



**2018 Edition**

# Rights of Grandparents and Third Parties in Connecticut

A Guide to Resources in the Law Library

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### **See Also:**

- [Child Custody Actions in Connecticut](#)
- [Child Visitation in Connecticut](#)

*For Child Abuse and Neglect and Termination of Parental Rights Juvenile Court matters, see the following research guides:*

- [Child Abuse and Neglect in Connecticut](#)
- [Termination of Parental Rights in Connecticut](#)

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

These guides are provided with the understanding that they represent only a beginning to research. It is the responsibility of the person doing legal research to come to his or her own conclusions about the authoritativeness, reliability, validity, and currency of any resource cited in this research guide.

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

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<http://www.jud.ct.gov/policies.htm>

# Introduction

A Guide to Resources in the Law Library

- **Grandparent:** “means a grandparent or great-grandparent related to a minor child by (A) blood, (B) marriage, or (C) adoption of the minor child by a child of the grandparent;” Conn. Gen. Stat. [§ 46b-59](#) (2017).
- **Any Person:** “We view the 1983 amendment that extended standing to any third person as a reflection of the legislature’s recognition that persons other than parents may have substantial relationships with children that warrant preservation.” [Roth v. Weston](#), 259 Conn. 202, 220, 789 A.2d 431 (2002).
- “In an ideal world, parents might always seek to cultivate the bonds between grandparents and their grandchildren. Needless to say, however, our world is far from perfect, and in it the decision whether such an intergenerational relationship would be beneficial in any specific case is for the parent to make in the first instance. **And, if a fit parent’s decision of the kind at issue here becomes subject to judicial review, the court must accord at least some special weight to the parent’s own determination.**” [Troxel v. Granville](#), 530 U.S. 57, 70, 120 S.Ct. 2054, 147 L.Ed. 2d 49 (2000).
- **Third Party:** “When construing similarly broad language concerning third party visitation in *Roth*, [[Roth v. Weston](#)], 259 Conn. 202, 789 A.2d 431 (2002)] we noted that the 1983 amendment to the visitation statute extending standing to ‘any person’; Public Acts 1983, No. 83-95; reflected ‘the legislature’s recognition that persons other than parents may have substantial relationships with children that warrant preservation.’ *Roth v. Weston*, supra, 259 Conn. 220. We also recognized that, ‘in many households, grandparents, as well as people who have no biological relationship with a child, undertake duties of a parental nature and that states have sought to ensure the welfare of children by protecting those relationships. Some states have done this expressly . . . while others have done so by judicial gloss. . . .” [Fish v. Fish](#), 285 Conn. 24, 43, 939 A. 2d 1040 (2008).
- **Parent vs. Third Party:** “Where the dispute is between a fit parent and a private third party [such as a grandparent], however, both parties do not begin on equal footing in respect to rights to ‘care, custody, and control’ of the children. The parent is asserting a fundamental constitutional right. The third party is not. A private third party has no fundamental constitutional right to raise the children of others. Generally, absent a constitutional statute, the non-governmental third party has no rights, constitutional or otherwise, to raise someone else’s child.” [McDermott v. Dougherty](#), 385 Md. 320, 353, 869 A.2d 751 (2005) cited in [Fish v. Fish](#), 285 Conn. 24, 45-46, 939 A. 2d 1040 (2008).

Table 1: Petition for Right of Visitation with Minor Child. Order for Payment of Fees.

Conn. Gen. Stat. <a href="#">§ 46b-59</a> (2017)	
<b>Definitions</b>	<p>(a) As used in this section:</p> <p>(1) "Grandparent" means a grandparent or great-grandparent related to a minor child by (A) blood, (B) marriage, or (C) adoption of the minor child by a child of the grandparent; and</p> <p>(2) "Real and significant harm" means that the minor child is neglected, as defined in section 46b-120, or uncared for, as defined in said section.</p>
<b>Petition Requirements and Standard of Proof</b>	<p>(b) Any person may submit a verified petition to the Superior Court for the right of visitation with any minor child. Such petition shall include specific and good-faith allegations that (1) a parent-like relationship exists between the person and the minor child, and (2) denial of visitation would cause real and significant harm. Subject to subsection (e) of this section, the court shall grant the right of visitation with any minor child to any person if the court finds after hearing and by clear and convincing evidence that a parent-like relationship exists between the person and the minor child and denial of visitation would cause real and significant harm.</p>
<b>Factors the Court May Consider</b>	<p>(c) In determining whether a parent-like relationship exists between the person and the minor child, the Superior Court may consider, but shall not be limited to, the following factors:</p> <p>(1) The existence and length of a relationship between the person and the minor child prior to the submission of a petition pursuant to this section;</p> <p>(2) The length of time that the relationship between the person and the minor child has been disrupted;</p> <p>(3) The specific parent-like activities of the person seeking visitation toward the minor child;</p> <p>(4) Any evidence that the person seeking visitation has unreasonably undermined the authority and discretion of the custodial parent;</p> <p>(5) The significant absence of a parent from the life of a minor child;</p> <p>(6) The death of one of the minor child's parents;</p> <p>(7) The physical separation of the parents of the minor child;</p> <p>(8) The fitness of the person seeking visitation; and</p> <p>(9) The fitness of the custodial parent.</p>
<b>Additional Factors for Grandparents</b>	<p>(d) In determining whether a parent-like relationship exists between a grandparent seeking visitation pursuant to this section and a minor child, the Superior Court may consider, in addition to the factors enumerated in subsection (c) of this section, the history of regular contact and proof of a close and substantial relationship between the grandparent and the minor child.</p>

