



2022 Edition

# Child Visitation Actions in Connecticut

A Guide to Resources in the Law Library

## Table of Contents

Introduction .....	3
Section 1: Child Visitation Action.....	4
Section 2: Third Party Visitation Actions .....	15
Section 3: Temporary or Pendente Lite Visitation Orders .....	28
Section 4: Preference of the Child in Visitation Actions.....	31
Section 5: Contempt of Visitation Orders.....	35
Section 6: Habeas Corpus Proceedings in Child Visitation Matters.....	40

For modification of child visitation orders, see our research guide on [Modification of Judgments in Family Matters](#).

*Treated Elsewhere:*

- [Best Interest of the Child Standard in Connecticut](#)
- [Child Custody Actions in Connecticut](#)
- [Enforcement of Family and Foreign Matrimonial Judgments](#)
- [Parental Relocation](#)
- [Rights of Grandparents and Third Parties in Connecticut](#)

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

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# Introduction

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## A Guide to Resources in the Law Library

- Action for visitation of minor child: "Every application or verified petition in an action for visitation of a minor child, other than actions for dissolution of marriage or civil union, legal separation or annulment, shall state the name and date of birth of such minor child or children, the names of the parents and legal guardian of such minor child or children, and the facts necessary to give the court jurisdiction. An application brought under this section shall comply with Section 25-5. Any application or verified petition brought under this Section shall be commenced by an order to show cause. Upon presentation of the application or verified petition and an affidavit concerning children, the judicial authority shall cause an order to be issued requiring the adverse party or parties to appear on a day certain and show cause, if any there be, why the relief requested in the application or verified petition should not be granted. The application or verified petition, order and affidavit shall be served on the adverse party not less than twelve days before the date of the hearing, which shall not be held more than thirty days from the filing of the application or verified petition." Conn. Practice Book § [25-4](#) (2022).
- Motions: "**(a) Any appropriate party may move for alimony, child support, custody, visitation, appointment or removal of counsel for the minor child, appointment or removal of a guardian ad litem for the minor child, counsel fees, or for an order with respect to the maintenance of the family or for any other equitable relief. (b) Each such motion shall state clearly, in the caption of the motion, whether it is a pendente lite or a postjudgment motion.**" Conn. Practice Book § [25-24](#) (2022).
- U.S. Supreme Court: "**The liberty interest at issue in this case — the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v. Nebraska*, 262 US 390, 399, 401, 67 L Ed 1042, 43 S Ct 625 (1923), we held that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and 'to control the education of their own.'**" [Troxel v. Granville](#), 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).
- "**Accordingly, any third party, including a grandparent or a great-grandparent, seeking visitation must allege and establish a parent-like relationship as a jurisdictional threshold in order both to pass constitutional muster and to be consistent with the legislative intent.**" [Roth v. Weston](#), 259 Conn. 202, 222, 789 A.2d 431 (2002).

# Section 1: Child Visitation Action

A Guide to Resources in the Law Library

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

- DEFINITIONS:
- **Visitation:** "A court order deciding the amount of time a non-custodial parent may spend with his or her child, also called **parenting time or access.**" [Common Legal Words](#), CT Judicial Branch.
  - "Every application or verified petition in an action for visitation of a minor child, other than actions for dissolution of marriage or civil union, legal separation or annulment, shall state the name and date of birth of such minor child or children, the names of the parents and legal guardian of such minor child or children, and the facts necessary to give the court jurisdiction. An application brought under this section shall comply with Section 25-5. Any application or verified petition brought under this Section shall be commenced by an order to show cause. Upon presentation of the application or verified petition and an affidavit concerning children, the judicial authority shall cause an order to be issued requiring the adverse party or parties to appear on a day certain and show cause, if any there be, why the relief requested in the application or verified petition should not be granted. The application or verified petition, order and affidavit shall be served on the adverse party not less than twelve days before the date of the hearing, which shall not be held more than thirty days from the filing of the application or verified petition." Conn. Practice Book § [25-4](#) (2022).

CT STATUTES: • Conn. Gen. Stat. (2021)

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.

[Title 45a](#). Probate Courts and Procedure  
[Chapter 802h](#). Protected Persons and Their Property  
§ [45a-604](#). Definitions ([2022 Supplement](#))  
§ [45a-606](#). Father and mother joint guardians

[Title 46b](#). Family Law  
[Chapter 815j](#). Dissolution of Marriage, Legal Separation and Annulment  
§ [46b-54](#). Appointment of counsel or guardian ad litem for a minor child. Duties. Best interests of the child. ([2022 Supplement](#))  
§ [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening. ([2022 Supplement](#))  
§ [46b-57](#). Third party intervention re custody of minor children. Preference of the child.

- § [46b-59](#). Petition for right of visitation with minor child. Order for payment of fees.
- § [46b-59a](#). Mediation of disputes re enforcement of visitation rights.
- § [46b-59b](#). Court may not grant visitation to parent convicted of murder. Exception.
- § [46b-61](#). Orders re children where parents live separately. Filing of accompanying documents. ([2022 Supplement](#))
- § [46b-64](#). Orders of court prior to return day of complaint.

[Chapter 815p](#). Uniform Child Custody Jurisdiction and Enforcement Act

§§ [46b-115 through 46b-115jj](#)

OLR REPORTS:

[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.

- *Department of Children and Visitation Criteria*, Saul Spigel, Connecticut General Assembly, Office of Legislative Research Report, [2004-R-0799](#) (October 5, 2004).  
*"You asked about the Department of Children and Families' (DCF) criteria for deciding whether a child in foster care can visit overnight with a biological parent."*

PRACTICE BOOK:

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

- Connecticut Practice Book (2022)
  - [Chapter 25](#). Superior Court - Procedure in Family Matters
    - § 25-4. Action for Visitation of Minor Child
    - § 25-5. Automatic Orders Upon Service of Complaint or Application
    - § 25-7. Pleadings in General; Amendments to Complaint or Application
    - § 25-9. —Answer, Cross Complaint, Claims for Relief by Defendant
    - § 25-23. Motions, Requests, Orders of Notice, and Short Calendar
    - § 25-24. Motions
    - § 25-26. Modification of Custody, Alimony or Support
    - § 25-27. Motion for Contempt
    - § 25-28. Order of Notice
    - § 25-30. Statements to be Filed
    - § 25-38. Judgment Files
    - § 25-50. Case Management
    - § 25-57. Affidavit concerning Children
    - § 25-59. Closure of Courtroom in Family Matters
    - § 25-59A. Sealing Files or Limiting Disclosure of Documents in Family Matters
    - § 25-60. Evaluations, Studies, Family Services Mediation Reports and Family Services Conflict Resolution Reports
    - § 25-61. Family Division
    - § 25-62. Appointment of Guardian Ad Litem

## LEGISLATIVE HISTORY:

- 1983 Conn. Acts 96. An act concerning visitation rights. "We know from prior analysis that § 46b-59, as initially enacted . . . permitted only grandparents to petition for visitation. [Castagno v. Wholean](#) [239 Conn. 336, 684 A.2d 1181], supra, 239 Conn. 347-48. In 1983, however § 46b-59 . . . was **amended to its current form to allow 'any person' to petition** for visitation . . . ." [Roth v. Weston](#), 259 Conn. 202, 219-220, 789 A.2d 431 (2002).
- 1974 Conn. Acts 169, § 12, 17 H.R. Proc., Pt. 6, 1974 Sess., [p. 2805](#) [§ 46b-61] "...**expands the jurisdiction of the superior court** involving minor children and further states that the section can be used in controversies not only involving a husband and wife but in controversies involving parents of minor children or children if they are no longer married or **were never married.**"

## COURT FORMS:

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

- [Official Family Forms](#) (Connecticut Judicial Branch)
  - See Also: [Filing for Custody or Visitation \(or both\)](#)

### Unofficial Forms

- *Library of Connecticut Family Law Forms*, 2d ed., MacNamara, Welsh, and George, editors, Connecticut Law Tribune, 2014. Custody and Visitation Forms 5-012 thru 5-033
- [Fish v. Fish](#), 285 Conn. 24, 38-39, 939 A. 2d 1040 (2008). ". . . a court could exercise jurisdiction over a petition for third party visitation against the wishes of a fit parent only if the **petition contains 'specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that denial of the visitation will cause real and significant [emotional] harm to the child. As we have stated, that degree of harm requires more than a determination that visitation would be in the child's best interest. It must be a degree of harm analogous to the kind of harm contemplated by §§ 46b-120 and 46b-129, namely, that the child is 'neglected, uncared-for or dependent.'** The degree of specificity of the allegations must be sufficient to justify requiring the fit parent to subject his or her parental judgment to unwanted litigation. Only if these specific, good faith allegations are made will a court have **jurisdiction over the petition.**"
- [Browne v. D'Allewa](#), Superior Court, Judicial District of Windham, No. FA06-4004782-S (Dec. 7, 2007) (2007 Conn. Super. LEXIS 3250). "**Once a person signs a written acknowledgment form, that form has the same force and effect as a judgment in the court** . . . Although the defendant has asserted that she did not intend for the plaintiff to obtain any rights with regard to the child by her acknowledgment

## CASE LAW:

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.

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under oath that belief does not affect the legal import of her having signed it. Undoing such an acknowledgment, after the sixty-day period has passed may only be done at the discretion of the Court and based upon a DNA test that the respondent is not possibly the biological father of the child. That is not the case here.

