

2011 Edition

Parental Kidnapping

A Guide to Resources in the Law Library

- **International parental kidnapping.** “Whoever removes a child from the United States or attempts to do so, or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years or both.” [18 USC §1204\(a\)](#) (2010).
- **Custodial interference in the second degree: Class A misdemeanor.** “(a) A person is guilty of custodial interference in the second degree when: (1) Being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; (2) knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution; or (3) knowing that he has no legal right to do so, he holds, keeps or otherwise refuses to return a child who is less than sixteen years old to such child's lawful custodian after a request by such custodian for the return of such child. (b) Custodial interference in the second degree is a class A misdemeanor.” CONN. GEN. STAT. [§ 53A-98](#) (2011).
- **Custodial interference in the first degree: Class D felony.** “(a) A person is guilty of custodial interference in the first degree when he commits custodial interference in the second degree as provided in section 53a-98: (1) Under circumstances which expose the child or person taken or enticed from lawful custody or the child held after a request by the lawful custodian for his return to a risk that his safety will be endangered or his health materially impaired; or (2) by taking, enticing or detaining the child or person out of this state.” CONN. GEN. STAT. [§ 53a-97](#) (2011).

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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: Hague Convention on the Civil Aspects of International Child Abduction

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to parental child abduction to and from the United States, with specific emphasis on Connecticut courts.
- SEE ALSO:**
- [Section 6: Family Violence and Parental Kidnapping](#)
- DEFINITIONS:**
- [Hague Convention on the Civil Aspects of International Child Abduction](#)
Article 13: “Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that —
 [Article 13]a the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
 [Article 13]b there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.
 The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.
 In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.” [emphasis added].
 - **Habitual residence:** “To determine the habitual residence, the court must focus on the child, not the parents, and examine past experience, not future intentions.” [Friedrich v. Friedrich](#), 983 F.2d 1396, 1401 (6th Cir. 1993).
 - **Best interests of the child:** “The guiding principle in determining custody is the best interest of the child The best interest of the child include the child’s interest in sustained growth, development, well-being, and continuity and stability of its environment.” [Schult v. Schult](#), 241 Conn. 767, 777, 699 A.2d 134 (1997).
 - **Comity:** “. . . judgments of courts of foreign countries are recognized in the United States because of comity due to the courts and judgments of one nation to another. Such recognition is granted to foreign judgments with due regard to international duty and convenience, on the one hand, and to rights of citizens of the United States and others under the protection of its laws, on the other hand.” [Litvaitis v. Litvaitis](#), 162 Conn. 540, 544, 295 A.2d 519 (1972).
- STATUTES:**
- HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, 51 Fed. Reg. 10494 (March 26, 1986). [Reprinted in [Turner v. Frowein](#), 253 Conn. 312, 351, 752 A.2d 955 (2000)].

- INTERNATIONAL CHILD ABDUCTION REMEDIES ACT, Chapter 121, P.L.100-300, 42 USC [§§11601-11610](#).
- **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 chapter, 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.” CONN. GEN. STAT. § [46b-115jj](#) (2011).

LEGISLATIVE:

- 1988 U.S.C.C.A.N. vol. 4 pp. 386-403. *Excerpts from H. Report # 100-525 including “section-by section analysis of the Committee amendment in the nature of a substitute”*

REGULATIONS:

- International Child Abduction, [22 C.F.R. §§ 94.1 - 94.8](#) (2011).
 § 94.6 Procedures for children abducted to the United States
 § 94.7 Procedures for children abducted from the United States

CASES:

Unreported Connecticut Decisions

- Wittman v. Wittman, No. FA 07 4006469 S (Conn. Super. Ct. Feb. 21, 2007), 42 Conn. L Rptr. 814 (April 9, 2007). 2007 WL 826536 (Conn. Super. 2007). “The applicant, Josef R. Wittman initiated this action pursuant to the International Child Abduction Remedies Act, 42 U.S.C. 11601, commonly known as the Hague Convention (hereinafter ICARA)...The petitioner husband has alleged that the respondent wife wrongfully removed and retained the children in the United States and that he has formally requested their return to Germany. He alleges that he has custody rights under German law. . . . For the foregoing reasons, attorney Matthew Potter is appointed as guardian ad litem for the minor children.”
- Cruz v. Cruz, No. CV 00-0341008-S, (Superior Court, Danbury, Dec. 27, 2002), 33 Conn. L Rptr. 594 at 595, 2002 Conn. Super. LEXIS 4195, 2002 WL 31955020. “The issue presented in a Hague Convention case for return of a minor child are:
 1. Has there been a wrongful removal or retention?
 2. Is the child under the age of 18 years?
 3. Has the child been removed or retained from his or her habitual residence?
 4. Was the removal or wrongful retention of the child committed in violation of the ‘custody rights’ of the ‘left behind’ parent?

The Court's analysis of this case has been limited to determining whether the minor child has been removed or retained from his ‘habitual residence’ in violation of the custody rights of the ‘left behind’ parent.”

From Other Jurisdictions

- Ohlander v. Larson, 114 F.3d 1531, 1534 (10th Cir. 1997). “The Convention is meant to provide for a child’s prompt return once it has been established

the child has been ‘wrongfully removed’ to or retained in any affiliated state.”

- [Mohsen v. Mohsen](#), 715 F. Supp. 1063, 1065 (D.Wyo. 1989). “In light of the fact the petitioner’s daughter was last habitually resident in Bahrain, a noncontracting state, the court concludes that the petitioner has no rights under the Convention and is therefore not entitled to seek redress under its remedial provisions.”
- [Com. ex rel. Zaubi v. Zaubi](#), 423 A.2d 333, 335-336 (Pa.1980). “Thus, the courts below were correct in their determination that a showing of ‘physical or emotionally harmful’ conditions in the custodial household was a necessary prerequisite to the exercise by the Greene County court of its jurisdiction to modify the Danish decree.”

WEST KEY NUMBERS:

- *Parent and Child* #2(1). Custody and control of child. Nature and extent in general.
- *Parent and Child* #18. Enticing away Child
- *Kidnapping* #3. Person liable
- *Treaties* #8. Construction and operation of particular provisions

DIGESTS:

- ALR DIGEST: *Kidnapping*
- ALR INDEX: *Abduction and Kidnapping*
- CONNECTICUT FAMILY LAW CITATIONS: *Child Abduction*

ENCYCLOPEDIAS:

- 1 [AM. JUR. 2D](#) *Abduction and Kidnapping* (2005).
Abduction or kidnapping by parent or person in loco parentis
§ 35. Generally
- 59 [AM. JUR. 2D](#) *Parent and Child* (2002).
§ 123. Enticement or abduction of child; interference with custody
- 67A [C.J.S.](#) *Parent and Child* (2002).
§ 99. Jurisdiction and venue
§ 377. Other offenses
- 51 [C.J.S.](#) *Kidnapping* (2003).
§§ 31-33. Persons liable; defenses
§ 4. —Kidnapping by parents, or custodians
- Tracy Bateman Farrell, Annotation, *Construction and Application of Grave Risk of Harm Exception in Hague Convention on the Civil Aspects of International Child Abduction as Implemented in International Child Abduction Remedies Act*, 42 U.S.C.A. § 11603(e)(2)(A) 56 ALR Fed. 2d 163 (2011)
- Scott M. Smith, Annotation, *Construction And Application Of International Child Abduction Remedies Act* (42 USCS §§ 11601 et seq.), 125 ALR Fed 217 (1995).
- 5 C.O.A. 799 *Cause of action against noncustodial parent for interference with custody rights to child* (1983).

TREATISES:

- 5 SANDRA MORGAN LITTLE, [CHILD CUSTODY AND VISITATION](#) (2011).
Chapter 32 International Enforcement of Child Custody
§ 32.02. Hague Convention on the Civil Aspects of International Child Abduction
§ 32.03. International enforcement outside the Hague Convention
- GLORIA F. DEHART, ED., [INTERNATIONAL CHILD ABDUCTIONS: A GUIDE TO](#)

[APPLYING THE HAGUE CONVENTION, WITH FORMS](#) (2d ed. 1993).

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (3d ed. 2010).
Chapter 40. Jurisdiction to Enter and Enforce Custody Orders
§ 40:27. International application
§ 40:28. Enforcement jurisdiction under the UCCJEA, generally

LAW REVIEWS:

- Carol A. Bruch, *The Unmet Needs Of Domestic Violence Victims And Their Children In Hague Child Abduction Convention Cases*, 38 FAMILY LAW QUARTERLY 529 (Fall 2004).
- Merle H. Weiner, *Using Article 20*, 38 Family L.Q. 583 (Fall 2004).
- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge's Guide To The UCCJA, PKPA, And The Hague Abduction Convention*, 48 JUVENILE & FAMILY COURT JOURNAL CH1 (185) (1997).
- Robert J. Levy, *Memoir Of An Academic Lawyer: Hague Convention Theory Confronts Practice*, 29 FAMILY LAW QUARTERLY 171 (1995).
- Linda Silberman, *Hague Convention On International Child Abduction: A Brief Overview And Case Law Analysis*, 28 FAMILY LAW QUARTERLY 9 (1994). Special Issue on International Family Law.
- Carol S. Bruch, *The Central Authority's Role Under The Hague Child Abduction Convention: A Friend In Deed*, 28 FAMILY LAW QUARTERLY 35 (1994).
Special Issue on International Family Law.
 - Raymond R. Norko, *Mandatory Implementation Of The Hague Convention On International Child Abduction: An Open Letter To President William Clinton*, 8 CONNECTICUT JOURNAL OF INTERNATIONAL LAW 575 (1993).