<p><b>Terms and Conditions of Visitation (Best Interest of the Child)</b></p>	<p>(e) If the Superior Court grants the right of visitation pursuant to subsection (b) of this section, the court shall set forth the terms and conditions of visitation including, but not limited to, the schedule of visitation, including the dates or days, time and place or places in which the visitation can occur, whether overnight visitation will be allowed and any other terms and conditions that the court determines are in the best interest of the minor child, provided such conditions shall not be contingent upon any order of financial support by the court. In determining the best interest of the minor child, the court shall consider the wishes of the minor child if such minor child is of sufficient age and capable of forming an intelligent opinion. In determining the terms and conditions of visitation, the court may consider (1) the effect that such visitation will have on the relationship between the parents or guardians of the minor child and the minor child, and (2) the effect on the minor child of any domestic violence that has occurred between or among parents, grandparents, persons seeking visitation and the minor child.</p>
<p><b>Visitation Rights Shall Not Be Deemed to Have Created Parental Rights</b></p>	<p>(f) Visitation rights granted in accordance with this section shall not be deemed to have created parental rights in the person or persons to whom such visitation rights are granted, nor shall such visitation rights be a ground for preventing the relocation of the custodial parent. The grant of such visitation rights shall not prevent any court of competent jurisdiction from thereafter acting upon the custody of such child, the parental rights with respect to such child or the adoption of such child and any such court may include in its decree an order terminating such visitation rights.</p>
<p><b>Attorney's Fees and Other Fees</b></p>	<p>(g) Upon motion, the court may order the payment of fees for another party, the attorney for the minor child, the guardian ad litem, or any expert by any party in accordance with such party's financial ability.</p>

# Section 1: Visitation with Grandchildren

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic resources relating to the rights of grandparents to visitation with their grandchildren in family matters.

**SEE ALSO:**

- [Child Visitation Actions in Connecticut](#)  
§ 2. Third party visitation actions
- [Child Custody Actions in Connecticut](#)  
§ 2. Third party custody actions
- [Best Interest of the Child Standard in Connecticut](#)  
“We conclude that the trial court improperly determined that the best interest of the child standard can overcome the *Roth* standard for ordering visitation.” [DiGiovanna v. St. George](#), 300 Conn. 59, 69, 12 A. 3d 900 (2011).

**DEFINITIONS:**

- “**Grandparent**’ means a grandparent or great-grandparent related to a minor child by (A) blood, (B) marriage, or (C) adoption of the minor child by a child of the grandparent;” Conn. Gen. Stat. [§ 46b-59](#) (2017).
- “**Real and significant harm**’ means that the minor child is neglected, as defined in section 46b-120, or uncared for, as defined in said section.” Conn. Gen. Stat. [§ 46b-59](#) (2017).
- **Parent-Like Relationship:** “any third party, including a grandparent or a great-grandparent, seeking visitation must allege and establish a parent-like relationship as a jurisdictional threshold in order both to pass constitutional muster and to be consistent with the legislative intent.” [Roth v. Weston](#), 202, 221-222, 789 A.2d 431 (2002).
- **Harm:** “The harm alleged in a **visitation petition** results from the child’s lack of access to the petitioner rather than from the parent-child relationship, which is deemed to be beneficial . . . .” [Fish v. Fish](#), 285 Conn. 24, 47, 939 A. 2d 1040 (2008) (Emphasis added).
- **Right to Visitation:** “Any person may submit a verified petition to the Superior Court for the right of visitation with any minor child. Such petition shall include specific and good-faith allegations that (1) a parent-like relationship exists between the person and the minor child, and (2) denial of visitation would cause real and significant harm. Subject to subsection (e) of this section, the court shall grant the right of visitation with any minor child to any person if the court finds after hearing and by clear and convincing evidence that a parent-like relationship exists between the person and the minor child and denial of visitation would cause real and significant harm.” Conn. Gen. Stat. [§ 46b-59](#) (2017).

- **Best Interest of the Child:** “If the Superior Court grants the right of visitation pursuant to subsection (c) of this section, the court shall set forth the terms and conditions of visitation including, but not limited to, the schedule of visitation, including the dates or days, time and place or places in which the visitation can occur, whether overnight visitation will be allowed and any other terms and conditions that the court determines are in the best interest of the minor child, provided such conditions shall not be contingent upon any order of financial support by the court. In determining the best interest of the minor child, the court shall consider the wishes of the minor child if such minor child is of sufficient age and capable of forming an intelligent opinion. In determining the terms and conditions of visitation, the court may consider (1) the effect that such visitation will have on the relationship between the parents or guardians of the minor child and the minor child, and (2) the effect on the minor child of any domestic violence that has occurred between or among parents, grandparents, persons seeking visitation and the minor child.” Conn. Gen. Stat. [§ 46b-59](#) (2017).
- **Roth Standards Are Applicable to Modifications and Initial Applications:** “Furthermore, the *Roth standards apply equally whether a third party initially moves for an order of visitation or a parent moves to modify such an order.*” [Martocchio v. Savoie](#), 153 Conn. App. 492, 502-503, 101 A. 3d 953 (2014).
- **Custody vs. Visitation Petition:** “In summary, we conclude that third party custody petitions challenge the liberty interest of a parent in a way that is fundamentally different from visitation petitions . . . .” [Fish v. Fish](#), 285 Conn. 24, 55-56, 939 A. 2d 1040 (2008).