Based on the circumstances surrounding the decision by the defendant to be artificially inseminated by the sperm of the plaintiff, the preconception intent of the parties, the evidence submitted, and, in particular, the plaintiff's acknowledgment of paternity, it is the court's determination that he has standing to bring an application for joint legal custody and visitation of **the child. The defendant's motion to dismiss is denied.**"

- [Ruffino v. Bottass](#), Superior Court, Judicial District of Hartford, No. FA05-4019188-S (April 11, 2006) (41 Conn. L. Rptr. 181, 183) (2006 WL 1149131) (2006 Conn. Super. LEXIS 1066). **"This court recognizes the anguish that the grandparents are suffering in not being able to spend as much time with their grandchildren as they previously did and their concern that the children will suffer too. However, the court also recognizes that the father must devote his energies to re-establishing his family unit with the children, and, as the courts have indicated, there is a presumption that he is acting in the best interests of the children. It is that very principle that is so protected that the Connecticut Supreme Court has declared that a very high standard must be met so as to appropriately protect the father's right to not have to defend his decisions in a court of law. While adherence to the underlying principle may be very difficult for the grandparents at this time, the grandparents might consider that just as parents must give their children two things — roots and wings, grandparents must continue to do that for the parents of their grandchildren."**
- [Foster v. Foster](#), 84 Conn. App. 311, 320, 853 A.2d 588 (2004). **"As the plaintiff has no constitutionally protected right to counsel in a custody or visitation proceeding, we decline to require the court, in every custody or visitation dispute confronted with a pro se litigant, to grant a continuance simply because the request is founded on a parent's right to raise a child without undue interference. Although we recognize the value of family integrity, we acknowledge also that the state has an interest in the orderly presentation of cases and the ability of the court to manage its docket. We therefore conclude that, balancing all the interests, the court's refusal to grant a continuance did not result in a constitutional deprivation."**
- [Roth v. Weston](#), 259 Conn. 202, 789 A.2d 431 (2002). **"In the absence of a threshold requirement of a finding of real and substantial harm to the child as a result of the denial of visitation, forced intervention by a third party seeking**

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.

visitation is an unwarranted intrusion into family autonomy. Accordingly, in the absence of any such requirement of harm, § 46b-59 does not justify interference with parental rights.” (p. 229)

“... the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that the denial of the visitation will cause real and significant harm to the child... Second, the petitioner must prove these allegations by clear and convincing evidence.” (p. 234-235)

- [Laspina-Williams v. Laspina-Williams](#), 46 Conn. Supp. 165, 742 A.2d 840 (1999). *Petition for visitation rights with minor child, conceived through alternative insemination, who had been jointly raised by coguardian same sex partners*; “On July 27, 1999, the plaintiff . . . filed the present action seeking visitation with the biological daughter of the defendant . . . pursuant to General Statutes § 46b-59.” (p. 166)

“The defendant filed a motion to dismiss the present action on August 23, 1999, on the following two grounds: (1) that this court lacks subject matter jurisdiction because the plaintiff does not meet the threshold requirements of [Castagno v. Wholean](#), 239 Conn. 336, 684 A.2d 1181 (1996); and (2) the action should be dismissed in accordance with the principles of judicial economy, efficiency, and to give effect to § 45a-616 (d). . . . The plaintiff timely filed a memorandum in opposition to the motion to dismiss arguing that the breakdown of the parties’ relationship creates the threshold requirement of ‘disruption of the family unit’ as required by [Castagno](#), and that the removal of the guardianship action pending in the Probate Court is separate and distinct from the present visitation action.” (p. 167)

The sole issue on appeal in [Castagno v. Wholean](#), supra, 239 Conn. 337, was ‘whether, pursuant to . . . § 46b-59, the trial court had subject matter jurisdiction to entertain a petition by grandparents for visitation rights with their minor grandchildren when the grandchildren and their parents were not involved in any case or controversy currently before the court and there was no claim that the family unit was no longer intact.’ The defendant argues that because the plaintiff has no biological tie to the child, the plaintiff cannot be and never was a parent to the minor child under Connecticut law and thus the plaintiff fails to meet the requirement that the ‘parents were not involved in any case or controversy currently before the court.’ (Emphasis added.) Id. The defendant further contends that although the parties were accepted by friends and others to be a family, because Connecticut law would not recognize the parties and the minor child as ‘family’ there can be no claim that the ‘family unit was no longer intact.’



The court finds the foregoing arguments of the defendant unpersuasive. Under § 46b-59 **'any person'** may seek visitation of a minor child as opposed to only persons with a biological tie **to the child.**" (p. 168 -169)

"Section 46b-59 does not define the relationship necessary to give standing. Without addressing or labeling the status of the relationship of the parties, the defendant allowed, even encouraged, the plaintiff to assume a significant role in the life of the child such that she is a party entitled to seek visitation **with the child. Accordingly, the defendant's motion to dismiss on this ground is denied.**" (p. 171)

"The defendant next argues that the case should be dismissed because the plaintiff can seek visitation in the Probate Court under § 45a-616. . . . Neither this subsection nor any other section or subsection of the statute exclusively vests in either the Probate or Superior Courts jurisdiction over a petition for visitation." (p. 171-172)

- [Raymond v. Raymond](#), 165 Conn. 735, 742, 345 A.2d 48 (1974). **"It has never been our law that support payments** were conditioned on the ability to exercise rights of visitation or vice versa. The duty to support is wholly independent of the **right of visitation.**"

WEST KEY  
NUMBERS:

- *Child Custody - Visitation*
  - # 175. In general
  - # 176. Discretion
  - # 177. Grounds in general
  - # 178. Welfare and best interest of child
  - # 179. Existence of factors other than best interest of the child
  - # 180. Right of biological parent as to third persons in general
  - # 181. Ability of parties to cooperate
  - # 182. Person entitled in general
  - # 183. Custody of siblings
  - # 184. Geographic considerations
  - # 185. Religion
  - # 186. Primary caregiver
  - # 187. Rewarding or punishing party
  - # 188. Behavior of parties in general
  - # 189. Motives
  - # 190. Litigation conduct
  - # 191. Sexual behavior or preference of party
  - # 192. —In general
  - # 193. —Homosexuals
  - # 194. —Effect on child
  - # 195. Cohabitation with third party
  - # 196. Previous interference with lawful custody or visitation
  - # 197. Abuse of neglect of child

- # 198. Physical condition of custodian
- # 199. Use of drugs or alcohol
- # 200. Commission of crime
- # 201. Mental condition
- # 202. Previous abandonment or relinquishment by custodian
- # 203. Agreements, contracts, or stipulations
- # 204. Child's preference
- # 205. Age of child
- # 206. Health and physical condition of child
- # 207. Mental health or condition of child
- # 208. Performance of child in school
- # 208.5 Nonmarital circumstances of birth or conception
- # 209. Physical custody arrangement
- # 210. —In general
- # 211. —Hours
- # 212. —Holidays
- # 213. Transporting and transferring child
- # 214. Placement of child with third parties
- # 215. Visitation conditions
- # 216. —In general
- # 217. —Supervised visitation
- # 218. —**Payment of child support, attorney's fees, alimony**
- # 219. —Excluding other persons from being present during visitation
- # 220. —Place of visitation
- # 221. —Notice to custodial parent
- # 222. —Counseling
- # 223. —Restrictions on conduct
- # 224. —Bond
- # 225. Control and authority of parties
- # 226. —In general
- # 227. —Religion
- # 228. —Education
- # 229. —Extracurricular choices
- # 230. —Discipline or punishment
- # 231. Employment status

TREATISES:

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References to online databases refer to in-library use of these databases.

- *LexisNexis Practice Guide: Connecticut Family Law*, Louise Truax, editor, 2022 ed., LexisNexis.
  - Chapter 8. Custody and Visitation
    - Part II. Establishing Jurisdiction and Analyzing Statutory Provisions for Child Custody and Visitation
    - Part III. Determining Who May Seek Custody and Visitation
    - Part V. Assessing Considerations in Custody and Visitation Actions
    - Part VI. Filing Custody or Visitation Actions Post Judgment
    - Part VII. Assessing Evidentiary Considerations in Custody or Visitation Actions

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References to online databases refer to in-library use of these databases. Remote access is not available.

- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., Thomson West, 2010, with 2022-2023 supplement (also available on Westlaw).
  - Chapter 42. Custody and visitation
    - § 42.42. Restrictions on care and supervision
    - § 42.44. Visitation—General considerations
    - § 42.45. - Allocation of vacations, holidays and the like
    - § 42.46. - Checklist of holidays, vacations and special events
    - § 42.47. - Parental access via mail, e-mail, phone and the like; attendance at special events
    - § 42.48. - Supervision or denial of visitation rights
    - § 42.49. - With third parties
    - § 42.50. Parenting-education program
    - § 42.52. Parenting plan
  
- *Connecticut Family Law Citations: A Reference Guide to Connecticut Family Law Decisions*, by Monika D. Young, LexisNexis, 2021.
  - Chapter 11. Child Custody and Visitation
    - § 11.01. Best Interest of the Child Standard
    - § 11.03. Temporary Custody and Visitation
    - § 11.04. Modification of Custody and Visitation
    - § 11.11. Third Party Intervention for Custody and Visitation
  
- 3 *Child Custody and Visitation Law and Practice*, by Sandra Morgan Little, Matthew Bender, 2022.
  - Chapter 16. Visitation
    - § 16.01 Introduction and General Considerations
    - § 16.02 The Right of a Parent to Visitation Following Dissolution of a Marriage
    - § 16.03 Putative Father's Right to Visitation
    - § 16.03A Parents' Right to Visitation After Termination of Parental Rights
    - § 16.03B Effect of Adoption
    - § 16.03C Visitation with Incarcerated Parent
    - § 16.03D Court's Authority to Grant Visitation to Parent Whose Child Has Been Placed with Guardian
    - § 16.04 Manner of Visitation
    - § 16.06 Excessive or Infrequent Contact with the Child
    - § **16.07 Effect of Visitation on Child's Emotional Development**
    - § 16.08 Religious Differences
    - § 16.09 Effect of the Parent's Sexual Conduct on Visitation
    - § 16.10 Behaviors and Conditions Affecting Visitation
    - § 16.11 Jurisdictional Restrictions on Visitation
      - § 16.11A Voluntary Relinquishment of Visitation
      - § 16.11B Adult Child's Right to Visit Parent
    - § 16.13 Stipulations and Agreements
      - § 16.13A Tort Action for Interference with Visitation Rights

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§ 16.13B Criminal Prosecution for Interference with Visitation Rights  
§ 16.13C Procedural Issues in Visitation Disputes  
§ 16.14 Bibliography

Chapter 16A. Visitation and Child Support

§ 16A.01. Introduction  
§ 16A.02. Support and Visitation as Independent Obligations and Rights  
§ 16A.03. Conditioning Child Support on Compliance with Visitation  
§ 16A.04. Conditioning Visitation on Payment of Child Support  
§ 16A.05. The Perils of Self-Help Remedies  
§ 16A.07. Statutory Links Between Support and Visitation  
§ 16A.07A. Visitation and Setting Support  
§ 16A.09. Bibliography

- *2 Handling Child Custody, Abuse and Adoption Cases*, 3d ed., by Ann M. Haralambie, Thomson West, 2009, with 2022 supplement.