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Table 1: Requirements of the Hague Convention

<u>Caro v. Sher</u> , 687 A.2d 354, 356-357 (N.J. Super. Ch. 1996).
1. The nations involved must be signatories to the Convention
2. The children must be “habitual resident(s) in a Contracting State immediately before any breach of custody or access right.” (The Convention, art. 4)
3. The children must be under the age of sixteen. (The Convention, art. 4); and
4. The children’s removal or retention in a country other than their place of habitual residence must have been wrongful, <i>e.g.</i> “it is in breach of rights of custody attributed to a person . . . , either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention.” (The Convention, art. 3(a)).

Table 2: Affirmative Defenses to International Parental Kidnapping

<u>18 U.S.C. §1204(c) 1-3</u>
1. The defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and Enforcement Act and was in effect at the time of the offense;
2. the defendant was fleeing an incidence or pattern of domestic violence;
3. the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant’s control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

Section 2: Federal Parental Kidnapping Prevention Act (PKPA)

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to PKPA as it relates to Connecticut.
- SEE ALSO:**
- [§ 1. Hague Convention on Civil Aspects of Child Abduction](#)
 - [§ 3. Interstate \(New law\).](#)
- DEFINITIONS:**
- **Purpose:** “deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitations awards.” P.L. 96-611 § 7(c)(7).
 - “Under the PKPA, a court of one state generally must enforce, and may not modify, a child custody determination of another state when the custody determination was made consistent with the provisions of the PKPA.” [Murphy v. Woerner](#), 748 P.2d 749, 750 (Alaska 1988).
 - **Home state:** “means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six month or other period.” [28 USC §1738A\(b\)\(4\)](#) (2010).
- STATUTES:**
- [28 USC § 1738A](#) (2010), Full faith and credit given to child custody determinations.
- CASES:**
- Connecticut**
- [Scott v. Somers](#), 97 Conn. App. 46, 55, 903 A.2d 663 (2006). “Because Somers continues to reside in Florida, the Florida court has exclusive, continuing jurisdiction over its custody determination, under Florida law, until a Florida court determines that significant connections do not exist in Florida. Thus, a party seeking to modify Florida’s custody determination must obtain an order from Florida stating that it no longer has jurisdiction. This was not done in the present case and, therefore, Connecticut did not have jurisdiction to modify Florida’s order.”
 - [Brown v. Brown](#), 195 Conn. 98, 119-120, 486 A.2d 1116 (1985). “Geared as the PKPA is toward establishing national jurisdictional standards that endeavor to reduce interstate child abductions, the application of the PKPA to this case initially turns on the definition of a ‘custody determination.’ We believe that the orders of the Florida court which, in effect, generated this Connecticut action, fall squarely within the PKPA definition of a ‘custody determination.’ 28 U.S.C. § 1738A (b) (3).”
- Unreported Connecticut Decisions**
- [Lebejko v. Lebejko](#), No. FA 064004870 (Conn. Super. Ct., Windham, Feb. 8, 2007), 42 CLR 760. “The purpose behind the PKPA was to eliminate the four ‘bases’ or ‘factors’ in the original UCCJA which had resulted in all of

the conflicts and resulting inconsistencies which had created an unworkable and non-uniform interstate act. Instead, enforceability under the PKPA was to be based on the priority of home state jurisdiction. That provision of the uniform act was adopted in Connecticut as Conn. Gen. Stat. § 46b-115k.”

- Venditti v. Plonski, No. FA01 0076354S (Conn. Super. Ct., Milford, Feb. 5, 2002), 2002 WL 241376. “Even though the facts may be unclear as to the defendant's permanent intentions, this court does not need to find that Arizona is in fact the home state of the minor child. Using the significant connections test, it is clear that the child has more ties to Arizona and that jurisdiction should reside in that state. The plaintiff will have full opportunity to contest custody and to present all evidence necessary for a thoughtful custody and visitation determination in that state. Therefore, the motion to dismiss is granted.”
- Rowland v. Rowland, No. FA97 0057152S (Conn. Super. Ct., Milford, Aug. 19, 1999), 1999 WL 669794. “The language of the federal Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. § 1738A must now be examined. That act requires the states to give full faith and credit to the custody decisions of other states that are consistent with federal law. The requirement, of course, is mandatory because of the Supremacy Clause of the federal constitution.”

Other States

- Wilson v. Gouse, 441 S.E.2d 57, 59 (Ga. 1994). “As a preliminary matter, we find the PKPA applies in all interstate child custody disputes.”
- Murphy v. Woerner, 748 P.2d 749, 750 (Alaska 1988). “To the extent that the PKPA and the UCCJA conflict, the PKPA preempts state law.”
- *Parent and Child* #2(1). Custody and control of child. Nature and extent in general.
- *Parent and Child* #18. Enticing away Child
- *Kidnapping* #3. Person liable

WEST KEY NUMBERS:

ENCYCLOPEDIAS:

- 1 AM. JUR. 2D *Abduction and Kidnapping* (2005).
 - Abduction or kidnapping by parent or person in loco parentis
 - § 35. Generally
 - § 36. Federal statutes; kidnapping statute
 - § 37. Federal Kidnapping Prevention Act
- 59 AM. JUR. 2D *Parent and Child* (2002).
 - § 123. Enticement or abduction of child; interference with custody
- 67A C.J.S. *Parent and Child* (2002).
 - § 99. Jurisdiction and venue, Generally
 - § 377. Other offenses
- 51 C.J.S. *Kidnapping* (2003).
 - § 29. Persons liable; defenses, Generally
 - § 31. Kidnapping by parents, Generally
 - § 32. Custodial interference statutes; distinction from kidnapping
 - § 33. Agent or person assisting a parent
- *Cause of action against noncustodial parent for interference with custody rights to child*, 5 COA 799 (1983).

**TEXTS &
TREATISES:**

- SANDRA MORGAN LITTLE, [CHILD CUSTODY AND VISITATION LAW & PRACTICE](#) (2011).
Chapter 3. Impact of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA): an overview
§ 3.01[3]. Parental Kidnapping Prevention Act
Chapter 5.
§ 5.30 The Parental Kidnapping Prevention Act of 1980
- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (3d ed. 2010).
Chapter 40. Jurisdiction to Enter and Enforce Custody Orders
§ 40:1. In general
§ 40:2. Purpose
§ 40:3. Scope; definitions
§ 40:10. Modification—Continuing exclusive jurisdiction
§ 40:12. Prohibition on simultaneous proceedings

LAW REVIEWS:

- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge's Guide To The UCCJA, PKPA, And The Hague Abduction Convention*, 48 JUVENILE & FAMILY COURT JOURNAL CH1 (185) (1997).

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Section 3: Interstate (New Law)

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) which was effective in Connecticut on July 1, 2000.

SEE ALSO:

- [Child Custody Actions in Connecticut: Section 8: Out of State Custody Orders](#)
- [International](#)
- [Indian child](#)
- [Interstate \(prior law\)](#)

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. STAT. [§ 46b-115a\(3\)](#) (2011). [emphasis added] Uniform Child Custody Jurisdiction & Enforcement Act.
- **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. A period of temporary absence of any such person is counted as part of the period;" CONN. GEN. STAT. [§ 46b-115a\(7\)](#) (2011).
- **Indian Child Welfare Act:** "A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 USC Section 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act." CONN. GEN. STAT. [§ 46b-115c](#) (2011).
- **Exclusive, continuing jurisdiction:** CONN. GEN. STAT. [§ 46b-115l](#) (2011).
- **Modification of custody determination of another state:** CONN. GEN. STAT. [§ 46b-115m](#) (2011).
- **Taking testimony in another state.** CONN. GEN. STAT. [§ 46b-115j](#) (2011).
- **Temporary Emergency Jurisdiction:** CONN. GEN. STAT. [§ 46b-115n](#) (2011).

STATUTES:

Connecticut

- CONN. GEN. STAT. (2011).
[Chapter 815p](#). Uniform Child Custody Jurisdiction and Enforcement Act
[§§ 46b-115](#) et seq.
Part I. General provisions
Part II. Jurisdiction
Part III. Enforcement (see [Table 3](#))
Part IV. Foreign child custody

Uniform Law

- 9 Part 1A [UNIFORM LAWS ANNOTATED](#) 655 (1999).
Prefatory Note, pp. 649-654
- 1 SANDRA MORGAN LITTLE, [CHILD CUSTODY AND VISITATION LAW &](#)

[PRACTICE](#) (2011).