**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-56](#). Orders re custody, care, education, visitation and support of children
  - § [46b-56b](#). Presumption re best interest of child to be custody of parent
  - § [46b-59](#). Petition for Right of Visitation with Minor Child. Order for Payment of Fees.

**PUBLIC ACTS:**

- [Public Act No. 12-137](#): An Act Concerning Visitation Rights for Grandparents and Other Persons.

**LEGISLATIVE:**

- Michelle Kirby, [Grandparents’ Visitation Rights in Connecticut and Select States](#), Connecticut General Assembly, Office of Legislative Research Report No. 2015-R-0082 (February 17, 2015).

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- Susan Price and Duke Chen. [Updated Report: Caselaw on Grandparents' Visitation Rights in Connecticut](#), Connecticut General Assembly, Office of Legislative Research Report No. 2011-R-0333 (October 25, 2011).
- Soncia Coleman, [Grandparents' Rights](#), Connecticut General Assembly, Office of Legislative Research Report No. 2009-R-0439 (Dec. 30, 2009).  
*"You asked several questions regarding grandparents' rights to petition the court for visitation with their grandchildren."*
- Susan Price, [Grandparents' Rights](#), Connecticut General Assembly, Office of Legislative Research Report No. 2006-R-0383 (Sept. 18, 2006).  
*"You asked for an explanation of Connecticut law on grandparents' custody of, and visitation with, their grandchildren."*

### **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Connecticut Practice Book (2018)  
[Chapter 25: Superior Court - Procedure in Family Matters](#)
  - § 25-3 Action for Custody of Minor Child
  - § 25-4 Action for Visitation of Minor Child
  - § 25-5 Automatic Orders Upon Service of Complaint
  - § 25-57 Affidavit Concerning Children
  - § 25-59 Closed Hearings and Records
  - § 25-62 Appointment of Guardian Ad Litem

### **FORMS:**

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- Connecticut Judicial Branch - [Official Forms](#)  
[Filing for Custody or Visitation \(or both\)](#)
  - JD-CL-12 Appearance
  - JD-FM-75 Application for Waiver of Fees
  - JD-FM-221 Verified Petition for Visitation – Grandparents & Third Parties**
  - JD-FM-162 Order to Attend Hearing and Notice to the Defendant
  - JD-FM-158 Notice of Automatic Orders
  - JD-FM-164 Affidavit Concerning Children
  - JD-FM-164A Addendum to Affidavit Concerning Children
  - JD-FM-6-Long Financial Affidavit **or**
  - JD-FM-6-Short Financial Affidavit
  - JD FM-183 Custody/Visitation Agreement

### **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.

- [Martocchio v. Savoie](#), 153 Conn. App. 492, 506-507, 101 A.3d 953 (2014). "Our conclusion regarding the lack of a proper *Roth* analysis must be considered in the context of the highly unusual circumstances of this case. The defendants have had court-ordered visitation with the minor child since 2007. The record does not reveal any information as to the current relationship between the minor child and the defendants. This relationship, however, must be considered in light of the principle set forth by the United States Supreme Court in *Troxel*, and by our Supreme Court in *Roth* and its progeny that a fit parent has a constitutional right to control his child's associations without interference from the state. We conclude, therefore, that the May 17, 2013 judgment must be reversed and the case remanded for a determination



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of whether the defendants have standing under *Roth* to proceed with their subsequently filed petition for visitation with the minor child.”

- [In re Leeanna B.](#), 142 Conn. App. 60, 66, 62 A.3d 1135 (2013). “Here, the paternal grandmother filed two motions to intervene in the custody case in the family division. Both of those motions were denied without prejudice. She did not appeal from either judgment. The paternal grandmother also filed a motion for contempt in the custody case in the family division, but she was not a party to that action, the court twice having denied her intervenor status. Because she was not a party to that action, she had no standing to file a motion for contempt in that action, and the family division should have dismissed her motion.”
- [DiGiovanna v. St. George](#), 300 Conn. 59, 69, 12 A. 3d 900 (2011). “We conclude that the trial court improperly determined that the best interest of the child standard can overcome the *Roth* standard for ordering visitation. We further conclude that the trial court improperly failed to consider and to invoke its authority to issue orders to compel the defendant’s compliance with any such visitation order. Therefore, the trial court improperly denied the plaintiff’s application.”
- [Warner v. Bicknell](#), 126 Conn. App. 588, 592-593, 12 A. 3d 1042 (2011). “We conclude, on the basis of precedent from our Supreme Court and the relevant case law on subject matter jurisdiction, that the plaintiff was not relieved of the requirements of *Roth* simply because there previously had been an agreement regarding visitation. In the absence of specific, good faith allegations that the plaintiff had a parent-like relationship with the child and that the denial of visitation would cause real and significant harm to the child, the court lacked jurisdiction to consider the plaintiff’s application for visitation.”
- [Carrier v. King](#), 105 Conn. App. 391, 392-393, 939 A. 2d 1 (2008). “In *Roth*, our Supreme Court stated that the issue was not whether a child should have the benefit of relationships with persons other than their parents, but whether there was sufficient reason for the state to interfere with the constitutional right of parents to raise their children free from state interference. [Roth v. Weston](#), supra, 223. The Supreme Court held that “[t]he petition [for visitation] must . . . contain specific, good faith allegations that denial of the visitation will cause real and significant harm to the child. . . . [T]he petitioner must prove these allegations by **clear and convincing evidence**. Only if that enhanced burden of persuasion has been met may the court enter an order of visitation.” (Emphasis added.)
- [Fish v. Fish](#), 285 Conn. 24, 44, 939 A. 2d 1040 (2008). “The relevant statutes concerning visitation and custody are overly

