



2017 Edition

Paternity Actions in Connecticut

A Guide to Resources in the Law Library

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*Prepared by Connecticut Judicial Branch, Superior Court Operations,
Judge Support Services, Law Library Services Unit*

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Introduction

A Guide to Resources in the Law Library

- “The purpose of what were formerly called bastardy actions and are now called paternity proceeding is to relieve the public of the burden of supporting an illegitimate child and to provide the mother with assistance in carrying out her **obligation of support.**” [Kuser v. Orkis](#), 169 Conn. 66, 71, 362 A.2d 943 (1975).
- **“In this State there are only three ways of legally establishing paternity: (1) the marital presumption if the mother and the putative father are married to each other; (2) adjudication of paternity by a court of competent jurisdiction; or (3) a formal acknowledgment of paternity in accordance with the acknowledgment statute.”** [Hjarne v. Martin](#), Superior Court, Judicial District of Hartford-New Britain at Hartford, No. FA00-0631333 (Apr. 21, 2002) (2002 WL 1163023).
- **“The private interests that are at stake** in this litigation involve both the putative father and the child The putative father faces a possible loss of liberty if he **is found ‘guilty’ and subsequently fails to pay court ordered child support.** General Statutes §§ 46b-171, 46b-215, 53-304. In addition, both father and child have substantial financial and property interests at stake. The father is liable for past, present and future child support. General Statutes § 46b-171. In later years the child may be liable for the support of its father; General Statutes § 53-304; and may eventually have claims upon the father's estate. The child's interests also extend to its health, which may depend upon an accurate family **medical history.**” [Lavertue v. Niman](#), 196 Conn. 403, 493 A.2d 213, (Conn. 1985).
- **“A child shall be made a party to a paternity action under the provisions of** General Statutes § 46b-172a (c) when the putative father requests an adjudication of paternity. The legislative history for § 46b-172a shows that there **is legislative intent for the child to be a party to paternity proceedings.**” [Ragin v. Lee](#), 78 Conn. App. 848, 854, 829 A.2d 93 (2003).
- **““An educational support order may be entered with respect to any child who has not attained twenty-three years of age and shall terminate not later than the date on which the child attains twenty-three years of age.’** Connecticut General Statute § 46b-56c(a) An order may be issued pursuant to a Petition for Paternity and Support. Connecticut General Statute § 46b-56c(b)(3). The educational support statute provides that a ‘court may not enter an educational support order pursuant to this section unless the court finds as a matter of fact that it is more likely than not that the parents would have provided support to the child for higher education or private occupational school if the family were **intact.**’ Connecticut General Statute § 46b-56c.” [Watters v. Mase](#), Superior Court, Judicial District of Fairfield, No. FA04 400 39 40 (Aug. 12, 2005) (2005 WL 2206900).

Section 1: Rights and Status of Children Born Out-of-Wedlock

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the rights and status of children born out-of-wedlock in Connecticut

DEFINITION:

- **Child Out of Wedlock:** "Unlike a valid marriage which creates a legal status between the parties and has been said to be the marital res capable of furnishing the basis for jurisdiction of a court, the birth of a child out of wedlock does not, per se, create any legal status between the child and a putative father. Generally, the legitimatization of such a child vis-a-vis his 'father' is a matter of statute." [Hayes v. Smith](#), 194 Conn. 52, 64, 480 A.2d 425 (1984).
- **Child of a Marriage:** "The issue of any void or voidable marriage shall be deemed legitimate. Any child born before, on or after October 1, 1976, whose birth occurred prior to the marriage of his parents shall be deemed a child of the marriage." Conn. Gen. Stats. § [46b-60](#) (2017)
- **Equal Protection of the Law:** "The United States Supreme Court, moreover, has held that illegitimate children cannot be denied equal protection of the law." [Trimble v. Gordon](#), 430 U.S. 762, 776, 97 S. Ct. 1459, 52 L.Ed. 2d 31 (1977). See [Lalli v. Lalli](#), 439 U.S. 259, 99 S. Ct. 518, U.S.N.Y., 1978 where statutory provision did not violate equal protection clause.

STATUTES:

- Conn. Gen. Stat. (2017)
 - [Chapter 802b](#). Decedents' estate
 - § [45a-438](#). Children born out of wedlock may inherit.
 - See [Table 1](#)
 - [Chapter 815j](#). Dissolution of marriage, legal separation and annulment
 - § [46b-45a](#). Allegation of pregnancy in pleadings. Disagreement as to paternity. Hearing
 - § [46b-61](#). **Orders re children where parents live separately.** Commencement of proceedings. "In all cases in which the parents of a minor child live separately, the superior court for the judicial district where the parties or one of them resides may, on the application of either party and after notice is given to the other party, make any order as to the custody, care, education, visitation and support of any minor child of the

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parties, subject to the provisions of sections 46b-54, 46b-56, 46b-57 and 46b-66. Proceedings to obtain such orders shall be commenced by service of an application, a summons and an order to show cause." [Emphasis added]

[Chapter 815y](#). Paternity matters

§ [46b-160](#). Petition by mother or expectant mother.

§ [46b-172a](#). Filing of claim for paternity by putative father.

(c). "The child shall be made a party to the action..."

[Chapter 816](#). Support

§ [46b-215](#). Relatives obliged to furnish support. Attorney General and attorney for town as parties. Orders.

(a)(4). "For purposes of this section, the term 'child' shall include one born out of wedlock whose father has acknowledged in writing paternity of such child or has been adjudged the father by a court of competent jurisdiction, or a child who was born before marriage whose parents afterwards intermarry."

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

U.S. Supreme Court

- [Gomez v. Perez](#), 409 U.S. 535, 538, 93 S.Ct. 872, 35 L.Ed. 2d 56 (1973). "Under these decisions, a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. We therefore hold that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother."

Connecticut

- [Foster v. Smith](#), 91 Conn. App. 528, 534-535, 881 A.2d 497 (2005). "Connecticut appellate courts have decided that a minor child who is the subject of a paternity action has a fundamental interest in an accurate determination of paternity. See [Lavertue v. Niman](#), 196 Conn. 403, 409, 493 A.2d 213 (1985); [Ragin v. Lee](#), 78 Conn. App. 848, 861. The United States Supreme Court has also acknowledged that 'both the child and the defendant in a paternity action have a compelling interest in the accuracy of such a determination.' [Little v. Streater](#), 452 U.S. 1, 13, 101 S.Ct. 2202, 68 L.Ed.2d 627 (1981). In [Ragin v. Lee](#), supra, 864, this court determined that a minor child had standing to bring a motion to open a default judgment of paternity on the basis of the child's independent right to an accurate determination of paternity in that proceeding. In reaching

that decision, this court took into account the fact that **'Connecticut has long recognized that children have a separate and independent interest in family relations matters . . . [and that] . . . [o]ur Supreme Court has recognized that both the father and the child in a paternity proceeding have an interest in seeing that their rights to companionship, care and custody are accurately adjudicated.'** (Citations omitted.) Id., 861. Furthermore, our Supreme Court has considered the child's interests in that regard to be especially strong. *Lavertue v. Niman, supra, 409.* **'Any determination that a particular individual is a child's biological father may have profound sociological and psychological ramifications. . . . It is in the child's interest not only to have it adjudicated that some man is his or her father and thus liable for support, but to have some assurance that the correct person has been so identified.'**"

- [Shockley v. Okeke](#), 48 Conn. Sup. 647, 856 A.2d 1054 (2004). **"The court finds that the legal name of the minor child is as acknowledged by both the parents of the child in the acknowledgment of paternity that is on file both in the present case and in the companion custody and visitation case. A similar method of assigning a legal name to a minor child has been approved in [Don v. Don](#), 142 Conn. 309, 313 [1955] and *In re Tanaja G.*, Superior Court, Juvenile Matters at Hartford, (April 28, 2000) (2000 WL 1023587). These are the only two Connecticut court decisions which, in any way, refer to a court determining a minor child's original legal name. The acknowledgment of paternity in the present case was signed the day after the child's birth."**
- [Ragin v. Lee](#), 78 Conn. App. 848, 863, 829 A.2d 93 (2003). **"We hold that a child who is the subject of a paternity action has fundamental interest in an accurate determination of paternity that is independent of the state's interest in establishing paternity for the benefit of obtaining payment for the child's care and any interest that the parents may have in the child."**
- [Brancato v. Moriscato](#), Superior Court, Judicial District of New Haven, No. CV03 0472496 S (Feb. 27, 2003) (34 Conn. L. Rptr. 208) (2003 WL 1090596). **"To suggest that paternity can only be established in this one way [the applicant . . . show that the decedent acknowledged her in writing and treated her openly as his child] is a gross misapplication of case law and the statutes pertaining to paternity and intestate inheritance."**
- [W. v. W.](#), 248 Conn. 487, 495, 728 A.2d 1076 (1999). **"The second issue on appeal is whether the trial court acted improperly when it equitably estopped the defendant from denying that he is the father of the plaintiff's older child. We conclude that the trial court's action was proper."**

- [Andrews-White v. Mitchell](#), Superior Court, Judicial District of Hartford, No. FA95 0710468 S (Nov. 13, 1995) (15 Conn. L. Rptr. 629) (1995 WL 684779). **"The defendant accurately notes the statutory limits as to who may initiate paternity actions; C.G.S. § 46b-160 (mother or expectant money); C.G.S. § 46b-162 (action by state or town) and C.G.S. § 46b-172a [claim for paternity by putative father]. The statutory scheme is devoid of reference to an action by a child or her guardian. This is a disturbing scenario when one considers that it is the child's interest which is at stake; as it is the child who has the primary interest in establishing a relationship to its father."**
- [Pickett v. Brown](#), 462 U.S. 1, 16 n.15 (1983). **"This Court for the reasons set forth below, finds that the child's interest in establishing paternity is a fundamental state and federal constitutional liberty interest of the child. The common law recognizes this right and the judicial system must afford the child an opportunity to exercise and protect her interest."**
- [Stevens v. Leone](#), 35 Conn. Supp. 237, 239-240, 406 A.2d 402 (1979). **"It seems obvious from the remarks of the chairman of the house judiciary committee at the time that the amendment was introduced that it was the intent of the legislature to expand the jurisdiction of the Superior Court regarding custody issues from controversies arising out of a dissolution of marriage to controversies in which a child had been born without benefit of marriage."**
- [Franklin v. Congelosi](#), 6 Conn. Cir. 357, 360, 273 A.2d 291 (1970). **"Moreover, '[i]f the father of an illegitimate child is legally bound to support it, his promise to furnish such support or to pay for support rendered is itself enforceable without any consideration.'" 1A Corbin, Contracts § 231, p.347; note, 20 A.L.R.3d 500, 520."**

DIGESTS:

- ALR Index: *Legitimacy of Children*
- ALR Digest: *Children Out-of-Wedlock*
- Connecticut Family Law Citations: *Paternity*

WEST KEY NUMBERS:

- *Children Out-Of-Wedlock*
 - # 1-15. Status in General
 - # 20. Custody
 - # 21-23. Support
 - # 80-90. Property

ENCYCLOPEDIAS:

- 14 [C.J.S.](#) *Children Out-of-Wedlock* (2006).
 - §§ 1-9. In General
 - §§ 10-17. Evidence of Legitimacy
 - §§ 18-27 Legitimization and Similar Matters

§§ 28-31. Repudiation of Legitimacy or Presumed Paternity
§§ 32-38. Custody and Protection
§§ 39-63. Support, Maintenance and Education
§§ 64-70. Inheritance by or Through Children Born out-of-Wedlock

- 41 [Am. Jur. 2d](#) *Illegitimate Children* (2015).
 - I. Who are Illegitimate Children
 - II. Presumption of Legitimacy and Paternity
 - III. Genetic Testing, Registry of Paternity, and Voluntary Acknowledgment and Denial of Paternity Under Uniform Parenting Act
 - IV. Civil Action to Establish Paternity
 - V. Support of Children
 - VI. Custody of Children
 - VII. Capacity to Take Property; Inheritance Rights
 - VIII. Legitimation
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 [COA 2d](#) 1 (1994).
 - § 17. Parties. Generally.
- George L. Blum, Annotation, *Right Of Illegitimate Child To Maintain Action To Determine Paternity*, 86 [ALR5th](#) 637 (2001).
- William H. Danne, Jr., Annotation, *Legal Status Of Posthumously Conceived Child Of Decedent*, 17 [ALR6th](#) 593 (2006).
- William G. Phelps, Annotation, *Eligibility Of Illegitimate Child For Survivor's Benefits Under Social Security Act, Pursuant To § 216(h)(2)(A) of Act (42 USCS § 416(h)(2)(A), Where State Intestacy Law Denying Inheritance Right, Or Application Of That State Law To § 216(h)(2)(A), May Violate Child's Right To Equal Protection of Laws*, 116 [ALR Fed](#) 121(1993).
- Lee R. Russ, Annotation, *Right of Illegitimate Grandchildren To Take Under Testamentary Gift To "Grandchildren"*, 17 [ALR4th](#) 1292 (1982).
- Catherine R. Lazuran, Annotation, *Posthumous Illegitimate Child As "Child" Entitled to Survivor's Benefits Under § 216 of The Social Security Act (42 USCS § 416)*, 36 [ALR Fed](#) 166 (1978).
- Donald M. Zupanec, Annotation, *Right Of Illegitimate Child, After Levy v Louisiana, To Recover Under Wrongful Death Statute For Death Of Putative Father*, 78 [ALR3d](#) 1230 (1977).

- Irwin J. Schiffres, Annotation, *Discrimination On Basis of Illegitimacy As Denial Of Constitutional Rights*, 38 [ALR3d](#) 613 (1971).
- Annotation, *Supreme Court's Views as to the Status and the Rights of Illegitimate Children*, 41 [L Ed.2d](#) 1228 (1975).

PAMPHLETS:

- [Establish Paternity: Questions and Answers for Dads](#)
- [Establish Paternity: Questions and Answers for Moms](#)

TEXTS & TREATISES:

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- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
 - Chapter 10. Paternity
 - § 10.03. CHECKLIST: Asserting a Claim of Paternity
 - § 10.04. Asserting a Claim of Paternity-In General
- 8 Arnold H. Rutkin et al. [Connecticut Practice Series. Family Law and Practice with Forms](#) (3d ed. 2010).
 - Chapter 38. Child Support
 - § 38.8. Illegitimate children
 - § 38.11. Support claim not based on birth or adoption
 - § 38.13. Child's need for maintenance**
- Robert H. Folsom and Gayle B. Wilhelm, [Incapacity, Powers of Attorney and Adoption in Connecticut](#) 3d (2011).
 - Chapter 3. Guardianships
 - § 3:6. Status of illegitimate children
- 1 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed., 2011).
 - Chapter 1. Overview of Disputed Paternity Actions
 - § 1.03. Present Legal Status of the Nonmarital Child
 - [1] Custody
 - [2] Visitation
 - [3] Support Order and Agreements
 - [4] Rights of Inheritance
 - [5] Wrongful Death Recovery
 - [6] Workers' Compensation**
 - [7] Social Security Benefits
 - [8] Citizenship
 - [9] Income Tax Dependency Exemption
 - Chapter 5. Rights Enforceable in Paternity Actions
 - § 5.01. Effect of Judgment
 - § 5.02. Child Support
 - § 5.03. Custody and Visitation
 - § 5.04. Name Change
- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
 - Chapter 63. Paternity proceedings
 - § 63.01. Introduction

[1]. Nature and Purpose of Proceedings Generally
[d]. Legitimation

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

- Randy Curry, *Illegitimate Children—Protecting Their Rights In The Courtroom*, 8 *Journal of Juvenile Law* 234 (1984).
- Kate Schuler, *Liberalization of Posthumous Paternity Testing – Expanding the Rights of Illegitimate Children, The [notes]* 17 [Quinnipiac Probate L.J.](#) 150, (2003).
- Aviam Soifer, *Parental Autonomy, Family Rights and The Illegitimate: A Constitutional Commentary*, 7 [Conn. L. R.](#) 1 (1974).