Chapter 5. Visitation

5.1. The right of the noncustodial parent to visitation  
5.2. Best interests of the child  
**5.3. Child's wishes**  
**5.4. Child's developmental level**  
5.5. Physical or sexual abuse  
5.6. Denial, suspension, or termination of visitation  
5.7. Restricted and supervised visitation  
5.7.50. Medical marijuana  
5.8. Parenting time schedules  
5.9. Virtual visitation  
**5.10. Effect of parent's relocation**  
5.11. Enforcement  
5.12. Modification  
5.13. Delegated visitation  
5.14. Relationship between visitation and child support

- *The Special Needs Child and Divorce, A Practical Guide to Evaluating and Handling Cases*, by Margaret "Pegi" S. Price, American Bar Association, 2009.

Chapter 4. Why Child Support Guidelines and Standard Visitation Schedules Do Not Meet the Needs of Special Needs Children

§ II. Visitation Schedules

A. Noncustodial Parent

**1. Child's Schedule**

B. Environmental Modifications

Chapter 11. Forms and Samples

#9. Sample Special Needs Parenting Plan

Chapter 14. Checklists

10. Visitation – Special Considerations Regarding

## Visitation

- 1 *Legal Rights of Children*, 3d ed., by Thomas R. Young, 2021-2022 ed., Thomson West (also available on Westlaw).  
Chapter 3. Secondary Custodial Rights: Visitation, Parent Time, and Parenting Time
  - § 3:1. Generally
  - § 3:2. Noncustodial parents
  - § 3:3. Stepparents and adoptive parents
  - § 3:4. Foster parents
  - § 3:5. Grandparents, generally
  - § 3:6. -- Effect of termination of parental rights
  - § 3:7. -- Effect of adoption on visitation rights of natural grandparents
  - § 3:8. **Siblings and other "family members"**
  - § 3:9. The wishes of the child with regard to visitation decisions
  - § 3:10. Terms of visitation
  - § 3:11. Modification

### ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 59 *Am Jur 2d Parent & Child*, Thomson West, 2012 (Also available on Westlaw).
  - § 36. Right of visitation
  - § 37. —Denial to noncustodial parent
  - § 38. —By third parties
- 27C *CJS Divorce*, Thomson West, 2016 (Also available on Westlaw).
  - VII. Custody, Visitation, and Support of Children
    - A. In General
      - 1. Authority of Divorce Court
        - § 1041. Power over visitation
    - B. Custody and Visitation
      - 3. Visitation Rights
        - § 1071. Visitation rights, generally
        - § 1072. Discretion; best interests of child
        - § 1073. Child's preference**
  
        - § 1074. Effect of parent's conduct**
        - § 1075. Grandparents, stepparents, and other nonparents
        - § 1076. Incarcerated parent
        - § 1077. Time and place of visitation
        - § 1078. Conditions and restrictions
        - § 1079. Effect of visitation rights on removal of child from jurisdiction
- 67A *CJS Parent and Child*, Thomson West, 2013 (Also available on Westlaw).
  - § 132. Visitation
  - § 133. Visitation – Conditions and restrictions
  - § 134. Visitation—Rights of persons other than parents

ARTICLES:

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

- Jason LaMarca, *Virtually Possible – Using the Internet to Facilitate Custody and Parenting Beyond Relocation*, 38 Rutgers Computer & Tech. L.J. 146 (2012).
- David Welsh, Statute Note, *Virtual Parents: How Virtual Visitation Legislation is Shaping the Future of Custody Laws*, 11 J.L. & Fam. Stud. 215 (2008).
- Anne LeVasseur, Note, *Virtual Visitation: How Will Courts Respond to a New and Emerging Issue?*, 17 The Quinnipiac Probate Law Journal 362 (2004).

## Section 2: Third Party Visitation Actions

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to right of nonparents to initiate child visitation actions or to seek visitation by intervening in a pending family action.

SEE ALSO:

- [Rights of Grandparents and Third Parties in Connecticut](#) (Research Guide)

DEFINITIONS:

- Constitutional Issues: "The relevant statutes concerning visitation and custody are overly broad in exactly the same fashion; they fail to define with particularity those persons who may seek visitation and custody other than parents. 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* [[Roth v. Weston](#), 259 Conn. 202 (2002)] to third party custody awards and to third parties seeking intervention in **existing custody proceedings."** [Fish v. Fish](#), 285 Conn. 24, 44, 939 A. 2d 1040 (2008).
- Third Party: "**is not defined in the foregoing statutes or in any other related statutes.** The legislative history of the statutes sheds no additional light on the matter. As we stated in *Castagno*, [[Castagno v. Wholean](#), 239 Conn. 336, 684 A.2d 1181(1996)] **'courts are bound to assume that the legislature intended, in enacting a particular law, to achieve its purpose in a manner which is both effective and constitutional. . . . [T]his presumption of constitutionality imposes upon the trial court, as well as this court, the duty to construe statutes, whenever possible, in a manner that comports with constitutional safeguards of liberty.'**" [Fish v. Fish](#), 285 Conn. 24, 42-43, 939 A. 2d 1040 (2008).
- Petition for visitation: "**First, the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that denial of the visitation will cause real and significant harm to the child. As we have stated, that degree of harm requires more than a determination that visitation would be in the child's best interest. It must be a degree of harm analogous to the kind of harm contemplated by §§ 46b-120 and 46b-129, namely, that the child is 'neglected, uncared-for or dependent.'** The degree of specificity of the allegations must be sufficient to justify requiring the fit parent to subject his or her parental judgment to unwanted litigation. Only if these specific,

good faith allegations are made will a court have jurisdiction over the petition.

Second, once these high jurisdictional hurdles have been overcome, the petitioner must prove these allegations by clear and convincing evidence. Only if that enhanced burden of persuasion has been met may the court enter an order of visitation. These requirements thus serve as the constitutionally mandated safeguards against unwarranted intrusions into a **parent's authority.**" [Roth v. Weston](#), 259 Conn. 202, 234-235, 789 A.2d 431 (2002).

- **Parent-like relationship:** **"(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:**
  - (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;
  - (2) The length of time that the relationship between the person and the minor child has been disrupted;
  - (3) The specific parent-like activities of the person seeking visitation toward the minor child;
  - (4) Any evidence that the person seeking visitation has unreasonably undermined the authority and discretion of the custodial parent;
  - (5) The significant absence of a parent from the life of a minor child;
  - (6) The death of one of the minor child's parents;
  - (7) The physical separation of the parents of the minor child;
  - (8) The fitness of the person seeking visitation; and
  - (9) The fitness of the custodial parent.

(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." **Conn. Gen. Stat. § 46b-59** (2021).
- **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).
- **Custody vs. visitation:** **"In summary, we conclude that third party custody petitions challenge the liberty interest of a parent in a way that is fundamentally different from visitation petitions . . . in which the child's relationship with the parent has not been placed in issue."** [Fish v. Fish](#), 285 Conn. 24, 55-56, 939 A. 2d 1040 (2008).



## CT 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. Statutes (2021)
  - § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening. ([2022 Supplement](#))
  - § [46b-57](#). Third party intervention re custody of minor children. Preference of child.
  - § [46b-59](#). Petition for right of visitation with minor child. Order for payment of fees.

## OLR REPORTS:

[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.

- *Updated Report: Caselaw on Grandparents' Visitation Rights in Connecticut*, Duke Chen, Connecticut General Assembly, Office of Legislative Research Report, [2011-R-0333](#) (October 25, 2011).  
"You asked us to summarize four Connecticut Supreme Court cases and one U.S. Supreme Court case involving child visitation and custody disputes between fit parents and third parties, including grandparents (*Castagno v. Wholean*, *Troxel v. Granville*, *Roth v. Weston*, *Fish v. Fish*, and *DiGiavanni v. St. George*)."
- *Grandparents' Visitation Rights*, Mary M. Janicki, Connecticut General Assembly, Office of Legislative Research Report, [2011-R-0079](#) (February 7, 2011).  
**"You asked for a comparison of Connecticut's law on grandparents' right to visit their grandchildren with the laws on that subject in other states."**
- *Grandparent Visitation Over a Parent's Objection*, Susan Price, Connecticut General Assembly, Office of Legislative Research Report, [2011-R-0022](#) (January 10, 2011).
- *Grandparent Rights*, Soncia Coleman, Connecticut General Assembly, Office of Legislative Research Report, [2009-R-0439](#) (Dec. 30, 2009).  
**"You asked several questions regarding grandparents' rights to petition the court for visitation with their grandchildren."**
- *Grandparents' Rights*, Susan Price, Connecticut General Assembly, Office of Legislative Research Report, [2006-R-0383](#) (September 18, 2006).  
**"You have asked for an explanation of Connecticut law on grandparents' custody of, and visitation with, their grandchildren."**
- *Grandparents' Custody of Grandchildren*, Saul Spigel, Connecticut General Assembly, Office of Legislative Research, [2003-R-0596](#) (September 22, 2003).  
**"You asked for an explanation of (1) Connecticut law on grandparents' custody of, and visitation with, their grandchildren and (2) 'de facto' custody laws in other states."**