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broad in exactly the same fashion; they fail to define with particularity those persons who may seek visitation and custody other than parents. For this reason, as in the case of visitation, a literal application of the custody statutes could **place them in 'constitutional jeopardy.'** *Castagno v. Wholean*, supra, 239 Conn. 345. Accordingly, we conclude that, to avoid constitutional infirmity, the standing requirement that a third party allege a parent-like relationship with the child should be applied for all of the reasons described in *Roth* to third party custody awards and to third parties seeking **intervention in existing custody proceedings."**

- [Fennelly v. Norton](#), 103 Conn. App. 125, 140-141, 931 A. 2d 269 (2007). **"The plaintiffs' application for visitation contained not a single specific allegation of either the requisite relationship or harm. The mere act of checking a box on the application for visitation form that provides that '[t]he applicant has/had a relationship with the child(ren) that is similar in nature to a parent-child relationship and denial of visitation would cause real and significant harm to the child(ren)' does not suffice for the specific, good faith allegations required by Roth.** The plaintiffs did not attach an **affidavit to their application for visitation...It therefore was incumbent on the plaintiffs to state, in their application for visitation, the facts that supported the conclusion that they possessed a relationship with the children that is similar in nature to a parent-child relationship and that denial of the visitation would cause real and significant harm to the children. Without such factual specificity, subjecting a fit parent to unwanted litigation is unwarranted."**
- [Denardo v. Bergamo](#), 272 Conn. 500, 514, 863 A. 2d 686 (2005). **"Our conclusion that Roth applies retrospectively leads to the further conclusion that the trial court was compelled to grant the defendant's motion to terminate visitation. The plaintiffs failed to allege or attempt to prove that their relationship with the child was similar to a parent-child relationship and that denial of visitation would cause real and significant harm to the child. Without those specific, good faith allegations or such proof, either at the time of the filing of their petition or at the time of the hearing on the defendant's motion, the trial court's prior order of visitation was rendered without subject matter jurisdiction."**
- [Clements v. Jones](#), 71 Conn. App. 688, 696, 803 A. 2d 378 (2002) **"We conclude in the present case, as the Supreme Court did in Roth, that there is an 'absence of the essential allegations and proof in support thereof, both of the nature of the relationship between the [plaintiff] and the defendant's minor [child] as well as the harm that the [child] might suffer were visitation denied..."**
- [Roth v. Weston](#), 259 Conn. 202, 221, 789 A.2d 431 (2002). **"Therefore, we acknowledge that a person other than a blood relation may have established a more significant connection**

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with a child than the one established with a grandparent or some other relative. Conversely, we recognize that being a blood relation of a child does not always translate into that relative having significant emotional ties with that child. Indeed, as § 46b-59 implicitly recognizes, it is not necessarily the biological aspect of the relationship that provides the basis for a legally cognizable interest. Rather, it is the nature of the relationship that determines **standing.**"

- [Roth v. Weston](#), 259 Conn. 202, 205, 789 A. 2d 431 (2002). **"We conclude that the statute is unconstitutional as applied to the extent that the trial court, pursuant to the statute, permitted third party visitation contrary to the desires of a fit parent and in the absence of any allegation and proof by clear and convincing evidence that the children would suffer actual, significant harm if deprived of the visitation."**

**"...interference is justified only when it can be demonstrated that there is a compelling need to protect the child from harm." (229)**

- [Crockett v. Pastore](#), 259 Conn. 240, 250, 789 A.2d 453 (2002). *Maternal grandmother's petition for visitation; defendant father has sole custody; defendant father and child's mother were never married and mother's parental rights were terminated.* **"Because the plaintiff failed to meet the requirements under § 46b-59 that she allege and prove that she has a parent-like relationship with the child and that the trial court's failure to grant visitation with her would cause the child to suffer serious, real and significant harm, we conclude that the trial court did not have jurisdiction over the plaintiff's petition for visitation."**
- [In Re Kristy L. v. Ragaglia](#), 47 Conn. Supp. 273, 284, 787 A.2d 679 (2001). **"So, even though courts have been more cognizant of the ever changing family unit, [it] is imperative for this court to place strong emphasis on the fact that the parental rights of the petitioner's have been terminated and to find the grandparents no longer possess a legally protected right and, therefore, they lack standing to bring a habeas corpus action."**

**"... the grandparents' rights are derivative of the parent's rights, and when the parent's rights are terminated, the grandparents no longer have a legally protected interest."**  
(pg. 286)

- [Castagno v. Wholean](#), 239 Conn. 336, 352, 684 A.2d 1181 (1996), *overruled* by [Roth v. Weston](#), 259 Conn. 202, 789 A.2d 431 (2002). **"... the legislature intended §46b-59 to afford the trial court jurisdiction to entertain a petition for visitation only when the minor child's family life has been disrupted in a manner analogous to the situations addressed by §§ 46b-56 and 46b-57... Although the death of a parent or the de facto separation of the parents may allow an action,**

there may be other times when an action is also warranted...”