Table 1: Child Born Out-of-Wedlock: Selected Statutory Provisions

Children Born Out-of-Wedlock: Selected Statutory Provisions	
Birth Certificate	<p>“No certificate of birth shall contain any specific statement that the child was born in or out of wedlock or reference to illegitimacy of the child or to the marital status of the mother, except that information on whether the child was born in or out of wedlock and the marital status of the mother shall be recorded on a confidential portion of the certificate pursuant to section 7-48. Upon the completion of an acknowledgment of paternity at a hospital, concurrent with the hospital’s electronic transmission of birth data to the department, or at a town in the case of a home birth, concurrent with the registration of the birth data by the town, the acknowledgment shall be filed in the paternity registry maintained by the department, as required by section 19a-42a, and the name of the father of a child born out of wedlock shall be entered in or upon the birth certificate or birth record of such child. All properly completed post birth acknowledgments or certified adjudications of paternity received by the department shall be filed in the paternity registry maintained by the department, and the name of the father of the child born out of wedlock shall be entered in or upon the birth record or certificate of such child by the department, if there is no paternity already recorded on the birth certificate. If another father’s information is recorded on the certificate, the original father’s information shall not be removed except upon receipt by the department of a certified order by a court of competent jurisdiction in which there is a finding that the individual recorded on the birth certificate, specifically referenced by name, is not the child’s father, or a finding that a different individual than the one recorded, specifically referenced by name, is the child’s father. The name of the father on a birth certificate or birth record shall otherwise be removed or changed only upon the filing of a rescission in such registry, as provided in section 19a-42a. The Social Security number of the father of a child born out of wedlock may be entered in or upon the birth certificate or birth record of such child if such entry is done in accordance with 5 USC 552a note.” Conn. Gen. Stats. § 7-50(a) (2017).</p>
Health insurance	<p>“An insurer shall not deny enrollment of a child under the group health plan of the child’s parent if: (1) The child was born out of wedlock, provided the father of the child has acknowledged paternity pursuant to section 46b-172 or has been adjudicated the father pursuant to section 46b-171; (2) the child is not claimed as a dependent on the federal income tax return of the parent; (3) the child does not reside with the parent or in the insurer’s service area; or (4) if the child is receiving, or is eligible for benefits under a state medical assistance plan required by the Social Security Act.” Conn. Gen. Stats. § 38a-497a(c) (2017).</p>

Inheritance	<p>“Except as provided in section 45a-731, for the purposes of this chapter, a father and his kindred shall qualify for inheritance from or through a child who was born out of wedlock if (1) the father’s paternity was established by a written acknowledgment of paternity under section 46b-172, or (2) the father’s paternity has been adjudicated by a court of competent jurisdiction under chapter 815y.” Conn. Gen. Stats. § 45a-438b (2017).</p>
	<p>“The adoptive parent and the adopted person shall have rights of inheritance from and through each other and the biological and adopted relatives of the adoptive parent. The right of inheritance of an adopted person extends to the heirs of such adopted person, and such heirs shall be the same as if such adopted person were the biological child of the adoptive parent;” Conn. Gen. Stats. § 45a-731(2) (2017).</p>

Section 2: Children and Annulment of Marriage

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to children and annulment of marriage including child support, custody and visitation

SEE ALSO:

- [§ 6h Blood and DNA Testing](#)
- [§ 6i Evidence](#)
- [§ 6j Defenses](#)

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)
§ [46b-60](#). **Orders re children and alimony in annulment cases.** "In connection with any petition for annulment under this chapter, the Superior Court may make such order regarding any child of the marriage and concerning alimony as it might make in an action for dissolution of marriage. The issue of any void or voidable marriage shall be deemed legitimate. Any child born before, on or after October 1, 1976, whose birth occurred prior to the marriage of his parents shall be deemed a child of the marriage."

COURT CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Hames v. Hames](#), 163 Conn. 588, 593, 316 A.2d 379 (1972). "Section 46-28 of the General Statutes provides that the issue of any void or voidable marriage shall be deemed legitimate and permits the Superior Court to order alimony, custody and child support as it might in a divorce proceeding."
- [Sarantos v. Sarantos](#), 18 Conn. Supp. 472, 474 (1953). "Our statute (§ 7341) empowers our court to annul a marriage illegal under the laws of the foreign state in which it was celebrated. It does not purport to carry over to Connecticut the foreign law of the state in which the marriage was celebrated as to the legitimacy of the offspring of such marriage. The question of legitimacy under the facts here is governed by the law of Connecticut, which at the time of the child's birth was, and up to the present time continuously has been, the domicile of both parents **and of the child.**"

DIGESTS:

- ALR Index: *Legitimacy of Children*
- ALR Digest: *Children Out-of-Wedlock*
- Connecticut Family Law Citations: *Paternity*

TEXTS & TREATISES:

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- 7 Arnold H. Rutkin et al. [Connecticut Practice Series. Family Law and Practice With Forms](#) (3d ed. 2010).
Chapter 14. Procedure in Annulment Actions
§ 14.8 Legitimacy of children

ENCYCLOPEDIAS:

- 4 [Am. Jur. 2d](#) *Annulment of Marriage* § 84 (2007).
Necessity of dispute as to validity of marriage
- 41 [Am. Jur. 2d](#) *Illegitimate Children* (2015).
Presumptions of Legitimacy and Paternity
§ 11. Presumption where child born after termination
of marriage
- 14 [C.J.S.](#) *Children Out-Of-Wedlock* (2006).
§ 2. Issue of Void or Voidable Marriage
§ 14. Birth after Termination of Marriage
- Ferdinand S. Tinio, Annotation, *Presumption Of Legitimacy Of Child Born After Annulment, Divorce Or Separation*, 46 [ALR3d](#) 158 (1972).
- Annotation, *Court's Power As To Custody And Visitation Of Children In Marriage Annulment Proceedings*, 63 [ALR2d](#) 1008 (1959).
- Annotation, *Court's Power As To Support And Maintenance Of Children In Marriage Annulment Proceedings*, 63 [ALR2d](#) 1029 (1959).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 [COA 2d](#) 1 (1994).
- *Cause of Action To Annul Marriage*, 29 [COA](#) 431
§ 21. Misrepresentation Regarding Pregnancy or
Child's Paternity (1992).

Section 3: Rights of Unmarried Fathers in Paternity Actions

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to parental rights and status of unmarried fathers in paternity actions.
- SEE ALSO:**
- [§ 6h Blood and DNA testing](#)
 - [§ 6i Evidence](#)
 - [§ 6j Defenses](#)
- DEFINITIONS:**
- **“Father and mother joint guardians.** The father and mother of every minor child are joint guardians of the person of the minor, and the powers, rights and duties of the father and the mother in regard to the minor shall be equal. If either father or mother dies or is removed as guardian, the other parent of the minor child shall become the sole **guardian of the person of the minor.**” Conn. Gen. Stat. § [45a-606](#) (2017)
 - “Once alleged parental rights of the father have been adjudicated in his favor under subsection (b) of this section, or acknowledged as provided for under section [46b-172](#) [2017] **his rights and responsibilities shall be equivalent to those of the mother**, including those rights defined under section [45a-606](#).” Conn. Gen. Stat. § [46b-172a](#)(f) (2017) (Emphasis added).
 - “The notice to the putative father shall inform him that (A) he has a right to be represented by an attorney, and if he is indigent, the court will appoint an attorney for him, (B) if he is found to be the father, he will be required to financially support the child until the child attains the age of eighteen years, (C) if he does not admit he is the father, the court or family support magistrate may order a genetic test to determine paternity and that the cost of such test shall be paid by the state in IV-D support cases, and in non-IV-D cases shall be paid by the petitioner, except that if he is subsequently adjudicated to be the father of the child, he shall be liable to the state or the petitioner, as the case may be, for the amount of such cost and (D) if he fails to return the answer form or fails to appear for a scheduled genetic test without good cause, a default judgment shall be entered.” Conn. Gen. Stat. § [46b-160](#)(e)(2) (2017).
- STATUTES:**
- Conn. Gen. Stat. (2017)
 - § [45a-606](#). Father and mother joint guardians.
 - § [46b-61](#). Orders re children where parents live separately
 - § [46b-160](#). Petition by mother or expectant mother
 - § [46b-166](#). Testimony of putative father
 - § [46b-167](#). Evidence of putative father's good character

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admissible

§ [46b-168](#). Genetic tests when paternity is at issue.

Assessment of costs.

§ [46b-172a](#). Filing of claim for paternity by putative father.

Child as party. Attorney General as party.

Hearing.

§ [46b-215](#). Relatives obliged to furnish support. Attorney

General and attorney for town as parties.

Orders.

COURT RULES

- Connecticut Practice Book (2017)
[Chapter 25](#). Superior Court - Procedure in Family Matters
§ 25-68. Right to Counsel in State Initiated Paternity Actions

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

U.S. Supreme Court

- [Stanley v. Illinois](#), 405 U.S. 645, 658, 92 S. Ct. 1208, 31 L.Ed. 2d 551 (1972). **“The State of Illinois assumes custody of the children of married parents, divorced parents, and unmarried mothers only after a hearing and proof of neglect. The children of unmarried fathers, however, are declared dependent children without a hearing on parental fitness and without proof of neglect. Stanley’s claim in the state courts and here is that failure to afford him a hearing on his parental qualifications while extending it to other parents denied him equal protection of the laws. We have concluded that all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody.”**
- [Caban v. Mohammed](#), 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed. 2d 297 (1979).
- [Quilloin v. Walcott](#), 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978).
- [Lehr v. Robertson](#), 463 U.S. 248, 266-267, 103 S. Ct. 2985, 77 L.Ed. 2d 614 (1983). **“the existence or nonexistence of a substantial relationship between parent and child is a relevant criterion in evaluating both the rights of the parent and the best interests of the child We therefore found that a Georgia statute that always required a mother’s consent to the adoption of a child born out of wedlock, but required the father’s consent only if he had legitimated the child, did not violate the Equal Protection Clause We have held that these statutes may not constitutionally be applied in that class of cases where the mother and father are in fact similarly situated with regard to their relationship with the child.”**

Connecticut

- [Ashe v. Nixon](#), Superior Court Judicial District of New Haven at New Haven No. FA 05-4010683S (June 24, 2005) (2005

WL 2129301).

- "Paternity actions by those claiming to be a child's biological father are brought to the Probate Court. See General Statutes § 46b-172a. Sections 46b-56(b) and 46b-59 of the General Statutes, however, allow actions for visitation to be brought in the Superior Court. Under the recent case of *Roth v. Weston*, 259 Conn. 202 (2002), the Superior Court has limited power to grant visitation to non-parents against the wishes of the custodial parent. But Mr. Ashe claims to be the biological father of the minor child with whom he seeks visitation. If he proves that allegation by the requisite standard of proof, he has a right to seek visitation with the minor child, and any orders regarding visitation will be guided by the best interest of the minor **child.**" [Weidenbacher v. Duclos](#), 234 Conn. 51, 661 A.2d 988 (1995).

See [Table 4](#)

- [Chaffee v. Cunningham](#), (Judicial District of Hartford-New Britain at New Britain, No. FA88-603938 (March 29, 1989) (4 C.S.C.R. 371 at 371). "**This court feels that similar to an action for dissolution of marriage, the defendant could file an answer and a cross-complaint setting forth his claims as to whether or not he is merely seeking visitation orders, custody orders and support orders in the paternity action.**"
- [Stevens v. Leone](#), 35 Conn. Supp. 237, 239-240, 406 A.2d 402 (1979). "It seems obvious from the remarks of the chairman of the house judiciary committee at the time that the amendment was introduced that it was the intent of the legislature to expand the jurisdiction of the Superior Court regarding custody issues from controversies arising out of a dissolution of marriage to controversies in which a child had been born without benefit of marriage."

DIGESTS:

- ALR Index: *Legitimacy of Children*
- ALR Digest: *Children Out-of-Wedlock*
- Connecticut Family Citations: *Paternity*

WEST KEY NUMBER:

- Children out-of-wedlock
 - # 20 Custody
 - # 21-23 Support
 - # 30-79 Paternity proceedings

ENCYCLOPEDIAS:

- 41 [Am. Jur. 2d](#) *Illegitimate Children* (2015)
 - IV. Civil Action to Establish Paternity
 - B. Evidence
 - § 72. Genetic tests
 - V. Support of Child
 - A. In General
 - § 92. Duty of mother's husband to support child

VI. Custody of Child

§ 96. Rights of father - Visitation

- 14 [C.J.S.](#) *Children Out-Of-Wedlock* (2006).
 - § 35. Change of custody between parents.
 - § 37. Father
 - § 38. Visitation
- VI. Support, maintenance, and education. Father
- Robin Cheryl Miller, Annotation, *Right Of Putative Father To Visitation With Child Born Out Of Wedlock*, 58 [ALR5th](#) 669 (1998).
- Alan Stephens, *Parental Rights Of Man Who Is Not Biological Or Adoptive Father Of Child But Was Husband Or Cohabitant Of Mother When Child Was Conceived Or Born*, 84 [ALR4th](#) 655 (1991).
- David M. Holliday, Annotation, *Paternity Proceedings: Right To Jury Trial*, 51 [ALR4th](#) 565 (1987).
- Russell G. Donaldson, Annotation, *Natural Parent's Parental Rights As Affected By Consent To Child's Adoption By Other Natural Parent*, 37 [ALR4th](#) 724 (1985).
- Kristine Cordier Karnezis, Annotation, *Right Of Indigent Defendant In Paternity Suit To Have Assistance Of Counsel At State Expense*, 4 [ALR4th](#) 363 (1981).
- Gary D. Spivey, Annotation, *Right Of Natural Parent To Withdraw Valid Consent To Adoption Of Child*, 74 [ALR3d](#) 421(1976).
- Thomas J. Goger, Annotation, *Rights Of Putative Fathers To Custody Of Illegitimate Child*, 45 [ALR3d](#) 216 (1972).
- Annotation, *Necessity Of Securing Consent Of Parents Of Illegitimate Child To Its Adoption*, 51 [ALR2d](#) 497 (1957).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 [COA 2d](#) 1 (1994).
 - §§ 9-16. Defendant's case against paternity

TEXTS & TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
Chapter 10. Paternity
- 8 Arnold H. Rutkin et al. [Connecticut Practice Series. Family Law and Practice With Forms](#) (3d ed. 2010).
Chapter 42. Child Custody and Visitation
§ 42.2. Rights of unmarried or noncohabiting parents
- 5 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2015).
Chapter 30. Rights of putative fathers to custody and visitation
§ 30.02. The putative **father's standing to seek** custody of his child
§ 30.03. Rights of the putative father vs. the natural mother or legal parent
§ 30.04. Rights of the putative father vs. a non-parent
§ 30.05. Rights of the putative father to visitation
§ 30.06. Right of the putative father to have his child bear his name
- 2 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed., 2011).
Chapter 27. The Rights of Putative Fathers
§ 27.02. The Constitutional Foundation
§ 27.03. The Constitutional Implications of the Protections of the Rights of Putative Fathers and the Extent of Those Rights in Particular Cases
[2] Paternity Actions
- 1 Hollinger, et al. [Adoption Law & Practice](#) (2010).
Chapter 2. Consent
§ 2.04[2] Status of Unwed Fathers in Adoption Proceedings
- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
Chapter 63. Paternity Proceedings
§ 63.01. Introduction
[1]. Nature and Purpose of Proceedings
Generally
[a]. Duty to Support
[b]. Proceedings Civil in Nature
[c]. Constitutional Considerations
[d]. Legitimation

LAW REVIEWS:

- Susan M. Zajac, Comment, *The Doctrine Of Family Integrity: Protecting The Parental Rights Of Unwed Fathers Who Have Substantial Relationships With Their Children*, 13 [Conn. L. R.](#) 145 (Fall 1980).

- Aviam Soifer, *Parental Autonomy, Family Rights and The Illegitimate: A Constitutional Commentary*, 7 [Conn. L. R.](#) 1 (1974).

