed for grandparent visitation... The court concludes that the decision of *Roth v. Weston* does override the prior court orders in this matter granting visitation rights to third parties against the wishes of a fit custodial parent.”

**WEST KEY
NUMBERS:**

- *Child Custody*
 - # 181. Ability of parties to cooperate.
 - # 270. Particular status or relationship. In general
 - # 271. Relatives in general
 - # 272. Stepparents
 - # 273. Adult siblings
 - # 274. In loco parentis; de facto parents

**TEXTS &
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
 - § 42.45. Visitation—With third parties
- 2 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
 - Chapter 11. Disputes between parents and third parties
 - § 11.01. Introduction
 - § 11.02. The constitutional basis of parental rights
 - § 11.03. The parental preference standard
 - § 11.04. Determination of parental fitness: Factors to be considered
 - § 11.05. The best interest of the child standard
 - § 11.05A. Detrimental to the child standard
 - § 11.05B. Conditions attached to custody award
 - § 11.05C. Effect of adoption
 - § 11.06. Standing
 - § 11.07. Role of expert witness
 - § 11.08. Bibliography
- 3 ARNOLD H. RUTKIN, GEN. ED., [FAMILY LAW AND PRACTICE](#) (2011).
 - Chapter 32. Child custody and visitation
 - § 32.09. Visitation
 - [7] Nonparent visitation
 - [a] Generally
 - [b] Grandparents
 - [c] Stepparents, siblings, other nonparents
 - [d] Guidelines for granting and scheduling nonparent visitation
- ANN M. HARALAMBIE, [HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES](#), 3rd ed. (2009).
 - Chapter 10. Third-party custody and visitation
 - § 10.15. Third party visitation generally
 - § 10.17. Standing
 - § 10.19. Coordinating schedules
 - § 10.20. Representing the third party
 - § 10.21. Opposing third-party visitation
 - § 10.22. Effect of termination of parental rights or adoption

ENCYCLOPEDIAS:

- 59 AM JUR 2D Parent and Child (2002).

Custody; Visitation

§ 38. Right of visitation

§ 39. —Denial to noncustodial parent

§ 40. —By third party

- 67A C.J.S. Parent and child (2002)
 - § 132. Visitation
 - § 134. Visitation—Rights of persons other than parent
- See Table 1: ALR Annotations

ARTICLES:

- John R. Logan, *Connecticut's Visitation Statute After 'Troxel v. Granville,'* 11 CONN. LAWYER 4 (no. 3, Nov. 2000).
- Kimberly R. Lusk, *What Rights Do You Have to My Child? Analysis of Stepparent Visitation Rights*, 23 CHILD. LEGAL RTS. J., Fall 2003, at 21.
- Eric B. Martin, Comment, *Grandma Got Run Over by the Supreme Court: Suggestions for a Constitutional Nonparental Visitation Statute After Troxel v. Granville*, 76 WASH. L. REV. 571 (2001).
- Eric B. Martin, *Maintaining Sibling Relationships for Children Removed from Their Parents*, CHILDREN'S LEGAL RTS. J., Winter 2002-2003, at 47.
- Ellen Marrus, "Where Have You Been Fran?" *The Right of Siblings to Seek Court Access to Override Parental Denial of Visitation*, 66 TENN. L. REV. 977 (1999).
- Laura W. Morgan, *Stepparents' and Cohabitants' Rights to Custody and Visitation*, in 1999 WILEY FAMILY LAW UPDATE 249 (1999).
- John R. Logan, *Connecticut's Visitation Statute After 'Troxel v. Granville,'* CONN. LAWYER (Nov. 2000, at 4).
- Koreen Labrecque, Note, *Grandparent Visitation After Stepparent Adoption*, 6 CONN. PROB. L. J. 61 (1991).
- Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Court's Reluctance to Declare Grandparent Visitation Statutes Unconstitutional* (Troxel v. Granville and its Implications for Families and Practice: A Multidisciplinary Symposium), 41 FAM. CT. REV. 14 (2003).
- Laurence C. Nolan, *Beyond Troxel: the Pragmatic Challenges of Grandparent Visitation Continue*, 50 DRAKE L. REV. 267 (2002).
- Linda Quinton Burr, *Selecting and Questioning Expert Witnesses When Grandparents Want the Kids*, in 2001 FAMILY LAW UPDATE, ch. 6 (2001).
- David G. Savage, *Parents First: Supreme Court Warns Judges to be Cautious When Granting Visitation Rights to Grandparents*, 86 ABA J., August 2000, at 38.
- Beatrice Yorker, et seq., *Custodial Relationships of Grandparents Raising Grandchildren: Results of a Home-based Intervention Study*, 49 Juv. & Fam. Ct. J., no. 2 (Spring 1998), p. 15.
- J.C. Bohl, *Brave New Statutes: Grandparent Visitation Statutes as Unconstitutional Invasions of Family Life and Invalid Exercises of State Power*, 3 Geo. Mason U. Civil Rights L. J. 271 (1993).

Section 3: Temporary or Pendente Lite Visitation Orders

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to temporary visitation orders issued while a family action is pending.
- DEFINITION:**
- “**Pendente lite** orders, by their very definition, are orders that continue to be in force ‘during the pendency of a suit, action, or litigation.’ Ballentine’s Law Dictionary (3d ed., 1969.” [Febbrioriello v. Febbrioriello](#), 21 Conn. App. 200, 206, 572 A.2d 1032 (1990).
 - “**Pendente lite** orders necessarily cease to exist once a final judgment in the dispute has been rendered because their purpose is extinguished at that time.” [Connolly v. Connolly](#), 191 Conn. 468, 480, 464 A.2d 837 (1983).
- STATUTES:** CONN. GEN. STAT. (2011)
- § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
 - § [46b-61](#). Orders re children where parents live separately. Commencement of proceedings
 - § [46b-64](#). Orders of court prior to return day of complaint.
- COURT RULES** [CONNECTICUT PRACTICE BOOK](#) (2011)
- § 25-23. Motions, Requests, Orders of Notice, and Short Calendar
 - § 25-24. Motions
 - (b) Each such motion shall state clearly in the caption of the motion, whether it is a pendente lite or a postjudgment motion.
 - § 25-26. Modification of Custody, Alimony or Support
- FORMS:**
- [JD-FM-176 Motion for Orders Before Judgment](#) (Pendente Lite)
 - MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) (1991).
 - VI. Pendente Lite motions, p.98
 - [Gardner v. Falvey](#), 45 Conn. App. 699 (1997), CONNECTICUT APPELLATE RECORDS & BRIEFS, February 1997.
 - Motion for Specific Visitation, Pendente Lite
- TEXTS & TREATISES:**
- 8 ARNOLD H. RUTKIN ET AL., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - Chapter 41. Pendente lite custody and visitation
 - § 41.1. In general
 - § 41.2. Automatic orders affecting temporary custody
 - § 41.3. Determining necessity of motion for temporary custody
 - § 41.4. Significance of temporary custody determinations
 - § 41.5. Modification and enforcement of temporary orders
 - § 41.6. Appealability of temporary orders
 - § 41.7. Emergency temporary orders
 - BARBARA KAHN STARK, [FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT](#) (2d

ed., 2003).

Temporary (Pendente Lite) orders, pp. 124-127.