**WEST KEY  
NUMBERS:**

- Child Custody #175. Visitation in general
- Child Custody #181. Ability of parties to cooperate.
- Child Custody #182. Person entitled in general
- Child Custody #183. Custody of siblings
- Child Custody #282. **Grandparent visitation and access to child**
  - #283. In General.
  - #284. Grandparent rights as derivative.
  - #285. Conduct of parent or custodian.
  - #286. Objections of Parent
  - #287. Interference with parental rights.
  - #288. Parent unavailable.
  - #289. Death of parent.

**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.

- 8 Arnold H. Rutkin et al., Connecticut Practice: [Family Law and Practice with Forms](#) (2010).
  - § 42:49. Visitation—With third parties
- Louise Truax, Editor, [Connecticut Family Law](#), LexisNexis Practice Guide (2018).
  - Chapter 8. Custody and Visitation
    - Part III: Determining Who May Seek Custody and Visitation. § 8.07 et seq.
- Barry Armata and Campbell Barrett, eds., [A Practical Guide to Divorce in Connecticut](#) (2013).
  - Chapter 8. Issues Relating to Children
    - § 8.9.2. Third Party Visitation
- 2 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2016).
  - Chapter 11. Disputes Between Parents and Third Parties
    - § 11.01. Introduction
    - § 11.02. The constitutional basis of parental rights
    - § 11.03. The parental preference standard
    - § 11.04. Determination of parental fitness:
      - Factors to be considered
    - § 11.05. The best interests standard
    - § 11.06. Standing
    - § 11.07. Role of expert witness
    - § 11.08. Bibliography
- 2 Ann M. Haralambie, [Handling Child Custody, Abuse and Adoption Cases](#) (3d ed. 2009).
  - Chapter 10. Third Party Custody and Visitation
    - II. Third Party Visitation (p.164)
- 1 Donald T. Kramer, [Legal Rights of Children](#) (Rev. 3d ed., 2017-2018).
  - § 3:5. Visitation rights; Grandparents, generally
  - § 3:6. Visitation rights; Effect of adoption on visitation

- rights of natural grandparents
- § 3:7. Visitation rights; Siblings and other “family members”
- § 3:8. The wishes of the child with regard to visitation decisions

**ENCYCLOPEDIAS:**

- 67A [C.J.S.](#) Parent and Child (2013)
  - § 54. Access or Visitation—Persons Other Than Parent
  - § 134. Visitation—Rights of Persons Other Than Parent
- 27C [C.J.S.](#) Divorce (2016)
  - § 1075. Grandparents, stepparents, and other nonparents [Visitation Rights]
- *Grandparent Visitation and Custody Awards*, 69 [POF3d](#) 281 (2002).
  - I. Background
  - II. Elements of proof
  - III. Proof of grandparent visitation award
  - IV. Proof of grandparent custody award

*Note: This article does not discuss Connecticut law, but does provide many citations to cases from other states and law review articles for the researcher.*

**ALR INDEX:**

- Visits and Visitation
  - Grandchildren

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our law libraries.

- Jeff Atkinson, *Shifts in the Law Regarding the Rights of Third Parties to Seek Visitation and Custody of Children*, 47 Family Law Quarterly 1 (2013).
- Sonya C. Garza, [The Troxel Aftermath: A Proposed Solution for State Courts and Legislatures](#), 69 Louisiana Law Review 927 (2009).
- Lindsay J. Rohlf, *The Psychological-Parent and De Facto-Parent Doctrines: How Should the Uniform Parentage Act Define “Parent”?*, 94 Iowa Law Review 691 (2009).
- Lauren F. Cowan, [There’s No Place Like Home: Why the Harm Standard in Grandparent Visitation Disputes Is in the Child’s Best Interests](#), 75 Fordham Law Review 3137 (2006).
- John R. Logan, *Connecticut’s Visitation Statute After ‘Troxel v. Granville,’* Conn. Lawyer (Nov. 2000, at 4).