Appendix 3-C. Uniform

CASES:

- [Desjardins v. Charity](#), No. FA 11 4115761 (Conn. Super. Ct., New London, Apr. 19, 2011). “It is this court's obligation to determine under the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA) that it has jurisdiction to make an initial determination as to the children's custody. *Scott v. Somers*, 97 Conn. App. 46 (2006). This duty implicates the subject matter jurisdiction of the court and hence must be raised and determined by the court on its own motion if not formally raised by the parties. Absent a statutory basis for such exercise of jurisdiction, the parties cannot by agreement confer jurisdiction upon the court. *Muller v. Muller*, 43 Conn. App. 327 (1996).”
- [In re Deleon J.](#), 290 Conn. 371, 377-378, 963 A.2d. 53 (2009). “In addressing the issue of jurisdiction, the court noted that it had made an initial child custody determination, pursuant to General Statutes § 46b-115k, when it ordered protective supervision of the child on September 21, 2000, and that it subsequently had modified that disposition on April 22, 2002, when it ordered guardianship of the child to be transferred to the grandmother. The court further determined that the respondent and the grandmother both reside in Connecticut. The court concluded, therefore, that its exclusive, continuing jurisdiction had not expired pursuant to § 46b-1151 (a) (1).”
- [Temlock v. Temlock](#), 95 Conn. App. 505, 520-521, 898 A.2d 209 (2006). “Even when a Connecticut trial court does not have exclusive jurisdiction over a child custody matter, it still may maintain concurrent jurisdiction under the UCCJEA pursuant to General Statutes § 46b-1151 (b), but only ‘if it has jurisdiction to make an initial determination under section 46b-115k.’ General Statutes § 46b-1151 (b).”
- [Lamprey-Mills v. Ward](#), No. FA 01 0726826 (Conn. Sup. Ct., June 16, 2005, J.D. Hartford), 39 CONN. L. RPTR. 523,525. “The purposes of the UCCJEA 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 . . . The UCCJEA addresses inter-jurisdictional issues related to child custody and visitation. The UCCJEA allows a Connecticut court to maintain exclusive, continuing jurisdiction over child custody determinations until one of the enumerated events under § 46b-1151 occurs . . . In subsection (a) of § 46b-1151, the decree-granting state retains exclusive continuing jurisdiction until: (1) A court of this state or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this state; or (2) a court of this state determines that (A) this state is not the home state of the child, (B) a parent or a person acting as a parent continues to reside in this state but the child no longer has a significant relationship with such parent or person, and (c) substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships. Subsection (b) provides: A court of this state which has made a child custody determination but does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 46b-115k.” (Citations omitted; internal quotation marks omitted.)

- Davis v. Kania, 48 Conn. Sup. 141, 146, 836 A.2d 480 (2003). “Since both the plaintiff and defendant were parties to the California action and the judgment neither contravenes Connecticut policy nor violates its laws, the plaintiff can, therefore, enforce his legal right in the state of Connecticut.”
- Lord v. Lord, No. CV01 038 02 79 (Conn. Super. Ct., Fairfield at Bridgeport, Aug. 20, 2002), 33 CONN. L. RPTR. 88, 90 (November 4, 2002), 2002 WL 31125621. “If parties could consent to jurisdiction in any forum, provisions of the UCCJEA itself would be meaningless. General Statutes § 46b-115k provides that ‘a court of this state has jurisdiction to make an initial child custody determination if’ certain facts are present. Notably, an agreement by the parties that a court shall have subject matter jurisdiction is not one of those factors. General Statutes § 46b-115l provides that ‘a court of this state which has made a child custody determination pursuant to sections 46b-115k to 46b-115m, inclusive, has exclusive, continuing jurisdiction over the determination until’ certain determinations are made by Connecticut or other state courts. Again, not included in this determination is whether the parties have agreed that a court shall take subject matter jurisdiction.”
- Crawford v. Calayag, No. FA01-034 44 98 S (Conn. Super. Ct., Danbury, March 22, 2002) 2002 WL 653241. “Connecticut is not the ‘home state’ of the minor child as that term is defined by § 46b-115a (7) of the Connecticut General Statutes.
Under the provisions of the UCCJEA, the court has exercised temporary jurisdiction in this matter and has entered the temporary emergency orders recited above in what it found to be the best interests of the minor child and to address the concerns raised by the plaintiff regarding alleged efforts by the defendant to deny the plaintiff access to his minor child.”
- Guillory v. Francks, FA 010065736S (Conn. Super. Ct., Windham at Willimantic, February 14, 2002), 2002 WL 442145. “From the record before this court the court concludes that the Florida court continues to exercise jurisdiction in the case This court is convinced, based upon the continuing activity in the Florida court, that Samantha's presence here in Connecticut is due to a temporary custody order in favor of the plaintiff and thus pursuant to § 46b-115(7) Florida remains the home state of Samantha.”
- Graham v. Graham, No. FA 92 65185 (Conn. Super. Ct., Middlesex at Middletown, Feb. 6, 2002), 2002 WL 241493. “Under the UCCJEA, jurisdiction largely depends on the status of the involved individuals on the date of the commencement of the proceeding. Jurisdiction attaches at the commencement of a proceeding. C.G.S. § 46b-115a (5).”
- Gilman v. Gilman, No. 0121957S (Conn. Super. Ct., New London at Norwich, May 22, 2001), 2001 WL 688610. “The new act represents a marked difference from what had been Connecticut General Statute § 46b-93. Under the former statute, a court of this state could exercise jurisdiction if this state was the home state of the child at the time the proceeding was commenced or it was in the best interest of the child that the court exercise jurisdiction because the child and his parents had a significant connection to the state. 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.’”

- Anselmo v. Anselmo, No. FA000181708 (Conn. Super. Ct., Stamford, March 28, 2001), 2001 WL 358851. “. . . the question becomes on what basis can this court, or any court for that matter, accept jurisdiction regarding custody of an unborn infant.”
- Heath v. Heath, No. FA91 0117282 S (Conn. Super. Ct., Norwalk at Stamford, Nov. 16, 2000), 2000 WL 1838932. “Jurisdiction is found in Section 13 of the act since this state has made an initial child custody determination and has exclusive, continuing jurisdiction over the determination until (1) neither parent nor the child reside in this state or (2) that this state is not the home state of the child, and that although one parent continues to reside in this state the child no longer has a significant relationship with such parent and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships. The facts in this case are that the father does reside in this state and no evidence has been introduced to show that he no longer has a significant relationship with the boy. Connecticut has the jurisdiction to act in the matter.”

ENCYCLOPEDIAS:

- 1 AM. JUR. 2D *Abduction and Kidnapping* (2005).
Abduction or kidnapping by parent or person in loco parentis
§ 38. Uniform Child Custody Jurisdiction and Enforcement Act
- 51 C.J.S. *Kidnapping* (2003).
§ 29. Persons liable; defenses; Generally
§ 31. Kidnapping by parents or custodians; Generally
- 59 AM. JUR. 2D *Parent and Child* (2002).
§ 123. Enticement or abduction of child; interference with custody
- 67A C.J.S. *Parent and Child* (2002).
§ 321. Action by parent for enticing away child or other interference with relationship
§ 322. — Nature and elements of cause of action
§ 323. — Pleading
§ 324. — Evidence
§ 325. — Trial and recovery for damages
§ 326. Action by child for enticing away or harboring parent
- Claudia G. Catalano, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Significant Connection Jurisdiction Provision*, 52 A.L.R.6th 433 (2010)
- Ann K. Wooster, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Temporary Emergency Jurisdiction Provision*, 53 A.L.R.6th 419 (2010)
- Ann K. Wooster, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Home State Jurisdiction Provision*, 57 A.L.R.6th 163 (2010)
- Claudia G. Catalano, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision--No Significant Connection\Substantial Evidence*, 59 A.L.R.6th 161 (2010)
- Claudia G. Catalano, Annotation, *Construction and Application of Uniform*

Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision--Other Than No Significant Connection/Substantial Evidence, 60 A.L.R.6th 193 (2010)

- David Carl Minneman, Annotation, *Construction and Operation Of Uniform Child Custody Jurisdiction And Enforcement Act*, 100 ALR5th 1 (2002).
- David Carl Minneman, Annotation, *Inconvenience of forum as ground for declining jurisdiction under §7 of the Uniform Child Custody Jurisdiction Act (UCCJA)* 21 ALR5th 396 (1994)
- William B. Johnson, Annotation, *Liability Of Legal Or Natural Parent, Or One Who Aids And Abets, For Damages Resulting From Abduction Of Own Child*, 49 ALR4th 7 (1986).
- William B. Johnson, Annotation, *Kidnapping Or Related Offense By Taking Or Removing Child By Or Under Authority Of Parent Or One In Loco Parentis*, 20 ALR 4th 823 (1983).

**TEXTS &
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).

Chapter 40. Jurisdiction to enter and enforce custody orders

§ 40.1. In general

§ 40.2. Purpose

§ 40.3. Scope; Definitions

§ 40.4. Grounds for UCCJEA jurisdiction—Generally

§ 40.5. Home state jurisdiction

§ 40.9. Temporary emergency jurisdiction

§ 40.10. Modification—Continuing exclusive jurisdiction

§ 40.12. Prohibition on simultaneous proceedings

§ 40.13. Jurisdiction declined due to inconvenient forum

§ 40.14. —Criteria for determining inconvenient forum

§ 40.15. —Effect of determination as to inconvenient forum

§ 40.16. Jurisdiction declined due to unjustifiable conduct

§ 40.17. Relevance of best interests standard to jurisdictional determinations

§ 40.18. Pleading under UCCJEA

§ 40.27. International application

§ 40.28. Enforcement jurisdiction under the UCCJEA, generally

- 1 SANDRA MORGAN LITTLE, [CHILD CUSTODY AND VISITATION](#) (2011).