Table 2: Nonfather's Parental Rights

Nonfather's Parental Rights	
CASES:	<ul style="list-style-type: none"> • W. v. W., 248 Conn. 487, 495, 728 A.2d 1076 (1999). "The second issue on appeal is whether the trial court acted improperly when it equitably estopped the defendant from denying that he is the father of the plaintiff's older child. We conclude that the trial court's action was proper." • Temple v. Meyer, 208 Conn. 404, 410, 544 A.2d 629 (1988). "Even if the plaintiff had demonstrated that he had been Timothy's psychological parent, such a finding would not demonstrate that visitation continued to be in the best interest of the child."
ENCYCLOPEDIAS:	<ul style="list-style-type: none"> • Alan Stephens, <i>Parental Rights Of Man Who Is Not Biological Or Adoptive Father Of Child But Was Husband Or Cohabitant Of Mother When Child Was Conceived Or Born</i>, 84 ALR4th 655 (1991).
TEXTS & TREATISES:	<ul style="list-style-type: none"> • 8 Arnold H. Rutkin et al. Connecticut Practice Series. Family Law and Practice With Forms (3d ed. 2010). § 42.2. Rights of unmarried or noncohabiting parents

Table 3: Opening a Paternity Judgment

Opening a Paternity Judgment	
<p>Connecticut Practice Book (2017) § 25a-17</p>	<p>“(a) Any mother or acknowledged father who wishes to challenge an acknowledgement of paternity pursuant to General Statutes § 46b-172 (a)(2) shall file a motion to open judgment, which shall state the statutory grounds upon which the motion is based and shall append a certified copy of the document containing the acknowledgement of paternity to such motion.”</p>
<p>Barss v. Harrelle, Superior Court, Judicial District, New London at Norwich, No. KNO FA-0129832 S (Nov. 25, 2005) (40 Conn. L. Rptr. 350) (2005 WL 3372868).</p>	<p>“The Rhode Island acknowledgement was authorized under R.I. Gen. Laws 15-8-3, which provides in relevant part that ‘a man is presumed to be the natural father of a child if . . . a sworn acknowledgement of paternity of a child born out of wedlock is signed by both parents . . . and is forwarded to the state registrar of vital records for the purpose of amending the birth certificate. The sworn acknowledgement becomes a conclusive presumption if there is no court challenge to this document within sixty (60) days of the signing of this acknowledgement. The only defenses which may be raised to the signing of this acknowledgement after the sixty (60) day period are fraud, duress, or mistake of fact.’ In Pettinato v. Pettinato, 582 A2d. 909 (R.I., 1990), Rhode Island’s supreme court held that the presumption created by this statute could not be overcome by a mother who introduced the results of genetic blood testing proving that her husband had not fathered the older of her two children. The parties had utilized the statutory acknowledgement process because this child had been born prior to their marriage. The court indicated its concern about a ‘. . . situation wherein a mother can tell a man that he is the father of the child . . . and then illegitimatize the child . . . by attacking the presumption of paternity that she helped bring about . . .,’ and relied upon the principle of equitable estoppel in deeming the blood test results to be, in this context, irrelevant. Legal paternity had been previously and sufficiently established. Connecticut law requires the same conclusion.”</p>
<p>Connecticut Family Support Magistrate Decision</p>	<p>Hightower v. Barrett, Family Support Magistrate, Judicial District of Hartford at Hartford, Docket No. FA 11-4055296 (Sept. 12, 2014). <i>Motion to Open Judgments of Paternity by Acknowledgement</i></p>

Section 4: Rights of Mothers in Paternity Actions

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to parental rights and status of unmarried mothers in paternity actions.

- DEFINITIONS:**
- **“Father and mother joint guardians.** The father and mother of every minor child are joint guardians of the person of the minor, and the powers, rights and duties of the father and the mother in regard to the minor shall be equal. If either father or mother dies or is removed as guardian, the other parent of the minor child shall become the sole guardian of the person of the minor.” Conn. Gen. Stat. § [45a-606](#) (2017).
 - “Once alleged parental rights of the father have been adjudicated in his favor under subsection (b) of this section, or acknowledged as provided for under section 46b-172, **his rights and responsibilities shall be equivalent to those of the mother**, including those rights defined under section 45a-606.” Conn. Gen. Stat. § [46b-172a](#)(f) (2017) (emphasis added).
 - **Compelling disclosure:** “If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a decree of divorce or dissolution or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the Commissioner of Social Services, if such child is a recipient of public assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the Superior Court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.” Conn. Gen. Stat. [46b-169](#)(a) (2017).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)
 - § [45a-606](#). Father and mother joint guardians.
 - § [46b-61](#). Orders re children where parents live separately.
 - § [46b-160](#). Petition by mother or expectant mother.
 - § [46b-169](#). Compelling disclosure of name of putative father. Institution of action.
 - § [46b-215](#). Relatives obliged to furnish support. Attorney General and attorney for town as parties. Orders.

COURT RULES

- Connecticut Practice Book (2017)
[Chapter 25](#). Superior Court - Procedure in Family Matters
§ 25-68. Right to counsel in State initiated paternity actions

COURT CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Temple v. Meyer](#), 208 Conn. 404, 410, 544 A.2d 629 (1988). "It seems obvious from the remarks of the chairman of the house judiciary committee at the time that the amendment was introduced that it was the intent of the legislature to expand the jurisdiction of the Superior Court regarding custody issues from controversies arising out of a dissolution of marriage to controversies in which a child had been born without benefit of marriage."

DIGESTS:

- ALR: Digest: *Legitimacy of Children*
- ALR: Digest: *Children Out-of-Wedlock*
- Connecticut Family Law Citations: *Paternity*

WEST KEY NUMBER:

- Children Out-Of-wedlock
 - # 20 Custody
 - # 21-23 Support
 - # 30-79 Paternity proceedings

ENCYCLOPEDIAS:

- 41 [Am. Jur. 2d](#) *Illegitimate Children* (2015)
 - § 93. Right of mother
 - § 94. Right of mother – Loss of mother's right
- 14 [C.J.S.](#) *Children Out-Of-Wedlock* (2006).
 - § 34. Parent and nonparent
 - § 35. Change of custody between parents
 - § 36. Mother
 - § 37. Father
- David M. Holliday, Annotation, *Paternity Proceedings: Right To Jury Trial*, 51 [ALR4th](#) 565 (1987).
- Annotation, *Natural Parent's Parental Rights As Affected By Consent To Child's Adoption By Other Natural Parent*, 37 [ALR4th](#) 724
- Annotation, *Right Of Natural Parent To Withdraw Valid Consent To Adoption Of Child*, 74 [ALR3d](#) 421
- Annotation, *Necessity Of Securing Consent Of Parents Of Illegitimate Child To Its Adoption*, 51 [ALR2d](#) 497 (1957).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 [COA 2d](#) 1 (1994).
Plaintiff's Case for Paternity

- § 4. Generally
- § 5. Mother's Sexual Intercourse with Defendant
- § 6. —Intercourse During Period of Child's Conception
- § 7. Absence of Intercourse With Other Men
- § 8. Child's Biological Affinity to Defendant

TEXTS & TREATISES:

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- 8 Arnold H. Rutkin et al., [Connecticut Practice Series. Family Law and Practice With Forms](#) (3d ed. 2010).
 - § 42.2. Rights of unmarried or noncohabiting parents
- 5 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2015)
 - Chapter 30. Rights of Putative Fathers to Custody and Visitation
 - § 30.03 Rights of the Putative Father vs. the Natural Mother or Legal Parent
- 2 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5TH ed., 2011).
 - Chapter 27. The Rights of Putative Fathers
 - § 27.02 The Constitutional Foundation
 - § 27.03 The Constitutional Implications of the Protections of the Rights of Putative Fathers and the Extent of Those Rights in Particular Cases
- 1 Joan Hollinger et al., [Adoption Law & Practice](#) (2007).
 - Chapter 2. Consent to Adoption
 - § 2.04[2]. Status of Unwed Fathers in Adoption Proceedings
- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
 - Chapter 10. Paternity

PAMPHLETS:

- [Establish Paternity: Questions and Answers for Moms](#)

LAW REVIEWS:

- Aviam Soifer, *Parental Autonomy, Family Rights and The Illegitimate: A Constitutional Commentary*, 7 [Conn. L. R.](#) 1 (1974).

Section 5: Marital Presumption in Connecticut

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the presumption in Connecticut that a child born in wedlock is the legitimate child of mother and her husband

DEFINITION:

- **Marital presumption:** "postulates that a child born in wedlock is presumed to be a legitimate child of the mother and her husband." [Weidenbacher v. Duclos](#), 234 Conn. 51, 68-69, 661 A.2d 988 (1995).
- **Rebuttable presumption:** "We have never held, however, that this presumption is irrebuttable and conclusive against a person claiming to be the biological father of the child. On the contrary, we have held that this presumption may be rebutted a person who presents clear, convincing and satisfactory evidence that the mother's husband is not the child's natural father." [Ibid.](#), p. 69.
- "Proceedings to establish paternity of a child born or conceived out of lawful wedlock, **including one born to, or conceived by, a married woman but begotten by a man other than her husband**, shall be commenced by the service on the putative father of a verified petition of the mother or expectant mother. Such petition may be brought **at any time prior to the child's eighteenth birthday, provided** liability for past support shall be limited to the three years next preceding the date of the filing of any such petition." (emphasis added), Conn. Gen. Stats § [46b-160](#)(a)(1)(A) (2017).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stats. (2017).
 - [Chapter 815j](#). Dissolution of marriage, legal separation and annulment
 - § [46b-61](#). Orders re children where parents live separately. Commencement of proceedings.
 - [Chapter 815y](#). Paternity matters
 - § [46b-160](#). Petition by mother or expectant mother.
 - § [46b-172a](#). Filing of claim for paternity by putative father

COURT CASES:

United States Supreme Court

- [Michael H. v. Gerald D.](#), 491 U.S. 110, 129, 109 S. Ct. 2333, 105 L. Ed. 2d 91 (1989). "Where, however, the child is born into an extant marital family, the natural father's unique opportunity conflicts with the similarly unique opportunity of the husband of the marriage; and it is not unconstitutional for the State to give categorical preference to the latter."

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

Connecticut

- [W. v. W.](#), 248 Conn. 487, 495, 728 A.2d 1076 (1999). "The second issue on appeal is whether the trial court acted improperly when it equitably estopped the defendant from **denying that he is the father of the plaintiff's older child. We conclude that the trial court's action was proper.**"
- [Weidenbacher v. Duclos](#), 234 Conn. 51, 68-69, 661 A.2d 988 (1995).

See [Table 2](#).

- [Jack M. v. Kim D.](#), (Judicial District, New Haven at Meriden, No. CV89-0233398S (March 5, 1990) (1 Conn. L. Rptr. 333, 334-335) (1990 WL 265960). "**The court finds it is a fact** that the petitioner knew from the date of birth that Kim and her husband believed that the husband was the father of the child and were representing at all times that he was the father of the child. The court finds that the child was never represented to be the child of the petitioner. The child believes the husband is her father and enjoys a traditional family life in a comfortable home owned by Kim and her husband. He has legitimized the child by marrying Kim D. and acknowledging paternity in the probate court For the foregoing reasons, the court concludes that the petitioner is equitably estopped from pursuing this action and will not advance the petition by granting the petitioner's **motions for testing.**"
- [Freda v. Freda](#), 39 Conn. Supp. 230, 232, 476 A.2d 153 (1984). "**The finding of paternity in this case was the same** as if the court had given its approval to an agreement submitted to the court. The litigation required for the application of collateral estoppel was not present and the court may open its judgment if it is shown that fraud in **obtaining it was present.**"
- [Schaffer v. Schaffer](#), 187 Conn. 224, 226, 445 A.2d 589 (1982). "**Although the trial court did not specify the nature of** the plaintiff's burden, it is clear that in Connecticut there is a presumption that a child born during lawful wedlock is the child of the husband, which presumption may be rebutted only by clear, convincing, and satisfactory proof that the **child is illegitimate.**"
- [Stevens v. Leone](#), 35 Conn. Sup. 237, 240, 406 A.2d 402 (1979). "**The court concludes that in view of the legislative** history resulting in the present § 46b-61 of the General Statutes, the father of an illegitimate child need no longer be limited to bringing a petition for a writ of habeas corpus to invoke the jurisdiction of the Superior Court in a question regarding custody. It is clear that it was the intent of the

legislature to permit an illegitimate father to institute a cause of action regarding custody under the authority of § 46b-61, as was done in the present case.”

WEST KEY NUMBERS:

- *Children Out-Of-Wedlock*
3. ___Presumptions

DIGESTS:

- ALR Index: *Legitimacy of children*
- ALR Digest: *Children Out-of-Wedlock*
- Connecticut Family Law Citations: *Paternity*

ENCYCLOPEDIAS:

- 41 [Am Jur. 2d](#) *Illegitimate Children* (2015).
Presumptions of legitimacy and paternity
§§ 8-12. In general
§§ 13-21. Rebutting presumption from birth in wedlock
- 14 [C.J.S.](#) *Children Out-Of-Wedlock* (2006).
§ 14. Birth in after termination of marriage
§§ 28-31. Repudiation of legitimacy or presumed paternity
- *Proof Of Husband’s Impotency Or Sterility As Rebutting Presumption Of Legitimacy*, 14 [POF2d](#) 409 (1977).
- Alan Stephens, *Parental Rights Of Man Who Is Not Biological Or Adoptive Father Of Child But Was Husband Or Cohabitant Of Mother When Child Was Conceived Or Born*, 84 [ALR4th](#) 655 (1991).
- Donald M. Zupanec, *Who May Dispute Presumption Of Legitimacy Of Child Conceived Or Born During Wedlock*, 90 [ALR3d](#) 1032 (1979).
- James O. Peterson, *Proof Of Husband’s Impotency Or Sterility As Rebutting Presumption Of Legitimacy*, 84 [ALR3d](#) 495 (1978).
- Ferdinand S. Tinio, *Presumption Of Legitimacy Of Child Born After Annulment, Divorce, Or Separation*, 46 [ALR3d](#) 158 (1972).

TEXTS & TREATISES:

- 8 Arnold H. Rutkin et al. [Connecticut Practice Series. Family Law and Practice With Forms](#) (3d ed. 2010).
§ 38.9. Illegitimate children—Presumption of paternity
§ 42.2. Rights of unmarried or noncohabiting parents
- Robert H. Folsom and Gayle B. Wilhelm, [Incapacity, Powers of Attorney and Adoption in Connecticut](#) 3d (2011).
Chapter 3. Guardianships
§ 3:6. Status of illegitimate children

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 1 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5TH ed., 2011).
 - § 1.05. Presumption of Legitimacy
 - [1]. In General
 - [2]. Reason for the Presumption
 - [3]. Nature of the Presumption and Evidentiary Standard To Overcome Presumption
- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
 - Chapter 63. Paternity Proceedings
 - § 63.02. Preliminary Considerations
 - [5]. Presumption of legitimacy
 - [a]. Rebuttable Presumption of Legitimacy
 - [b]. Effects of Divorce on Presumption of Legitimacy
 - [c]. Irrebuttable Presumption of Legitimacy
- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
 - Chapter 10. Paternity

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

- Traci Dallas, Notes, *Rebutting the Marital Presumption: A Developed Relationship Test*, 88 [Columbia Law Review](#) 369 (1988).
- Aviam Soifer, *Parental Autonomy, Family Rights and The Illegitimate: A Constitutional Commentary*, 7 [Connecticut L. R.](#) 1 (1974).

Table 4: Weidenbacher v. Duclos

Weidenbacher v. Duclos	
Definition	a "presumption of legitimacy," . . . postulates that a child born in wedlock is presumed to be a legitimate child of the mother and her husband. Weidenbacher v. Duclos , 234 Conn. 51, 68-69, 661 A.2d 988 (1995).
Rebuttable	". . . we have held that this presumption may be rebutted by a person who presents clear, convincing and satisfactory evidence that the mother's husband is not the child's natural father Indeed, we have not limited or restricted in any way the class of persons who may present such proof and thereby overcome the presumption. " <i>Ibid</i> , p. 69.
Not A Per Se Bar	"In sum, there is no persuasive reason today to deny the putative father of a child born in wedlock the opportunity to rebut the presumption of legitimacy. Accordingly, 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." <i>Ibid.</i> , pp. 73-74.
Standing	"In deciding whether the putative father has standing, the trial court, on the basis of all the evidence before it, must determine whether the putative father has established that his interests and the best interests of the child outweigh those of the marital family unit." <i>Ibid.</i> , pp. 76-77.
Twofold Task	"In accordance with our precedents, the petitioner has a twofold task ahead. First, he must prove, by clear and convincing evidence, that he is the biological father Second, the petitioner must prove to the trial court that it is in the best interests of . . . [the child] that he be awarded custody or visitation. <i>Ibid.</i> , p.78.