- [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
 - Chapter 10. Child custody and visitation
 - II. Temporary custody and visitation (Pendente Lite)
 - 10.15. Statutory basis, p. 10-17
 - 10.16. When a temporary order should be obtained, pp. 10-17 to 10-18
 - 10.17. The significance of a pendente Lite order, pp. 10-18 to 10-19
 - 10.18. Modification of pendente elite orders, pp. 10-19 to 10-20
- 2 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
 - Chapter 8. Temporary custody determinations
 - § 8.01. Generally
 - § 8.02. Obtaining a temporary custody order
 - § 8.03. Third-party custody
 - § 8.04. Appealing a temporary custody order
 - § 8.05. Modification and enforcement of temporary custody orders
 - § 8.06. Forms
- 3 ARNOLD H. RUTKIN, GEN. ED., [FAMILY LAW AND PRACTICE](#) (2011).
 - Chapter 32. Child custody and visitation
 - § 32.05. Temporary custody
 - [1] Generally
 - [2] Purposes and significance of temporary custody
 - [3] Obtaining temporary custody orders
 - [4] Effect of temporary custody on permanent award
 - [5] Appeal
 - [6] Forms: Temporary custody

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- * Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

Section 4: Preference of the Child in Visitation Actions

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the consideration courts give to the wishes of the child when making child visitation orders.
- STATUTES:** CONN. GEN. STAT. (2011)
- § [46b-56](#). (b). In making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests. Such orders may include, but shall not be limited to: (1) Approval of a parental responsibility plan agreed to by the parents pursuant to section 46b-56a; (2) the award of joint parental responsibility of a minor child to both parents, which shall include (A) provisions for residential arrangements with each parent in accordance with the needs of the child and the parents, and (B) provisions for consultation between the parents and for the making of major decisions regarding the child's health, education and religious upbringing; (3) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent where sole custody is in the best interests of the child; or (4) any other custody arrangements as the court may determine to be in the best interests of the child.
 - § [46b-57](#). Third party intervention re custody of minor children. Preference of child.
 - § [46b-59](#). Court may grant right of visitation to any person
- COURT RULES:** [CONNECTICUT PRACTICE BOOK](#) (2011)
- § 25-60. Family Division Evaluations and Studies
- CASES:**
- [Szczerkowski v. Karmelowicz](#), 60 Conn. App. 429, 434 (2000). “Indeed, as the court succinctly stated, ‘We’re trying to respond to the articulated needs of the children to spend more time with [the plaintiff].’ No other rational reading of the court’s language is possible but that it was acting in the children’s best interests when it modified visitation...”
 - [Knock v. Knock](#), 224 Conn. 776, 788, 621 A.2d 267 (1993). “Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes; it requires only that the court take the child’s wishes into consideration.”
 - [Gennarini v. Gennarini](#), 2 Conn. App. 132, 137, 477 A.2d 674 (1984). “...whether the child’s preferences and feelings as to custody and visitation are a significant factor in the court’s ultimate determination ... will depend on all the facts of the particular case, including the child’s age and ability intelligently to form and express those preferences and feelings.” (p. 137)
 - [Hamele v. Hamele](#), 5 Conn. L. Rptr. 795 (Bridgeport Super. Ct. Dec. 31, 1991), 91 WL 288142, 1991 Conn. Super. Lexis 3108. *The court refused to make an order requiring a 15 year old child to visit with his father in prison after the child testified that he did not wish to do so.*
 - [Kawaller v. Kawaller](#), Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. 241310 (July 22, 1986), 1 C.S.C.R. 566.
“... it is the desire of all parties that the court modify the existing orders

pertaining to visitation and transportation ... In so doing, the court is guided by the best interests of the child, ... age 11, giving consideration to his wishes as is set forth in Conn. Gen. Stat. §46b-56(b).”

WEST KEY NUMBERS:

- *Child Custody*
204. Visitation. Child’s preference

TEXTS & TREATISES:

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 42. Child custody and visitation
§ 42.31. Preference of the child
- [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
Chapter 10. Child custody and visitation
§ 10.32. Child’s preference
- 3 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
Chapter 16. Child visitation
§ 16.05. Child’s preference

LAW REVIEWS:

- Steven Sichel, *The Child’s Preference in Disputed Custody Cases*, 6 Conn. Family Law. 45 (1991).
- Barbara L House, Comment, *Considering the Child’s Preference in Determining Custody: Is it Really in the Child’s Best Interest?* 19 J. JUV. L. 176 (1998).
- Kathleen Nemechek, *Child Preference in Custody Decisions: Where We Have Been, Where We Are Going, Where We Should Go*. 83 IOWA L. REV. 437 (1998).

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* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

Section 5: Modification of Child Visitation Orders

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the grounds and procedures for modification of child visitation orders.
- DEFINITIONS:**
- “**Child custody determination:** “means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual;” CONN. GEN. STATS. § [46b-115a\(3\)](#) (2011).
 - “**Modification:** “means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the prior custody determination;” CONN. GEN. STATS. § [46b-115a](#) (11) (2011)
 - “In order to prevail on a motion to modify visitation or custody, the moving party must prove by a preponderance of the evidence that there has been a material change of circumstances which alters the initial order. Alternatively, a court must conclude that the original custody or visitation order was not based upon the best interests of the child. *Hall v. Hall*, 186 Conn. 118, 122, 439 A.2d 441 (1982). Not all changes in circumstances since the date of the judgment are material. *Simons v. Simons*, 172 Conn. 341, 344, 374 A.2d 1040 (1977). *Gusev v. Gusev*, No. FA02 46 99 67 (Conn. Super. Ct., J.D. New Haven, Sept. 5, 2006).
- STATUTES:** CONN. GEN. STAT. (2011)
- § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
 - § [46b-59](#). Court may Grant right of visitation to any person
 - § [46b-59a](#). Mediation of disputes re enforcement of visitation rights
 - § [46b-61](#). Orders re children where parents live separately
 - § [46b-71](#). Filing of foreign matrimonial judgment; enforcement in this state
 - (b) “Such foreign matrimonial judgment shall become a judgment of the court of this state where it is filed and shall be enforced and otherwise treated in the same manner as a judgment of a court in this state; provided such foreign matrimonial judgment does not contravene the public policy of the state of Connecticut. A foreign matrimonial judgment so filed shall have the same effect and may be enforced or satisfied in the same manner as any like judgment of a court of this state and is subject to the same procedures for modifying, altering, amending, vacating, setting aside, staying or suspending said judgment as a judgment of a court of this state; provided, in modifying, altering, amending, setting aside, vacating, staying or suspending any such foreign matrimonial judgment in this state the substantive law of the foreign jurisdiction shall be controlling.”
 - § [46b-115m](#). Modification of custody determination of another state.
 - § [46b-115w](#). Registration of child custody determination
- COURT RULES** [CONNECTICUT PRACTICE BOOK](#) (2011)
- § 25-26. Modification of Custody, Alimony or Support

- § 25-30. Statements to be filed

LEGISLATIVE REPORTS:

- SAUL SPIGEL, [MODIFYING VISITATION ORDERS AFTER DIVORCE](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2001-R-0250 (February 23, 2001).

FORMS:

[Official Forms](#)

- [JD-FM-174](#). Motion for Modification

Unofficial Forms

- [Ruggiero v. Ruggiero](#), 76 Conn. App. 338 (2003), Connecticut Appellate Court Records & Briefs, January 2003.
Ex Parte Motion for Modification of Visitation and Custody (p.28)
- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
§ 44.3. Motion for modification of custody/visitation--Form
- MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) (1991)
XVI-b-2. Motion to Fix Visitation, p. 245

CASES:

- [McGinty v. McGinty](#), 66 Conn. App. 35, 40, 783 A.2d 1170 (2001). “In *Szczerkowski*, as here, the defendant claimed that the court abused its discretion by modifying a visitation order without finding that there was a substantial change in circumstances... We concluded that when considering motions to modify visitation, the court’s should apply the best interest of the child standard.”
- [Szczerkowski v. Karmelowicz](#), 60 Conn. App. 429, 433, 759 A.2d 1050 (2000). “The defendant cites no case, and our independent research discloses none, that requires a court ruling on a motion to modify visitation to find as a threshold matter that a change of circumstances has occurred. Rather, the standard the court applies is that of the best interest of the child.”
- [Kioukis v. Kioukis](#), 185 Conn. 249, 440 A.2d 894 (1981) At the time of the action to modify visitation Connecticut was not the “home state” of the child and therefore lacked jurisdiction to grant a modification. Support payments are independent of visitation rights.
- [Baumert v. Baumert](#), 19 Conn. L. Rptr. 59 (Stamford Super. Ct. Jan. 28, 1997), 1997 WL 66500, 1997 Conn. Super. Lexis 268. The court concluded that Texas should have jurisdiction to hear a motion to modify visitation based on the fact that “all visitation took place in Texas” and “Texas would seem to possess the greater information as to the child’s best interests”.
- [Pfister v. Pfister](#), Docket No. FA890263992S (Bridgeport Super. Ct. June 10, 1997), 1997 WL 334903, 1997 Conn. Super. Lexis 1578. “The children would benefit emotionally by increasing the father’s visitation to allow their relationship to grow in a loving and positive manner. Section 46b-56(a).”
- [Serrel v. Serrel](#), Docket No. FA940138147S (Stamford Super. Ct. December 17, 1996), 1996 WL 745868, 1996 Conn. Super. Lexis 3373. “It is found to be in the best interests of the older child that visitation with her father be suspended. It is found to be in the best interests of the younger child that overnight visitation be suspended until suitable home or home-like quarters are obtained by the defendant and the court finds such to be the case in a future hearing.”