Chapter 3 Impact of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA): An Overview

§ 3.01[2]. Evolutionary developments—UCCJEA

§ 3.01[4][b]. Interstate overview—UCCJEA

§ 3.01[6][b]. Applicability—UCCJEA

§ 3.02[2]. Objectives—UCCJEA

§ 3.02A[2]. Jurisdiction to decide this dispute—UCCJEA

§ 3.02B[2]. Enforcement provisions in UCCJEA

[b]. Duty to enforce foreign-state orders

[c]. Enforcement under Hague Convention

§ 3.02C. Extraordinary enforcement under UCCJEA; warrant for physical custody—UCCJEA

§ 3.04[2]. Due process requirements—UCCJEA

§ 3.05[2]. Pleadings and testimony—UCCJEA

§ 3.06[2]. Joinder of additional parties; appearances—UCCJEA

§ 3.07[2]. Cooperation between courts—UCCJEA

LAW REVIEWS:

- Patricia M. Hoff, *The ABC's Of The UCCJEA: Interstate Custody Practice Under The New Act*, 32 FAM. L.Q. 267 (1998).

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Table 3: Enforcement under UCCJEA

Enforcement under UCCJEA CONN. GEN. STAT. (2011)	
§ 46b-115gg	Appeals
§ 46b-115ee	Costs, fees and expenses
§ 46b-115x	Enforcement of child custody determinations
§ 46b-115v	Enforcement under Hague Convention
§ 46b-115aa	Expedited enforcement of child custody determination
§ 46b-115cc	Hearing and order
§ 46b-115dd	Order to take physical custody of child
§ 46b-115ff	Recognition and enforcement of order issued by another state
§ 46b-115w	Registration of child-custody determination
§ 46b-115bb	Service of petition and order
§ 46b-115y	Temporary visitation order

Section 3a: Interstate (Before July, 2000)

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the Connecticut Uniform Child Custody Jurisdiction Act (UCCJA) which was repealed eff. July 1, 2000.
- SEE ALSO:**
- [Current law](#)
- DEFINITIONS:**
- **Home State:** “means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the state in which the child lived from birth with any of such persons. periods of temporary absence of any of the named persons are counted as part of the six-month or other period;” CONN. GEN. STATS. §46B-92(6) (1999).
- STATUTES:**
- CONN. GEN. STATS. §§ 46b-90 to 46b-114 (1999). Uniform Child Custody Jurisdiction Act. [repealed effective July 1, 2000].
- CASES:**
- [McNamara v. McNamara](#), No. TTD FA97 0064781-S (Conn. Super. Ct., Jan. 20, 2006, J.D. Tolland at Rockville) “Both the Uniform Child Custody Jurisdiction Act, §§ 46b-90 et seq., which was in effect at the commencement of this case, and the UCCJEA, which was adopted by the state of Connecticut on July 1, 2000, seek to avoid jurisdictional conflicts with courts of other states in matters of child custody, assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his or her family have the closest connection and permit courts of a state to decline the exercise of jurisdiction when the child and his/her family have a closer connection with another state.”
 - [Muller v. Muller](#), 43 Conn. App. 327, 333, 682 A.2d 1089 (1996). “Here, of course, there is no such danger [parental resort to kidnapping to gain a more favorable judgment in a new forum] because the plaintiff has lived in California with the minor child since giving birth to him nearly seven years ago. The child has never lived in Connecticut.”
 - [Grynkewich v. McGinley](#), 3 Conn. App. 541, 545-546, 490 A.2d 534 (1985). “In order to bring about a measure of interstate stability in custody awards, the UCCJA ‘limits custody jurisdiction to the state where the child has his home or where there are other strong contacts with the child and his family.’ Unif. Child Custody Jurisdiction Act, Commissioners’ Prefatory Note, 9 U.L.A. 114(1979).”
 - [Goldstein v. Fischer](#), 200 Conn. 197, 201, 510 A.2d 184 (1986). “General Statutes § 46b-93(a)(1) is inapplicable because this state is not and never has been the ‘home state’ of the child The child in this case was less than five months old when she left Connecticut, and because she was born in West Germany.”

ENCYCLOPEDIAS

- 1 [AM. JUR. 2D](#) *Abduction and Kidnapping* (2005).
 - Abduction or kidnapping by parent or person in loco parentis
 - § 35. Generally
 - § 36. Federal kidnapping statute
 - § 37. Federal Kidnapping Prevention Act
 - § 38. Uniform Child Custody Jurisdiction and Enforcement Act
- 51 [C.J.S.](#) *Kidnapping* (2003).
 - § 29. Persons liable; defenses; Generally
 - § 32. Custodial interference statutes; distinction from kidnapping
 - § 33. Agent or person assisting a parent
- 59 [AM. JUR. 2D](#) *Parent and Child* (2002).
 - § 123. Enticement or abduction of child; interference with custody
- 67A [C.J.S.](#) *Parent and Child* (2002).
 - § 321. Action by parent for enticing away child or other interference with relationship
 - § 322. — Nature and elements of cause of action
 - § 323. — Pleading
 - § 324. — Evidence
 - § 325. — Trial and recovery for damages
 - § 326. Action by child for enticing away child or harboring parent
- David Carl Minneman, Annotation, *Significant Connection Jurisdiction Of Court To Modify Foreign Child Custody Decree Under §§ 3(a)(2) And 14(b) Of The Uniform Child Custody Jurisdiction Act (UCCJA) And The Parental Kidnapping Prevention Act (PKPA)*, 28 USC §§ 1738A(c)(2)(b) And 1738A(f)(1), 67 ALR5th 1 (1999).
- Annotation, *Pending Proceeding In Another State As Ground For Declining Jurisdiction Under §7 Of The Uniform Child Custody Jurisdiction Act (UCCJA)*, 20 ALR 5th 700 (1994).
- David Carl Minneman, Annotation, *Parties' Misconduct As Ground For Declining Jurisdiction Under § 8 Of The Uniform Child Custody Jurisdiction Act (UCCJA)*, 16 ALR 5th 650 (1993).
- David Carl Minneman, Annotation, *Home State Jurisdiction Of Court Under § 3(a)(1) Of The Uniform Child Custody Jurisdiction Act (UCCJA) Or The Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A(c)(2)(A), 6 ALR 5th 1 (1992).
- David Carl Minneman, Annotation, *Significant Connection Jurisdiction Of Court Under § 3(A)(2) Of The Uniform Child Custody Jurisdiction Act (UCCJA) Or The Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A(C)(2)(D), 5 ALR5th 550 (1992).
- David Carl Minneman, Annotation, *Default Jurisdiction Of Court Under § 3(A)(4) Of The Uniform Child Custody Jurisdiction Act (UCCJA) Or The Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A(C)(2)(D), 6 ALR 5th 69 (1992).
- Annotation, *Child Custody: When Does State That Issued Previous Custody Determination Have Continuing Jurisdiction Under Uniform Child Custody Jurisdiction Act (UCCJA) Or Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A, 83 ALR 4th 742 (1991).
- Danny R. Veilleux, Annotation, *Applicability Of Uniform Child Custody Act (UCCJA) To Temporary Custody Orders*, 81 ALR4th 1101 (1990).
- Danny R. Veilleux, Annotation, *What Types Of Proceedings Or Determinations Are Governed By The Uniform Child Custody Jurisdiction Act (UCCJA) Or The Parental Kidnapping Prevention Act (PKPA)*, 78 ALR4th 1028 (1990).
- William B. Johnson, Annotation, *Liability Of Legal Or Natural Parent, Or One Who Aids And Abets, For Damages Resulting From Abduction Of Own*

Child, 49 ALR4th 7 (1986).

- William B. Johnson, Annotation, *Kidnapping Or Related Offense By Taking Or Removing Child By Or Under Authority Of Parent Or One In Loco Parentis*, 20 ALR 4th 823 (1983).

**TEXTS &
TREATISES:**

- SANDRA MORGAN LITTLE, [CHILD CUSTODY AND VISITATION](#) (2011).
Chapter 5. Recognition, enforcement and modification under UCCJA and PKPA: comity and full faith and credit
Part B. Uniform Child Custody and Jurisdiction Act
§ 5.20 The Pre-UCCJA Situation
§ 5.21 UCCJA Generally
§ 5.22 Enforcement Under UCCJA
- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (3d ed. 2010).
Chapter 40. Jurisdiction to Enter and Enforce Custody Orders
§ 40:1. In general

JOURNALS:

- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge's Guide To The UCCJA, PKPA, And The Hague Abduction Convention*, 48 JUVENILE & FAMILY COURT JOURNAL CH1 (185) (1997).

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

Section 4: Custodial Interference

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to custodial interference with custody rights to child.
- SEE ALSO:**
- [Table 4](#). Criminal: Custodial interference
- DEFINITIONS:**
- **Conspiracy to interfere with custodial relations:** “The requisites of a civil action for conspiracy are: (1) a combination between two or more persons, (2) to do a criminal or an unlawful act or a lawful act by criminal or unlawful means, (3) an act done by one or more of the conspirators pursuant to the scheme and in furtherance of the object, (4) which act results in damage to the plaintiff.” *Williams v. Maislen*, 116 Conn. 433, 437, 165 A. 455 (1933).
 - **Effects of Joint Custody:** “We were wrong to conclude that a joint custodian could never, under any scenario, be liable for custodial interference.” *State v. Vakilzaden*, 251 Conn. 656, 664, 742 A.2d 767 (1999).
- LEGISLATIVE:**
- Susan Price-Livingston, *Moving Out Of State In Violation Of Child Custody Order*, Connecticut General Assembly. Office of Legislative Research Report No. [2003-R-0491](#) (June 18, 2003).
 - Susan Price, *Custodial Interference*, Connecticut General Assembly. Office of Legislative Research Report No. [2008-R-0644](#) (November 24, 2008).
- STATUTES:**
- CONN. GEN. STAT. (2011)
 - [§ 53a-97](#). Custodial interference in the first degree: Class D felony.
 - [§ 53a-98](#). Custodial interference in the second degree: Class A misdemeanor.
- FORMS:**
- **Sample Complaint**, 5 COA 799 (1984), *Cause Of Action Against Noncustodial Parent For Interference With Custody Rights To Child*.
- CASES:**
- *Streeter v. Bruderhof Communities in New York, Inc.*, No. X01 CV-02-0179481-S (Conn. Super. Ct., Waterbury, Complex Litigation, Nov. 3, 2003), 36 CONN. L. RPTR. 69 (January 12, 2004).