Table 2: Troxel vs. Granville

<p><a href="#">Troxel v. Granville</a>, 530 US 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).</p>	
<p><a href="#">Page 65</a></p>	<p>"The liberty interest at issue in this case — the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court."</p>
<p><a href="#">Pages 68-69</a></p>	<p>"Accordingly, so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."</p>
<p><a href="#">Pages 72-73</a></p>	<p>"Considered together with the Superior Court's reasons for awarding visitation to the Troxels, the combination of these factors demonstrates that the visitation order in this case was an <i>unconstitutional infringement on Granville's fundamental right to make decisions concerning the care, custody, and control of her two daughters</i>. The Washington Superior Court failed to accord the determination of Granville, a fit custodial parent, any material weight. In fact, the Superior Court made only two formal findings in support of its visitation order. First, the Troxels "are part of a large, central, loving family, all located in this area, and the [Troxels] can provide opportunities for the children in the areas of cousins and music." App. 70a. Second, "[t]he children would be benefitted from spending quality time with the [Troxels], provided that that time is balanced with time with the childrens' [sic] nuclear family." Ibid. These slender findings, in combination with the court's announced presumption in favor of grandparent visitation and its failure to accord significant weight to Granville's already having offered meaningful visitation to the Troxels, show that this case involves nothing more than a simple disagreement between the Washington Superior Court and Granville concerning her children's best interests. The Superior Court's announced reason for ordering one week of visitation in the <b>summer demonstrates our conclusion well: 'I look back on some personal experiences . . . . We always spen[t] as kids a week with one set of grandparents and another set of grandparents, [and] it happened to work out in our family that [it] turned out to be an enjoyable experience. Maybe that can, in this family, if that is how it works out.'</b> Verbatim Report 220-221. As we have explained, <i>the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a "better" decision could be made. Neither the Washington nonparental visitation statute generally — which places no limits on either the persons who may petition for visitation or the circumstances in which such a petition may be granted — nor the Superior Court in this specific case required anything more. Accordingly, we hold that § 26.10.160(3), as applied in this case, is unconstitutional.</i>" [Emphasis added.]</p>

Table 3: Roth v. Weston

<a href="#">Roth vs. Weston</a> , 259 Conn. 202, 789 A.2d 431 (2002).	
<a href="#">pp. 209-210</a>	The dispositive issue on appeal is whether, in light of the United States Supreme Court decision in <i>Troxel</i> , § 46b-59, as interpreted by this court in <b><i>Castagno v. Wholean</i></b> , 239 Conn. 336, 339-52, 684 A.2d 1181 (1996), is unconstitutional, either facially or as applied in this case. Specifically, the defendant claims that, despite the judicial gloss we placed upon § 46b-59 in <i>Castagno</i> , the statute nevertheless violates the rights of parents to rear their children under the due process clause of the fourteenth amendment to the federal constitution and article first, § 8, of the Connecticut constitution. He further claims that even if the statute survives his facial attack, it is unconstitutional as applied by the trial court to the extent that it permits third party visitation contrary to the desires of a fit parent. Tied to this challenge is the threshold issue of jurisdiction. Accordingly, we resolve the claims together.
<a href="#">pp. 216-217</a>	Building on a long line of cases acknowledging the fundamental right of parents to raise their children as they see fit, <b><i>Troxel</i></b> teaches that courts must presume that "fit parents act in the best interests of their children," and that "so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." <i>Id.</i> , 68-69. Moreover, <b><i>Troxel</i></b> confirms that among those interests lying at the core of a parent's right to care for his or her own children is the right to control their associations. <i>Id.</i> The essence of parenthood is the companionship of the child and the right to make decisions regarding his or her care, control, education, health, religion and association. <b><i>Pierce v. Society of Sisters</i></b> , 268 U.S. 510, 534-35, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); <b><i>Meyer v. Nebraska</i></b> , 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042 (1923) (noting that liberty interest includes rights of parents to establish home, bring up children and control education). Furthermore, <b><i>Troxel</i></b> confirms that the family integrity is the core element upon which modern civilization is founded and that the safeguarding of familial bonds is an innate concomitant of the protective status accorded the family as a societal institution. <b><i>Troxel v. Granville</i></b> , <i>supra</i> , 65-66.
<a href="#">p. 240</a>	In the absence of the essential allegations and proof in support thereof, both of the nature of the relationship between the plaintiffs and the defendant's minor children as well as the harm that the children would suffer were visitation denied, the trial court did not have jurisdiction over the petition for visitation.

## Section 2: Custody of Grandchildren

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic resources relating to the rights of grandparents to seek custody of their grandchildren in family matters.

- SEE ALSO:**
- [Child Custody Actions in Connecticut](#)  
§ 2. Third party custody actions
  - [Child Visitation in Connecticut](#)  
§ 2. Third Party Visitation Actions
  - [Best Interest of the Child Standard in Connecticut](#)

- DEFINITIONS:**
- **Standing:** “Therefore, we acknowledge that a person other than a blood relation may have established a more significant connection with a child than the one established with a grandparent or some other relative. Conversely, we recognize that being a blood relation of a child does not always translate into that relative having significant emotional ties with that child. Indeed, as § 46b-59 implicitly recognizes, it is not necessarily the biological aspect of the relationship that provides the basis for a legally cognizable interest. Rather, it is the nature of the relationship that determines standing.” [Roth v. Weston](#), 259 Conn. 202, 221, 789 A.2d 431 (2002).
  - **Standing for Custody Application:** “[p]arental rights are further protected by the standing requirement, the fact that **third parties cannot initiate custody proceedings**, unlike third parties who are permitted to initiate proceedings in visitation cases; compare General Statutes § 46b-57 with General Statutes § 46b-59;...” [Fish v. Fish](#), 285 Conn. 24, 45, 939 A. 2d 1040 (2008). (Emphasis Added.)
  - **Presumption:** “...we conclude that the statutory presumption in favor of parental custody may be rebutted only in exceptional circumstances and only upon a showing that it would be clearly damaging, injurious or harmful for the child **to remain in the parent's custody.**” [Fish v. Fish](#), 285 Conn. 24, 45, 939 A. 2d 1040 (2008).
  - **Harm:** “...the harm alleged in a third party **custody** petition arises from the fundamental nature of the parent-child relationship, which may be emotionally, psychologically or **physically damaging to the child.**” [Fish v. Fish](#), 285 Conn. 24, 47, 939 A. 2d 1040 (2008).
  - **Three Prongs of Fish Test:** “...a nonparent who seeks to intervene in a custody matter has the burden of proving by a fair preponderance of the evidence all of the following: that he or she has a parent-like relationship with the child in question; that it would be clearly detrimental to the child to remain in the custody of the parent or parents; and that third-party custody is in the best interests of the child.” [Briscoe v. Dominguez](#), Superior Court, Judicial District of