Section 6: Proceedings to Establish Paternity

A Guide to Resources in the Law Library

- **"In this State there are only three ways of legally establishing paternity: (1) the marital presumption if the mother and the putative father are married to each other; (2) adjudication of paternity by a court of competent jurisdiction; or (3) a formal acknowledgment of paternity in accordance with the acknowledgment statute."** [Hjarne v. Martin](#), Superior Court, Judicial District of Hartford-New Britain at Hartford, No. FA00-0631333 (Apr. 21, 2002) (2002 WL 1163023).
- **"Although paternity actions may have 'quasi-criminal' overtones; [Little v. Streater](#), 452 U.S. 1, 10, 101 S. Ct. 2202, 68 L. Ed. 2d 627 (1981); they are civil actions to which the general rules governing civil actions apply."** [Green v. Green](#), 39 Conn. Supp. 325, 326, 464 A.2d 72 (1983).
- **"A paternity action results in a finding of 'guilt' or 'innocence,' and nonpayment of support orders attendant to a finding of 'guilt' may lead to contempt and imprisonment. General Statutes §§ 46b-171, 46b-215, 53-304. Nonetheless, the plaintiff in a paternity proceeding need only prove her case by a fair preponderance of the evidence."** [Lavertue v. Niman](#), 196 Conn. 403, 407, 493 A.2d 213, (Conn. 1985).
- "Historically, the action was criminal in form but civil in nature. It is fundamental, however, that the rules governing civil actions apply." [Kuser v. Orkis](#), 169 Conn. 66, 71, 362 A.2d 943 (1975).

Section 6a: Jurisdiction

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to jurisdiction in paternity matters.

DEFINITIONS:

Putative father

- "Any person claiming to be the father of a child born out of wedlock may file a claim for paternity with the Probate Court for the district in which either the mother or the child resides, on forms provided by such court. The claim may be filed at any time during the life of the child, whether before, on or after the date the child reaches the age of eighteen, or after the death of the child, but not later than sixty days after the date of notice under section 45a-716." Conn. Gen. Stat. § [46b-172a\(a\)](#) (2017).
- "By filing a claim under this section, the putative father submits to the jurisdiction of the Probate Court." Conn. Gen. Stat. § [46b-172a\(e\)](#) (2017).

Mother or expectant mother

- "Proceedings to establish paternity of a child born or conceived out of lawful wedlock, including one born to, or conceived by, a married woman but begotten by a man other than her husband, shall be commenced by the service on the putative father of a verified petition of the mother or expectant mother. Such petition may be **brought at any time prior to the child's eighteenth birthday**, provided liability for past support shall be limited to the three years next preceding the date of the filing of any such petition." Conn. Gen. Stat. § [46b-160\(a\)](#) (2017).
- "If the putative father resides out of or is absent from the state, notice required for the exercise of jurisdiction over such putative father shall be actual notice, and shall be in the manner prescribed for personal service of process by the law of the place in which service is made." Conn. Gen. Stat. § [46b-160\(b\)](#) (2017).
- " In any proceeding to establish paternity, the court or family support magistrate may exercise personal jurisdiction over a nonresident putative father if the court or magistrate finds that the putative father was personally served in this state or that the putative father resided in this state and while residing in this state (1) paid prenatal expenses for the mother and support for the child, (2) resided with the child and held himself out as the father of the child, or (3) paid support for the child and held himself out as the father of the child, provided

the nonresident putative father has received actual notice of the pending petition for paternity pursuant to subsection (c) of this section." Conn. Gen. Stat. CONN. § [46b-160](#)(c) (2017).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)
 - [Chapter 815y](#). Paternity Matters
 - § [46b-160](#). Petition by mother or expectant mother.
 - § [46b-161](#). Procedure in action brought by expectant mother
 - § [46b-162](#). Action by state or town
 - § [46b-163](#). Action not defeated by stillbirth or other premature termination of pregnancy
 - § [46b-172a](#). Filing of claim for paternity by putative father.(a)

FORMS:

- 2 [Connecticut Civil Practice Forms](#) (2004)
 - Form 504.6. Petition for Paternity Proceeding by Mother
 - Form 504.7. Petition for Paternity Proceeding by State or Town
 - Form 505.2. Plea in Paternity
 - Form 508.2. Mittimus—Paternity

WEST KEY NUMBERS:

- Children out-of-wedlock
#36. Jurisdiction

DIGESTS:

- *Dowling's Digest: Paternity* § 1
- Connecticut Family Law Citations: *Paternity*

COURT CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- *Athitang v. Sek*, Superior Court, Judicial District of New Haven at New Haven, No. 5033349S (Jan. 21, 2011) 2011 WL 522882. Grandfather had no standing to challenge a determination of paternity on grounds that his deceased son may not be the father of the child, where grandfather had no pecuniary interest in deceased son's estate.
- *W. v. W.*, 256 Conn. 657, 666, 779 A2d 716 (2001). "Furthermore, even if it is the biological father who has been located at the address discovered by the plaintiff, this court does not have jurisdiction over him. He lives in Massachusetts. It is not alleged that he has ever been in Connecticut, that he has ever been married to the plaintiff, that he knows he is the father of the child, or that he has been served with any notice of these proceedings. As a result, this court cannot bring this individual before us pursuant to General Statutes §§ 46b-44 and 46b-46 in order to resolve the issue of support. Therefore, we conclude that the trial court did not abuse its discretion in applying the doctrine of equitable estoppel in this case."

- [Weidenbacher v. Duclos](#), 234 Conn. 51, 661 A.2d 988 (1995).
- [Shannon L. v. Richard W.](#), Superior Court, Judicial District of Litchfield at Litchfield, No. FA 93 0063955 (September 8, 1994) (12 Conn. L. Rptr. 403 at 403) (Litchfield 1994) 1994 WL 506410. **"Moreover, this court** has already addressed, and denied, the defendant's argument that a paternity action under General Statutes § 46b-160 does not survive the death of the putative father.
- [Roberts v. Greaves](#), Superior Court Judicial District of Hartford-New Britain at Hartford, No. BS904F/82 (July 30, 1986) 1 C.S.C.R. 589 at 589 (Hartford 1986). "Therefore, jurisdiction to determine paternity is implicit whenever there is jurisdiction to determine paternity support. That is the accepted view in this state and the prevailing view in the majority of jurisdictions that have **considered this issue.**"
- [Hayes v. Smith](#), 194 Conn. 52, 58, 480 A.2d 425 (1984). "An examination of 46b-160 demonstrates that the paternity action must be instituted by service of a verified petition, summons and order upon the putative father himself."
- [Collins v. Scholz](#), 34 Conn. Sup. 501, 506, 373 A.2d 200 (1976). "The court's conclusion that the defendant did not reside or have his usual place of abode at the Fairfield address necessarily led to the conclusion that the attempted abode service made at that address was invalid and that the court had no jurisdiction over the person of the defendant. Accordingly, the court had to dismiss the action for lack of jurisdiction."
- [Kuser v. Orkis](#), 169 Conn. 66, 72, 362 A.2d 943 (1975). "In the present case, personal jurisdiction over the defendant was obtained when he was served with a true and attested copy of the writ, summons and complaint. This service of process gave the court in personam jurisdiction and was valid for that purpose regardless of any irregularity or deficiency in the body arrest of the defendant for security purposes, which procedure was not necessary to establish jurisdiction."

ENCYCLOPEDIAS:

- 41 [Am Jur 2d](#) *Illegitimate Children* (2015)
§ 40. Jurisdiction
§ 41. Venue
- 14 [C.J.S.](#) *Children Out-Of-Wedlock* (2012).
§ 86. Jurisdiction

TEXTS & TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- James O. Pearson, Annotation, *Long-Arm Statutes: Obtaining Jurisdiction Over Nonresident Parent In Filiation Or Support Proceeding* 76 [ALR3d](#) 708 (1977).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 [COA2d](#) 1 (1994).
§ 19. Jurisdiction
- Ralph H. Folsom and Gayle B. Wilhelm, [Probate Jurisdiction and Procedure in Connecticut 2d](#) (2017)
§ 2:32. Probate court jurisdiction over paternity proceedings
- 1 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed., 2011).
§ 2.03. Jurisdiction and Venue
§ 4.06. Personal Service of Summons Upon the Respondent
§ 4.07. Long-Arm Jurisdiction
§ 4.09. Subject Matter Jurisdiction
- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
Chapter 63. Paternity Proceedings
§ 63.02. Preliminary Considerations
[2]. Jurisdiction and Venue Over the Defendant
[a]. Subject Matter Jurisdiction
[b]. *In Personam* Jurisdiction
[i]. Long-arm Jurisdiction
[ii]. Minimum Contacts
- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
Chapter 10. Paternity
- Noah J. Kores, *How to Establish and Disestablish Paternity*, 25 Connecticut Lawyer no. 6, pp. 18-23 (February 2015).

LAW REVIEWS:

Section 6b: Venue

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to venue in paternity matters.

TREATED ELSEWHERE: DEFINITION:

- [§ 6a Jurisdiction](#)
- **Father:** "Any person claiming to be the father of a child born out of wedlock may file a claim for paternity with the Probate Court for the district in which either the mother or the child resides, on forms provided by such court. The claim may be filed at any time during the life of the child, whether before, on or after the date the child reaches the age of eighteen, or after the death of the child, but not later than sixty days after the date of notice under section 45a-716...." Conn. Gen. Stat. § [46b-172a](#)(a) (2017).
- **Mother or Expectant Mother:** "Proceedings to establish paternity of a child born or conceived out of lawful wedlock, including one born to, or conceived by, a married woman but begotten by a man other than her husband, shall be commenced by the service on the putative father of a verified petition of the mother or expectant mother. Such petition may be brought at any **time prior to the child's eighteenth birthday, provided** liability for past support shall be limited to the three years next preceding the date of the filing of any such petition." Conn. Gen. Stat. § [46b-160](#)(a) (2017).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)
 - [Chapter 815y](#). Paternity Matters
 - § [46b-160](#). Petition by mother or expectant mother.
 - § [46b-161](#). Procedure in action brought by expectant mother
 - § [46b-162](#). Action by state or town
 - § [46b-163](#). Action not defeated by stillbirth or other premature termination of pregnancy
 - § [46b-172a](#). Claim for paternity by putative father.

FORMS:

- 2 [Connecticut Civil Practice Forms](#) (2004)
 - Form 504.6. Petition for Paternity Proceeding by Mother
 - Form 504.7. Petition for Paternity Proceeding by State or Town
 - Form 505.2. Plea in Paternity
 - Form 508.2. Mittimus—Paternity

WEST KEY NUMBERS:

- *Children Out-Of-Wedlock*
 - # 37. Venue

DIGESTS:

- Dowling's Digest: *Paternity* §1
- Connecticut Family Law Citations: Paternity

COURT CASE:

Once you have identified useful cases, it is important to update them to ensure they are still good law. You can [contact your local law librarian](#) to learn about updating cases.

- [Hayes v. Smith](#), 194 Conn. 52, 59, 480 A.2d 425 (1984). "Moreover, 46b-160 provides that the verified petition which may be brought by either 'the mother or expectant mother' shall be filed in the Superior Court for the geographical area in which either 'she or the putative father *resides*.' (Emphasis added.)"

ENCYCLOPEDIAS:

- 41 [Am Jur 2d Illegitimate Children](#) (2015).
§ 40. Jurisdiction
§ 41. Venue
- 14 [C.J.S. Children Out-Of-Wedlock](#) (2006).
§ 87. Venue
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 [COA2d](#) 1 (1994).
§ 19. Jurisdiction and venue

TEXTS & TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Ralph H. Folsom And Gayle B. Wilhelm, [Probate Jurisdiction and Procedure in Connecticut 2d](#) (2017).
§ 2:32. Probate court jurisdiction over paternity proceedings
- 1 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed., 2011).
§ 2.03. Jurisdiction and venue
§ 4.08. Venue
- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
Chapter 63. Paternity Proceedings
§ 63.02. Preliminary Considerations
[2]. Jurisdiction and Venue Over the Defendant
- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
Chapter 10. Paternity

Section 6c: Petition by Mother or Expectant Mother

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the petition for paternity by mother or expectant mother.

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stats. (2017).
[Chapter 815y](#). Paternity matters
§ [46b-160](#). Petition by mother or expectant mother.
Venue. Continuance of case. Evidence.
Jurisdiction over nonresident putative father.
Personal service. Petition to include answer form, notice and application for appointment of counsel. Genetic tests. Default judgment, when.

§ [46b-161](#). Procedure in action brought by expectant mother.

FORMS:

- 2 [Connecticut Civil Practice Forms](#) (2004).
Form 504.6 Petition for Paternity Proceeding by Mother

COURT CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Sharon L. v. W.](#), 9 CSCR 701, Superior Court, Judicial District of Litchfield at Litchfield, No. FA93-0063955 (June 13, 1994), 1994 WL 271518. "Since our Supreme court decided [Hayes](#), a court faced with the question of paternity is no longer dependent upon fallible testimony: through ... advancements in genetic testing, science has virtually eliminated the 'proof problem' by developing an effective means to prove the identity of an illegitimate child's father in the absence of the father."
- [Hayes v. Smith](#), 194 Conn. 52, 60-61, 480 A.2d 425 (1984). **"Although the plaintiff can point to nothing in the statutory scheme of 46b-160 that belies the plain legislative intent that 46b-160 requires that a paternity action must be instituted during the lifetime of the putative father, she seems to argue, recognizing that the action must be instituted by verified petition, that the balance of the statute is procedural and not substantive. The plaintiff claims that while the 'procedural method' might be 'flawed' by the death of the putative father, that will not destroy the action. To support this claim, she argues that the 1978 amendment to 45-274 'enlarged' the means of establishing paternity to include in rem proceedings against the estate of the deceased 'father' and that the issue of paternity does not fall within the exception to the general survival statute in 52-599. We do not agree."**
- [Moore v. McNamara](#), 201 Conn. 16, 33-34, 513 A.2d 660 (1986). "Nevertheless, even were we to find the defendant's

interpretation of the statute reasonable, the fact that 46b-168 allows the court to order blood tests on motion of any party would render futile a decision not to apply the test results to the defendant. At the next trial, the plaintiff would be able to move for a further round of blood tests, and then to have the results admitted into evidence. Therefore, the court did not err in applying the results of the HLA and blood grouping tests to this defendant.”

- [Delgado v. Martinez](#), 25 Conn. App. 155, 159, 593 A.2d 518 (1991). “Accordingly, we hold that the statute of limitations enunciated in General Statutes 46b-172 (a) is not enforceable against a party who has not validly waived his procedural due process rights and where a judgment of paternity has been entered without notice and an opportunity to be heard.”

DIGESTS:

- ALR Index: *Legitimacy of children*
- ALR Digest: *Children Out-of-Wedlock*
- Connecticut Family Law Citations: *Paternity*

ENCYCLOPEDIAS:

- 41 [Am Jur 2d Illegitimate Children](#) (2015).
- 14 [C.J.S. Children Out-Of-Wedlock](#) (2006).

TEXTS & TREATISES:

- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
Chapter 10. Paternity
- 1 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed., 2011).
§ 2.05. Pretrial proceedings
[1]. Elements of petition
§ 4.05. Verification of the petition
- Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
Chapter 63. Paternity proceedings
§ 63.03. Initial procedures in the Paternity Action
[1]. Form and Sufficiency of Complaint or Petition
[a]. FORM: Complaint to Determine Paternity
[b]. Drafting Petition or Complaint

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Section 6d: Claim for Paternity by Father

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to claim for paternity by putative father.

SEE ALSO: • [§ 3. Rights of Unmarried Father in Paternity Actions](#)

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stats. (2017).
[Chapter 815y](#). Paternity matters
§ [46b-172a](#). Filing of claim for paternity by putative father. "Any person claiming to be the father of a child born out of wedlock may file a claim for paternity with the Probate Court for the district in which either the mother or the child resides, on forms provided by such court. The claim may be filed at any time during the life of the child, whether before, on or after the date the child reaches the age of eighteen, or after the death of the child, but not later than sixty days after the date of notice under section 45a-716." Conn. Gen. Stat. § [46b-172a](#)(a) (2017).