“This action concerns the claimed abduction of the plaintiff’s two (2) minor children by the children’s father, the plaintiff’s ex-husband. The claim is that he, with the assistance of the other named defendants, removed the children from the United States to Egypt via Ireland. The other named defendants are the owner and/or carrier for the international flight, a global aviation and manufacturing business, and a private airline charter service. The mother and the father share joint legal custody; the plaintiff mother has physical custody.

The complaint asserts four (4) causes of action: 1) Interference with Custodial Relations; 2) Negligence; 3) False Imprisonment; and 4) Emotional Distress.”

- [State v. Vakilzaden](#), 251 Conn. 656, 742 A.2d 767 (1999). “. . . a joint custodian is not inherently immune from criminal prosecution based solely on his or her status as joint custodian if the state can prove all elements of the custodial interference statute, including both knowledge and intent beyond a reasonable doubt.”
- [Zamstein v. Marvasti](#), 240 Conn. 549, 566, 692 A.2d 781 (1997). “The plaintiff in the present case has failed to allege sufficient facts to state a cause of action for the tort of child abduction or custodial interference, as defined in *Marshak v. Marshak*, [below] . . . because the plaintiff did not allege any facts suggesting an unlawful custody of his children.”
- [Marshak v. Marshak](#), 226 Conn. 652, 665-666, 628 A.2d 964 (1993), *overruled* by [State v. Vakilzaden](#). “We disagree with the trial court's conclusion, however, that, under the circumstances of this case, the defendant was liable for such a tort. In order to impose liability on a third party for conspiring with or aiding another in the removal of children from the custodial parent, the third party must have conspired with, or aided the other, ‘to do a criminal or an unlawful act or a lawful act by criminal or unlawful means’ . . . In this case, however, civil liability was predicated on acts that were not themselves unlawful when they occurred because on August 7, 1985, the date on which the defendant drove the children and their father to New York, the father still had joint legal custody of the children.”
- [Brown v. Brown](#), 195 Conn. 98, 119-120, 486 A.2d 1116 (1985). “Geared as the PKPA is toward establishing national jurisdictional standards that endeavor to reduce interstate child abductions, the application of the PKPA to this case initially turns on the definition of a ‘custody determination.’ We believe that the orders of the Florida court which, in effect, generated this Connecticut action, fall squarely within the PKPA definition of a ‘custody determination.’” 28 U.S.C. § 1738A (b) (3)
- [Agnello v. Becker](#), 184 Conn. 421, 432-433, 440 A.2d 172 (1981). “The defendant also claims that the ‘reprehensible conduct’ of the plaintiff, in taking the child from the home of the defendant and allegedly ‘concealing’ her from the defendant, supports the trial court’s conclusion that the New Jersey decree should not be recognized We initially note that this provision [Conn. Gen. Stats. §46b-98(a) and N.J. Stat. Ann. §2A:34-36(a)] does not set forth any new bases for jurisdiction. Secondly, under this section, the determination of whether the plaintiff’s conduct was reprehensible was more properly a question for the New Jersey court. Thirdly, we point out that the act does not *require* a state to decline to exercise its jurisdiction over the matter for such conduct.”

WEST KEY NUMBERS:

- *Infants* #18. Custody and protection. Jurisdiction of the court
- *Parent and Child* #2(5). Custody and control of child. Proceedings to determine right. Jurisdiction; venue

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Child Abduction*

ENCYCLOPEDIAS:

- 1 [AM. JUR. 2D](#) *Abduction and Kidnapping* (2005).
Abduction or kidnapping by parent or person in loco parentis
§ 35. Generally
- 51 [C.J.S.](#) *Kidnapping* (2003).
§ 32. Custodial interference statutes; distinction from kidnapping

- § 33. Agent or person assisting a parent
- 59 [AM. JUR. 2D](#) *Parent and Child* (2002).
 - § 123. Enticement or abduction of child; interference with custody
 - § 124. Action by child
 - § 125 –Against third person for act of parent
- 67A [C.J.S.](#) *Parent and Child* (2002).
 - Action for intentional interference with the custodial parent-child relationship*
 - § 321. Action by parent for enticing away child or other interference with relationship
 - § 322. Action by parent for enticing away child or other interference with relationship—Nature and elements of cause of action
 - § 323. Action by parent for enticing away child or other interference with relationship—Pleading
 - § 324. Action by parent for enticing away child or other interference with relationship—Evidence
 - § 325. Action by parent for enticing away child or other interference with relationship—Trial and recovery of damages
 - § 326. Action by child for enticing away or harboring parent
- William B. Johnson, Annotation, *Liability Of Legal Or Natural Parent, Or One Who Aids And Abets, For Damages Resulting From Abduction Of Own Child*, 49 ALR4th 7 (1986).
- William B. Johnson, Annotation, *Kidnapping Or Related Offense By Taking Or Removing Child By Or Under Authority Of Parent Or One In Loco Parentis*, 20 ALR 4th 823 (1983).
- 5 COA 799 (1984), *Cause Of Action Against Noncustodial Parent For Interference With Custody Rights To Child*.
 - I. Introduction
 - a. Prima Facie Case
 - b. Defenses
 - c. Parties
 - II. Substantive law overview
 - III. Practice and procedure
 - a. In general
 - § 11. Advantage of action over other remedies
 - b. Plaintiff’s proof
 - c. Recovery
 - IV. Appendix
 - § 20. Sample case
 - § 21. Sample complaint
 - § 22. Research guide

TEXTS & TREATISES:

- 1 SANDRA MORGAN LITTLE, [CHILD CUSTODY AND VISITATION](#) (2011).
 - Chapter 5. Interstate review
 - § 5.40. Tort remedy for child-snatching
- DANIEL C. POPE, [CONNECTICUT ACTIONS AND REMEDIES: TORT LAW 2](#) (1996).
 - Chapter 40. Conspiracy
- AMERICAN LAW INSTITUTE, [RESTATEMENT OF THE LAW OF TORTS 2D](#) (1977).
 - § 700. Causing minor child to leave home or not return to home

LAW REVIEWS:

- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge’s Guide To The UCCJA, PKPA, And The Hague Abduction*

Convention, 48 JUVENILE & FAMILY COURT JOURNAL CH1 (185) (1997).

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Table 4: Tort of custodial interference or child abduction: Key Connecticut Cases

Tort of Custodial Interference or Child abduction: Key Connecticut Cases	
<p>Mirjavadi v. Vakilzadeh, 128 Conn. App. 61, 76-77, 18 A.3d 591 (2011).</p>	<p>“...the court’s conclusion that the concern over possible abduction was ‘wither[ing]’ and that, as a consequence, the <i>foreseeability</i> of abduction was ‘decreasing’ is not supportable. The question is not whether the risk of abduction was low or had diminished over time, but whether it remained foreseeable that Saba could be abducted by her father. See <i>Lodge v. Arett Sales Corp.</i>, 246 Conn. 563, 572, 717 A.2d 215 (1998).”</p>
<p>Bouchard v. Sundberg, 80 Conn. App. 180, 198-199, 834 A.2d 744 (2003).</p>	<p>“In <i>Vakilzaden</i> [infra], the Supreme Court considered for the first time whether the tort of child abduction or custodial interference applied to a parent who had joint custody of the subject child That case did not, as the plaintiff argues, abrogate the requirement of an extralegal taking of custody for the tort of custodial interference. The Supreme Court expressly decided that a parent enjoying joint custody could be liable for the crime of custodial interference and, in that respect, overruled <i>Marshak</i> [infra].”</p>
<p>State v. Vakilzaden, 251 Conn. 656, 662-663, 742 A.2d 767 (1999).</p>	<p>“The state argues that we should overrule <i>Marshak</i> [infra] and allow joint custodians to be held criminally liable if, in abducting their own child, their intent is to deprive the other joint custodian of his or her equal parental rights permanently or for a protracted period of time in accordance with General Statutes § 53a-98. We agree that <i>Marshak</i> should be overruled and that a joint custodian is not inherently immune from criminal prosecution based solely on his or her status as joint custodian if the state can prove all elements of the custodial interference statute, including both knowledge and intent, beyond a reasonable doubt.”</p>
<p>Zamstein v. Marvasti, 240 Conn. 549, 565, 692 A.2d 781 (1997)</p>	<p>“Although we have recognized that the tort of child abduction or custodial interference may have a place in our jurisprudence; see <i>Marshak v. Marshak</i>, 226 Conn. 652, 665, 628 A.2d 964 (1993); we conclude that the plaintiff has failed to allege sufficient facts to state such a cause of action.” (emphasis added)</p>
<p>Marshak v. Marshak, 226 Conn. 652, 665, 628 A.2d 964 (1993). <i>Overruled</i> by State v. Vakilzaden.</p>	<p>“We agree with the trial court that the recognition of the tort of child abduction or custodial interference, as applied to either a parent or a third party, might well play an important role in encouraging the speedy return of abducted children to the custodial parent and in compensating that parent for the harm suffered from the child’s absence. We also agree that such a tort may have a place in our jurisprudence. We disagree with the trial court’s conclusion, however, that, under the circumstances of this case, the defendant was liable for such a tort.” (Emphasis added).</p>