## PRACTICE BOOK:

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

- Connecticut Practice Book (2022)
  - [Chapter 25](#). Superior Court - Procedure in Family Matters
    - § 25-1. Definitions Applicable to Proceedings on Family Matters
    - § 25-3. Action for Custody of Minor Child
    - § 25-4. Action for Visitation of Minor Child
    - § 25-5. Automatic Orders upon Service of Complaint or Application
    - § 25-23. Motions, Requests, Orders of Notice, and Short Calendar
    - § 25-59. Closure of Courtroom in Family Matters
    - § 25-59a. Sealing Files or Limiting Disclosure of Documents in Family Matters
    - § 25-62. Appointment of Guardian Ad Litem

## COURT FORMS:

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

- [Filing for Custody or Visitation \(or both\)](#) (Connecticut Judicial Branch)
- [Official Family Forms](#) (Connecticut Judicial Branch)
  - [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 Show Cause and Notice to the Respondent
  - JD-FM-158 Notice of Automatic Court Orders
  - JD-FM-164 Affidavit Concerning Children
  - JD-FM-164A Addendum to Affidavit Concerning Children
  - JD-FM-6-Financial Affidavit (Long Version) or
  - JD-FM-6-Financial Affidavit (Short Version)
  - JD-FM-184 Custody/Visitation Judgment

## CASE LAW:

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.

- [Igersheim v. Bezrutczyk](#), 197 Conn. App. 412, 231 A.3d 1276 (2020). **"The statutory jurisdictional requirements relevant to the present case are prescribed in General Statutes § 46b-59, the third-party visitation statute. Section 46b-59 (b) provides: '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. 416-417)

"On the petition form, the plaintiff, inter alia, checked the boxes **next to the statements: 'I have a relationship with the child(ren) that is parent-like . . . (State specifically how your relationship is parent-like)' and 'Denial of visitation will cause real and significant harm to the child(ren) . . . (State specifically what**

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harm would be caused to the child(ren) by a denial of visitation) . . . .’ **As to the parent-like relationship**, the plaintiff wrote: **‘[B]een [taking] care of [the minor child] up until this past April when he moved back with his mom.’ As to the harm, the plaintiff wrote: ‘Jeopardize relationship with grandparents.’** (p. 414)

**“Exercising plenary review of the issue, we conclude that the initial, verified petition did not contain the required specific, good faith allegations of real and significant harm. Section 46b-59 (a) (2) defines “[r]eal and significant harm” to mean ‘that the minor child is neglected, as defined in section 46b-120, or uncared for, as defined in said section.’ Other than a general statement that denial of visitation would ‘[j]eopardize [a] relationship with [his] grandparents,’ the plaintiff’s verified petition contained no specific references to harm, much less specific allegations of harm that the minor child would endure if visitation were denied. See [Fuller v. Baldino](#), 176 Conn. App. 451, 460, 168 A.3d 665 (2017). The petition, then, lacked the specific allegations necessary to meet the jurisdictional thresholds of § 46b-59 (b). Consequently, we conclude that the trial court did not have subject matter jurisdiction over the plaintiff’s petition for visitation.”** (p. 420-421)

- [Romeo v. Bazow](#), 195 Conn. App. 378, 225 A.3d 710 (2020). **“In the present case, the plaintiffs argue that the court improperly declined to consider their expert disclosure when ruling on the defendant’s motion to dismiss their petition. They maintain that the disclosure was part of the record available to the court when considering whether the [Roth](#) standards were satisfied and that the disclosure specifically ‘address[ed] the harm issue in addition to their affidavit.’ As noted previously, it is not clear from our scrutiny of the record that the plaintiffs requested that Judge Murphy consider the expert disclosure because, prior to oral argument before Judge Murphy, Judge Olear had stated, as represented by the defendant’s counsel, that no ‘third parties’ could present testimony. Even if the plaintiffs had made such a request, we conclude that the court properly limited its consideration to the allegations contained in the plaintiffs’ petition, including the attached affidavit.”** (p. 387-388)

**“Indeed, our case law instructs that it would have been inappropriate for the court to look beyond that pleading to the expert disclosure.”** (p. 389)

- [Hunter v. Shrestha](#), 195 Conn. App. 393, 401-402, 225 A.3d 285 (2020). **“We first address the allegation that denial of visitation would cut the child off from her maternal side of the family. Although it may not be in the child’s best interest not to share a relationship with extended family, this allegation is not commensurate with the level of harm contemplated in [Roth](#). Second, the plaintiffs allege that denying visitation will have the effect of the child feeling that they have abandoned her, citing the early abandonment by the child’s mother. Again, while the absence of a parent and maternal family members could be detrimental to the child, it does not rise to the level of harm set**

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forth in § 46b-120. . . . Finally, the plaintiffs' allegation that **denying visitation will 'compound [the child's] early childhood trauma [and] harm her'** ignores the requirement that facts must be pleaded with sufficient specificity to warrant the court's intrusion. The plaintiffs do not allege how the child will be harmed and, without more, these allegations do not rise to the level of abuse, neglect, or abandonment contemplated by [Roth](#)."

- [Boisvert v. Gavis](#), 332 Conn. 115, 210 A3d 1 (2019). "The principal issue in this appeal is whether an order granting a third party's petition for visitation pursuant to General Statutes § 46b-59 over the objection of a fit custodial parent must include a provision requiring the third party to abide by all of the parent's decisions regarding the care of the child during the visitation. We conclude that neither § 46b-59 nor the due process clause of the fourteenth amendment to the United States constitution requires the trial court to impose such a broad term and condition on an order of **third-party visitation**." (p. 119-120)

"The trial court noted that 'visitation is always an open issue, it's never cast in stone,' and, if an order of visitation puts a child at risk or is not in a child's best interest, 'then the court can always modify or terminate the visitation . . . .' The trial court explained, however, that it was not otherwise 'going to micromanage' the visitation because '[there are] literally millions and millions of circumstances that may ultimately follow . . . .'" (p. 126)

"Stated another way, once there has been a judicial **determination that a parent's denial of visitation** would cause the child to suffer real and significant harm, then it no longer can be presumed that a fit parent is acting in his **or her child's best interest** in connection with the third-party visitation. The [Roth](#) standard itself is built on the premise that judicial intervention is warranted precisely because the interactions between an otherwise fit parent and a third party seeking visitation can be so fraught with hostility, tension, and resentment—often for reasons unrelated to the child—that the parent is unable or **unwilling to act in the child's best interest, resulting in real and significant harm to the child**.

None of this means that a fit parent[ who is subject to a third-party visitation order has forfeited his or her parental rights or that the third party has obtained parental rights by virtue of the order of visitation. **A fit parent retains the 'quintessential rights of parenthood,' which 'include the right to make medical, educational, religious and other decisions that affect the most fundamental aspects of the child's life . . . .'** (Internal quotation marks omitted.) [Fish v. Fish](#), 285 Conn. 24, 58, 939 A.2d 1040 (2008). Likewise, § 46b-59 (f) explicitly provides that '[v]isitation 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 . . . .' These precepts remain fixed and unchanged, but they do not confer on

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the parent an absolute right to dictate the terms and conditions governing the visitation. The animating purpose of the statute is to sustain and nurture the deep, emotional bond between the **child and the third party, and the third party's caregiving choices** for the child while acting in a 'parent-like' capacity necessarily are integral to the formation and sustenance of that bond—a bond that the trial court has determined must be preserved to prevent real and significant harm to the child. The fundamental purpose of the statute would be thwarted if the parent opposing third-party visitation were given unfettered authority to **micromanage the visitation and to replace the third party's caregiving choices during the period of visitation with his or her own**" (p. 145-146)

**"Nothing in § 46b-59** requires the trial court to include, as a term and condition governing the order of third-party visitation, a provision affirmatively directing the third party not to override **a fit parent's decisions regarding the child's care.**" (p. 142-143)

"A party seeking to impose terms and conditions on the order of visitation must make a *specific* and *timely* request. A request is **specific if it is tailored to identify and ameliorate the party's** concern and is accompanied by an explanation of how the requested terms and conditions further the best interest of the child. . . . If the requesting party is a parent who believes that the requested terms and conditions are necessary to protect his or her fundamental parental rights, the parent must alert the trial court to the alleged constitutional nature of the request and the right asserted. See General Statutes § 46b-59 (f) ('[t]he grant of such visitation rights shall not prevent any court of competent jurisdiction from thereafter acting upon . . . the parental rights with **respect to such child**'). The explanation provided to the trial court need not be exhaustive, but it should be sufficient to alert the trial court to the content and contours of the requesting **party's claim.**" (p. 150)

**"The requesting party is not barred from** belatedly requesting such terms and conditions in a postjudgment motion, as was done in this case, but the belated nature of the request may support an inference that it is not made in good faith, if the inference reasonably is justified under the surrounding circumstances." (p. 151)

**"Ultimately it is up to the trial court, as the finder of fact and the** arbiter of credibility, to determine the issues relating to the terms and conditions of visitation, including, without limitation, whether the **requested terms and conditions reflect a parent's** sincerely held belief regarding a fundamental aspect of the **child's upbringing or whether they are a pretext to undermine** the third-party relationship or the order of visitation. The trial **court has many "tools in its arsenal" to protect a fit parent's** fundamental rights while simultaneously fostering the third-party relationship by effectuating the order of **visitation.**" (p. 152)

**"As the United States Supreme Court has cautioned, "the** constitutional protections in this area are best 'elaborated with