WEST KEY NUMBERS:

- Children out of Wedlock
20.10. Modification
- Child Custody

#577. Visitation. modification

PAMPHLETS:
TEXTS &
TREATISES:

- [VISITATION, Connecticut Network for Legal Aid.](#)
- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
 - Chapter 44. Modification of custody and visitation orders
 - §44.1. In general
 - §44.2. Procedure for seeking modification
 - §44.3. Motion for modification of custody/visitation—Form
 - §44.4. Standards for modification
 - §44.5. Time of events and circumstances to be considered
 - §44.6. Parties entitled to seek modification
 - §44.7. Pleading specific facts justifying modification
 - §44.8. Temporary or interim orders
 - §44.9. Motion for temporary change of custody—Form
 - §44.10. Particular reasons for modifying orders
 - §44.11. Relocation of the child’s residence
 - §44.12. Violation of visitation rights
 - §44.13. Needs of the child
 - §44.14. Fitness of parent
 - §44.15. Health of parent
 - §44.16. Remarriage or cohabitation of parent
 - §44.17. Default in support
 - §44.18. Preference of the child
 - §44.19. Death of custodial parent
 - §44.20. Burden of proof
 - §44.21. Effect of agreement for change in custody or visitation
 - §44.22. Automatic modification provisions
 - §44.23. Effects of prior modification
- [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
 - Chapter 10. Child custody and visitation
 - 10.43. Modification statute, p. 10-39
 - 10.44. The standards for modification of custody and visitation, pp. 10-39 to 10-40
 - 10.45. Procedure for obtaining a modification, pp. 10-40 to 41
 - 10.46. Reason for modification of custody and visitation, pp. 10-41 to 10-43
 - 10.47. Standard of review, pp. 43-44
- 4 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
 - Chapter 25. Modification and enforcement of forum state’s custody-visitacion directives
 - § 25.01. Preliminary considerations
 - § 25.02. Modification proceedings: Procedural issues
 - § 25.03. Modification standards
 - § 25.04. Key modification factors
 - § 25.05. Enforcement proceedings

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- * Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

Section 6: Contempt of Visitation Orders

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the use of contempt proceedings to enforce visitation orders.
- SEE ALSO:**
- § 10.8. Habeas Corpus Visitation Proceedings
- CURRENCY:**
- 2011 edition
- DEFINITIONS:**
- “While particular acts do not always readily lend themselves to classification as civil or criminal contempts, a **contempt** is considered **civil** when the punishment is wholly remedial, serves only the purposes of the complainant, and is not intended as a deterrent to offenses against the public.” [McCrone v. United States](#), 307 U.S. 61, 64, 59 S. Ct. 685, 686 (1939)
 - “**Civil contempt** is conduct directed against the rights of the opposing party.” [Tatro v. Tatro](#), 24 Conn. App. 180, 185 (1991)
- STATUTES:**
- CONN. GEN. STAT. (2011)
- § [46b-87](#). Contempt of orders
 - § [46b-87a](#). Forms and instructions for application for contempt order based on violation of visitation order
- COURT RULES**
- [CONNECTICUT PRACTICE BOOK](#) (2011)
- § 25-27. Motion for Contempt
 - § 25-63. Right to Counsel in Family Civil Contempt Proceedings
 - § 25-64. Waiver
 - § 23-20. Review of Civil Contempt
- FORMS:**
- [Official Forms](#)
- [JD-FM-173](#). Motion for Contempt
- Unofficial Forms*
- MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) 188 (1991).
 - Form No. XI-A-1. Motion for Contempt [pendente lite], pp. 189-190
 - Form No. XI-A-3a. Application for Order to Show Cause and Contempt Citation [post judgment], pp. 193-194
 - Form No. XI-A-3b. Order for hearing, p. 195
 - Form No. XI-A-3c. Summons, p.196
- CASES:**
- [Wilson v. Wilson](#), 38 Conn. App. 263, 661 A.2d 621 (1995).
 - [Tatro v. Tatro](#), 24 Conn. App. 180, 186, 587 A.2d 154 (1991). “The inability of a contemnor to obey a court order through no fault of her own is a defense to a claim of contempt... The act for which the penalty was imposed cannot constitute contempt if the actor was unable to obey the order.”
 - [Tufano v. Tufano](#), 18 Conn. App. 119 (1989). The plaintiff mother was found in contempt for willful violation of the visitation rights granted to the paternal grandparents.

- Gilman v. Gilman, Docket No. 385930 (New Haven Super. Ct. May 14, 1997), 1997 WL 276459, 1997 Conn. Super. Lexis 1284. "... the court has serious concerns as to whether the plaintiff fully appreciates the importance of complying with the court's orders and the consequences for not doing so. It is fundamentally important that the children have visitation with their father according to the court's schedule. In order to insure that visitation occurs when scheduled, the court imposes a fine of \$150 for every visitation missed, now and in the future, due to the plaintiff's willful actions. The court also finds that an award to the defendant of attorney fees in the amount of \$750 ... is reasonable."

WEST KEY NUMBERS:

- *Child Custody*
 - # 851. Contempt
 - # 852. —In general
 - # 853. —Excuses and defenses
 - # 854. —Visitation
 - # 855. Jurisdiction
 - # 856. Venue
 - # 857. Time for proceedings
 - # 858. Parties
 - # 859. Process
 - # 860. Appearance
 - # 861. Pleading
 - # 862. —In general
 - # 863. —Issues, proof and variance
 - # 864. Evidence
 - # 865. —In general
 - # 866. —Admissibility
 - # 867. —Burden of proof
 - # 868. —Presumptions
 - # 869. —Degree of proof
 - # 870. —Weight and sufficiency
 - # 871. Hearing
 - # 872. Judgment or order
 - # 873. Operation and effect of judgment or order
 - # 874. Relief granted

PAMPHLETS:

- [HOW TO GET A CONTEMPT ORDER \(WHEN COURT ORDERS ARE NOT BEING OBEYED\)](#), [Connecticut Network for Legal Aid](#).

TEXTS & TREATISES:

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
 - Chapter 43. Enforcement of custody and visitation orders
 - § 43.1. In general
 - § 43.2. Parties entitled to seek enforcement
 - § 43.3. Venue for enforcement proceedings
 - § 43.4. Contempt proceedings generally
 - § 43.5. Notice and hearing requirements for contempt proceedings
 - § 43.6. Defenses to contempt claims
 - § 43.7. Penalties imposed for contempt
 - § 43.8. Habeas Corpus proceedings
 - § 43.9. Application for writ of habeas corpus—Form
 - § 43.10. Arbitration or mediation

- § 43.11. Criminal sanctions
- § 43.12. Tort claims
- § 43.13. Effect of pending claims for modification
- § 43.14. Enforcement provisions incorporated into judgment or agreement
- [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
 - Chapter 10. Child custody and visitation
 - 10.40. Contempt proceeding, pp. 10-36 to 10-37
 - 10.41. Enforcement through habeas corpus proceeding, pp. 10-37 to 10-38
 - 10.42. Criminal and tort claims
- 4 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
 - Chapter 25. Modification and enforcement of forum state's custody-visitacion directives
 - § 25.05. **Enforcement proceedings**
 - [1] Preliminary considerations
 - [a]. Types of enforcement proceedings and remedies
 - [i]. Contempt of court and habeas corpus
 - [ii]. Punitive modification
 - [iii]. Reduction, suspension or termination of child support
 - [iv]. Required posting of a bond
 - [v]. Money damages
 - [vi]. Criminal liability
 - [vii]. Injunctive relief
 - [viii]. Court's discretionary powers in enforcing visitacion directives
 - [ix]. Noncustodial parent compelled to exercise visitacion
 - [2] Contempt of court proceedings
 - [3] Punitive transfer of custody or modification of visitacion directives
 - [4] Reduction, termination or suspension of child support payments as an enforcement mechanism
 - [5] Requirement that a bond be posted to secure custody or visitacion rights
 - [a] Court's authority to require the posting of bonds in child custody or visitacion proceedings
 - [b] Appropriate circumstances for the imposition of a bond requirement
 - [c] Amount of the bond
 - [d] Execution on the bond

ENCYCLOPEDIAS:

- See Table 1 for list of ALR Annotations
- Denial of Child Visitation Rights, 2 POF2d 791 (1974).