Table 5: Criminal custodial interference

Criminal: Custodial interference	
<p>CONN. GEN. STAT. § 53a-97 (2011).</p>	<p>Custodial interference in the first degree: Class D felony. “(a) A person is guilty of custodial interference in the first degree when he commits custodial interference in the second degree as provided in section 53a-98: (1) Under circumstances which expose the child or person taken or enticed from lawful custody or the child held after a request by the lawful custodian for his return to a risk that his safety will be endangered or his health materially impaired; or (2) by taking, enticing or detaining the child or person out of this state.”</p>
<p>CONN. GEN. STAT. § 53a-98 (2011).</p>	<p>Custodial interference in the second degree: Class A misdemeanor. “(a) A person is guilty of custodial interference in the second degree when: (1) Being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; (2) knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution; or (3) knowing that he has no legal right to do so, he holds, keeps or otherwise refuses to return a child who is less than sixteen years old to such child’s lawful custodian after a request by such custodian for the return of such child.”</p>
<p>LEGISLATIVE:</p>	<p>George Coppolo, <i>Attempted Kidnapping</i>, Connecticut General Assembly. Office of Legislative Research Report No. 2004-R-0272 (February 27, 2004).</p> <p>“ . . . in 1995, the legislature increased the penalty, from a class A misdemeanor to a class D felony for ‘detaining’ a child under 16 out of state when, knowing he has no legal right to do so, someone refuses to return the child to his lawful custodian after the custodian requests his return (PA 95-206)(See CGS § 53a-97). Generally, refusing to return a child after a request is second-degree custodial interference, a class A misdemeanor. Prior law it first-degree custodial interference, a class D felony, only for ‘taking’ or ‘enticing the child out of state.’”</p>
<p>TREATISES:</p>	<p>1 SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2011). Chapter 5. Interstate review § 5.41. State criminal statutes: Custodial interference</p>

Section 5: Indian Child Welfare Act (ICWA)

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the federal Indian Child Welfare Act (ICWA) and parental kidnapping of an Indian child.

DEFINITIONS:

- **Indian child:** “means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;” [25 U.S.C. §1903\(4\)](#) (2010).
- **Indian tribe:** "means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602 (c) of title 43;" [25 U.S.C. §1903\(8\)](#) (2010).
- **Exclusive jurisdiction:** "An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child." [25 U.S.C. §1911](#) (2010).

STATUTES:

- Indian Child Welfare Act, [25 U.S.C. §§ 1901](#) et seq. (2010).
[§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception.](#) "Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger. "
[§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child](#) “In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.”

Emergency removal or placement of child; termination; appropriate action. “Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency

placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.”

- **Application to Indian tribes.** “A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 USC Section 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.” CONN. GEN. STAT. § [46b-115c](#) (2011).

LEGISLATIVE HISTORY:

- H.R.Rep. No. 1386, 95th Cong., 2d Sess. 25 (1978). Reprinted in 1978 U.S.C.C.A.N. 7530, 7548.
"Section 110 [25 U.S.C. §1920] establishes a 'clean hands' doctrine with respect to petitions in State courts for the custody of an Indian child by a person who improperly has such child in physical custody. It is aimed at those persons who improperly secure or improperly retain custody of the child without the consent of the parent or Indian custodian and without the sanction of law. It is intended to bar such person from taking advantage of their wrongful conduct in a subsequent petition for custody. The child is to be returned to the parent or Indian custodian by the court unless such return would result in substantial and immediate physical damage or threat of physical danger to the child. It is not intended that any such showing be by or on behalf of the wrongful petitioner.”

REGULATIONS:

- [25 C.F.R. Part 23](#) (April 1, 2011). Indian Child Welfare Act

CASES:

- [D.E.D. v. State](#), 704 P.2d 774, 780 (Alaska 1985). "Thus, as the State's notes, there was nothing in R.S.'s petition which demonstrated that there was any basis for declining jurisdiction under either § 1913 or § 1920."

WEST KEY NUMBERS:

- *Indians* #6. Protection of persons and personal rights
- *Indians* #27(2). Actions. Jurisdiction

DIGESTS:

- ALR DIGEST: *Indians* #1

ENCYCLOPEDIAS:

- 41 [AM. JUR. 2D](#) *Indians* §§ 116-139 (2005).
§ 116. Indian Child Welfare Act; Purpose of act
§ 117. –Role of tribe
§ 118. Applicability of the ICWA
§ 119. Who are “Indian children”
§ 120. Interpretation; construction
§ 121. Tribe’s jurisdiction
- 42 [C.J.S.](#) *Indians* §§137-153 (1991).
- 19 [FEDERAL PROCEDURE LAWYERS EDITION](#) (2000).
Indians and Indian Affairs. Child custody Proceedings under Indian Child Welfare Act
§ 46:469. Exclusive jurisdiction of tribes
§ 46:472. State court's declining jurisdiction upon improper removal of child from custody

**TEXTS &
TREATISES:**

- 5 SANDRA MORGAN LITTLE, 4 [CHILD CUSTODY AND VISITATION](#) (2011).
Chapter 29. The Indian Child Welfare Act and Laws Affecting Indian Juveniles.
 - § 29.01. Introduction
 - § 29.02. Domestic relations law and Indians: General principles
 - § 29.03. Indian Child Welfare Act: Policy and Legislative History
 - § 29.04. Indian Child Welfare Act: General application
 - § 29.05. Involuntary child custody proceedings
 - § 29.06. Voluntary child custody proceedings
 - § 29.07. Placement of Indian children
 - § 29.08. Post trial matters
 - § 29.10. Bibliography

LAW REVIEWS:

Marcia Yablon, *The Indian Child Welfare Act Amendments Of 2003*, 38 FAMILY L.Q. 689 (Fall 2004).

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Section 6: Family Violence and Parental Kidnapping

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the affirmative defense of “risk of harm” to parental child abduction and the granting of “temporary emergency jurisdiction” under PKPA and UCCJEA.
- SEE ALSO:**
- [Section 1: Hague Convention on the Civil Aspects of International Child Abduction](#)
 - [Section 2: Federal Parental Kidnapping Prevention Act \(PKPA\)](#)
- DEFINITIONS:**
- [Hague Convention on the Civil Aspects of International Child Abduction](#)
Article 13: “Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that —
[**Article 13**]b there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.”
 - **Grave Risk of Harm:** “Article 13(b) of the Convention requires that the child be placed in a ‘grave risk’ of harm. Webster’s New World Dictionary, 2nd. College Edition defines grave as: ‘of a threatening nature; indicating great danger; ominous [a grave illness]’. In the psychological context this court accepts Dr. Grenier’s definition that ‘grave’ ... ‘it would be that their day-to-day functioning and their ability to function at all would be most urgently wiped out or done away with to the point that the person could not conduct a normal kind of life.’” *Renovales v. Roosa*, 5 Conn. L. Rptr. 609 (1991)
 - **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.” CONN. GEN. STAT. [§ 46b-115n](#) (2011)
 - **Abuse:** “‘abused’ means that a child or youth (A) has been inflicted with physical injury or injuries other than by accidental means, (B) has injuries that are at variance with the history given of them, or (C) is in a condition that is the result of maltreatment, including, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment” CONN. GEN. STAT. [§ 46b-120](#) (2011)
 - **Undertakings:** “Return plus conditions (‘undertakings’) can in some, maybe many, cases properly accommodate the interest in the child’s welfare to the interest of the country of the child’s habitual residence. Often the bulk of the evidence concerning risk of harm will be found in that country and the left-behind parent’s defense to charge of abuse may be more difficult and costly to prepare and present in the country to which the abductor has fled. But in cases of child abuse the balance may shift against return plus conditions”.

[Walsh v. Walsh](#), 221 F.3d 204, 219 (1st Cir.2000)

STATUTES:

- 18 U.S.C. (2010)
[§ 1204 \(c\)\(2\)](#) International parental kidnapping
- 25 U.S.C. (2010)
[§ 1922](#) Emergency removal or placement of child; termination; appropriate action
- 28 U.S.C (2010)
[§ 1738A \(c\)\(2\)\(c\)](#) Full faith and credit given to child custody determinations
- CONN. GEN. STAT. (2011)
Chapter 815p Uniform Child Custody Jurisdiction and Enforcement Act
[§ 46b-115n](#). Temporary emergency jurisdiction.