FORMS:

- 2 [Connecticut Civil Practice Forms](#) (2004).
Form 504.6 Petition for Paternity Proceeding by Mother
Form 504.7 Petition for Paternity by State or Town
Form 505.2 Plea in Paternity

COURT CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Ashe v. Nixson](#), Superior Court, Judicial District of New Haven at New Haven, No. FA 05-4010683S (June 24, 2005). "Paternity actions by those claiming to be a child's biological father are brought to the Probate Court. See General Statutes § 46b-172a. Sections 46b-56(b) and 46b-59 of the General Statutes, however, allow actions for visitation to be brought in the Superior Court. Under the recent case of *Roth v. Weston*, 259 Conn. 202 (2002), the Superior Court has limited power to grant visitation to non-parents against the wishes of the custodial parent. But Mr. Ashe claims to be the biological father of the minor child with whom he seeks visitation. If he proves that allegation by the requisite standard of proof, he has a right to seek visitation with the minor child, and any orders regarding visitation will be guided by the best interest of the minor child."
- [Weidenbacher v. Duclos](#), 234 Conn. 51 (1995) "This appeal raises an issue of first impression for this court: Whether a man who alleges that he is the biological father of a minor child has standing to establish his paternity when the mother, at the time of the child's birth, was married to another man."

- [Lach v. Welch](#), 9 CSCR 701, Superior Court, Judicial District of Litchfield at Litchfield, No. FA93-0063955 (June 13, 1994), 1994 WL 271518. "Since our Supreme Court decided [Hayes](#), a court faced with the question of paternity is no longer dependent upon fallible testimony: through ... advancements in genetic testing, science has virtually eliminated the 'proof problem' by developing an effective means to prove the identity of an illegitimate child's father in the absence of the father."
- [Hayes v. Smith](#), 194 Conn. 52, 60-61, 480 A.2d 425 (1984). **"Although the plaintiff can point to nothing in the statutory scheme of 46b-160 that belies the plain legislative intent that 46b-160 requires that a paternity action must be instituted during the lifetime of the putative father, she seems to argue, recognizing that the action must be instituted by verified petition, that the balance of the statute is procedural and not substantive. The plaintiff claims that while the 'procedural method' might be 'flawed' by the death of the putative father, that will not destroy the action. To support this claim, she argues that the 1978 amendment to 45-274 'enlarged' the means of establishing paternity to include in rem proceedings against the estate of the deceased 'father' and that the issue of paternity does not fall within the exception to the general survival statute in 52-599. We do not agree."**
- [Moore v. McNamara](#), 201 Conn. 16, 33-34, 513 A.2d 660 (1986). **"Nevertheless, even were we to find the defendant's interpretation of the statute reasonable, the fact that 46b-168 allows the court to order blood tests on motion of any party would render futile a decision not to apply the test results to the defendant. At the next trial, the plaintiff would be able to move for a further round of blood tests, and then to have the results admitted into evidence. Therefore, the court did not err in applying the results of the HLA and blood grouping tests to this defendant."**
- [Delgado v. Martinez](#), 25 Conn. App. 155, 159, 593 A.2d 518 (1991). **"Accordingly, we hold that the statute of limitations enunciated in General Statutes 46b-172 (a) is not enforceable against a party who has not validly waived his procedural due process rights and where a judgment of paternity has been entered without notice and an opportunity to be heard."**

DIGESTS:

- ALR Index: *Legitimacy of children*
- ALR Digest: *Children Out-of-Wedlock*
- Connecticut Family Law Citations: *Paternity*

ENCYCLOPEDIAS:

- 41 [Am Jur 2d](#) *Illegitimate Children* (2015).

**TEXTS &
TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 14 [C.J.S. Children Out-Of-Wedlock](#) (2006).

- 1 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed., 2011).
 - § 2.05. Pretrial Proceedings
 - [1]. Elements of Petition and Response
 - § 4.05. Verification of the Petition

- Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
 - Chapter 63. Paternity proceedings
 - § 63.03. Initial procedures in the Paternity Action
 - [1]. Form and Sufficiency of Complaint or Petition
 - [a]. FORM: Complaint to Determine Paternity
 - [b]. Drafting Petition or Complaint

- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
 - Chapter 10. Paternity

Section 6e: Parties and Standing

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to parties and standing in paternity actions

SEE ALSO:

- [Table 5: Paternity Action by State or Town](#)
- [Table 6: Paternity Action by Child](#)

DEFINITION:

- **Attorney General:** "In cases involving public assistance recipients, the petition shall also be served upon the Attorney General who shall be and remain a party to any paternity proceeding and to any proceedings after judgment in such action." Conn. Gen. Stat. § [46b-160](#)(a)(1)(B) (2017).
- **Cease to be a party:** "Failing perfection of parental rights as prescribed by this section, any person claiming to be the father of a child born out of wedlock (1) who has not been adjudicated the father of such child by a court of competent jurisdiction, or (2) who has not acknowledged in writing that he is the father of such child, or (3) who has not contributed regularly to the support of such child, or (4) whose name does not appear on the birth certificate, shall cease to be a legal party in interest in any proceeding concerning the custody or welfare of the child, including, but not limited to, guardianship and adoption, unless he has shown a reasonable degree of interest, concern or responsibility **for the child's welfare.**" Conn. Gen. Stat. § [46b-172a](#)(g) (2017).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)
 - [Chapter 815y](#). Paternity Matters
 - § [46b-160](#). Petition by mother or expectant mother.
 - § [46b-161](#). Procedure in action brought by expectant mother
 - § [46b-162](#). Action by state or town.
 - § [46b-163](#). Action not defeated by stillbirth or other premature termination of pregnancy
 - § [46b-172a](#). Claim for paternity by putative father

WEST KEY NUMBERS:

- *Children Out-Of-Wedlock*
 - #34. Who may maintain proceedings
 - #35. Persons liable

COURT CASES:

- [Weidenbacher v. Duclos](#), 234 Conn. 51, 76, 661 A.2d 988 (1995). "Accordingly, we conclude that a man's mere assertion that he is the biological father, without more, is insufficient to confer standing to challenge the paternity of a child born in wedlock. Rather, we hold that a putative father of such a child must offer proof, at a

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

preliminary evidentiary hearing devoted to standing, that he is entitled to set in motion the judicial machinery to determine whether he is the biological father of the child."

- [Andrews-White v. Mitchell](#), 15 Conn. L. Rptr. 629 at 629-30 (Hartford 1995), 1995 WL 684779. "The defendant accurately notes the statutory limits as to who may initiate paternity actions; C.G.S. § 46b-160 (mother or expectant mother); C.G.S. § 46b-162 (action by state or town) and C.G.S. § 46b-172a [claim for paternity by putative father]. The statutory scheme is devoid of reference to an action by a child or her guardian. This is a disturbing scenario when one considers that it is the child's interest which is at stake; as it is the child who has the primary interest in establishing a relationship to its father [Pickett v. Brown](#), 462 U.S. 1, 16 n.15 (1983).

This Court for the reasons set forth below, finds that the child's interest in establishing paternity is a fundamental state and federal constitutional liberty interest of the child. The common law recognizes this right and the judicial system must afford the child an **opportunity to exercise and protect her interest."**

- [Shannon L. v. Richard W.](#), Superior Court, Judicial District of Litchfield at Litchfield, No. FA 93 0063955 (September 8, 1994) (12 Conn. L. Rptr. 403 at 403 (Litchfield 1994), 1994 WL 506410. "Moreover, this court has already addressed, and denied, the defendant's argument that a paternity action under General Statutes § 46b-160 does not survive the death of the putative father."

DIGESTS:

- ALR Index: *Legitimacy of children*
- ALR Digest: *Children Out-of-Wedlock*
- Connecticut Family Law Citations: *Paternity*

ENCYCLOPEDIAS:

- 41 [Am Jur 2d Illegitimate Children](#) (2015).
- 14 [C.J.S. Children Out-Of-Wedlock](#) (2006).
- George L. Blum, Annotation, *Right Of Illegitimate Child To Maintain Action To Determine Paternity*, 86 [ALR 5th](#) 637 (2001).

TEXTS & TREATISES:

- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
Chapter 10. Paternity
- 1 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed., 2011).
§ 1.04. Types of Proceedings and Parties
[3] Parties Who May Sue

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[4] Necessary Parties
§ 2.05. Pretrial Proceedings
[2] Parties and Standing

- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
 - Chapter 63. Paternity Proceedings
 - § 63.02. Preliminary Considerations
 - [4] Parties in the Paternity Proceeding
 - [a] Who May Maintain the Action
 - [i] The Child
 - [ii] Mother/Pregnant Woman
 - [iii] Biological and Presumed Fathers
 - [iv] Public Agencies
 - [v] Persons Providing Support for the Child or Other Interested Parties
 - [b] Necessary Parties/Joinder

- Aviam Soifer, *Parental Autonomy, Family Rights and The Illegitimate: A Constitutional Commentary*, 7 [Conn. L. Rev.](#) 1 (1974).

LAW REVIEWS:

Table 5: Paternity Action by State or Town

Paternity Action by State or Town	
STATUTE:	<p>"The state or any town interested in the support of a child born out of wedlock may, if the mother neglects to bring such petition, institute such proceedings against the person accused of begetting the child, and may take up and pursue any petition commenced by the mother for the maintenance of the child, if she fails to prosecute to final judgment. Such petition may be made by the Commissioner of Social Services or the town welfare administrator on information or belief. The mother of the child may be subpoenaed for testimony on the hearing of the petition." Conn. Gen. Stat. § 46b-162 (2017).</p>
FORM:	<ul style="list-style-type: none"> • 3 Connecticut Civil Practice Forms (2004). Form 504.7 Petition for Paternity Proceeding by State or Town
CASES:	<ul style="list-style-type: none"> • "In appearing on behalf of the state in this action, the attorney general was exercising this right given by § 52-440a [now 46b-162]." Cross v. Wilson, 35 Conn. Supp. 628, 403 A.2d 1103 (1978).

Table 6: Paternity Actions by Child

Paternity Action by Child	
STATUTE:	<p>"If any child born during a marriage, which is terminated by a divorce decree or decree of dissolution of marriage, is found not to be issue of such marriage, the child or his representative may bring an action in the Superior Court to establish the paternity of the child within one year after the date of the judgment of divorce or decree of dissolution of the marriage of his natural mother, notwithstanding the provisions of section 46b-160." Conn. Gen. Stat. § 46b-55(b) (2017).</p>

Section 6f: Notice

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to notice and service of notice in paternity actions in Connecticut

SEE ALSO:

- [§3. Rights of Unmarried Fathers in Paternity Actions](#)

DEFINITION:

- **Summons:** "The court, or any judge or family support magistrate assigned to said court, shall cause a summons, signed by such judge or magistrate, by the clerk of said court, or by a commissioner of the Superior Court to be issued, requiring the putative father to appear in court at a time and place as determined by the clerk but not more than ninety days after the issuance of the summons to show cause why the request for relief in such petition should not be granted." Conn. Gen. Stat. § [46b-160](#)(a)(3)(A) (2017).
- **Actual notice:** "If the putative father resides out of or is absent from the state, notice required for the exercise of jurisdiction over such putative father shall be actual notice, and shall be in the manner prescribed for personal service of process by the law of the place in which service is made." Conn. Gen. Stat. § [46b-160](#)(b) (2017).
- **Notice to the putative father:** "The notice to the putative father shall inform him that (A) he has a right to be represented by an attorney, and if he is indigent, the court will appoint an attorney for him, (B) if he is found to be the father, he will be required to financially support the child until the child attains the age of eighteen years, (C) if he does not admit he is the father, the court or family support magistrate may order a genetic test to determine paternity and that the cost of such test shall be paid by the state in IV-D support cases, and in non-IV-D cases shall be paid by the petitioner, except that if he is subsequently adjudicated to be the father of the child, he shall be liable to the state or the petitioner, as the case may be, for the amount of such cost and (D) if he fails to return the answer form or fails to appear for a scheduled genetic test without good cause, a default judgment shall be entered." Conn. Gen. Stat. § [46b-160](#)(e)(2) (2017).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)
 - [Chapter 815y](#). Paternity Matters
 - § [46b-160](#). Petition by mother or expectant mother
 - § [46b-162](#). Action by state or town
 - § [46b-172a](#). Claim for paternity by putative father

WEST KEY NUMBERS:

DIGESTS:

COURT CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- *Children Out-Of-Wedlock*
36. Jurisdiction
- Dowling’s Digest: *Paternity*
- Connecticut Family Law Citations: *Paternity*
- [W. v. W.](#), 256 Conn. 657, 666, 779 A2d 716 (2001).
“Furthermore, even if it is the biological father who has been located at the address discovered by the plaintiff, this court does not have jurisdiction over him. He lives in Massachusetts. It is not alleged that he has ever been in Connecticut, that he has ever been married to the plaintiff, that he knows he is the father of the child, or that he has been served with any notice of these proceedings. As a result, this court cannot bring this individual before us pursuant to General Statutes §§ 46b-44 and 46b-46 in order to resolve the issue of support.[fn4] Therefore, we conclude that the trial court did not abuse its discretion in applying the doctrine of equitable estoppel in **this case.**”
- [Banks v. Evans](#), 6 Conn. App. 175, 178, 504 A.2d 522 (1986). “The entire record of this case also indicates that the notice to the defendant of the trial was reasonable under all the circumstances.”

ENCYCLOPEDIAS:

- 41 [Am Jur 2d](#) *Illegitimate Children* (2015).
- 14 [C.J.S.](#) *Children Out-Of-Wedlock* (2006).
- 1 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed., 2011).
Chapter 4. Conducting the Paternity Trial
§ 4.06. Personal Service of Summons Upon the Respondent
- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
Chapter 63. Paternity Proceedings
§ 63.03. Initial Procedures in the Paternity Action
[2]. Effecting Service Upon the Defendant

TEXTS & TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

Table 7: Service and Return of Process

Service and Return of Process	
<p>§ 46b-160(a)(3) (B) (2017)</p>	<p>"A state marshal, proper officer or investigator shall make due return of process to the court not less than twenty-one days before the date assigned for hearing."</p>
	<p>"In the case of a child or expectant mother being supported wholly or in part by the state, service of such petition may be made by any investigator employed by the Department of Social Services and any proper officer authorized by law."</p>
<p>§ 46b-160 (a)(1)(B) (4)(b) (2017)</p>	<p>"If the putative father resides out of or is absent from the state, notice required for the exercise of jurisdiction over such putative father shall be actual notice, and shall be in the manner prescribed for personal service of process by the law of the place in which service is made."</p>

Section 6g: Hearing

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to the hearing in an action to establish paternity in Connecticut

DEFINITION:

- "Proceedings to establish paternity of a child born or conceived out of lawful wedlock, including one born to, or conceived by, a married woman but begotten by a man other than her husband, shall be commenced by the service on the putative father of a verified petition of the mother or expectant mother. Such petition may be **brought at any time prior to the child's eighteenth birthday**, provided liability for past support shall be limited to the three years next preceding the date of the filing of any such petition." Conn. Gen. Stat. § [46b-160](#)(a)(1)(A) (2017).
- **Default Judgment:** "The court or family support magistrate shall enter a default judgment against a nonresident putative father if such putative father (1) fails to answer or otherwise respond to the petition, or (2) fails to appear for a scheduled genetic test without good cause, provided a default judgment shall not be entered against a nonresident putative father unless (A) there is evidence that the nonresident putative father has received actual notice of the petition pursuant to subsection (c) of this section and (B) there is verification that the process served upon the putative father included the answer form, notice to the defendant and an application for appointment of counsel required by subsection (e) of this section. Upon entry of a default judgment, a copy of the judgment and a form for a motion to reopen shall be served upon the father in the same manner as provided in subsection (c) of this section." Conn. Gen. Stat. § [46b-160](#)(g) (2017).
- **Hearing (Probate):** "If a claim for paternity is filed by the father of any minor child born out of wedlock, the Probate Court shall schedule a hearing on such claim, send notice of the hearing to all parties involved and proceed accordingly." Conn. Gen. Stat. § [46b-172a](#)(b) (2017).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)
 - [Chapter 815y](#). Paternity matters
 - § [46b-160](#). Petition by mother or expectant mother.
 - § [46b-172a](#). Filing of claim for paternity by putative father

WEST KEY NUMBERS:

- *Children out-of-wedlock*
 - # 56. Trial
 - # 57. — In general
 - # 59. — Questions for jury
 - # 60. — Instructions
 - # 61. — Verdict or findings
 - # 62. New Trial

DIGESTS:

COURT CASE:

Once you have identified useful cases, it is important to update them to ensure they are still good law. You can [contact your local law librarian](#) to learn about updating cases.