COMPILERS:

- George Booth, Connecticut Judicial Branch Law Library at Danbury, 146 White Street, Danbury, CT 06810. (203) 207-8625. [Email](#)

* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

Section 7: Habeas Corpus Proceedings in Child Visitation Matters

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the applicability of a writ of habeas corpus in child visitation matters and form preparation and procedure in habeas corpus visitation proceedings.
- DEFINITION:**
- “The employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common-law writ... The primary purpose is to furnish a means by which the court ... may determine what is best for the welfare of the child.” [Howarth v. Northcott](#), 152 Conn. 460, 464 (1965).
 - “A habeas corpus petition concerning a minor child’s custody is an equitable proceeding in which the trial court is called upon to decide, in the best exercise of its sound discretion, the custodial placement which will be best for the child.” [Evans v. Santoro](#), 6 Conn. App. 707, 709 (1986).
- STATUTES:**
- CONN. GEN. STAT. (2011)
- § [45a-606](#). Father and mother joint guardians
 - § [46b-1](#)(8), (9). Family relations matters defined
 - § [52-466](#). Application for writ of habeas corpus. Service. Return.
 - § [52-467](#). Punishment for refusal to obey writ or accept copy.
 - § [52-493](#). Order in the nature of prerogative writs
- COURT RULES**
- [CONNECTICUT PRACTICE BOOK](#) (2011)
- § 25-40. Habeas Corpus in Family; The Petition
 - § 25-41. —Preliminary Consideration
 - § 25-42. —Dismissal
 - § 25-43. —The Return
 - § 25-44. —Reply to the Return
 - § 25-45. —Schedule for filing Pleadings
 - § 25-46. —Summary Judgment as to Writ of Habeas Corpus
 - § 25-47. —Discovery
- FORMS:**
- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
 - § 43.9. Application for Writ of Habeas Corpus
 - MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) (1991).
 - Form No. X-A-1a. Application for writ of habeas corpus concerning custody /visitation of minor child(ren), pp. 176-177
 - Form no. X-A-1b. Affidavit, pp. 178-179
 - Form no. X-A-1c. Writ of habeas corpus, p. 180
 - Form no. X-A-1d. Certification into court
 - Form no. X-A-1e. Petition for return of child

CASES:

- [In Re Jonathan M.](#), 255 Conn. 208, 223, 764 A.2d 739 (2001). “The primary issue in this appeal is whether the habeas petition may be employed as a means of testing the merits of the termination judgment, and not solely as a means of bringing challenges to custody and visitation orders. Although the petitioner’s parental rights have been terminated by a presumptively valid judgment ... to foreclose, on jurisdictional grounds, his ability to seek custody and assert subsequent challenges to the termination judgment, whether through a petition for a writ of habeas corpus or other means, would require a circular course of reasoning in which we are unprepared to indulge.”
- [Weidenbacher v. Duclos](#), 234 Conn. 51, 73, 661 A.2d 988 (1995). “... we hold that the mere fact that a child was born while the mother was married is not a per se bar that prevents a man other than her husband from establishing standing to bring an action for a writ of habeas corpus for custody of or visitation with a minor child.”
- [Doe v. Doe](#), 163 Conn. 340, 307 A.2d 166 (1972). The court held that only parents and legal guardians have standing to bring an action for habeas corpus seeking visitation rights.
- [Evans v. Santoro](#), 6 Conn. App. 707, 709, 507 A.2d 116 (1986). “In order to invoke the aid of a habeas corpus writ to enforce a right to physical custody of a minor, the applicant for the writ must show a prima facie legal right to custody... Once the writ has issued, the burden of proving that a change of custody would be in the child’s best interest rests upon the party seeking the change... In this case, that party was the petitioner.”
- [Axelrod v. Avery](#), Superior Court, judicial district of New London at New London, Docket No. 532395 (Dec. 1, 1994), 13 Conn. L. Rptr. 124, 1994 Conn. Super. Lexis 3058. “The language of [Nye](#) arguably extends standing in habeas corpus petitions from the narrow construction in [Doe](#) to a broad construction which include members of a child’s biological family... Moreover, a finding of standing is appropriate on the facts ... because the plaintiffs have a sufficient ‘personal stake in the outcome of the controversy,’ namely the custody of their granddaughter and the maintenance of a familial relationship with her.”
- [Forestiere v. Doyle](#), 30 Conn. Supp. 284, 288, 31 A. 2d 607 (1973). *Plaintiff father’s petition for a writ of habeas corpus seeking visitation rights* “... to deny him visitation rights without a hearing on the ultimate question of what is best for the welfare of the child is to deny him his constitutional rights.”

WEST KEY NUMBERS:

- *Habeas Corpus*
 - # 531. Infants
 - #532. —Custody in general
 - # 532(1). In general
 - # 532(2). Judgment or order awarding custody

**TEXTS &
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
 - § 43.8. Habeas corpus proceedings
 - § 43.9. Application for writ of habeas corpus—Form
- [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
 - Chapter 10. Child custody and visitation
 - 10.41. Enforcement through habeas corpus proceeding, pp. 10-37 to 10-38
- 1 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
 - Chapter 6. Commencement of action or proceeding
 - § 6.06. Habeas corpus
 - [1]. —Applicability to custody disputes
 - [2]. —Procedure

LAW REVIEWS:

- Paul J. Buser, *Habeas Corpus Litigation in Child Custody Matters: An Historical Mine Field*, 2 JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS, Winter 1993, at 1.
(available at the Norwich Law Library)

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Section 8: Relocation and Child Visitation Orders — Effective 10/1/06

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the impact of relocation on visitation orders and the role of the courts in controversies where the noncustodial parent objects to the relocation of the custodial parent, effective October 1, 2006.

SEE ALSO: • [Parental Relocation](#) (Research Guide)

STATUTES: CONN. GEN. STAT. (2011)

- § [46b-56d](#). Relocation of parent with minor child. Burden of proof. Factors considered by court

LEGISLATIVE:

- [2006 CONN. ACTS 169](#) (Reg. Sess.). An Act Concerning Relocation of Parents Having Custody of Minor Children
- Excerpt from Connecticut House debate on May 2, 2006:
“So the Bill before us provides that in post-judgment family situations, when there is a proposed relocation, there would be a burden of proof by preponderance of the evidence on the party that is relocating that the relocation is for a legitimate purpose, that the proposed location is reasonable in light of the purpose, and that the relocation is in the best interest of the child.
The Bill in question also codifies several factors that a court will consider to determine whether the best interests of the child are met, and those are in subsection B of the Bill.
Mr. Speaker, this Bill fulfills a legitimate purpose of clarifying the situation in the statutes, and of addressing a case which has caused some concern in the practice of family law. Therefore, I would urge the House to support the Bill this evening. Thank you, Mr. Speaker.” **FULL TEXT**

CASES:

- [Enrich v. Enrich](#), 127 Conn. App. 691, 696, 15 A.3d 1104, 1107, 15 A.3d 1104 (2011). “The court found, pursuant to § 46b-56d (a), that the plaintiff proved by a preponderance of the evidence that the proposed relocation of the children to Maine was for a legitimate purpose, the proposed location was reasonable in light of such purpose, and the relocation was in the best interests of the children.”
- [Noonan v. Noonan](#), 122 Conn. App. 184, 191-192, 998 A.2d 231, 236 (2010). “In 2006, the legislature enacted Public Acts 2006, No. 06-168, codified as § 46b-56d, which sets out the analysis a court is to apply when deciding a *postjudgment* motion to relocate with a couple's minor child. Section 46b-56d adopted the shift in the burden of proof to the relocating parent set forth in [Ireland v. Ireland](#), 246 Conn. 413, 425, 717 A.2d 676 (1998), and expanded the best interest of the child standard adopted through case law by providing specific factors that the court is to consider.” (Emphasis added.) [Taylor v. Taylor](#), 119 Conn. App. 817, 821-22, 990 A.2d 882 (2010)”