CASES:

- [Turner v. Frowein](#), 253 Conn. 312, 351, 752 A.2d 955 (2000). “We emphasize that we do not disturb or modify the trial court’s finding that returning the child to the defendant would expose him to a ‘grave’ risk of harm, within the meaning of article 13b. Thus, if the trial court remains unable to find any reasonable means of repatriation that would not effectively place the child in the defendant’s immediate custody, either expressly or de facto, it should deny the petition under the Hague Convention.”
- [Blondin v. Dubois](#), 189 F.3d 240, 249 (2d Cir. 1999). “Under the circumstances presented, we think it appropriate to remand this matter to the District Court for further consideration of the range of remedies that might allow *both* the return of the children to their home country *and* their protection from harm, pending a custody award in due course by a French court with proper jurisdiction.”
- [State v. Vakilzaden](#), 251 Conn. 656, 663, 742 A.2d 767 (1999) “Thus, a parent who temporarily ‘abducts’ a child in an effort to safeguard that child from an abusive situation, but seeks appropriate legal redress under § 46b-93 (a)(3)(B) as soon as is feasible under the circumstances, could not meet the necessary mens rea for custodial interference because he or she would have the legal right to take the child to protect him or her. We are confident that our law enforcement authorities and our courts will be sensitive to this reality.”

Unreported Connecticut Decisions

- [Crowley v. Lounsbury](#), No. FA 99-0551913S (Apr. 24, 2003) “Children need - it is their best interest - to have a custodial parent who is physically and emotionally safe. Implicit in our laws is the notion that one parent must be free from abuse at the hands of the other. State and federal law recognize the legitimacy of domestic violence victims relocating with their children to escape abuse.”
- [Harliwich v. Harliwich](#), No. FA 98-68306 S, 1998 Conn. Super. LEXIS 3401, 1998 WL 867328 (Dec. 3, 1998). "There was no substantial evidence that the child's return would expose him to physical or psychological harm or otherwise place him in an intolerable situation."
- [Panazatou v. Panazatou](#), No. FA 960713571S. (Sept. 24, 1997) 1997 WL 614519 (Conn. Super.). “Did the respondent mother prove by clear and convincing evidence that there was grave risk of psychological harm of the child if returned to Greece? The answer is yes. The Court was clearly

convinced that to return the child without the mother would create a grave risk of psychological harm to the child and more particularly to remove Nicole back to Greece without her mother would create greatest risk of serious psychological harm both short and long term.

- Renovales v. Roosa, No. FA 91-0392232 (Sep. 27, 1991), 1991 Conn. Super. LEXIS 2215, 1991 WL 204483 (Sep. 27, 1991). "The court finds that the respondent has failed to prove by 'clear and convincing ' evidence that the children will be ' exposed ' to grave risk of either physical or psychological harm or that they will be placed in an intolerable situation."

Other Jurisdictions

- Van de Sande v. Van de Sande, 431 F.3d 567, 571 (7th Cir.2005). "If handing over custody of a child to an abusive parent creates a grave risk of harm to the child, in the sense that the parent may with some nonnegligible probability injure the child, the child should not be handed over, however severely the law of the parent's country might punish such behavior. In such a case, any order divesting the abducting parent of custody would have to be conditioned on the child's being kept out of the custody of the abusing parent until the merits of the custody dispute between the parents could be resolved by the court in the abusive parent's country."
- Danaipour v. McLarey, 386 F.3d 289, 295-296 (1st Cir. 2004). "Having found by clear and convincing evidence that C.D. was sexually abused by her father, the court then went on to conclude, also by clear and convincing evidence that returning the children to Sweden would create a grave risk of psychological harm and an intolerable situation for them."

WEST KEY NUMBERS:

- Child Custody #753. Emergency Jurisdiction
- Kidnapping #29 Defenses.

DIGESTS:

- ALR DIGEST: *Kidnapping*
- ALR INDEX: *Abduction and Kidnapping*
- CONNECTICUT FAMILY LAW CITATIONS: *Child Abduction*

ENCYCLOPEDIAS:

- Tracy Bateman Farrell, Annotation, *Construction and Application of Grave Risk of Harm Exception in Hague Convention on the Civil Aspects of International Child Abduction as Implemented in International Child Abduction Remedies Act*, 42 U.S.C.A. § 11603(e)(2)(A), 56 ALR Fed. 2d 163 (2011)
- David Carl Minneman, Annotation, *Abandonment And Emergency Jurisdiction Of Court Under § 3(A)(3) Of The Uniform Child Custody Jurisdiction Act(UCCJA) Or Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A(C)(2)(C), 5 ALR5th 788 (1992).
- David Carl Minneman, Annotation, *Emergency jurisdiction of court under §§3(a)(3)(ii) and 14(a) of Uniform Child Custody Jurisdiction Act and Parental Kidnapping Prevention Act*, 28 U.S.C.A. §§1738A(c)(2)(C)(ii) and 1738A(f), to protect interests of child notwithstanding existence of prior, valid custody decree rendered by another state, 80 ALR5th 117 (2000)
- Ann K. Wooster, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Temporary Emergency Jurisdiction Provision*, 53 A.L.R.6th 419 (2010)

TEXTS & TREATISES:

- SANDRA MORGAN LITTLE, 5 CHILD CUSTODY AND VISITATION (2011). Chapter 4. Interstate Child Custody Jurisdiction under UCCJA,

UCCJEA, and PKPA.
§4.21 Temporary Emergency Jurisdiction
Chapter 32. Hague Convention on the Civil Aspects of International
Child Abduction
§32.02 [3] Specific Provisions of the Convention
[d] Chapter III - Return of the Child

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (3d ed. 2010).
Chapter 40. Jurisdiction to Enter and Enforce Custody Orders
§ 40:9. Temporary emergency jurisdiction
§ 40:32. Enforcement jurisdiction under the UCCJEA—Proceedings to take physical custody of a child
- ANN M. HARALAMBIE, [HANDLING CHILD CUSTODY, ABUSE, AND ADOPTION CASES](#) (2008)
§2.34 Remedies Available
§2.42 Emergency Jurisdiction

LAW REVIEWS:

- Laura Theresa Curcio Curry, *On the Border: The Country's Ambiguous Response to Out-of-State Domestic Violence Victims Fleeing Their Abusers*, 13 Holy Cross J.L. & Pub. Policy 9 (2009)
- Miranda Kaye, *The Hague Convention and the Flight from Domestic Violence: How Women & Children are Being Returned by Coach & Four*, 13 Int'l J.L., Pol'y & Fam. 191 (1999)
- Merle H. Weiner, [Intolerable Situations and Counsel for Children: Following Switzerland's Example in Hague Abduction Cases](#), 58 American University Law Review 335
- Merle H. Weiner, *International Child Abduction & the Escape from Domestic Violence*, 69 Fordham L. Rev. 593 (2000)
- Sudha Shetty, [Adult Domestic Violence in Cases of International Parental Child Abduction](#), 11 Violence Against Women 115 (2005)
- Roxanne Hoegger, *What if She Leaves? Domestic Violence Cases Under the Hague Convention and the Insufficiency of the Undertakings Remedy*, 18 Berkeley Women's L.J. 181 (2003).
- Carol A. Bruch, *The Unmet Needs Of Domestic Violence Victims And Their Children In Hague Child Abduction Convention Cases*, 38 FAMILY LAW QUARTERLY 529 (Fall 2004).
- Julia Alanen, *When Human Rights Conflict: Mediating International Parental Kidnapping Disputes Involving the Domestic Violence Defense*, 40 U. Miami Inter-Am. L. Rev. 49 (2008-09)

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Appendix A

OLR Research Report

August 18, 1999

99-R-0792

The Hague Convention on the Civil Aspects of International Child Abduction

By: Lawrence K. Furbish, Assistant Director

You asked about possible conflicts between the Hague Convention on the Civil Aspects of International Child Abduction and the provisions of PA 99-185, An Act Concerning the Uniform Child Custody Jurisdiction and Enforcement Act.

SUMMARY

It is difficult to give a definitive answer to your question because both the Hague Convention and PA 99-185 are long and detailed laws designed to cover complex inter-personal situations involving multiple parties and different states with differing legal systems. It is unlikely that they would be in direct conflict, but in a fact-specific real-world case a conflict might arise.

The public act is more inclusive, and it is designed to allow courts to settle jurisdictional disputes involving custody and visitation issues when the parties live in different states. The Hague Convention is more limited; it is designed to hasten the return of children wrongfully abducted internationally and deter such abductions in the future. Thus the situations that would be covered by PA 99-185 are much broader than those covered by the Convention. In addition, the convention only covers children under age 16 while the act covers children under age 18.

One provision of PA 99-185, which might conflict with the Convention concerns human rights issues. When sHB 7010, which became PA 99-185, was being discussed during the session a provision was added that allows a Connecticut court to refuse to enforce a custody determination rendered under a child custody law that violates fundamental human rights principles or is repugnant to state policy. But the Convention has a provision that allows a party state to refuse to return a child if it would violate the state's fundamental principles regarding the protection of human rights and freedoms. It is unclear what would be repugnant to state policy, but if a court found another state's custody determination not to be in violation of fundamental human rights but to be "repugnant" to state public policy and refused to return the child, the court probably could be considered to be in violation of the Convention. But this is very speculative, and it is difficult to predict a situation where such a result would occur.

We have enclosed copies of the Hague Convention, PA 99-185, and the OLR summary of PA 99-185.

THE HAGUE CONVENTION

The goals of the Hague Convention, as laid out in Article 1, are first to secure the prompt return of children wrongfully removed to or retained in any contracting state and second to ensure that the rights of custody and access under the laws of one state are respected in other states. The Convention makes removal or retention wrongful when (1) it is a breach of custody rights under the law of the state where the child "was habitually resident immediately before the removal" and (2) at the time the child was removed the custody rights were actually being exercised (Art. 3). Under the International Child Abduction Remedies Act (ICARA), which is the U. S. law implementing the Hague Convention, the applicant must prove by a

preponderance of the evidence that the removal was wrongful (42 USCA § 11603). The custody rights can arise by (1) operation of law, (2) judicial or administrative decision, or (3) a legally effective agreement.