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care,' " because "[state court] adjudication in this context occurs on a case-by-case basis . . ." [Troxel v. Granville](#), supra, 530 U.S. 73 (plurality opinion). The assessment of what terms and conditions are necessary in the third-party visitation context is highly fact dependent; see [DiGiovanna v. St. George](#), supra, 300 Conn. 78; and cannot be undertaken "in a factual vacuum." (p. 152-153)

- [Romeo v. Bazow](#), Superior Court, Judicial District of Hartford at Hartford, No. FA18-6087099-S (Oct. 5, 2018) (67 Conn. L. Rptr. 153) (2018 WL 5116489) (2018 Conn. Super. LEXIS 3174), judgment affirmed at 195 Conn. App. 378, 225 A.3d 710 (2020). **"The plaintiffs' petition states that the plaintiffs disagree with some of the defendant's parenting decisions. The plaintiffs' petition does not allege, however, that the children's mother is unfit or that her children are neglected. Clearly, the plaintiffs themselves are hurt that they no longer have contact with their grandchildren. The grandchildren may miss regular contact with their grandparents, although this fact is not alleged. But even if, for arguments sake, the grandchildren miss their grandparents or the defendant has made parenting mistakes, this type of harm alone does not rise to the level of neglect or uncared for as contemplated by [Roth](#) or as defined in General Statute §46b-59. The court does not question the intentions of the plaintiffs. The court decides only whether the plaintiffs have met the constitutionally mandated requirements for standing in their petition. For the reasons stated above, the court concludes that the plaintiffs lack standing. The motion to dismiss is granted."**
- [Warner v. Bicknell](#), 126 Conn. App. 588, 593, 12 A.3d 1042 (2011). **"Our case law is clear that, absent the allegations identified by the [Roth](#) court, the court must dismiss a third party's application for visitation. Id., 240; see also [Denardo v. Bergamo](#), 272 Conn. 500, 514, 863 A.2d 686 (2005); [Crockett v. Pastore](#), 259 Conn. 240, 250, 789 A.2d 453 (2002); [Fennelly v. Norton](#), 103 Conn. App. 125, 142, 931 A.2d 269 ('[i]f the application [for visitation] does not contain such allegations, the court lacks subject matter jurisdiction and the application must be dismissed')**, cert. denied, 284 Conn. 918, 931 A.2d 936 (2007); [Clements v. Jones](#), 71 Conn. App. 688, 696, 803 A.2d 378 (2002)."
- [In re Andrew C.](#), Superior Court, Judicial District of Hartford at Hartford, No. H12CP11013647A (April 19, 2011) (43 Conn. L. Rptr. 290) (2011 WL 1886493) (2011 Conn. Super. LEXIS 1072). "The paramount purpose of our termination of parental rights and adoption laws is the compelling interest in locating a stable and permanent home for a child in a timely fashion. This strong public policy should not be undermined by the forced imposition of visitation actions instituted by biological family members, or even worse, by persons with a tenuous nexus to the child. To hold that § 46b-59 is applicable to a child for whom the department is statutory parent will impermissibly qualify or

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impede many adoptions, effectively undermining them. The legislature did not intend that § 46b-59 create third-party visitation rights to children who have been freed for adoption. Absent agreement, such children and their new or prospective adoptive families must be free from such intrusions.

Accordingly, the department's motion to dismiss is granted. As the plaintiffs lack standing to file a petition under § 46b-59 to visit with a child for whom the department is statutory parent, this court lacks **subject matter jurisdiction.**"

- [DiGiovanna v. St George](#), 300 Conn. 59, 61, 12 A.3d 900 (2011). "In [Roth v. Weston](#), 259 Conn. 202, 789 A.2d 431 (2002), this court held that the legislature could, consistent with due process, authorize a nonparent to obtain visitation with a minor child over a fit parent's objection if the nonparent alleges and proves by clear and convincing evidence that he or she has a parent-like relationship with the child and that the child would suffer harm akin to abuse and neglect if that relationship is not permitted to continue. The present case calls on this court to consider whether a trial court may deny a nonparent's application for visitation when the applicant has met this stringent burden of proof if that court concludes that visitation nonetheless is not in the best interest of the child . . . . We conclude that the trial court improperly determined that the best interest of the child standard can overcome the Roth standard for ordering visitation."
- [Fish v. Fish](#), 285 Conn. 24, 46, 939 A. 2d 1040 (2008). "Mindful of the parent's constitutional rights, we concluded in [Roth](#) that Connecticut's third party visitation statute, without a judicial gloss, was unconstitutional and interfered with the fundamental right of parents to raise and care for their children because it was too broadly written and provided no standard to guide the court in making a visitation decision, other than the best interests of the child."
- [Denardo v. Bergamo](#), 272 Conn. 500, 514, 863 A.2d 686 (2005). "Our conclusion that [Roth](#) applies retrospectively leads to the further conclusion that the trial court was compelled to grant the defendant's motion to terminate visitation. The plaintiffs failed to allege or attempt to prove that their relationship with the child was similar to a parent-child relationship and that denial of visitation would cause real and significant harm to the child. Without those specific, good faith allegations or such proof, either at the time of the filing of their petition or at the time of the hearing on the defendant's motion, the trial court's prior order of visitation was rendered without subject matter jurisdiction. Accordingly, the defendant's motion to modify and terminate the plaintiffs' visitation rights properly was granted."
- [Troxel v. Granville](#), 530 U.S. 57, 68-69, 120 S.Ct. 2054, 2061, 147 L. Ed. 2d 49 (2000). "Accordingly, so long as a parent adequately cares for his or her children ... there will normally be

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no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make **the best decisions concerning the rearing of that parent's children."**

- [Roth v. Weston](#), 259 Conn. 202, 789 A.2d 431 (2002). **"In the absence of a threshold requirement of a finding of real and substantial harm to the child as a result of the denial of visitation, forced intervention by a third party seeking visitation is an unwarranted intrusion into family autonomy. Accordingly, in the absence of any such requirement of harm, § 46b-59 does not justify interference with parental rights."** (p. 229)  
"...the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that the denial of the visitation will cause real and significant harm to the child. . . . Second, . . . the petitioner must prove these allegations by clear **and convincing evidence."** (p. 234-235)
- [Crockett v. Pastore](#), 259 Conn. 240, 246, 789 A.2d 453 (2002). **"This case is controlled by our concurrent decision in [Roth](#), wherein we overruled our previous decision in [Castagno](#)."**
- [Castagno v. Wholean](#), 239 Conn. 336, 352, 684 A.2d 1181 (1996), *overruled by* [Roth v. Weston](#), 259 Conn. 202, 217, 789 A.2d 431 (2002).
- [In Re Felicia B](#), 56 Conn. App. 525, 527, 743 A.2d 1160 (2000), *cert. denied*, 252 Conn. 952 (2000). Paternal grandparents were denied both custody and visitation in a case where the **father's parental rights were terminated. "...they cannot safeguard and provide care in the children's best interests while clinging to the hope that their son did not sexually abuse their grandchildren."**
- [Alexander v. Gomez](#), Superior Court, Judicial District of Danbury at Danbury, No FA01-0344023S (May 30, 2003) (34 Conn. L. Rptr. 660) (2003 Conn. Super. Lexis 1586). **"The plaintiff argues that applying [Roth](#) retroactively would be a substantial injustice to the plaintiff. This court agrees. The court in [Roth](#) noted that applying the new standard to the specific complaint allegations in the case before it would be 'manifestly unfair, because these requirements are newly stated, and the plaintiffs could not have anticipated their adoption.' . . . For the foregoing reasons, the defendant's motion to modify and eliminate the plaintiff's visitation rights is denied, without prejudice, and the plaintiff will be allowed an opportunity to amend her application and provide proof that it is consistent with all the requirements of [Roth](#)."**
- [Pivnick v. Lasky](#), Superior Court, Judicial District of Hartford at Hartford, No. FA99-0720419 (Mar. 24, 2003) (34 Conn. L. Rptr. 426) (2003 Conn. Super. Lexis 944) (2003 WL 1908248). **"The**



question presented by this motion is whether the standard articulated in [Roth v. Weston](#), invalidates the prior orders in this case which have allowed for grandparent visitation... **The court** concludes that the decision of [Roth v. Weston](#) does override the prior court orders in this matter granting visitation rights to non-parent third parties against **the wishes of a fit custodial parent.**”

WEST KEY  
NUMBERS:

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

TEXTS &  
TREATISES:

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- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., Thomson West, 2010, with 2022-2023 supplement (also available on Westlaw).
  - Chapter 42. Child Custody and Visitation
    - § 42.49. Visitation—With third parties
- *LexisNexis Practice Guide: Connecticut Family Law*, Louise Truax, editor, 2022 ed., LexisNexis.
  - Chapter 8. Custody and Visitation
    - Part III. Determining Who May Seek Custody and Visitation.
      - § 8.07. Checklist
      - § 8.08. Analyzing the Rebuttable Presumption of Parentage for a Child Born During the Marriage
      - § 8.09. Analyzing the Rebuttable Presumption Of Parental Custody
      - § 8.10. Assessing the Rights of Third Parties to Seek Custody and Visitation
      - § 8.11. Commencing an Action or Intervening
      - § 8.12. Contesting Third-Party Custody and Visitation Claims
- *Connecticut Family Law Citations: A Reference Guide to Connecticut Family Law Decisions*, by Monika D. Young, LexisNexis, 2021.
  - Chapter 11. Child Custody and Visitation
    - § 11.11. Third Party Intervention for Custody and Visitation
- 2 *Child Custody and Visitation Law and Practice*, by Sandra Morgan Little, Matthew Bender, 2022 (also available on Lexis).