- Dowling's Digest: *Paternity*
- Melanson v. Rogers, 38 Conn. Sup. 484, 491, 451 A.2d 825 (1982). "A review of the trial judge's charge reveals that he correctly instructed the jury that the plaintiff has the burden of proving that the defendant is the father. Moreover, there is nothing in the charge which would indicate that the defendant had the burden of proving David Libby or anyone else was the real father. Thus, the instruction was not improper."

ENCYCLOPEDIAS:

- 41 Am Jur 2d *Illegitimate Children* (2015).
 - §§ 77-86. Trial, Judgment, and Order
 - § 77. Paternity as factual issue to be determined
 - § 78. Closed proceeding
 - § 79. Right to jury trial
 - § 80. Presence of child in court
 - § 81. Instructions to jury
 - § 85. Binding effect of determination of paternity
 - § 86. Vacation or modification of order

- 14 C.J.S. *Children Out-Of-Wedlock* (2006).

TEXTS & TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Louise Truax, editor, LexisNexis Practice Guide: Connecticut Family Law (2017).
 - Chapter 10. Paternity
- 1 Nina M. Vitek, Disputed Paternity Proceedings (5th ed., 2011).
 - Chapter 2. Paternity Proceedings
 - § 2.02. Civil Nature of Paternity Proceedings
 - [2]. Right to Court Appointed Counsel
 - [3]. Right to a Jury Trial
 - § 2.05. Pretrial Proceedings
 - § 2.06. Finality of Judgment or Order
 - § 2.07. Postjudgment Proceedings
 - Chapter 4. Conducting the Paternity Trial
 - § 4.11. Documents and Records To Be Subpoenaed
 - § 4.13. Quantum of Proof
 - § 4.14. Admissibility of Blood Tests
 - § 4.15. Exhibits
 - § 4.16. Examination of Witnesses

- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
 - Chapter 63. Paternity Proceedings
 - § 63.05. Settlement Opportunities and Trial
 - § 63.06. Orders and Judgment
 - [4]. Recovery of Costs, Prenatal, Postnatal, and Other Expenses
 - [5]. Attorney Fees
 - [6]. Selection of Surname

Section 6h: Blood & DNA Testing

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the admissibility of blood and genetic tests in paternity actions.
- SEE ALSO:**
- [§ 6i Evidence](#)
- DEFINITION:**
- “Courts have allowed the use of blood tests in paternity litigation for the last half century.” [Moore v. McNamara](#), 201 Conn. 16, 26, 513 A.2d 660 (1986).
 - **Order to submit to blood test:** “If the court or family support magistrate may exercise personal jurisdiction over the nonresident putative father pursuant to subsection (d) of this section and the answer form is returned and the putative father does not admit paternity, the court shall order the mother, the child and the putative father to submit to genetic tests. Such order shall be served upon the putative father in the same manner as provided in subsection (c) of this section. The genetic test of the putative father, unless he requests otherwise, shall be made in the state where the putative father resides at a location convenient to him. The costs of such test shall be paid by the state in IV-D support cases, and in non-IV-D cases shall be paid by the petitioner, except that if the putative father is subsequently adjudicated the father of the child, he shall be liable to the state or the petitioner, as the case may be, for the amount of the costs.” Conn Gen. Stat. § [46b-160\(f\)](#) (2017).
 - **HLA blood test:** “One type of blood test, the human leukocyte antigen (HLA) tissue typing test, can determine paternity with a rate of 98 percent probability. Fingerprinting with deoxyribonucleic acid, or DNA, can positively identify a person's father Several Connecticut paternity cases have focused on the accuracy of these tests. See generally [State v. Skipper](#), 228 Conn. 610, 637 A.2d 1101 (1994) (HLA and DNA tests); [Miller v. Kirshner](#), 225 Conn. 185, 621 A.2d 1326 (1993) (HLA tests); [Moore v. McNamara](#), 201 Conn. 16, 513 A.2d 660 (1986) (HLA tests). General Statutes § 46b-168 (a) allows a court or family support magistrate to order DNA tests when the paternity of a child is in issue.” [Weidenbacher v. Duclos](#), 234 Conn. 51, 71, 661 A.2d 988 (1995) fn. 25.

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stats. (2017).
[Chapter 815y](#). Paternity matters
§ [46b-160](#). Petition by mother or expectant mother.
§ [46b-168](#). Genetic tests when paternity is at issue.
Assessment of costs.
§ [46b-168a](#). Genetic tests in IV-D support cases when paternity at issue. Assessment of costs.
Regulations.

REGULATIONS:

- Conn. Agencies Regs. § [46b-168a-1](#). Genetic tests required by IV-D agencies (July 2000).

FORMS:

- "Motion—For blood test of putative father," 5 [Am Jur Pleading & Practice Bastards](#) §76 (2008).
- "Motion—For blood test of putative father—Comparison of blood types," 5 [Am Jur Pleading & Practice Bastards](#) §77 (2008).

RECORDS & BRIEFS:

- [Motion for HLA Testing](#), *Connecticut Appellate Court Records and Briefs* (April 1991), [Delgado v. Martinez](#).
- *Motion for Blood Test*, A-915 *Connecticut Supreme Court Records and Briefs* (May 1986), [Moore v. McNamara](#).
- [Motion for Payment of Blood Tests](#), A-915 *Connecticut Supreme Court Records and Briefs* (May 1986), [Moore v. McNamara](#).

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [White v. Cordier](#), 2000 Ct. Sup. 6486, 6488 Superior Court, Judicial District of Hartford at Hartford, No. FA94-0616380 (May 30, 2000) (27 Conn. L. Rptr. 365) (August 21, 2000), (2000 WL 773006). "Where the court properly orders a DNA test and there is an allegation of requisite sexual contact between the parties it is admissible in evidence without further foundation or proof of authenticity or accuracy."
- [In the Interest of Darlene C., a person under the age of eighteen years](#), Superior Court, Judicial District of Middlesex at Middletown. No docket number (1/2/1998)(21 Conn. L. Rptr. 30) (February 16, 1998) **1998 WL 867330**. "His [child's putative father's] court appointed lawyer challenged the DCF motion for blood testing and, on February 16, 1994, this court (Foley, J.) sustained the objection on the ground that in juvenile proceedings where the motion for blood testing is not accompanied by a verified statement by the child's mother, as is the custom in the usual paternity cases brought under Conn. Gen. Stat. § 46b-168, there must be a fact-based evidentiary hearing in order to satisfy due process before the blood testing can be ordered over the objection of the putative father."

- [Weidenbacher v. Duclos](#), 234 Conn. 51, 71, 661 A.2d 988 (1995). "Furthermore, modern scientific tests can determine, with near perfect accuracy, who is the true biological father of a child."
- [State v. Skipper](#), 228 Conn. 610, 611, 637 A.2d 1101 (1994). "The dispositive issue in this appeal is the admissibility of the probability of paternity statistic calculated from DNA evidence."
- [Miller v. Kirshner](#), 225 Conn. 185, 197, 621 A.2d 1326 (1993). "We conclude that when the defendant consented to have his blood tested not simply to establish exclusion from paternity but also to calculate the likelihood of paternity, such consent encompassed HLA testing. Therefore, the defendant's argument that his constitutional rights under the fourth and fifth amendments were violated because he did not consent to an HLA test is without merit."
- [Lach v. Welch](#), Superior Court Judicial District of Litchfield at Litchfield, No. FA93-0063955, 9 CSCR 701 (June 13, 1994) (11 Conn. Rptr. 622)(July 25, 1994) (1994 WL 271518). "Since our Supreme Court decided [Hayes](#), a court faced with the question of paternity is no longer dependent upon fallible testimony: through ... advancements in genetic testing, science has virtually eliminated the 'proof problem' by developing an effective means to prove the identity of an illegitimate child's father in the absence of the father."
- [In Re L.](#), 42 Conn. Sup. 562, 566-567, 632 A.2d 59 (1993). "This brings us to the interests of the movant. It is true that a parent has a fundamental right and interest in his family's integrity The movant, however, is not asserting the rights of a parent in his motion. Rather, he merely avers that he may be L.'s parent. That is his only linchpin on which to hang any claim of a right or an entitlement to compel L. to submit to a blood test. At best, such an uncertain assertion of a possible familial relation may entitle the movant to a judicial forum in which to resolve the uncertainty. See General Statutes § 52-29; [Stevens v. Leone](#), 35 Conn. Sup. 237, 406 A.2d 402 (1979) [L. v. R.](#), 518 S.W.2d 113 (Mo. App. 1974); [Slawek v. Stroh](#), 62 Wis.2d 295, 303-307, 215 N.W.2d 9 (1974); see also [In re Paternity of C.A.S.](#), 161 Wis.2d 1015, 1027-32, 468 N.W.2d 719 (1991); cf. General Statutes § 46b-172a. Such an uncertain claim does not give rise to a special constitutional status. Entitlement to a blood test, as previously observed, is statutory and is discretionary with the court. Balancing L.'s Constitutional right to bodily integrity against the movant's tentative and attenuated status, the former must obviously prevail."
- [Barlow v. Guerrera](#), 9 Conn. App. 431, 432, 519 A.2d 623

(1987). "General Statutes 46b-168 provides that the court 'may' order blood tests upon motion by any party. Thus, the order is discretionary."

- [Moore v. McNamara](#), 201 Conn. 16, 33-34, 513 A.2d 660 (1986). "Nevertheless, even were we to find the defendant's interpretation of the statute reasonable, the fact that 46b-168 allows the court to order blood tests on motion of any party would render futile a decision not to apply the test results to the defendant. At the next trial, the plaintiff would be able to move for a further round of blood tests, and then to have the results admitted into evidence. Therefore, the court did not err in applying the results of the HLA and blood grouping tests to this defendant."

WEST KEY NUMBERS:

- *Children out-of-wedlock*
 - # 56. Trial
 - # 58. — Blood tests or other medical procedures

DIGESTS:

- ALR Index: *Legitimacy of children*
- ALR Digest: *Children Out-of-Wedlock*
- Connecticut Family Law Citations: *Paternity*

ENCYCLOPEDIAS:

- 41 [Am Jur 2d](#) *Illegitimate Children* (2015).
 - § 70. Blood tests
 - § 72. Genetic tests
- 14 [C.J.S.](#) *Children Out-Of-Wedlock* (2006).
 - § 76. Blood and genetic tests
- Alan Stephens, Annotation, *Admissibility Or Compellability Of Blood Test To Establish Testee's Nonpaternity For Purpose Of Challenging Testee's Parental Rights*, 87 [ALR4th](#) 572 (1991).
- John P. Ludington, Annotation, *Admissibility And Weight Of Blood-Grouping Tests In Disputed Paternity Cases*, 43 [ALR4th](#) 579 (1986).
- Jean E. Maess, Annotation, *Admissibility, Weight And Sufficiency Of Human Leukocyte Antigen (HLA) Tissue Typing Tests In Paternity Cases*, 37 [ALR4th](#) 167 (1985).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 [COA2d](#) 1 (1994).
 - § 24. Genetic and Blood Grouping Tests
 - § 25. —Purposes for Which Tests May Be Used
 - § 26. —Paternity Calculations
 - § 28. Burden and Standard of Proof
 - § 29. —Presumption Based on Paternity Test Results
- *Blood Typing*, 40 [POF2d](#) 1 (1984).
 - § 1.5. Comparison of blood typing to DNA evidence
 - §§ 16-25. Proof of probability of paternity through blood

testing

- *Proof Of Criminal Identity Or Paternity Through Polymerase Chain Reaction (PCR) Testing*, 36 [POF3d](#) 1 (1996).

§§ 95-103. Proof of paternity from match of DNA fingerprints based on PCR and application of paternity probabilities

PAMPHLETS:

- [Establish Paternity: Questions and Answers for Dads](#)
- [Establish Paternity: Questions and Answers for Moms](#)

TEXTS & TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 1 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed., 2011).
 - Chapter 1. Overview of Disputed Paternity Actions
 - § 1.06. Evidence to Establish or Disestablish Paternity
 - [b] Ordering Blood Tests
 - Chapter 3. Evidentiary and Related Issues in Paternity Proceedings
 - § 3.07. DNA Testing
 - § 3.08. Human Leukocyte Antigen (HLA) Testing
 - § 3.09. Miscellaneous Tests
 - § 3.12. Disposition of Cases Based on Genetic Testing
 - Chapter 4. Conducting the Paternity Trial
 - § 4.14. Admissibility of Blood Tests
 - Chapter 13. Scientific Aspects of DNA Testing
 - Chapter 14. Admissibility of DNA Testing in Individual States
 - § 14.07. Connecticut.
 - Chapter 15. Analysis of Genetic Test Results for Courtroom Use
 - Chapter 16. Determining Paternity After Death: Genetic Testing when a Parent is not Available
- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
 - Chapter 63. Paternity Proceedings
 - § 63.04. Pretrial Procedures
 - [2]. Blood Tests
 - [a]. HLA, Blood Group Tests, and DNA Tests
 - [b]. Authority for Ordering Blood Tests
 - [c]. Refusal to Submit to Blood Tests; Sanctions
 - [d]. Discovery and Expert Witnesses

Figure 1: Motion for HLA Testing

FA 89-043989

ROBERT DELGADO : SUPERIOR COURT:
 : JUDICIAL DISTRICT OF
 V. : HARTFORD/NEW BRITAIN
 : AT NEW BRITAIN
 EDWIN MARTINEZ : AUGUST 17, 1989

MOTION FOR HLA TESTING

Pursuant to Conn. Gen. Stats. § 46b-168, Article I, § § 8 and 10 of the Connecticut Constitution, and the Fourteenth Amendment of the United States Constitution, respondent respectfully moves this court to order HLA testing in this case, and to order that costs for such testing be paid by the State of Connecticut. Respondent understands that such costs will be assessed against him in the event that he is eventually adjudicated the father in this case. A financial affidavit accompanies this Motion.

THE RESPONDENT

By: _____

[Name]
[Address]
[Telephone]
[Juris Number]

Counsel for Mr. Martinez

ORAL ARGUMENT REQUESTED

FAMILY SUPPORT MAGISTRATE

Figure 2: Motion for payment of blood tests

MOTION FOR PAYMENT OF BLOOD TESTS

The Defendant moves that the costs of blood tests for the Plaintiff, the minor child subject of this action and the Defendant be paid by the State as the Defendant is unemployed and indigent.

The Defendant also moves that said tests be ordered to be performed at the Hartford Hospital.

THE DEFENDANT

BY: [name]
LAW OFFICES OF [name]
[address]

Filed July 20, 1984

ORDER

The above and foregoing motion having been heard, it is hereby ORDERED: GRANTED.

BY THE COURT
_____, J.

Dated October 1, 1984

Section 6i: Evidence

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to evidence in an action to establish paternity.

SEE ALSO:

- [§ 6h Blood tests](#)

DEFINITION:

- **Prima facie case:** "The plaintiff did not waver in her assertions that the defendant was the first person with whom she had engaged in sexual relations, that such relations took place during the likely period of conception and that she had not had sexual relations with anyone else during that time. This evidence, added to Urso's testimony of the defendant's alleged admission of paternity, was sufficient to establish a prima facie case." [Palomba v. Gray](#), 208 Conn. 21, 32, 543 A.2d 1331 (1988).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)
 - § [45a-606](#). Father and mother joint guardians.
 - § [46b-61](#). Orders re children where parents live separately.
 - § [46b-160](#). Petition by mother or expectant mother.
 - § [46b-166](#). Testimony of putative father.
 - § [46b-167](#). Evidence of putative father's good character admissible.
 - § [46b-168](#). Genetic tests when paternity is at issue. Assessment of costs.
 - § [46b-172a](#). Filing of claim for paternity by putative father.