- [Taylor v. Taylor](#), 119 Conn. App. 817, 825, 990 A.2d 882, 887, 990 A.2d 882 (2010). “This court has noted that employing the best interest of the child standard in a termination case ‘is a difficult task that requires the court to weigh many different and sometimes competing interests.’ [In re Davonta V.](#), 98 Conn. App. 42, 48, 907 A.2d 126 (2006), aff’d, [285 Conn. 483](#), 940 A.2d 733 (2008). Similarly, the trial court was faced with the same challenge when deciding the issue of relocation. It candidly stated that both options, allowing or disallowing relocation, had negative aspects. For example, the court recognized that by allowing relocation, the plaintiff would not be able to coach the parties' minor child or attend his sporting events with the same frequency. Overall, however, the court found that although this relationship would not be the same, the parties' minor child would be able to maintain a relationship with the plaintiff while gaining a mother who “can work with some emotional support and be able ... to care for her family.” Because the defendant is the sole custodian of the parties' minor child, the court found that this result was in the best interest of the child.”

WEST KEY NUMBERS:

- *Child Custody* # 260-263

TEXTS & TREATISES:

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010)
 - § 42.39. Parental residence within or outside Connecticut
 - § 42.41. Limitation on location of residence
- [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
 - [10-17]. The significance of a *Pendente Lite* order
 - [10.36]. Parental relocation outside of the State of Connecticut
- 3 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
 - Chapter 16. Visitation
 - § 16.11 Jurisdictional restrictions on visitation
 - [1] Removal of child from jurisdiction
 - [2] Distance between noncustodial parent and child due to relocation of noncustodial parent

ENCYCLOPEDIAS:

- Jay M. Zitter, Annotation, *Custodial Parent’s Relocation as Grounds for Change of Custody*, 70 ALR5th 377 (1999).

LAW REVIEWS:

- M. Dee Samuels & Randall Friesen, *E-Visiting and Other Long-Distance Links*, 26 FAMILY ADVOCATE, Spring 2004, at 34.
- Sarah Gottfried, *Virtual Visitation: the Wave of the Future in Communication Between Children and Non-Custodial Parents in Relocation Cases*, 36 FAM. L. QUART. 475 (2002).
- Charles P. Kindregan, *Family Interests in Competition: Relocation and Visitation*, 36 SUFFOLK UNIV. L. REV. 31 (2002).
- Marion Gindes, *The Psychological Effects of Relocation for Children of Divorce*, 5 J. AM. ACAD. OF MATRIMONIAL LAWS. 119 (1998).

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- * Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

Table 3: P.A. 06-168 (An Act Concerning Relocation of Parents)

2006 Conn. Acts 168 (Reg. Sess.)

An Act Concerning Relocation of Parents Having Custody of Minor Children

Conn. Gen. Stats. § [46b-56d](#)

Section 1. (NEW) (*Effective October 1, 2006*)

(a) In any proceeding before the Superior Court arising after the entry of a judgment awarding custody of a minor child and involving the relocation of either parent with the child, where such relocation would have a significant impact on an existing parenting plan, the relocating parent shall bear the burden of proving, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose, (2) the proposed location is reasonable in light of such purpose, and (3) the relocation is in the best interests of the child.

Factors

(b) In determining whether to approve the relocation of the child under subsection (a) of this section, the court shall consider, but such consideration shall not be limited to:

- (1) Each parent's reasons for seeking or opposing the relocation;
- (2) the quality of the relationships between the child and each parent;
- (3) the impact of the relocation on the quantity and the quality of the child's future contact with the nonrelocating parent;
- (4) the degree to which the relocating parent's and the child's life may be enhanced economically, emotionally and educationally by the relocation; and
- (5) the feasibility of preserving the relationship between the nonrelocating parent and the child through suitable visitation arrangements.

Approved June 6, 2006

Section 8A: Relocation and Child Visitation Orders Effective — Prior to 10/1/06

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the impact of relocation on visitation prior to October 1, 2006.

SEE ALSO:

- [Parental Relocation](#) (Research Guide)

FORMS:

- MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) 109 (1991). Motion for Restraining Order.
- [Ireland v. Ireland](#), 246 Conn. 413, 428, 717 A.2d 676 (1998), Connecticut Supreme Court Records and Briefs, May/June 1998.
*Amended Motion to Enjoin and Restrain
Motion for Permission for Plaintiff to Reside in California with the
Minor Child*
- 7 AM. JUR. PLEADING & PRACTICE FORMS *Contempt* § 130.
“Removal of child from jurisdiction with intent to deprive person of part-time custody and visitation rights”

CASES:

- [Bretherton v. Bretherton](#), 72 Conn. App. 528, 538, 805 A.2d 766 (2002).
“The issue now arises whether our Supreme Court, in articulating the burden shifting scheme, intended summarily to preclude a custodial parent who fails to demonstrate by a preponderance of the evidence ‘that the relocation is for a legitimate purpose and, further, that the proposed location is reasonable in light of that purpose’ ... from relocating with the parties’ minor children without also considering the best interests of the children. Our reading of *Ireland* causes us to conclude that our Supreme Court did not intend to abandon the legal standard for custody decision-making solely on a custodial parent’s failure to meet the initial burden of proof.”
- [Ireland v. Ireland](#), 246 Conn. 413, 428, 717 A.2d 676 (1998). “In summary, we hold, therefore, that a custodial parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose, and (2) the proposed location is reasonable in light of the purpose. Once the custodial parent has made such a prima facie showing, the burden shifts to the noncustodial parent to prove by a preponderance of the evidence, that the relocation would not be in the best interests of the child.”
- [Ford v. Ford](#), 68 Conn. App. 173, 184, 789 A. 2d 1104 (2002). *The rationale in the Ireland decision determined to be* “limited to postjudgment relocation cases.”
“To apply the Ireland burden-shifting rationale to custody issues at judgment would unfairly impact the equilibrium of the parties.” (181)
- [Azia v. Dilascia](#), 64 Conn. App. 540, 550, 780 A.2d 992 (2001). “Because the court did apply the *Ireland* factors in reaching its custody decision, we

will assume, without deciding, that such application was proper... *Ireland* does not mandate that a court consider each factor individually and separately.”

- [Raymond v. Raymond](#), 165 Conn. 735, 740, 345 A.2d 48 (1974). “A divorce decree which awards the custody of a child to one parent with permission to the other to visit the child at reasonable times and places but which does not expressly restrict the residence of the child, does not impliedly prohibit the removal of the child from the state.”
- [Jones v. Jones](#), Docket No. FA990173261 (Middletown Super. Ct. Nov. 10, 2003). 2003 Conn. Super. Lexis 3369. “The court finds that Ms. Jones has failed to sustain her burden of proof that the move to Florida is reasonable in light of the reason therefor: Marriage... That said, then the quality and depth and continuity of these children’s very important relationship with their father should not be disturbed. The court grants the injunction applied for by Mr. Jones: Ms. Jones is enjoined from relocating the residence of the two minor children to Florida.”
- [Armstrong v. Armstrong](#), Docket No. FA010828168-S (Hartford Super. Ct. July 25, 2002). “The court concludes that the plaintiff should be designated as the primary physical custodian and that relocation of the children to Chicago will be in the best interest of the children.”
“In addition to the traditional modes of visitation, the parties should consider Internet visitation or videoconferencing (dubbed “virtual visitation”) between the children and the defendant father.”