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## 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

- 3 *Child Custody and Visitation Law and Practice*, by Sandra Morgan Little, Matthew Bender, 2022, (also available on Lexis).  
Chapter 16. Visitation  
§ 16.12 Nonparent Visitation
- 3 *Family Law and Practice*, by Arnold H. Rutkin, Matthew Bender, 2022 (also available on Lexis).  
Chapter 32. Child custody and visitation  
§ 32.09. Visitation
  - [1] Generally
    - [b] Visitation by nonparent
  - [7] Nonparent visitation
    - [a] Generally
    - [b] Grandparents
    - [c] Stepparents, siblings, other nonparents
    - [d] Guidelines for granting and scheduling nonparent visitation
- 2 *Handling Child Custody, Abuse and Adoption Cases*, 3d ed., by Ann M. Haralambie, Thomson West, 2009, with 2022 supplement.  
Chapter 10. Third-party custody and visitation
  - § 10.15. Third party visitation generally
  - § 10.17. Standing
  - § 10.19. Coordinating schedules
  - § 10.20. Representing the third party
  - § 10.21. Opposing third-party visitation
  - § 10.22. Effect of termination of parental rights or adoption
- 1 *Legal Rights of Children*, 3d ed., by Thomas R. Young, 2021-2022 ed., Thomson West (also available on Westlaw).  
Chapter 3. Secondary Custodial Rights: Visitation, Parent Time, and Parenting Time
  - § 3:1. Generally
  - § 3:2. Noncustodial parents
  - § 3:3. Stepparents and adoptive parents
  - § 3:4. Foster parents
  - § 3:5. Grandparents, generally
  - § 3:6. -- Effect of termination of parental rights
  - § 3:7. -- Effect of adoption on visitation rights of natural grandparents
  - § 3:8. Siblings and other "family members"**

- § 3:9. The wishes of the child with regard to visitation decisions
- § 3:10. Terms of visitation
- § 3:11. Modification

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 59 *Am Jur 2d* Parent & Child, Thomson West, 2012 (Also available on Westlaw).
  - § 36. Right of visitation
  - § 37. —Denial to noncustodial parent
  - § 38. —By third parties
- 27C *CJS* Divorce, Thomson West, 2016 (Also available on Westlaw).
  - VII. Custody, Visitation, and Support of Children
    - B. Custody and Visitation - 3. Visitation Rights
      - § 1075. Grandparents, stepparents, and other nonparents
- 67A *CJS* Parent and Child, Thomson West, 2013 (Also available on Westlaw).
  - § 134. Visitation—Rights of persons other than parents

ARTICLES:

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

- Nicole M. Riel, Note, *The Other Mother: Protecting Non-Biological Mothers in Same-Sex Marriages*, 31 *The Quinnipiac Probate Law Journal* 387 (2018).
- 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).
- John R. Logan, *Connecticut's Visitation Statute After Troxel v. Granville*, 11 *Conn. Lawyer* no. 3, (2000).
- Koreen Labrecque, Note, *Grandparent Visitation After Stepparent Adoption*, 6 *Conn. Prob. L. J.* 61 (1991).

# Section 3: Temporary or Pendente Lite Visitation Orders

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic resources relating to temporary visitation orders issued while a family action is pending.

**DEFINITION:**

- "[Pendente lite order](#): A court order made before final orders are granted." *Common Legal Words, CT Judicial Branch, 2022*.
- "Pendente lite orders, by their very definition, are orders that continue to be in force 'during the pendency of a suit, action, or litigation.'" *Ballentine's Law Dictionary (3d Ed.) 1969.* [Febroriello v. Febroriello](#), 21 Conn. App. 200, 206, 572 A.2d 1032 (1990).
- "Pendente lite orders necessarily cease to exist once a final judgment in the dispute has been rendered because their purpose is extinguished at that time." [Connolly v. Connolly](#), 191 Conn. 468, 480, 464 A.2d 837 (1983).

**CT 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. (2021)
  - § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening. ([2022 Supplement](#))
  - § [46b-61](#). Orders re children where parents live separately. Filing of accompanying documents. ([2022 Supplement](#))
  - § [46b-64](#). Orders of court prior to return day of complaint.

**PRACTICE BOOK:**

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

- Connecticut Practice Book (2022)
  - [Chapter 25](#). Superior Court - Procedure in Family Matters
    - § [25-23](#). Motions, Requests, Orders of Notice, and Short Calendar
    - § [25-24](#). Motions. "(b) Each such motion shall state clearly, in the caption of the motion, whether it is a pendente lite or a postjudgment motion."
    - § [25-26](#). Modification of Custody, Alimony or Support

**FORMS:**

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

- [Official Family Forms](#) (Connecticut Judicial Branch) including Family Forms Grouped by Case Type (with instructions)
- Motion for Orders Before Judgment (Pendente Lite) in Family Matters, [JD-FM-176](#), Rev. 2/20

Unofficial Forms

- *Library of Connecticut Family Law Forms*, 2d ed., MacNamara, Welsh, and George, editors, Connecticut Law Tribune, 2014. Pendente Lite Motions – Pendente Lite Motions—Custody & Visitation, Forms 5-012 through 5-033

- *Handbook of Forms for the Connecticut Family Lawyer*, by Mary Ellen Wynn & Ellen B. Lubell, Connecticut Law Tribune, 1991. VI. Pendente Lite motions, p.98
- [Gardner v. Falvey](#), 45 Conn. App. 699 (1997), Connecticut Appellate Records & Briefs, February 1997. Motion for Specific Visitation, Pendente Lite
- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., Thomson West, 2010, with 2022-2023 supplement (also available on Westlaw).
  - Chapter 41. Pendente Lite Custody and Visitation
    - § 41.1. In general
    - § 41.2. Automatic orders affecting temporary custody
    - § 41.3. Determining necessity of motion for temporary custody
    - § 41.4. Significance of temporary custody determinations
    - § 41.5. Modification and enforcement of temporary orders
    - § 41.6. Appealability of temporary orders
    - § 41.7. Emergency temporary orders
- *LexisNexis Practice Guide: Connecticut Family Law*, Louise Truax, editor, 2022 ed., LexisNexis.
  - Chapter 8. Custody and Visitation
    - Part II. Establishing Jurisdiction and Analyzing Statutory Provisions for Child Custody and Visitation
    - Part III. Determining Who May Seek Custody and Visitation
    - Part V. Assessing Considerations in Custody or Visitation Actions
      - § 8.26. Filing Custody and Visitation Motions *Pendente Lite* – General Considerations
      - § 8.27. Filing a Motion for Custody and Visitation *Pendente Lite*
      - § 8.31. Modifying *Pendente Lite* Orders
      - § 8.36. Appealing *Pendente Lite* Orders
- *Friendly Divorce Guidebook for Connecticut*, 2d ed., by Barbara Kahn Stark, LawFirst Publishing, 2003. Temporary (Pendente Lite) orders, p. 124-127.
- *2 Child Custody and Visitation Law and Practice*, by Sandra Morgan Little, Matthew Bender, 2022 (also available on Lexis).
  - Chapter 8. Temporary custody determinations
    - § 8.01. Generally
    - § 8.02. Obtaining a temporary custody order
    - § 8.03. Third-party custody
    - § 8.04. Appealing a temporary custody order
    - § 8.05. Modification and enforcement of temporary custody Orders
    - § 8.06. Special Considerations for Deploying Parents
    - § 8.07. Forms

TEXTS & TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- *Connecticut Family Law Citations: A Reference Guide to Connecticut Family Law Decisions*, by Monika D. Young, LexisNexis, 2021.  
Chapter 11. Child Custody and Visitation  
§ 11.03. Temporary Custody and Visitation
  
- 3 *Family Law and Practice*, by Arnold H. Rutkin, Matthew Bender, 2022 (also available on Lexis).  
Chapter 32. Child custody and visitation  
§ 32.05. Temporary custody
  - [1] Generally
  - [2] Purposes and significance of temporary custody
  - [3] Obtaining temporary custody orders
  - [4] Effect of temporary custody on permanent award
  - [5] Appeal
  - [6] Forms: Temporary custody

# Section 4: Preference of the Child in Visitation Actions

A Guide to Resources in the Law Library

## SCOPE:

Bibliographic resources relating to the consideration courts give to the wishes of the child when making child visitation orders.

## CT 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. (2021)

- § [46b-56](#). "(b) In making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests. Such orders may include, but shall not be limited to: (1) Approval of a parental responsibility plan agreed to by the parents pursuant to section 46b-56a; (2) the award of joint parental responsibility of a minor child to both parents, which shall include (A) provisions for residential arrangements with each parent in accordance with the needs of the child and the parents, and (B) provisions for consultation between the parents and for the making of major decisions regarding the child's health, education and religious upbringing; (3) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent where sole custody is in the best interests of the child; or (4) any other custody arrangements as the court may determine to be in the best interests of the child." ([2022 Supplement](#))
- § [46b-56](#). "(c) In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so, may consider, but shall not be limited to, one or more of the following factors: . . . (4) any relevant and material information obtained from the child, including the informed preferences of the child . . . " ([2022 Supplement](#))
- § [46b-57](#). Third party intervention re custody of minor children. Preference of child.
- § [46b-59](#). Petition for right of visitation with minor child. Order for payment of fees.

## PRACTICE BOOK:

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

- Connecticut Practice Book (2022)  
[Chapter 25](#). Superior Court - Procedure in Family Matters  
§ [25-60](#). Evaluations, Studies, Family Services Mediation Reports and Family Services Conflict Resolution Reports

## CASE LAW:

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.