Hartford at Hartford, No. FA104053445S (Oct. 21, 2014) (2014 WL 6462292).

## **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)
  - [§ 46b-56](#). Orders re custody, care, education, visitation and support of children
  - [§ 46b-56b](#). Presumption re best interest of child to be in custody of parent
  - [§ 46b-57](#). Third party intervention re custody of minor children. Preference of child.

### ***Child Welfare***

[§ 17a-101m](#). Identification of relatives when child removed from parent's or guardian's custody. Notification of relatives.

## **LEGISLATIVE:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- Nicole Dube, [Grandparents Raising Grandchildren](#), Connecticut General Assembly, Office of Legislative Research Report No. 2012-R-0391 (Aug. 30, 2012).  
***"You asked for information on state financial assistance programs for grandparents raising grandchildren."***
- Susan Price, [Grandparents' Rights](#), Connecticut General Assembly, Office of Legislative Research Report No. 2006-R-0383 (Sept. 18, 2006).  
***"You asked for an explanation of Connecticut law on grandparents' custody of, and visitation with, their grandchildren."***
- Susan Price, [Grandparents' Rights](#), Connecticut General Assembly, Office of Legislative Research Report No. 2005-R-0832 (Nov. 9, 2005). ***"You asked for an explanation of Connecticut law on grandparents' custody of, and visitation with, their grandchildren."***

## **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Connecticut Practice Book (2018)
  - [Chapter 25: Superior Court - Procedure in Family Matters](#)
    - § 25-3 Action for Custody of Minor Child
    - § 25-4 Action for Visitation of Minor Child
    - § 25-5 Automatic Orders Upon Service of Complaint
    - § 25-57 Affidavit Concerning Children
    - § 25-59 Closed Hearings and Records
    - § 25-62 Appointment of Guardian Ad Litem

## **FORMS:**

- Connecticut Judicial Branch - [Official Forms](#)
  - JD-CL-12 Appearance
  - **JD-FM-185 Motion for Intervention**

## **CASES:**

- [In re Leeanna B.](#), 142 Conn. App. 60, 66, 62 A.3d 1135 (2013). "Here, the paternal grandmother filed two motions to intervene in the custody case in the family division. Both of those motions were denied without prejudice. She did not appeal from either judgment. The paternal grandmother also filed a motion for contempt in the custody case in the family division, but she was not a party to that action, the court

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.

twice having denied her intervenor status. Because she was not a party to that action, she had no standing to file a motion for contempt in that action, and the family division **should have dismissed her motion.**"

- [Fish v. Fish](#), 285 Conn. 24, 44, 939 A. 2d 1040 (2008). "The relevant statutes concerning visitation and custody are overly broad in exactly the same fashion; they fail to define with particularity those persons who may seek visitation and custody other than parents. For this reason, as in the case of visitation, a literal application of the custody statutes could **place them in 'constitutional jeopardy.'** *Castagno v. Wholean*, supra, 239 Conn. 345. Accordingly, we conclude that, to avoid constitutional infirmity, the standing requirement that a third party allege a parent-like relationship with the child should be applied for all of the reasons described in *Roth* to third party custody awards and to third parties seeking intervention in existing custody proceedings."
- [Roth v. Weston](#), 259 Conn. 202, 205, 789 A. 2d 431 (2002). "We conclude that the statute is unconstitutional as applied to the extent that the trial court, pursuant to the statute, permitted third party visitation contrary to the desires of a fit parent and in the absence of any allegation and proof by clear and convincing evidence that the children would suffer **actual, significant harm if deprived of the visitation.**"

"...interference is justified only when it can be demonstrated that there is a compelling need to protect the child from harm." (pg. 229)

- [Crockett v. Pastore](#), 259 Conn. 240, 250, 789 A.2d 453 (2002). *Maternal grandmother's petition for visitation; defendant father has sole custody; defendant father and child's mother were never married and mother's parental rights were terminated.* "Because the plaintiff failed to meet the requirements under § 46b-59 that she allege and prove that she has a parent-like relationship with the child and that **the trial court's failure to grant visitation with her would cause the child to suffer serious, real and significant harm, we conclude that the trial court did not have jurisdiction over the plaintiff's petition for visitation.**"
- [In Re Kristy L. v. Ragaglia](#), 47 Conn. Supp. 273, 284, 787 A.2d 679 (2001). "So, even though courts have been more cognizant of the ever changing family unit, it is imperative for this court to place strong emphasis on the fact that the parental rights of the petitioner's son have been terminated and to find the grandparents no longer possess a legally protected right and, therefore, they lack standing to bring a habeas corpus action."