REGULATIONS:

- Conn. Agencies Regs. § [46b-168a-1](#). Genetic tests required by IV-D agencies (July 2000)

COURT CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [DiMichele v. Perrella](#), 158 Conn. App. 726, 120 A.3d 551 (2015). "...a relationship between two parties does not constitute a special relationship unless that relationship is one of 'trust and confidence.'" *Id.*; W. Keeton, *supra*, § 106, pp. 738-39. We therefore decline to recognize a special relationship of "trust and confidence" between the parties in the present case, where the record reveals that, prior to the plaintiff's discovery of the children's paternity, no relationship existed between them.

We conclude that the parties in this case did not share a special relationship, and thus the defendant did not have a duty to disclose the children's paternity to the plaintiff."

- [Waskewicz v. Black](#), Superior Court, Judicial District of Ansonia-Milford, No. FA97-0057416, (Jan. 3, 2000) 2000 WL 38772. "Defendant claims that by the evidence he presented, he has raised a 'doubt' as to his presence in Morris, Connecticut on July 10, 1995. Plaintiff must only

prove her case by a fair preponderance of the evidence in a paternity proceeding. [Palomba v. Gray](#), 208 Conn. 21, 25 (1988). 'Fair preponderance of the evidence' is defined as 'the better evidence, the evidence having the greater weight, the more convincing force in your mind.' [Cross v. Huttenlocher](#), 185 Conn. 390, 394 (1981). I find the testimony of the plaintiff with regard to the facts in dispute to be credible and that she was with the defendant on July 10, 1995 and had sexual relations with him that evening at his house in Morris, Connecticut."

- [Palomba v. Gray](#), 208 Conn. 21, 26, 543 A.2d 1331 (1988). "Evidence that the plaintiff has been constant in accusing the defendant of being the father of the child is admissible at trial to corroborate her testimony and to establish a prima facie case. General Statutes 46b-160; [Lavertue v. Niman](#), supra[196 Conn. 403, 407, 493 A.2d 123 (1985)]; [Armstrong v. Watrous](#), 138 Conn. 127, 129, 82 A.2d 800 (1951). Once the plaintiff has established a prima facie case, the burden shifts to the defendant to prove his innocence by evidence other than his own. [Mosher v. Bennett](#), 108 Conn. 671, 674, 144 A.2d 297 (1929); [Holmes v. McLean](#), 5 Conn. Cir. Ct. 476, 479, 256 A.2d 849 (1969)."
- [Thomas v. Rose](#), 10 Conn. App. 71, 74, 521 A.2d 597 (1987). "No medical testimony was offered to show that her heroin addiction impaired her ability to recall events and nothing in the exhibits would lead to that conclusion."
- [DiMauro v. Natalino](#), 11 Conn. App. 548, 550-551, 528 A.2d 851 (1987). "During cross-examination, the plaintiff was asked an isolated question regarding whether she had had sexual relations with anyone other than the defendant during the time that the child was conceived. She responded, 'Yes, I did.' When viewed in isolation, this testimony appears damaging to the plaintiff's case. This question was asked, however, in the midst of cross-examination regarding the surname of the woman with whom the plaintiff was sharing an apartment at the time of conception. It would not have been unreasonable for the jury to conclude, therefore, that the plaintiff was confused when she answered this particular question. Moreover, at four separate times during the trial, the plaintiff denied having had sexual relations with anyone other than the defendant at the time of conception. Thus, the jury was presented with one inconsistency within the plaintiff's testimony, and it was incumbent upon them to weigh her testimony as a whole."
- [Melanson v. Rogers](#), 38 Conn. Sup. 484, 486, 451 A.2d 825 (1982). "While it is true that the child whose paternity is in dispute may be exhibited to show a resemblance between that child and the alleged father; [Shailer v. Bullock](#), 78 Conn. 65, 66, 61 A. 65 (1905); [Holmes v. McLean](#), 5 Conn.

Cir. Ct. 476, 481, 256 A.2d 849 (1969); there is no requirement that the child be brought in to show the lack of **any such resemblance.**"

- Holmes v. McLean, 5 Conn. Cir. Ct. 476, 482, 256 A.2d 849, (1969). "Evidence, however, is permissible if it shows relations with other men about the time of commencement of the period of gestation."

WEST KEY NUMBERS:

- *Children out-of-wedlock*
 - # 42. Evidence.
 - # 42.1. — In general.
 - # 43. — Presumptions and burden of proof.
 - # 44. — Admissibility in general.
 - # 45. — Blood tests or other medical procedures.
 - # 46. — Testimony and declarations of prosecutrix.
 - # 47. — Character and conduct of prosecutrix.
 - # 48. — Admissions and declarations of defendant.
 - # 49. — Character and conduct of defendant.
 - # 51. — Resemblance of child to defendant.
 - # 52. — Degree of proof.
 - # 53. — Sufficiency.

DIGESTS:

- ALR Index: *Legitimacy of children*
- ALR Digest: *Children Out-of-Wedlock*
- Connecticut Family Law Citations: *Paternity*

ENCYCLOPEDIAS:

- 41 Am Jur 2d *Illegitimate Children* (2015).
 - §§ 58-76. Evidence
 - § 58. Applicable rules and admissibility
 - § 59. Burden of proof in paternity action
 - § 60. Degree of proof in paternity action
 - § 61. Testimony of the mother
 - § 62. Testimony of putative father
 - § 63. Declarations of mother
 - § 64. Declarations of putative father
 - § 65. Declaration of other persons
 - § 66. Intimacy and relations of parties
 - § 67. Reputation and character of mother
 - § 68. Relations of mother with other men
 - § 69. Reputation and character of putative father
 - § 70. Blood tests
 - § 71. Human leukocyte antigen tests
 - § 72. Genetic tests
 - § 75. Exhibition of child to jury
 - § 76. —To show race or color of child
- 14 C.J.S. *Children Out-Of-Wedlock* (2006).
 - §§ 102-111. Evidence
- Alan R. Gilbert, Annotation, Admissibility, *In Disputed Paternity Proceedings, Of Evidence To Rebut Mother's Claim of Prior Chastity*, 59 ALR3d 659 (1974).

- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 [COA2d](#) 1 (1994).

Plaintiff's Case for Paternity

- § 4. Generally
- § 5. Mother's Sexual Intercourse with Defendant
- § 6. —Intercourse during Period of Child's Conception
- § 7. Absence of Intercourse with Other Men
- § 8. Child's Biological Affinity to Defendant

Defendant's Case against Paternity

- § 9. Generally
- § 10. Absence of Sexual Intercourse
- § 11. Unlikelihood or Impossibility of Paternity
- § 12. **Mother's** Relations with Other Men
- § 13. Presumption That Another Man is Father
- § 14. Untimeliness of Action
- § 15. Prior Proceeding as Bar
- § 16. —Prior Settlement

Proof

- § 23. Generally
- § 24. Genetic and Blood Grouping Tests
- § 27. Expert Opinion
- § 28. Burden and Standard of Proof
- § 29. —Presumptions Based on Paternity Test Results

- *Proof Of Husband's Impotency Or Sterility As Rebutting Presumption Of Legitimacy*, 14 [POF2d](#) 409 (1977).

TEXTS & TREATISES:

- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
Chapter 10. Paternity

- 1 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed., 2011).
Chapter 1. Overview of Disputed Paternity Actions.
 - § 1.06. Evidence To Establish or Disestablish Paternity.
 - [1] Blood Tests.
 - [2] Testimony of Non-Access.
 - [3] Impotence or Sterility or Other Biological Impossibility.
 - [4] Effect of Void or Voidable Marriage.
 - [5] Acknowledgement of Parental Status Through Other Legal Proceedings or Course of Conduct.
 - [6] Family Resemblance.
 - [7] Witnesses.
- Chapter 2. Paternity Proceedings
 - § 2.02. Civil Nature of Paternity Proceedings.
 - [1]. The Standard of Proof.
- Chapter 3. Evidentiary and Related Issues in Paternity

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Proceedings.

§ 3.02. **Mother's** Testimony.

§ 3.03. **Father's** Testimony.

§ 3.04. Physical Resemblance Between Child and the Defendant.

§ 3.05. Period of Conception.

Chapter 4. Conducting the Paternity Trial.

§ 4.11. Documents and Records to be Subpoenaed.

§ 4.13. Quantum of Proof.

§ 4.14. Admissibility of Blood Tests.

§ 4.15. Exhibits.

§ 4.16. Examination of Witnesses.

- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).

Chapter 63. Paternity proceedings

§ 63.05. Settlement Opportunities and Trial

[4]. Burden of Proof

[5]. Competency of Witnesses

[6]. Evidence of the **Mother's** Sexual Conduct

[7]. Quantum of Proof to Establish Paternity

[8]. Demonstrative and Physical Evidence

[9]. Admissions, Character and Conduct of Defendant

Section 6j: Defenses

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to evidence in an action to establish paternity.

SEE ALSO:

- [§ 6h Blood tests](#)
- [§ 6i Evidence](#)

DEFINITIONS:

- **Collateral estoppel:** "or issue preclusion, prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action.' [Aetna Casualty & Surety Co. v. Jones](#), 220 Conn. 285, 296, 596 A.2d 414 (1991).
- **Res judicata:** "Claim preclusion (res judicata) and issue preclusion (collateral estoppel) have been described as related ideas on a continuum. [C]laim preclusion prevents a litigant from reasserting a claim that has already been decided on the merits. . . . [I]ssue preclusion, prevents a party from relitigating an issue that has been determined in a prior suit. [Virgo v. Lyons](#), 209 Conn. 497, 501, 551 A.2d 1243 (1988), quoting [Gionfriddo v. Gartenhaus Cafe](#), 15 Conn. App. 392, 401-402, 546 A.2d 284 (1988), aff'd, 211 Conn. 67, 557 A.2d 540 (1989)." (Internal quotation marks omitted.)" [Nancy G. v. Dept. of Children and Families](#), 248 Conn. 672, 681, 733 A.2d 136 (1999).
- **Laches:** "The burden is on the party alleging laches to establish that defense `Laches consists of two elements. First, there must have been a delay that was inexcusable, and, second, that delay must have prejudiced the defendant. [Kurzatkowski v. Kurzatkowski](#), 142 Conn. 680, 685, 116 A.2d 906 (1955). . . . The mere lapse of time does not constitute laches . . . unless it results in prejudice to the defendant . . . as where, for example, the defendant is led to change his position with respect to the matter in question. . . . [Bozzi v. Bozzi](#), [177 Conn. 232, 239, 413 A.2d 834 (1979)]." (Citations omitted; internal quotation marks omitted.) [Burrier v. Burrier](#), 59 Conn. App. 593, 596, 758 A.2d 373 (2000).

STATUTES:

- Conn. Gen. Stats. (2017).
[Chapter 815y](#). Paternity matters
§ [46b-160](#). Petition by mother or expectant mother
§ [46b-172a](#). Claim for paternity by putative father

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

COURT CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Fischer v. Zollino](#), 303 Conn. 661 (2012) The trial court incorrectly ruled that putative father of a child, upon hearing **that he was deceived by his wife, the child's mother, and the child's biological father as to the child's paternity, was** estopped from recovering from the biological father funds that the putative father expended to raise the child while believing her to be his offspring.
- [Bickham v. Bickham](#), Superior Court, Judicial District of New London at New London, No. FA084109840 (February 21, 2012) (53 Conn. L. Rptr. 496) (2012 WL 798932). A case examining and distinguishing [Fischer](#) (*supra*).
- [In Re Yadirah F.-S](#), Superior Court, Judicial District of Hartford at Hartford, No. H12-CP10-013519-A (November 10, 2011) (52 Conn. L. Rptr. 889) (February 6, 2012) 2011 WL 6004529. Conflicting paternity judgments.
- [Jack M. v. Kim D.](#), Superior Court, Judicial District of New Haven at Meriden, No. CV89-0233398S, (1 Conn. L. Rptr. 333) (1990) **1990 WL 265960**. "The court finds it is a fact that the petitioner knew from the date of birth that Kim and her husband believed that the husband was the father of the child and were representing at all times that he was the father of the child. The court finds that the child was never represented to be the child of the petitioner. The child believes the husband is her father and enjoys a traditional family life in a comfortable home owned by Kim and her husband. He has legitimized the child by marrying Kim D. and acknowledging paternity in the probate court For the foregoing reasons, the court concludes that the petitioner is equitably estopped from pursuing this action and will not advance the petition by granting the petitioner's **motions for testing.**"
- [Freda v. Freda](#), 39 Conn. Supp. 230, 232, 476 A.2d 153 (1984). "The finding of paternity in this case [marital presumption] was the same as if the court had given its approval to an agreement submitted to the court. The litigation required for the application of collateral estoppel was not present and the court may open its judgment if it is **shown that fraud in obtaining it was present.**"

DIGESTS:

- ALR Index: *Legitimacy of children*
- ALR Digest: *Children Out-of-Wedlock*
- Connecticut Family Law Citations: *Paternity*

ENCYCLOPEDIAS:

- 41 [Am Jur 2d](#) *Illegitimate Children* (2015).
 - § 50. Failure to file birth certificate
 - § 52. Res judicata
 - § 55. Death of mother
 - § 56. Death of child; stillborn child

§ 57. Death of father

- 14 [C.J.S. Children Out-Of-Wedlock](#) (2006).
 - §§ 80-83. Defenses and abatement of proceedings
 - § 80. Defenses, generally
 - § 81. Release or settlement
 - § 82. Abatement of proceedings, generally
 - § 80. Death
- James O. Pearson, Annotation, *Proof Of Husband's Impotency Or Sterility As Rebutting Presumption Of Legitimacy*, 84 [ALR3d](#) 495 (1978).
- Robert A. Brazener, *Statute Of Limitations In Illegitimacy Or Bastardy Proceedings*, 59 [ALR3d](#) 685 (1974).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 [COA2d](#) 1 (1994).
 - Defendant's Case Against Paternity
 - § 9. Generally
 - § 10. Absence of Sexual Intercourse
 - § 11. Unlikelihood or Impossibility of Paternity
 - § 12. **Mother's** Relations with Other Men
 - § 13. Presumption That Another Man Is Father
 - § 14. Untimeliness of Action
 - § 15. Prior Proceeding as Bar
 - § 16. —Prior Settlement

PAMPHLETS:

- [Establish Paternity: Questions and Answers for Dads](#)
- [Establish Paternity: Questions and Answers for Moms](#)

TEXTS & TREATISES:

- 1 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed., 2011).
 - Chapter 4. Conducting the Paternity Trial
 - § 4.12. Defenses to Paternity.
 - [1]. Presumption of Legitimacy.
 - [1A]. Presumption of Paternity.
 - [2]. Collateral Estoppel.
 - [3]. Res Judicata.
 - [4]. Laches.
 - [5]. Statute of Limitations.
 - [6]. Question of Law as a Defense.
 - [7]. Double Jeopardy Not a Defense in Paternity Proceedings.
 - [8]. Age of Respondent Not a Defense.
 - [9]. Full Faith and Credit.
- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
 - Chapter 63. Paternity Proceedings
 - § 63.02. Preliminary Considerations
 - [3]. Statute of Limitations

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[5]. Presumption of Legitimacy
§ 63.05. Settlement Opportunities and Trial
[10]. Laches, *Res Judicata*, and Estoppel
§ 63.07. Enforcement Proceedings and Modification
§ 63.08. Appellate Review

- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
Chapter 10. Paternity

LAW REVIEWS:

- Kristin K. Jacobs, [Comment, If the Genes Don't Fit: An Overview of Paternity Disestablishment Statutes](#), 24 J. Am. Acad. Matrimonial Law 249 2011-2012.

Section 6k: Postjudgment Proceedings

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to postjudgment proceedings following judgment or order of paternity

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stats. (2017).
[Chapter 815y](#). Paternity matters
§ [46b-160](#). Petition by mother or expectant mother.
§ [46b-172a](#). Claim for paternity by putative father.