WEST KEY NUMBERS:

- *Child Custody*
 - # 260. Geographic limitations. In general
 - # 261. Removal from jurisdiction
 - # 262. Construction and operation of court order
 - # 263. Agreements

TEXTS & TREATISES:

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010)
 - § 42.39. Parental residence within or outside Connecticut
 - § 42.41. Limitation on location of residence
- [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
 - [10-17]. The significance of a *Pendente Lite* order
 - [10.36]. Parental relocation outside of the State of Connecticut
- 3 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
 - Chapter 16. Visitation
 - § 16.11 Jurisdictional restrictions on visitation
 - [1] Removal of child from jurisdiction
 - [2] Distance between noncustodial parent and child due to relocation of noncustodial parent

ENCYCLOPEDIAS:

- Jay M. Zitter, Annotation, *Custodial Parent’s Relocation as Grounds for Change of Custody*, 70 A.L.R. 5th 377 (1999).

LAW REVIEWS:

- Sarah S. Oldham, *Recent Appellate Decisions*, 12 CONN. FAM. L. 25, (1997) [Discussion of the issues in *Ireland v. Ireland*]
- Kathryn E. Abare, *Protecting the New Family: Ireland v. Ireland and Connecticut’s Custodial Parent Relocation Law*. 32 CONN. L. REV. 307 (1999).
- M. Dee Samuels & Randall Friesen, *E-Visiting and Other Long-Distance*

- Links*, 26 FAMILY ADVOCATE, Spring 2004, at 34.
- Sarah Gottfried, *Virtual Visitation: the Wave of the Future in Communication Between Children and Non-Custodial Parents in Relocation Cases*, 36 FAM. L. QUART. 475 (2002).
 - Charles P. Kindregan, *Family Interests in Competition: Relocation and Visitation*, 36 SUFFOLK UNIV. L. REV. 31 (2002).
 - Marion Gindes, *The Psychological Effects of Relocation for Children of Divorce*, 5 J. AM. ACAD. OF MATRIMONIAL LAWS. 119 (1998).

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Table 4: Sibling Visitation in Connecticut

<p>Legislation</p>	<p>2003 Conn. Acts 243 (Reg. Sess.) “An Act Concerning Interstate Placement of Children and Visitation for Children in the Care and Custody of the Commissioner of Children and Families...” “§. 5 (New) (a) The Commissioner of Children and Families shall ensure that a child placed in the care and custody of the commissioner pursuant to an order of temporary custody or an order of commitment is provided visitation with such child’s parents and siblings, unless otherwise ordered by the court... (c) If such child has an existing relationship with a sibling and is separated from such sibling as a result of intervention by the commissioner including, but not limited to, placement in a foster home or in the home of a relative, the commissioner shall, based upon consideration of the best interests of the child, ensure that such child has access to and visitation rights with such sibling throughout the duration of such placement. In determining the number, frequency and duration of such visits, the commissioner shall consider the best interests of each sibling, given each child’s age and developmental level and the continuation of the sibling relationship...”</p>
<p>Statutes</p>	<p>§ 46b-59 Court may grant right of visitation to any person.</p>
<p>Legislative Reports</p>	<p>SAUL SPIGEL, DEPARTMENT OF CHILDREN AND FAMILIES POLICY ON SIBLINGS, Connecticut General Assembly, Office of Legislative Research Report No. 2000-R-0895 (Sept. 25, 2000).</p>
<p>Caselaw</p>	<p>Quail v. Quail, No. FA 02 0729549-S (Conn. Super. Ct., Hartford, July 25, 2002), 2002 Conn. Super Lexis 2685. “Both parties have filed ... motions for visitation of their youngest sibling. The applications are considered under Connecticut General Statutes §. 46b-59... This matter is controlled by the Connecticut Supreme Court decision in Roth v. Weston, 259 Conn. 202, 789 A.2d 431 (2002)... In applying those standards to the case at hand, the court reaches the following conclusions: The petitioners did have a relationship approaching a parent to child relationship with their sibling... However, that relationship lasted a relatively brief period, and the intensity and nature of that relationship ended some time ago...Accordingly, the court concludes that the plaintiffs lack standing to bring this action. In addition, an exam of the second jurisdictional requirement reveals that the evidence does not show by clear and convincing evidence that this parent’s dexision regarding visitation is causing, or would cause, the child to suffer real and substantial emotional harm...”</p>
<p>Articles</p>	<p>William Wesley Patton, <i>The Status of Siblings’ Rights: A View Into the New Millennium</i>, 51 DEPAUL L. REV. 1 (2001).</p>

Section 9: Out of State Child Custody Orders

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to registration, modification and enforcement of out of state child custody determinations pursuant to the “Uniform Child Custody Jurisdiction and Enforcement Act”.

DEFINITIONS:

- “The purposes of the UCCCJEA are to avoid jurisdictional competition and conflict with courts of other states in matters of child custody; promote cooperation with the courts of other states; discourage continuing controversies over child custody; deter abductions; avoid re-litigation of custody decisions; and to facilitate the enforcement of custody decrees of other states.” Radlo v. Radlo, No. FA920044260 (Conn. Super. CT, Putnam, Dec. 2, 2003), 36 Conn. L. Rptr. 136, 2003 Conn. Super. Lexis 3309.
- “**Child custody determination** means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.” (CONN. GEN. STAT. § [46b-115a](#)(3))
- “**Child custody proceeding** means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under sections 22 to 34, inclusive, of this act.” (CONN. GEN. STAT. § [46b-115a](#)(4))
- “**Commencement** means the filing of the first pleading in a proceeding.” (CONN. GEN. STAT. § [46b-115a](#)(5))
- “**Home state** means the state in which a child lived with a parent or person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months old, the term means the state in which the child lived from birth with any such parent or person acting as a parent...” (CONN. GEN. STAT. § [46b-115a](#)(7))
- “**Initial determination** means the first child custody determination concerning a particular child. (CONN. GEN. STAT. § [46b-115a](#)(8))
- “**Modification** means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the prior custody determination.” (CONN. GEN. STAT. § [46b-115a](#)(11))
- “**Physical custody** means the physical care and supervision of a child.” (CONN. GEN. STAT. § [46b-115a](#)(14))
- “As used in sections 46b-115u to 46b-115gg of this act, **petitioner** means a person who seeks enforcement of a child custody determination, and **respondent** means a person against whom a proceeding has been

commenced for enforcement of a child custody determination.” (CONN. GEN. STAT. § [46b-115u](#))

STATUTES:

CONN. GEN. STAT. (2011)

- [Uniform Child Custody Jurisdiction and Enforcement Act](#), §§ 46b-115—46b-115jj. Enforcement of foreign child custody order re return of child under Hague Convention.
§ [46b-115m](#). Modification of a child custody determination of another state.
§ [46b-115n](#). Temporary emergency jurisdiction.
§ [46b-115p](#). Simultaneous proceedings.
§ [46b-115s](#). Information required by the court.
§ [46b-115w](#). Registration of child custody determination.
§§ [46b-115u—46b-115gg](#). *Procedure for enforcement of out of state child custody orders*
§§ [46b-115hh—46b-115jj](#). Foreign child custody

LEGISLATIVE:

- Sandra Norman-Eady, Chief Attorney, [The Hague Convention On The Civil Aspects Of International Child Abduction](#), CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, Report No. 2006-R-0390 (July 12, 2006).
“You asked for an update of OLR Report 99-R-0792 on possible conflicts between The Hague Convention on the Civil Aspects of International Child Abduction and the Uniform Child Custody Jurisdiction and Enforcement Act.”

INTERNATIONAL CONVENTION:

- [The Hague Convention on the Civil Aspects of International Child Abduction](#), 1980, U.S., 1988, 51 Fed. Reg. 10494 (Mar. 26, 1986).
“The objects of the present convention are—
 - a. to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
 - b. to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting State.”

CASES:

- [Veacock-Little v. Little](#), No. FA 06-4020140S (Conn. Super. Ct., New Haven, Aug. 18, 2006) “. . . when children move with a parent from a state with home state status to another state, the former state does not lose its home state status if the other parent stays there until the children have lived in the new state for six months, at which point that state has acquired home state status.”
- [Radlo v. Radlo](#), No. FA920044260 (Conn. Super. CT, Putnam, Dec. 2, 2003), 36 Conn. L. Rptr. 136, 2003 Conn. Super. Lexis 3309. “The purposes of the UCCCJEA are to avoid jurisdictional competition and conflict with courts of other states in matters of child custody; promote cooperation with the courts of other states; discourage continuing controversies over child custody; deter abductions; avoid re-litigation of custody decisions; and to facilitate the enforcement of custody decrees of other states.”
- [Gilman v. Gilman](#), Docket No. 0121957S (Norwich Super. CT, May 22, 2001), 2001 WL 688610, 2001 Conn. Super. Lexis 1453. “The UCCJEA alters the analysis of the initial determination of child custody. Specifically, the new act requires that the ‘home state’ determination be made as a condition precedent to an examination as to whether the child and parent have significant connections with this state. The new act also

eliminates that analysis on the basis of “the best interest of the child.”