- [Szczerkowski v. Karmelowicz](#), 60 Conn. App. 429, 434, 759 A.2d 1050 (2000). **"Indeed, as the court succinctly stated, '[W]e're trying to respond to the articulated needs of the children to spend more time with [the plaintiff].'** No other rational reading of the court's language is possible but that it was acting in the children's best interests when it modified visitation..."
- [Logan v. Logan](#), 96 Conn. App. 842, 902 A.2d 666, 669 (2006). **"She stated that the defendant had been in several car accidents since December, 1993, and that the minor child wanted to have her visitation with the defendant limited to one night per week. The plaintiff requested that the court enter orders that the defendant's parenting time with the minor child be limited to weekly visits without an overnight stay and that the defendant be prohibited from driving the minor child in a motor vehicle."** (p. 845)

**"The plaintiff claims in her motion to modify that it is not in the best interest of the minor child to be transported by the defendant. The court also heard from the guardian ad litem, who stated that the minor child did not want to be transported by the defendant. Any of these facts can serve as a sufficient basis for the court's determination that it was not in the child's best interest to be transported by the defendant, and, therefore, it was not an abuse of discretion to grant this portion of the plaintiff's motion to modify.**

We disagree, however, that there was a sufficient factual basis for the court to determine that it was not in the best interest of the child to have overnight visits with the defendant. There was absolutely no evidence presented at the hearing on February 8, 2005, from which the court could conclude that it was not in the best interest of the child to have overnight visits with the **defendant."** (p. 848-849)

- [Knock v. Knock](#), 224 Conn. 776, 788, 621 A.2d 267 (1993). **"Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes; it requires only that the court take the child's wishes into consideration."**
- [Gennarini v. Gennarini](#), 2 Conn. App. 132, 137, 477 A.2d 674 (1984). **"...whether the child's preferences and feelings as to custody and visitation are a significant factor in the court's ultimate determination ... will necessarily depend on all the facts of the particular case, including the child's age and ability intelligently to form and express those preferences and feelings."**
- [Hamele v. Hamele](#), Superior Court, Judicial District of Fairfield at Bridgeport, No. 273497 (Dec. 31, 1991) (5 Conn. L. Rptr. 795) (91 WL 288142) (1991 Conn. Super. Lexis 3108). *The court refused to make an order requiring a 15 year old child to*



visit with his father in prison after the child testified that he did not wish to do so.

- Kawaller v. Kawaller, Superior Court, Judicial District of Hartford-New Britain at Hartford, No. 241310 (July 22, 1986) (1 C.S.C.R. 566).  
“... it is the desire of all parties that the court modify the existing orders pertaining to visitation and transportation ... In so doing, the court is guided by the best interests of the child . . . age 11, giving consideration to his wishes as is set forth in Conn. Gen. Stat. §46b-56(b).”

WEST KEY  
NUMBERS:

TEXTS &  
TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- *Child Custody - Visitation*  
#204. **Child’s preference**
- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., Thomson West, 2010, with 2022-2023 supplement (also available on Westlaw).  
Chapter 42. Child custody and visitation  
§ 42.26. Court conference or interview with child  
§ 42.31. Preference of the child
- *LexisNexis Practice Guide: Connecticut Family Law*, Louise Truax, editor, 2021 ed., LexisNexis.  
Chapter 8. Custody and Visitation  
Part II. Establishing Jurisdiction and Analyzing Statutory Provisions for Child Custody and Visitation  
§ 8.06[4]. Assessing Relevant Information Received from a Child
- 2 *Child Custody and Visitation Law and Practice*, by Sandra Morgan Little, Matthew Bender, 2022 (also available on Lexis).  
Chapter 12. Child Preferences  
§ 12.01 Introduction.  
§ 12.02 Statutory Guidelines.  
§ 12.03 Child of Sufficient Maturity.  
§ 12.04 Ascertaining the Child’s Preference.  
§ 12.05 Weight To Be Given Preference.  
§ 12.06 Modification of Order Based on Child’s Preference.  
§ 12.07 Bibliography.  
Chapter 16. Child visitation  
§ 16.05 Child’s Preference
- 3 *Family Law and Practice*, by Arnold H. Rutkin, Matthew Bender, 2022 (also available on Lexis).  
Chapter 32. Child custody and visitation  
§ 32.09. Visitation  
[3] Reasons for Limiting, Restricting, or Denying Visitation  
[c] **Child’s Wishes**

ARTICLES:

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

- Karen Alexander and Steven Sichel, *The Child's Preference in Disputed Custody Cases*, 6 Conn. Family Law. 45 (1991).

# Section 5: Contempt of Visitation Orders

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the use of contempt proceedings to enforce visitation orders.

SEE ALSO:

- [Enforcement of Family and Foreign Matrimonial Judgments](#) (Research Guide)
- [Modification of Judgments in Family Matters](#) (Research Guide)

DEFINITIONS:

- "[Contempt of Court](#): A finding that someone disobeyed a court order. Can also mean disrupting court, for example, by **being loud or disrespectful in court.**" **Common Legal Words**, CT Judicial Branch, 2022.
- "While particular acts do not always readily lend themselves to classification as civil or criminal contempts, a contempt is considered civil when the punishment is wholly remedial, serves only the purposes of the complainant, and is not intended as a **deterrent to offenses against the public.**" [McCrone v. United States](#), 307 U.S. 61, 64, 59 S. Ct. 685, 686 (1939).
- "Civil contempt is conduct directed against the rights of the **opposing party.**" [Tatro v. Tatro](#), 24 Conn. App. 180, 185, 587 A.2d 154 (1991).

CT 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. (2021)
  - § [46b-87](#). Contempt of orders
  - § [46b-87a](#). Forms and instructions for application for contempt order based on violation of visitation order

PRACTICE BOOK:

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

- Connecticut Practice Book (2022)
  - [Chapter 25](#). Superior Court - Procedure in Family Matters
    - § [25-27](#). Motion for Contempt
    - § [25-63](#). Right to Counsel in Family Civil Contempt Proceedings
    - § [25-64](#). Waiver
  - [Chapter 23](#). Miscellaneous Remedies and Procedures
    - § [23-20](#). Review of Civil Contempt

FORMS:

- [Official Family Forms](#) (Connecticut Judicial Branch)
- See Also: [Filing a Motion for Contempt](#)

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

## Unofficial Forms

- *Library of Connecticut Family Law Forms*, 2d ed., MacNamara, Welsh, and George, editors, Connecticut Law Tribune, 2014.  
Pendente Lite Motions – Contempt & Modification 5-037. Motion for Contempt Re: Parenting Plan
- *Handbook of Forms for the Connecticut Family Lawyer*, by Mary Ellen Wynn & Ellen B. Lubell, Connecticut Law Tribune, 1991.  
Form No. XI-A-1. Motion for Contempt, p. 189-190  
Form No. XI-A-3a. Application for Order to Show Cause and Contempt Citation [post judgment], p. 193-194  
Form No. XI-A-3b. Order for hearing, p. 195  
Form No. XI-A-3c. Summons, p.196

## CASE LAW:

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.

- [Kennedy v. Kennedy](#), 83 Conn. App. 106, 110-111, 847 A.2d 1104 (2004). "The denial of the plaintiff's request for a continuance to retain an attorney for assistance on the motion of civil contempt raises different concerns. Practice Book § 25-63 provides a right to counsel in family civil contempt proceedings. We have held that a court's failure to advise a party of the right to counsel in a contempt proceeding in which he faces potential incarceration, and in the event he is indigent, to court-appointed counsel, is fatal to the finding of contempt and any order related thereto. See [Emerick v. Emerick](#), 28 Conn. App. 794, 800, 613 A.2d 1351, cert. denied, 224 Conn. 915, 617 A.2d 171 (1992). Moreover, **a waiver of a right to counsel** 'should be clearly determined by the trial court, and it would be fitting and appropriate for that determination **to appear on the record.**' (Internal quotation marks omitted.) *Id.*, 799."
- [Wilson v. Wilson](#), 38 Conn. App. 263, 275-276, 661 A.2d 621 (1995). "**We agree with the plaintiff that a court may not find a person in contempt without considering the circumstances surrounding the violation to determine whether such violation was wilful.** See *id.*, 124; [Marcil v. Marcil](#), 4 Conn. App. 403, 405, 494 A.2d 620 (1985). Despite the plaintiff's claims to the contrary, our review of the transcripts of the proceedings in this case establish that the trial court gave thorough consideration to the circumstances surrounding the plaintiff's violation of the court's order of **visitation.**"
- [Tatro v. Tatro](#), 24 Conn. App. 180, 186, 587 A.2d 154 (1991). "**The inability of a contemnor to obey a court order through no fault of her own is a defense to a claim of contempt...** [T]he act for which the penalty was imposed cannot constitute contempt if the actor was unable to obey **the order.**"

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.

- [Tufano v. Tufano](#), 18 Conn. App. 119, 556 A. 2d 1036 (1989). The plaintiff mother was found in contempt for willful violation of the visitation rights granted to the paternal grandparents.
- [Gilman v. Gilman](#), Superior Court, Judicial District of New Haven at New Haven, No. 385930 (May 14, 1997) (1997 WL 276459) (1997 Conn. Super. Lexis 1284). "...the court has serious concerns as to whether the plaintiff fully appreciates the importance of complying with the **court's orders and the consequences** for not doing so. It is fundamentally important that the children have visitation with their father **according to the court's schedule. In order to insure that visitation occurs when scheduled, the court imposes a fine of \$150 for every visitation missed, now and in the future, due to the plaintiff's willful actions. The court also finds that an award to the defendant of attorney fees in the amount of \$750 for the prosecution of the motions for contempt is reasonable.**"

WEST KEY NUMBERS:

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

PAMPHLETS:

- [What if the Other Parent Doesn't Obey a Court Order? How to file a Motion for Contempt.](#) Connecticut Network for Legal Aid. July 2021

TEXTS &  
TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., Thomson West, 2010, with 2022-2023 supplement (also available on Westlaw).
  - Chapter 43. Enforcement of custody and visitation orders
    - § 43.1. In general
    - § 43.2. Parties entitled to seek enforcement
    - § 43.3. Venue for enforcement proceedings
    - § 43.4. Contempt proceedings, generally
    - § 43.5. Notice and hearing requirements for contempt proceedings
    - § 43.6. Defenses to contempt claims
    - § 43.7. Penalties imposed for contempt
    - § 43.8. Habeas corpus proceedings
    - § 43.9. Application for writ of habeas corpus—Form
    - § 43.10. Arbitration or mediation
    - § 43.11. Criminal sanctions
    - § 43.12. Tort claims
    - § 43.13. Effect of pending claims for modification
    - § 43.14. Enforcement provisions incorporated into judgment or agreement
  