COURT CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Colbert v. Carr](#), 140 Conn. App. 229, 57 A.3d 878 (2013). "The plaintiff, Colleen Colbert, appeals from the judgment rendered by the trial court in this paternity action that she brought against the defendant, Charles N. Carr. The plaintiff claims that the court improperly (1) denied her request for attorney's fees, (2) failed to award three years of child support retroactive from the date of the filing of her petition to establish paternity and (3) refused to deviate from the mandatory child support guidelines. We affirm the judgment of the trial court."
- [Greene v. Bynum](#), 46 Conn. App. 1, 5, 698 A.2d 334 (1997). "By filing an insufficient petition for appeal, the defendant failed to comply with the requirements of the statute and, thus, lacked standing to appeal. See [Beckish v. Manafort](#), 175 Conn. 415, 419, 399 A.2d 1274 (1978). The trial court, consequently, lacked jurisdiction to hear the appeal from the decision of the family court magistrate. Although the question of the trial court's jurisdiction was not raised at the hearing because the state did not appear at that hearing, subject matter jurisdiction may be raised at any time and, when it is raised, it must be decided."
- [Erisoty's Appeal from Probate](#), 216 Conn. 514, 522, 582 A.2d 760 (1990). "We conclude, therefore, that because the plaintiff's constitutionally protected interests in human dignity and privacy were adversely affected by the Probate Court order to submit to a blood grouping test, the plaintiff was aggrieved and could properly appeal the order pursuant to [Conn. Gen. Stats.] § 45-288."
- [Miller v. Kirshner](#), 225 Conn. 185, 199, 621 A.2d 1326 (1993). "The trial court heard the testimony of all of the witnesses and rendered its judgment accordingly. We will

not usurp the fact-finding function of the trial court and retry the case on appeal as the defendant would have us do.”

- [Fortier v. Laviero](#), 10 Conn. App. 181, 182, 522 A.2d 313 (1987). “Even if we assume *arguendo*, that the court erred in allowing into evidence the defendant's blood type, the defendant has failed to show that, given the other evidence relied on by the court, the admission was harmful. The court made only limited use of the evidence of the defendant's blood type, and explicitly found that ‘the most convincing evidence of paternity’ was the testimony of the parties themselves. In order to establish reversible error, the defendant has the burden of showing that an error is both erroneous and harmful.”
- [Fedele v. Romero](#), 37 Conn. Sup. 885, 886, 441 A.2d 867 (1982). “The validity of a claim that a decision is unsupported by the evidence may be tested only by reference to the record together with exhibits and transcripts filed in the matter.”

WEST KEY NUMBERS:

- *Children out-of-wedlock*
 - # 69. Enforcement of order for support.
 - # 71. Sentence on criminal conviction.
 - # 72. Review of proceedings.
 - # 72.1. — In general.
 - # 73. — Appeal.
 - # 74. — Certiorari.

DIGESTS:

- ALR Index: *Legitimacy of children*
- ALR Digest: *Children Out-of-Wedlock*
- Connecticut Family Law Citations: *Paternity*

ENCYCLOPEDIAS:

- 41 [Am Jur 2d](#). *Illegitimate Children* (2015).
- 14 [C.J.S.](#) *Children Out-Of-Wedlock* (2006).
- Donald M. Zupanec, Annotation, *Effect, In Subsequent Proceedings, Of Paternity Findings Or Implications In Divorce Or Annulment Decree Or In Support Or Custody Order Made Incidental Thereto*, 78 [ALR3d](#) 846 (1977).

TEXTS & TREATISES:

- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
Chapter 10. Paternity
- 1 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed., 2011).
Chapter 2. Paternity Proceedings
§ 2.07. Postjudgment Proceedings.
 - [1]. Enforcing Paternity Judgment or Order
 - [2]. Relief from Paternity Judgment or Order

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- [a]. In General.
- [b]. Newly Discovered Evidence.
- [c]. Mistake or Excusable Neglect.
- [d]. Prospective Relief.
- [e]. Relief on Other Grounds
- [f]. Relief Based on DNA Evidence

- 6 Arnold H. Rutkin, gen. ed., [Family Law and Practice](#) (2015).
 - Chapter 63. Paternity Proceedings
 - § 63.07. Enforcement Proceedings and Modification
 - § 63.08. Appellate Review

A

Action to establish paternity: "Historically, the action was criminal in form but civil in nature. It is fundamental, however, that the rules governing civil actions apply." [Kuser v. Orkis](#), 169 Conn. 66, 71, 362 A.2d 943 (1975).

Actual notice: "If the putative father resides out of or is absent from the state, notice required for the exercise of jurisdiction over such putative father shall be actual notice, and shall be in the manner prescribed for personal service of process by the law of the place in which service is made." Conn. Gen. Stat. § [46b-160](#)(b) (2017).

Attorney General: "In cases involving public assistance recipients, the petition shall also be served upon the Attorney General who shall be and remain a party to any paternity proceeding and to any proceedings after judgment in such action." Conn. Gen. Stat. § [46b-160](#)(a)(1)(B) (2017).

B

Bastardy actions: "The purpose of what were formerly called bastardy actions and are now called paternity proceedings is to relieve the public of the burden of supporting an illegitimate child and to provide the mother with assistance in carrying out her obligation of support." [Kuser v. Orkis](#), 169 Conn. 66, 71, 362 A.2d 943 (1975).

Burden of proof: "A paternity action results in a finding of 'guilt' or 'innocence,' and nonpayment of support or **orders attendant to a finding of 'guilt' may lead to** contempt and imprisonment. General Statutes §§ 46b-171, 46b-215, 53-304. Nonetheless, the plaintiff in a paternity proceeding need only prove her case by a fair preponderance of the evidence. [Lavertue v. Niman](#), 196 Conn. 403, 407, 493 A.2d 213, (Conn. 1985).

C

Cease to be a party: "Failing perfection of parental rights as prescribed by this section, any person claiming to be the father of a child born out of wedlock (1) who has not been adjudicated the father of such child by a court of competent jurisdiction, or (2) who has not acknowledged in writing that he is the father of such child, or (3) who has not contributed regularly to the support of such child, or (4) whose name does not appear on the birth certificate, shall cease to be a legal party in interest in any proceeding concerning the custody or welfare of the child, including, but not limited to, guardianship and adoption, unless he has shown a reasonable degree of interest, concern or responsibility for the **child's welfare**" Conn. Gen. Stat. § [46b-172a](#)(g) (2017).

Child of a Marriage: "In connection with any petition for annulment under this chapter, the Superior Court may make such order regarding any child of the marriage and concerning alimony as it might make in an action for dissolution of marriage. The issue of any void or voidable marriage shall be deemed legitimate. Any child born before, on or after October 1, 1976, whose birth occurred prior to the marriage of his parents shall be deemed a child of the marriage." Conn. Gen. Stats. § [46b-60](#) (2017).

Child Out of Wedlock: "Unlike a valid marriage which creates a legal status between the parties and has been said to be the marital res capable of furnishing the basis for jurisdiction of a court, the birth of a child out of wedlock does not, per se, create any legal status between the child and a putative father. Generally, the legitimization of such a child vis-a-vis his 'father' is a matter of statute." [Hayes v. Smith](#), 194 Conn. 52, 64, 480 A.2d 425 (1984).

Collateral estoppel (as defense to paternity): "or issue preclusion, prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action." [Aetna Casualty & Surety Co. v. Jones](#), 220 Conn. 285, 296, 596 A.2d 414 (1991).

Compelling disclosure: "If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a decree of divorce or dissolution or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the Commissioner of Social Services, if such child is a recipient of public assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the Superior Court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child." Conn. Gen. Stat. § [46b-169](#)(a) (2017).

D

Default Judgment: "The court or family support magistrate shall enter a default judgment against a nonresident putative father if such putative father (1) fails to answer or otherwise respond to the petition, or (2) fails to appear for a scheduled genetic test without good cause, provided a default judgment shall not be entered against a nonresident putative father unless (A) there is evidence that the nonresident putative father has received actual notice of the petition pursuant to subsection (c) of this section and (B) there is verification that the process served upon the putative father included the answer form, notice to the defendant and an application for appointment of counsel required by subsection (e) of this section. Upon entry of a default judgment, a copy of the judgment and a form for a motion to reopen shall be served upon the father in the same manner as provided in subsection (c) of this section." Conn. Gen. Stat. § [46b-160](#)(g) (2017).

E

Equal Protection of the Law (Illegitimate children): "The United States Supreme Court, moreover, has held that illegitimate children cannot be denied equal protection of the law." [Trimble v. Gordon](#), 430 U.S. 762, 776, 97 S. Ct. 1459, 52 L.Ed. 2d 31 (1977). See [Lalli v. Lalli](#), 439 U.S. 259, 99 S. Ct. 518, U.S.N.Y., (1978) where statute did not violate equal protection clause.

E

Father: "Any person claiming to be the father of a child born out of wedlock may file a claim for paternity with the Probate Court for the district in which either the mother or the child resides, on forms provided by such court. The claim may be filed at any time during the life of the child, whether before, on or after the date the child reaches the age of eighteen, or after the death of the child, but not later than sixty days after the date of notice under section 45a-716 [hearing on petition to terminate parental rights]." **Conn. Gen. Stats. § 46b-172a(a)** (2017).

H

HLA blood test: "One type of blood test, the human leukocyte antigen (HLA) tissue typing test, can determine paternity with a rate of 98 percent probability. Fingerprinting with deoxyribonucleic acid, or DNA, can positively identify a person's father Several Connecticut paternity cases have focused on the accuracy of these tests. See generally [State v. Skipper](#), 228 Conn. 610, 637 A.2d 1101 (1994) (HLA and DNA tests); [Miller v. Kirshner](#), 225 Conn. 185, 621 A.2d 1326 (1993) (HLA tests); [Moore v. McNamara](#), 201 Conn. 16, 513 A.2d 660 (1986) (HLA tests). General Statutes § 46b-168 (a) allows a court or family support magistrate to order DNA tests when the paternity of a child is in issue." [Weidenbacher v. Duclos](#), 234 Conn. 51, 71, 661 A.2d 988 (1995) fn. 25.

J

Joint Guardians: "The father and mother of every minor child are joint guardians of the person of the minor, and the powers, rights and duties of the father and the mother in regard to the minor shall be equal. If either father or mother dies or is removed as guardian, the other parent of the minor child shall become the sole guardian of the person of the minor." **Conn. Gen. Stat. § 45a-606** (2017).

L

Laches (as defense to paternity): "The burden is on the party alleging laches to establish that defense `Laches consists of two elements. First, there must have been a delay that was inexcusable, and, second, that delay must have prejudiced the defendant. [Kurzatkowski v. Kurzatkowski](#), 142 Conn. 680, 685, 116 A.2d 906 (1955). . . . The mere lapse of time does not constitute laches . . . unless it results in prejudice to the defendant . . . as where, for example, the defendant is led to change his position with respect to the matter in question. . . . [Bozzi v. Bozzi](#), [177 Conn. 232, 239, 413 A.2d 834 (1979)]." (Citations omitted; internal quotation marks omitted.) [Burrier v. Burrier](#), 59 Conn. App. 593, 596, 758 A.2d 373 (2000).

M

Marital presumption: "postulates that a child born in wedlock is presumed to be a legitimate child of the mother and her husband." [Weidenbacher v. Duclos](#), 234 Conn. 51, 68-69, 661 A.2d 988 (1995). **Rebuttable presumption:** "We have never held, however, that this presumption is irrebuttable and conclusive against a person claiming to be the biological father of the child. On the contrary, we have held that this presumption may be rebutted a person who presents clear, convincing and satisfactory evidence that the mother's husband is not the child's natural father." *Ibid.*, p. 69.

Mother or Expectant Mother: "The verified petition, summons and order shall be filed in the superior court for the judicial district in which either she or the putative father resides, except that in IV-D support cases, as defined in subdivision (13) of subsection (b) of section 46b-231, and in petitions brought under sections 46b-301 to 46b-425, inclusive, such petition shall be filed with the clerk for the Family Support Magistrate Division serving the judicial district where either she or the putative father resides." Conn. Gen. Stat. § [46b-160](#)(a)(2) (2017).

N

Notice to the putative father: "...shall inform him that (A) he has a right to be represented by an attorney, and if he is indigent, the court will appoint an attorney for him, (B) if he is found to be the father, he will be required to financially support the child until the child attains the age of eighteen years, (C) if he does not admit he is the father, the court or family support magistrate may order a genetic test to determine paternity and that the cost of such test shall be paid by the state in IV-D support cases, and in non-IV-D cases shall be paid by the petitioner, except that if he is subsequently adjudicated to be the father of the child, he shall be liable to the state or the petitioner, as the case may be, for the amount of such cost and (D) if he fails to return the answer form or fails to appear for a scheduled genetic test without good cause, a default judgment shall be entered." Conn. Gen. Stat. § [46b-160](#)(e)(2) (2017).

O

Order to submit to blood test: "If the court or family support magistrate may exercise personal jurisdiction over the nonresident putative father pursuant to subsection (d) of this section and the answer form is returned and the putative father does not admit paternity, the court shall order the mother, the child and the putative father to submit to genetic tests. Such order shall be served upon the putative father in the same manner as provided in subsection (c) of this section. The genetic test of the putative father, unless he requests otherwise, shall be made in the state where the putative father resides at a location convenient to him. The costs of such test shall be paid by the state in IV-D support cases, and in non-IV-D cases shall be paid by the petitioner, except that if the putative father is subsequently adjudicated the father of the child, he shall be liable to the state or the petitioner, as the case may be, for the amount of the costs." Conn. Gen. Stat. § [46b-160](#)(f) (2017).

P

Parental Rights of Father: "Once alleged parental rights of the father have been adjudicated in his favor under subsection (b) of this section, or acknowledged as provided for under section 46b-172, **his rights and responsibilities shall be equivalent to those of the mother**, including those rights defined under section 45a-606. Thereafter, disputes involving custody, visitation or support shall be transferred to the Superior Court under chapter 815j, except that the Probate Court may enter a temporary order for custody, visitation or support until an order is entered by the Superior Court." Conn. Gen. Stat. § [46b-172a](#)(f) (2017) (emphasis added).

Prima facie case: "The plaintiff did not waver in her assertions that the defendant was the first person with whom she had engaged in sexual relations, that such relations took place during the likely period of conception and that she had not had sexual relations with anyone else during that time. This evidence, added to Urso's testimony of the defendant's alleged admission of paternity, was **sufficient to establish a prima facie case.**" [Palomba v. Gray](#), 208 Conn. 21, 32, 543 A.2d 1331 (1988).

Q

Quasi-Criminal Actions: "Although paternity actions may have 'quasi-criminal' overtones; [Little v. Streater](#), 452 U.S. 1, 10, 101 S. Ct. 2202, 68 L. Ed. 2d 627 (1981); they are civil actions to which the general rules governing civil actions apply." [Green v. Green](#), 39 Conn. Supp. 325, 326, 464 A.2d 72 (1983).

R

Res judicata (as defense to paternity): "Claim preclusion (res judicata) and issue preclusion (collateral estoppel) have been described as related ideas on a continuum. [C]laim preclusion prevents a litigant from reasserting a claim that has already been decided on the merits. . . . [I]ssue preclusion, prevents a party from relitigating an issue that has been determined in a prior suit. [Virgo v. Lyons](#), 209 Conn. 497, 501, 551 A.2d 1243 (1988), quoting [Gionfriddo v. Gartenhaus Cafe](#), 15 Conn. App. 392, 401-402, 546 A.2d 284 (1988), aff'd, 211 Conn. 67, 557 A.2d 540 (1989)." (Internal quotation marks omitted.)" [Nancy G. v. Dept. of Children and Families](#), 248 Conn. 672, 681, 733 A.2d 136 (1999).

S

Summons: "The court, or any judge or family support magistrate assigned to said court, shall cause a summons, signed by such judge or magistrate, by the clerk of said court, or by a commissioner of the Superior Court to be issued, requiring the putative father to appear in court at a time and place as determined by the clerk but not more than ninety days after the issuance of the summons to show cause why the request for relief in such petition should not be granted." Conn. Gen. Stat. § [46b-160](#)(a)(3)(A) (2017).

T

Three Judge Court (Probate): Conn. Gen. Stat. § 46b-172a(e) was deleted by [P.A. 14-104](#), Sec. 7.