**WEST KEY
NUMBERS:**

- *Child Custody* # 700-789 Interstate issues
- *Child Custody* # 800-830 International issues

ENCYCLOPEDIAS:

- David Carl Minneman, Annotation, *Construction and Operation of Uniform Child Custody Jurisdiction and Enforcement Act*, 100 A.L.R. 5th 1 (2002).
- David Carl Minneman, Annotation, *Home State Jurisdiction of Court to Modify Foreign Child Custody Decree Under §§ 3(a)(1) and 14(a)(2) of Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA)*, 28 U.S.C.A. §§ 1738A(c)(A) and 1738A(f)(1), 72 ALR5th 249 (1999).

**TEXTS &
TREATISES:**

- 1 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
 - Chapter 3. Impact of the Uniform Child Custody and Enforcement Act (UCCJEA): An overview
 - § 3.01. Evolutionary developments
 - § 3.02. Objectives
 - § 3.02A. Jurisdiction to decide this dispute
 - § 3.02B. Enforcement
 - § 3.02C. Extraordinary enforcement under UCCJEA: warrant for physical custody
 - § 3.03. Definitions
 - § 3.04. Due process requirements
 - § 3.05. Pleadings and testimony
 - § 3.06. Joinder of additional parties; Appearances
 - § 3.07. Cooperation between courts
 - § 3.08. Miscellaneous provisions
 - § 3.09. Bibliography

LAW REVIEWS:

- Mitchell A. Jacobs and David L. Marcus, *The Uniform Child Custody Jurisdiction and Enforcement Act*, 18 GP SOLO, Oct.-Nov. 2001, at 48.

COMPILERS:

- George Booth, Connecticut Judicial Branch Law Library at Danbury, 146 White Street, Danbury, CT 06810. (203) 207-8625. [Email](#)

* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

Table 5: Uniform Child Custody Jurisdiction and Enforcement Act

Conn. Gen. Stat. (2011)

<p>§46b-115a</p>	<p>Definitions: (3) “Child custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.</p>
<p>§46b-115c</p>	<p>Application to indian tribes</p>
<p>§46b-115g</p>	<p>Notice to persons outside state; submission to jurisdiction</p>
<p>§46b-115i</p>	<p>Taking testimony in another state</p>
<p>§46b-115j</p>	<p>Cooperation between courts; preservation of records</p>
<p>§46b-115k</p>	<p>Initial child custody jurisdiction</p>
<p>§46b-115l</p>	<p>Jurisdiction (<i>Exclusive, continuing jurisdiction</i>)</p>
<p>§46b-115m</p>	<p>Modification of out of state child custody determination: (a) Except as otherwise provided in section 46b-115n, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under subdivisions (1) to (4), inclusive, of subsection (a) of section 46b-115k and one of the following occurs: (1) The court of the other state determines that it no longer has exclusive, continuing jurisdiction under a provision substantially similar to section 46b-115l; (2) a court of another state determines that a court of this state would be a more convenient forum under a provision substantially similar to section 46b-115q; or (3) a court of this state or another state determines that the child, the child’s parents and any person acting as a parent do not presently reside in the other state. (b) Notwithstanding the provisions of this act, a court of this state may modify a child custody determination made by a court of another state if: (1) The child resides in this state with a parent; (2) the child has been, or is under a threat of being, abused or mistreated by a person who resides in the state which would have jurisdiction under the provisions of this act; and (3) the court of this state determines that it is in the child’s best interest to modify the child custody determination.</p>
<p>§46b-115n</p>	<p>Temporary emergency jurisdiction: (a) A court of this state has temporary emergency jurisdiction if the child is present in this state and (1) the child has been abandoned, or (2) it is necessary in an emergency to protect the child because the child, a sibling or a parent has been, or is under a threat of being, abused or mistreated. As used in this subsection with respect to a child, “abused” shall have the same meaning as in section 46b-120 of the general statutes.</p>
<p>§46b-115o</p>	<p>Notice and opportunity to be heard and the right to intervene: (c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this act are governed by section 46b-57 of the general statutes.</p>

§46b-115p	Simultaneous proceedings <i>(The authority of a court in this state to assume jurisdiction when a custody action has been commenced in another state)</i>
§46b-115q	Inconvenient forum
§46b-115r	Jurisdiction declined by reason of conduct; assessment of fees and costs (a) Except as otherwise provided in section 46b-115n, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise jurisdiction unless:...
§46b-115s	Information required by the court <i>(Affidavit concerning custody)</i>
§46b-115w	Registration of child custody determination “(a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the Superior Court in this state: (1) A letter or other document requesting registration; (2) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the petitioner the order has not been modified; and (3) except as otherwise provided in section 46b-115s, the name and address of the petitioner and any parent or person acting as parent who has been awarded custody or visitation in the child custody determination sought to be registered. (b) On receipt of the documents required by subsection (a) of this section, the registering court shall cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form. (c) Within five days after the registering court’s receipt of the documents required by subsection (a) of this section, the petitioner shall notify the persons named pursuant to subdivision (3) of subsection (a) of this section of the registration of the documents by certified mail, return receipt requested at their respective last-known addresses or by personal service, and provide them with an opportunity to contest the registration in accordance with this section. The notice required in this subsection shall state that: (1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state; (2) a hearing to contest the validity of the registered determination must be requested within twenty days after service of notice; and (3) failure to contest the registration will, upon proof of notice, result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted. (d) The respondent must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the respondent establishes that: (1) The issuing court did not have jurisdiction under a provision substantially similar to section 46b-115k, 46b-115l or 46b-115m; (2) the child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so pursuant to a statute substantially similar to sections 46b-115k to 46b-115m, inclusive; or (3) the respondent was entitled to notice of the proceedings before the court that issued the order for which registration is sought, but such notice was not given in a manner reasonably calculated to give actual notice. (e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law with respect to those who have received proper notice and all persons served must be notified of the confirmation by

	<p>the petitioner.</p> <p>(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.”</p>
§46b-115x	Enforcement of child custody determination
§46b-115y	Temporary visitation orders
§46b-115aa	Expedited enforcement of child custody determination
§46b-115dd	Order to take physical custody of child
§§46b-115hh-46b-115jj	<p>Foreign child custody</p> <p>§ 46b-115d “International application of chapter. For purposes of this chapter, any child custody order of a foreign country shall be treated in the manner provided in section 46b-115hh.”</p> <p>§ 46b-115hh “Definitions. ‘Foreign child custody determination’ means any judgment, decree or other order of a court or tribunal of competent jurisdiction of a foreign state providing for legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order.”</p> <p>§ 46b-115jj “Enforcement of foreign child custody order re return of child under Hague Convention. A court of this state shall enforce a foreign child custody determination or an order of a federal court or another state court for return of a child under The Hague Convention on the Civil Aspects of International Child Abduction made under factual circumstances in substantial conformity with the jurisdictional standards of this act, including reasonable notice and opportunity to be heard to all affected persons, as a child custody determination of another state under sections 46b-115u to 46b-115gg, inclusive, unless such determination was rendered under child custody law which violates fundamental principles of human rights or unless such determination is repugnant to the public policy of this state.”</p>

Appendix A: House Debate on Passage of H.B. 5536

[Link to Legislative History](#)

May 2, 2006

On Page 4, Calendar Number 311, Substitute for House Bill Number 5536, AN ACT CONCERNING THE RELOCATION OF PARENTS HAVING CUSTODY OF MINOR CHILDREN, Favorable Report by the Committee on the Judiciary.

DEPUTY SPEAKER GODFREY:

The distinguished Vice Chairman of the Judiciary Committee, Representative Spallone. Before we begin.