- *LexisNexis Practice Guide: Connecticut Family Law*, Louise Truax, editor, 2022 ed., LexisNexis.
  - Chapter 17. Enforcement of Orders
    - Part II. Filing Motions for Contempt
    - Part III. Asserting Defenses to a Motion for Contempt
    - Part IV. Determining General Relief that May be Sought in a Motion for Contempt
    - Part VII. Crafting Orders to Enforce Custody and Visitation
      - § 17.41. Checklist
      - § 17.42. Claiming an Inability to Force a Child to Attend a Visitation
      - § 17.43. Creating Barriers to Custody and Visitation
  
- *Connecticut Family Law Citations: A Reference Guide to Connecticut Family Law Decisions*, by Monika D. Young, LexisNexis, 2021.
  - Chapter 12. Enforcement of Orders
    - § 12.01. Motion for Contempt
    - § 12.04. Enforcement of Child Visitation Order
  
- 4 *Child Custody and Visitation Law and Practice*, by Sandra Morgan Little, Matthew Bender, 2022 (also available on Lexis).
  - Chapter 25. Modification and enforcement of forum **state's** custody-visitation directives
    - § 25.05. Enforcement proceedings
      - [1] Generally
      - [2] Preliminary considerations

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- [a]. Types of enforcement proceedings and remedies
  - [i]. Generally
  - [ii]. Contempt of court and habeas corpus
  - [iii]. Punitive modification
  - [iv]. Reduction, suspension or termination of child support
  - [v]. Required posting of a bond
  - [vi]. Money damages
  - [vii]. Criminal liability
  - [viii]. Injunctive relief
  - [ix]. **Court's discretionary powers in enforcing visitation directives**
  - [x]. Noncustodial parent compelled to exercise visitation
- [3] Contempt of court proceedings
- [4] Punitive transfers of custody or modification of visitation directives
- [5] Reduction, termination or suspension of child support payments as an enforcement mechanism
- [6] Requirement that a bond be posted to secure custody or visitation rights
  - [a]. Generally
  - [b]. **Court's authority to require the posting of bonds in child custody or visitation proceedings**
  - [c]. Appropriate circumstances for the imposition of a bond requirement
  - [d]. Amount of the bond
  - [e]. Execution on the bond

# Section 6: Habeas Corpus Proceedings in Child Visitation Matters

A Guide to Resources in the Law Library

## SCOPE:

Bibliographic resources relating to the applicability of a writ of habeas corpus in child visitation matters and form preparation and procedure in habeas corpus visitation proceedings.

## DEFINITION:

- **"The employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common-law writ... The primary purpose is to furnish a means by which the court ... may determine what is best for the welfare of the child."** [Howarth v. Northcott](#), 152 Conn. 460, 464, 208 A2d 540 (1965).
- **"A habeas corpus petition concerning a minor child's custody is an equitable proceeding in which the trial court is called upon to decide, in the best exercise of its sound discretion, the custodial placement which will be best for the child."** [Evans v. Santoro](#), 6 Conn. App. 707, 709, 507 A.2d 116 (1986).

## CT 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. (2021)
  - § [45a-606](#). Father and mother joint guardians
  - § [46b-1](#)(8), (9). Family relations matters defined ([2022 Supplement](#))
  - § [52-466](#). Application for writ of habeas corpus. Service. Return.
  - § [52-467](#). Punishment for refusal to obey writ or accept copy.
  - § [52-493](#). Order in the nature of prerogative writs

## PRACTICE BOOK:

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

- Connecticut Practice Book (2022)
  - [Chapter 25](#). Superior Court - Procedure in Family Matters
    - § 25-40. Habeas Corpus in Family Matters; the Petition
    - § 25-41. —Preliminary Consideration
    - § 25-42. —Dismissal
    - § 25-43. —The Return
    - § 25-44. —Reply to the Return
    - § 25-45. —Schedule for filing Pleadings
    - § 25-46. —Summary Judgment as to Writ of Habeas Corpus
    - § 25-47. —Discovery

## FORMS:

- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., Thomson West, 2010, with 2022-2023 supplement (also available on Westlaw).
  - § 43.9. Application for Writ of Habeas Corpus



- *Handbook of Forms for the Connecticut Family Lawyer*, by Mary Ellen Wynn & Ellen B. Lubell, Connecticut Law Tribune, 1991.
  - Form No. X-A-1a. Application for writ of habeas corpus concerning custody /visitation of minor child(ren), p. 176-177
  - Form no. X-A-1b. Affidavit, p. 178-179
  - Form no. X-A-1c. Writ of habeas corpus, p. 180
  - Form no. X-A-1d. Certification into court, p. 181
  - Form no. X-A-1e. Petition for return of child, p. 182-183

#### CASE LAW:

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.

- [In re Emma E.](#), Superior Court, Judicial District of New Britain, No. H14CP14011313A (March 17, 2015) (2015 WL 1759353) (2015 Conn. Super. LEXIS 617). **“The earliest reported instance in Connecticut of the use of habeas corpus to obtain custody of a child is the case of *Nichols v. Giles*, 2 Root (Conn.) 461, 461–62 (1796), where the court denied such a petition brought by a father seeking to remove a three-year-old daughter from her mother because, the court held, said Nichols had ‘no house and very little property,’ was ‘very irregular in his temper and life,’ and the child ‘is well taken care of in her mother’s care’ and ‘not likely to be so by the father.’ As that case shows, ‘[t]he primary purpose of habeas corpus in matters relating to the custody of children is to furnish a means by which the Superior Court may determine what is best for the welfare of the child.’ *Doe v. Doe*, 163 Conn. 340, 342, 307 A.2d 166 (1972). Thus the father’s petition for a writ here, even if he proved the alleged constitutional violations, would ultimately depend on the precise issue pending in the child protection cases of what visitation and custody orders are in these children’s best interests.”**
- [In Re Jonathan M.](#), 255 Conn. 208, 764 A.2d 739 (2001). **“The primary issue** in this appeal is whether the habeas petition may be employed as a means of testing the merits of the termination judgment, and not solely as a means of bringing challenges to custody and visitation orders. Although the **petitioner’s parental rights have been terminated by a presumptively valid judgment ... to foreclose**, on jurisdictional grounds, his ability to seek custody and assert subsequent challenges to the termination judgment, whether through a petition for a writ of habeas corpus or other means, would require a circular course of **reasoning in which we are unprepared to indulge.”** p. 223 **“Indeed, permitting a habeas writ as a vehicle in which a parent whose rights have been terminated may attack that judgment collaterally, unbounded by constraints within which time such a petition may be filed, would further undermine the legislative pronouncements in this area of the law.”** (p. 240-241)

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.

**"Moreover, even in habeas actions properly brought to challenge custody, this court has recited consistently that 'the welfare of the child is the paramount consideration . . . ' (Internal quotation marks omitted.) [McGaffin v. Roberts](#), 193 Conn. 393, 403, 479 A.2d 176 (1984), cert. denied, 470 U.S. 1050, 105 S. Ct. 1747, 84 L. Ed. 2d 813 (1985). As such, we are unwilling to infect the delicate and serious process governing the placement of foster children in permanent adoptive homes with perpetual uncertainty where the **General Assembly has not directed us to do so.**" (p. 241)**

- [Weidenbacher v. Duclos](#), 234 Conn. 51, 73, 661 A.2d 988 (1995). **"...we hold that the mere fact that a child was born while the mother was married is not a per se bar that prevents a man other than her husband from establishing standing to bring an action for a writ of habeas corpus for custody of or visitation with a minor child."**
- [Doe v. Doe](#), 163 Conn. 340, 345, 307 A.2d 166 (1972). The court held that only parents and legal guardians have standing to bring an action for habeas corpus seeking visitation rights. **"Because there was no allegation that the plaintiff was the parent or guardian of Beverly, there is no error in the judgment of the trial court in granting the motion to quash the petition insofar as it related to her."**
- [Evans v. Santoro](#), 6 Conn. App. 707, 709-710, 507 A.2d 116 (1986). **"In order to invoke the aid of a habeas corpus writ to enforce a right to physical custody of a minor, the applicant for the writ must show a prima facie legal right to custody... Once the writ has issued, the burden of proving that a change of custody would be in the child's best interest rests upon the party seeking the change... In this case, that party was the petitioner."**
- [Axelrod v. Avery](#), Superior Court, Judicial District of New London at New London, No. 532395 (Nov. 29, 1994) (13 Conn. L. Rptr. 124) (1994 Conn. Super. Lexis 3058). **"The language of *Nye* arguably extends standing in habeas corpus petitions from the narrow construction in *Doe* to a broad construction which include members of a child's biological family... Moreover, a finding of standing is appropriate on the facts ... because the plaintiffs have a sufficient 'personal stake in the outcome of the controversy,' namely the custody of their granddaughter and the maintenance of a familial relationship with her."**
- [Forestiere v. Doyle](#), 30 Conn. Supp. 284, 288, 31 A. 2d 607 (1973). ***Plaintiff father's petition for a writ of habeas corpus seeking visitation rights* "... to deny him visitation rights without a hearing on the ultimate question of what is best for the welfare of the child is to deny him his constitutional rights."**

TEXTS &  
TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., Thomson West, 2010, with 2022-2023 supplement (also available on Westlaw).
  - § 43.8. Habeas corpus proceedings
  - § 43.9. Application for writ of habeas corpus—Form
- 2 *Child Custody and Visitation Law and Practice*, by Sandra Morgan Little, Matthew Bender, 2022 (also available on Lexis).
  - Chapter 6. Commencement of action or proceeding
  - § 6.06. Habeas corpus
    - [1]. —Applicability to custody disputes
    - [2]. —Procedure