"... the grandparents' rights are derivative of the parent's rights, and when the parent's rights are terminated, the grandparents no longer have a legally protected interest."

(pg. 286)

**WEST KEY  
NUMBERS:**

- Child Custody # 175. Visitation in general
- Child Custody # 182. Person entitled in general
- Child Custody # 183. Custody of siblings

**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.

- 8 Arnold H. Rutkin et al., Connecticut Practice: [Family Law and Practice with Forms](#) (2010).
  - § 42: 12. Custody claims by third parties
  - § 42: 13. --Applicable standards
  - § 42: 14. --Assisted reproduction
  - § 42: 49. Visitation—With third parties
- Louise Truax, Editor, [Connecticut Family Law](#), LexisNexis Practice Guide (2018).
  - Chapter 8. Custody and Visitation
    - Part III: Determining Who May Seek Custody and Visitation. § 8.07 et seq.
- Barry Armata and Campbell Barrett, eds., [A Practical Guide to Divorce in Connecticut](#) (2013).
  - Chapter 8. Issues Relating to Children
    - § 8.9.1. Third Party Custody
- 2 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2016).
  - Chapter 11. Disputes Between Parents and Third Parties
    - § 11.01. Introduction
    - § 11.02. The constitutional basis of parental rights
    - § 11.03. The parental preference standard
    - § 11.04. Determination of parental fitness:
      - Factors to be considered
    - § 11.05. The best interests standard
    - § 11.06. Standing
    - § 11.07. Role of expert witness
    - § 11.08. Bibliography
- 1 Ann M. Haralambie, [Handling Child Custody, Abuse and Adoption Cases](#) (2009)
  - Chapter 10. Third Party Custody and Visitation
- 1 Donald T. Kramer, [Legal Rights of Children](#) (Rev. 3d ed., 2017-2018).
  - § 2: 18. Preference of natural parent(s) over others;
    - Generally—preference of natural parent(s) over grandparent(s)
  - § 2: 20. Preference of the natural parent(s) over others;
    - Generally—Preference of natural parent(s) over adult siblings or other relative

**ENCYCLOPEDIAS:**

- *Grandparent Visitation and Custody Awards*, 69 [POF3d](#) 281 (2002).
  - V. Background
  - VI. Elements of proof
  - VII. Proof of grandparent visitation award

VIII. Proof of grandparent custody award

*Note: This article does not discuss Connecticut law, but does provide many citations to cases from other states and law review articles for the researcher.*

**ALR INDEX:**

- Grandchildren
  - Custody and Support of Children

Table 3: Third Party Custody Statutes

Section No.	Text of Statute	Requirements
<a href="#">§ 46b-56(a)</a>	<p><b>"In any controversy before the Superior Court as to the custody or care of minor children, and at any time after the return day of any complaint under section 46b-45, the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children if it has jurisdiction under the provisions of chapter 815p. Subject to the provisions of section 46b-56a, the court may assign parental responsibility for raising the child to the parents jointly, or may award custody to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. The court may also make any order granting the right of visitation of any child to a third party to the action, including, but not limited to, grandparents."</b></p>	<p>"...in cases in which a third party seeks to intervene in a custody proceeding brought pursuant to § 46b-56 (a), the party must prove by a fair preponderance of the evidence facts demonstrating that he or she has a relationship with the child akin to that of a parent, that parental custody clearly would be detrimental to the child and, upon a finding of detriment, that third party custody would be in the child's best interest." <a href="#">Fish v. Fish</a>, 285 Conn. 24, 89, 939 A. 2d 1040 (2008).</p>
<a href="#">§ 46b-57</a>	<p><b>"In any controversy before the Superior Court as to the custody of minor children, and on any complaint under this chapter or section 46b-1 or 51-348a, if there is any minor child of either or both parties, the court, if it has jurisdiction under the provisions of chapter 815p, may allow any interested third party or parties to intervene upon motion. The court may award full or partial custody, care, education and visitation rights of such child to any such third party upon such conditions and limitations as it deems equitable. Before allowing any such intervention, the court may appoint counsel for the child or children pursuant to the provisions of section 46b-54. In making any order under this section, the court shall be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference."</b></p>	<p>"In cases in which the trial court considers awarding custody to a third party who has not intervened pursuant to § 46b-57, the court may award custody to the third party provided that the record contains proof of the foregoing facts by a fair preponderance of the evidence." <a href="#">Fish v. Fish</a>, 285 Conn. 24, 89, 939 A. 2d 1040 (2008).</p>

<p><a href="#">§ 46b-56b</a></p>	<p><b>“In any dispute</b> as to the custody of a minor child involving a parent and a nonparent, there shall be a presumption that it is in the best interest of the child to be in the custody of the parent, which presumption may be rebutted by showing that it would be detrimental to the child to permit the parent to have <b>custody.”</b></p>	<p>“...the statute is facially <b>constitutional.</b>” <a href="#">Fish v. Fish</a>, 285 Conn. 24, 47-48, 939 A. 2d 1040 (2008).</p>
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