(GAVEL)

Much better, thank you very much. Representative Spallone, you have the floor, Sir.

REP. SPALLONE: (36th)

Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

DEPUTY SPEAKER GODFREY:

The question is on acceptance and passage. Will you explain the Bill, please, Sir.

REP. SPALLONE: (36th)

Yes, thank you, Mr. Speaker. Mr. Speaker, this Bill addresses a situation which can occur in our family courts in a post-judgment situation, that is, after the parents have already been divorced and custody has been determined, usually a joint legal custody of the child with primary physical custody with one of the parents. And as frequently happens in our mobile society, one of the parents may relocate.

And if that is the parent who has physical custody of the child, the parent who does not have primary physical custody may be interested in this move because it may affect their parenting plan, that is, how often the child is visiting with each parent.

This situation had been previously addressed by the Supreme Court of Connecticut in the case of Ireland v. Ireland at 246 Connecticut 413 1998.

And in the Ireland case, the court had said there were two parts to when there's a motion concerning relocation.

On the one hand, the party who is moving would have to show that they're move was for a legitimate purpose and that the new location was for a reasonable relationship to the purpose for the move.

Then the burden would shift to the parent who is not relocating to show if they desired that the relocation was not in the best interest of the minor child.

The family bar has been concerned about some confusion that this particular scheme causes, and has required or advocated for a change in the law to statutorily define these situations.

So the Bill before us provides that in post-judgment family situations, when there is a proposed relocation, there would be a burden of proof by preponderance of the evidence on the party that is relocating that the relocation is for a legitimate purpose, that the proposed location is reasonable in light of the purpose, and that the relocation is in the best interest of the child.

The Bill in question also codifies several factors that a court will consider to determine whether the best interests of the child are met, and those are in subsection B of the Bill.

Mr. Speaker, this Bill fulfills a legitimate purpose of clarifying the situation in the statutes, and of addressing a case which has caused some concern in the practice of family law. Therefore, I would urge the House to support the Bill this evening. Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Klarides of the 114th.

REP. KLARIDES: (114th)

Thank you, Mr. Speaker. I also rise to support the Bill, and I associate my remarks with Representative Spallone. This has been a negotiated Bill that the family law section of the bar association has been working very diligently towards.

And it is clarification of a law, that as most lawyers know that practice family law, it's a lot of confusion. Thank you.

DEPUTY SPEAKER GODFREY:

I thank the gentlewoman. Representative Farr.

REP. FARR: (19th)

Thank you, Mr. Speaker. Mr. Speaker, this is a complex issue. We've had it before the Judiciary on several occasions, and one of the problems that we've tried to deal with in the past is what sort of relocation would trigger the reexamination.

In past versions of this Bill, we've tried to talk about relocating out of state. We've tried to talk about relocating outside of a certain distance.

This version recognizes that there are flaws with both of those approaches, and instead says the trigger will be where the relocation would have a significant impact on the existing parenting plan.

So that relocation could be a relatively close distance or it could be a significant distance before it has that impact on the parenting plan. I guess I have, for legislative intent, one question, through you to Representative Spallone.

DEPUTY SPEAKER GODFREY:

Please frame your question, Sir.

REP. FARR: (19th)

And, Representative Spallone, who would have the burden of proving that it has a significant impact on the parenting plan? Do you have an opinion as to which of the parties would have that burden?

DEPUTY SPEAKER GODFREY:

Representative Spallone, you look pensive.

REP. SPALLONE: (36th)

Through you, Mr. Speaker, to Representative Farr, the custodial parent would be making the movement to change the parenting plan to relocate. However, it's possible that the custodial parent could have their own opinion that it does not affect the existing parenting plan.

In which case I believe the motion practice would probably result in the other side asking the court to make that determination so that the matter could be heard. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Farr.

REP. FARR: (19th)

So through you, Mr. Speaker, to Representative Spallone, you believe that it would probably be up to the party that was opposing the relocation to show that it was significantly impacting the parenting plan? Through you, Mr. Speaker, to Representative Spallone.

DEPUTY SPEAKER GODFREY:

Representative Spallone.

REP. SPALLONE: (36th)

Through you, Mr. Speaker, to Representative Farr, if there was not agreement that it significantly affects the parenting plan, that is a possibility.

DEPUTY SPEAKER GODFREY:

Representative Farr.

REP. FARR: (19th)

Thank you, Mr. Speaker. I would concur, I would think in most cases there would be agreement, but in those cases where there is a disagreement, it would seem to me that the party who alleges that there is a significant impact would have the burden of showing that.

And I would think that's the way the court would treat it. I think that this Bill attempts to deal with a very complex and difficult issue. I think it's reasonable in its format we've come forward with this year, and I would urge adoption of the Bill. Thank you.

DEPUTY SPEAKER GODFREY:

Thank you, Sir. Representative Walker.

REP. WALKER: (93rd)

Thank you, Mr. Speaker. Mr. Speaker, as a parent, as a person who as gone through a divorce and someone who went through custody battles, this is a very, very hard situation to try and make a clear definition of who is going to have the option of moving the child, taking the child with them.

I know we go through the courts and we talk about who's going to be the custodial parent, and I've talked to a lot of fathers who are feeling in the circumstances of the court that they are not given equal opportunity to be the rearing or the custodial parent. And so I'd like to propose a couple of questions to the proponent of the Bill.

DEPUTY SPEAKER GODFREY:

Please frame your questions, Madam. Representative Spallone, prepare yourself.

REP. WALKER: (93rd)

Thank you, Mr. Speaker. Representative Spallone, when determining who is going to be the custodial parent and if before the custodial parent is declared, do you feel that they have to declare that they are planning to move out of the state, is that going to be part of the process?

DEPUTY SPEAKER GODFREY:

Representative Spallone.

REP. SPALLONE: (36th)

Through you, Mr. Speaker, to Representative Walker. The Bill before us contemplates a move that would occur in a post judgment proceeding.

So the Bill would take effect in a situation where the parties have already submitted their case to judgment and they have a divorce, an agreement governing their dissolution of marriage and a parenting plan in place.

Parenting plans are now not only good practice, but required by our statutes after a bill that we passed last year.

So this Bill contemplates what would happen when a decision to move arises after the parties have already been through either trial or a significant negotiated settlement. Through you.

DEPUTY SPEAKER GODFREY:

Representative Walker.

REP. WALKER: (93rd)

Thank you, Mr. Speaker. I want to thank the gentleman for his answers. I guess in some respects this is very strange, but I think I'm almost agreeing with Representative Farr.

This is a very hard, hard thing to make a determination on, what is going to be appropriate for the child.

I think in the description or the summary of the Bill they say that it's about what's going to be best for the child, but in many times it's not really the child's issues that are at stake.

It's really the custodial parent and whether they want to move out or whether they want to separately from the person they are divorcing, and the child ends up being sort of the pawn.

So I'm very concerned about how we make these determinations on who's going to have the right to take the child, and what is the best interest.

This is such a very, very sensitive situation. When I moved away from my first marriage and took my child, that was something that really was very difficult, and quite honestly, it was really for the benefit of me.

And I guess my ability to function and survive was probably going to impact the quality of life for my child, but at the same time, I also wonder in that separation was I separating my child from her father to a degree where he was not going to have as much input.

So it's very hard, and I'm still questioning whether this is a good idea. I understand the intent of the Bill, but I also look at what's going to happen to the father or to the other parent.

Because we always seem to make the mother the custodial parent, and I think many fathers have that same right, so I'm going to think about this as we go further in this discussion. Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, Madam. Are you ready for the question? If so, staff and guests please come to the Well of the House. Members take their seats. The machine will be opened.

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is taking a Roll Call Vote. Members to the Chamber please.

DEPUTY SPEAKER GODFREY:

Have all the Members voted, and is your vote properly recorded? If all the Members have voted, the machine will be locked. Clerk will take a tally. And, Mr. Clerk, if you would announce the tally.

CLERK:

House Bill Number 5536.

Total Number Voting 140

Necessary for Passage 71

Those voting Yea 132

Those voting Nay 8

Those absent and not voting 11

DEPUTY SPEAKER GODFREY:

The Bill is passed.