Under the Convention, each party state must designate a Central Authority to enforce its provisions, and a parent who believes his child has been wrongfully removed can apply to the Central Authority of either the home country or the country where the child is located (the requested state). The Central Authority is obligated to take appropriate measures to (1) discover the child's whereabouts; (2) prevent harm to the child; (3) protect the applicant's interests; (4) secure the voluntary return of the child; and (5) if necessary, initiate a judicial or administrative proceeding for the child's return.

In determining whether the child's removal has been wrongful, the Convention authorizes the requested state's judicial authorities to consider the law and judicial or administrative decisions of the habitual residence state (Art. 14). But it also allows the requested state to have the applicant obtain from the habitual residence state authorities a decision or determination that the removal was wrongful under the Convention's provisions (Art. 15).

The Convention exists solely to expedite the return of the child to the state of habitual residence, and this residence state is responsible for making the custody determination. The Convention specifically provides that decisions concerning the return of the child are not determinative on the merits of a custody issue (Art. 19).

If the wrongful removal has been for less than one year, the requested state must order the child's return. If the removal has been for more than one year, the requested state must order the child's return unless it determines that the child is now settled in his new environment (Art. 12). Article 13 of the Convention sets out three specific circumstances where the requested state does not have to return a child:

1. when the applicant was not actually exercising custody at the time of removal or subsequently consented or acquiesced to removal,
2. if there is grave risk that return would expose the child to physical or psychological harm or otherwise place him in an intolerable situation, or
3. if the authority finds that the child objects to return and has attained an age and degree of maturity where it is appropriate to take his views into account.

Finally, the Convention specifically states that a contracting state may refuse to return a child if such return "would not be permitted by the fundamental principles of the requested state relating to the protection of human rights and fundamental freedoms" (Art 20).

PA 99-185

This act replaces the uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement Act. Its effect is to specify more clearly which state has jurisdiction when the parties in a custody or visitation dispute live in different states. The act treats foreign countries as other states, if their custody order procedures basically conform to the act's requirements and do not violate fundamental human rights principles. The act establishes provisions governing a state's continuing exclusive jurisdiction over a custody matter. It significantly expands the court's authority to exercise temporary emergency jurisdiction in these cases and to modify another state's custody order.

The act also establishes a number of new procedures for enforcing existing custody determinations and federal or other states' orders under the Hague Convention on the Civil Aspects of International Child Abduction. These include provisions for registering and recognizing other states' orders, enforcing stays pending modifications, applying for orders to take temporary custody of a child, and awarding expenses to the prevailing party.

The act retains a number of the existing uniform provisions in identical or essentially similar form. These include provisions asserting the binding effect of a child custody determination on all parties that are served, giving jurisdictional issues under the uniform law calendar priority in court, governing the provision of notice both within the state and for parties in other states, and taking testimony from people in other states by deposition.

The act expands the law's international application by requiring this state's courts to enforce foreign child custody determinations and the orders of state or federal courts for the return of a child under the Hague Convention made in substantial conformity with its jurisdictional standards, including reasonable notice and an opportunity to be heard. But courts do not have to enforce orders if the foreign country's child custody laws violate fundamental human rights principles or the custody determination is repugnant to this state's public policy (§§ 37 and 38).

The act defines a foreign custody determination as one involving legal or physical custody or visitation, but not relating to child support or a person's monetary obligations (§ 36).

The act does not take effect until July 1, 2000.

LKF: pa

Appendix B

OLR Research Report

December 15, 1994

94-R-1036

Connecticut's Parental Abduction Law

TO:

FROM: Lawrence K. Furbish, Assistant Director

You asked if there was any problem or weakness in Connecticut's parental abduction (custodial interference) law and if our law is different from other states' laws. You were particularly interested in the law in Rhode Island and if there was a model law.

SUMMARY

Apparently there is what some would call a weakness in our law in that if the parental kidnapping occurs before a court has conferred custody, it is very difficult to meet the statutory conditions to establish that the crime has been committed. Second, if the alleged perpetrator takes the child out of state, the Connecticut police do not have the resources to pursue the parent; thus they must go to federal authorities for an arrest warrant and this will only be issued if the charged crime is a felony.

A bill to deal with this problem was introduced and given a public hearing in 1989 but no further action was taken. Both Rhode Island's law and model legislation suggested by the National Center for Missing and Exploited Children would cover situations not included in our law.

CONNECTICUT'S LAW ON CUSTODIAL INTERFERENCE

Custodial interference in this state is divided in the penal code into two offenses. Second degree custodial interference, which is a class A misdemeanor, is when a person, knowing that he has no legal right to do so:

1. being a relative of a child under age 16, takes or entices the child from his lawful custodian intending to hold that child permanently or for a protracted period of time;
2. takes from lawful custody an incompetent person; or
- 3 holds or refuses to return a child to the child's lawful guardian after a request for his return from the custodian (CGS § 53a-98).

According to Lt. Robert Irving, of the Cheshire Police Detective Division, unless the courts have awarded custody or papers have been legally served stating that custody is being sought, it is impossible to establish that a parent "has no legal right" to take his or her children somewhere and then fail to return them. First degree custodial interference, which is a class D felony, is to commit any of the three acts described in second degree custodial interference and either (1) take the child out of state or (2) endanger the child's health or safety (CGS § 53a-97).

Connecticut has also adopted the Uniform Child Custody Jurisdiction Act (CGS §§ 46b-90 through 114). This law is designed to prevent different states from rendering conflicting decisions concerning child custody and visitation rights. Its basic methods are (1) to require Connecticut courts to examine the background of custody cases coming before them and to decline jurisdiction over any case if it appears that

the courts of some other state have a closer connection with the case or are otherwise better suited to decide which party should get custody, and (2) to require Connecticut courts to enforce out-of-state decrees when those decrees comply with the jurisdictional principles contained in the act.

ATTEMPTS TO CHANGE CONNECTICUT'S LAW

In response to a high visibility case in the mid eighties, an attempt was made to change Connecticut's law in 1989. The case involved Sheldon and Karel Marshak who lived in Cheshire. In 1985, a few days after Karel informed Sheldon that she wanted a divorce and consulted an attorney, an altercation erupted between the two of them and Sheldon took their four children in his car and left. Despite Karel's attempts to find them Sheldon eluded her for several days, completed his arrangements and flew out of JFK airport taking the children with him to Israel. The Cheshire police found that because there was no court order and because Sheldon was the children's father, they could not use the Connecticut law on custodial interference. The Marshak case dragged on for several years taking a number of legal detours and Karel has still never seen her children, except for a brief look from a distance in Brazil.

In response to the Marshak case, Representative Fritz introduced proposed bill 5220 and the Judiciary Committee raised HB 7526 (copies enclosed). The raised bill received a public hearing, but no further action was taken on it by the Judiciary Committee. The bill would have made it second degree custodial interference for anyone having a right of custody of a child under 16 to take, detain, conceal, or entice away the child without good cause and with the intent to deprive another person of that person's right of custody of the child. This would have covered the situation in the Marshak case where there was no court order and it would also cover the case where there is a court order giving joint custody. The key would be the intent to deny someone having a right of custody. Lt. Irving worked on the Marshak case and was involved in the attempts to change Connecticut's laws. He might be able to provide you with additional details, and he can be reached at 271-5539.

RHODE ISLAND LAW

Rhode Island has two criminal statutes covering custodial interference. One covers the situation after a parent has been served with court papers affecting the family but prior to issuance of a temporary or final court order. This statute makes it a felony, punishable by imprisonment for up to two years, a fine of up to \$ 10,000, or both, for any parent, or a person acting for the parent, to take or entice a child away from the family unit to deprive the other parent of physical custody for longer than 15 days (R. I. Gen. Laws §11-26-1. 2 copy enclosed). If the parent takes the child to protect him from imminent physical harm, if the parent is fleeing imminent physical harm, if both parents consent, or if the removal is otherwise authorized by law, there is no violation.

The second law is entitled "childsnatching", and it is similar to the provisions of HB 7526. It makes it a felony for anyone to intentionally remove or detain a child under age 18 "with intent to deny another person's right of custody under an existing decree or order of Rhode Island family court" (R. I. Gen. Laws § 11-26-1. 1). The penalty is the same as for the offense above. It is an affirmative defense that (1) the person hold the child was doing so pursuant to a court order granting legal custody or visitation rights; (2) the person had physical custody pursuant to a court order granting custody or visitation and failed to return the child due to circumstances beyond his control and he notified, or made a reasonable attempt to notify, the other parent of the delay; or (3) the person was fleeing domestic violence. Rhode Island also has a civil childsnatching law which authorizes a civil lawsuit against anyone who intentionally detains a child with intent to deny another person's right of custody (R. I. Gen. Laws § 9-1-43).

MODEL STATE LEGISLATION

We were unable to find any fully drafted model suggested legislation, but the National Center for Missing and Exploited Children has published guidelines concerning what they think any state criminal custodial interference statute should contain. We have enclosed the relevant portions of their recommendations, and the first item on their list is very similar to the provisions of HB 7526. It says that the law should prohibit any person having a legal right of custody or visitation from taking a child with the intent of depriving any

other person or agency of their custody right. This provision would apply whether or not there was a court order establishing custody or visitation

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