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2015 Edition

Child Visitation Actions in Connecticut

A Guide to Resources in the Law Library

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Treated Elsewhere:

- [Best Interest of the Child Standard in Connecticut](#)
- [Child Custody Actions in Connecticut](#)
- [Grandparents’ Rights in Connecticut](#)
- [Parental Relocation](#)

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Introduction

A Guide to Resources in the Law Library

- **U.S. Supreme Court:** "The liberty interest at issue in this case — the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court." [Troxel v. Granville](#), 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 49 (2000).
- **Connecticut courts:** "Connecticut courts likewise have recognized the constitutionally protected right of parents to raise and care for their children When legislation affects a fundamental constitutional right, it must be strictly scrutinized." [Fish v. Fish](#), 285 Conn. 24, 41, 939 A. 2d 1040 (2008). (Emphasis added.)
- **Third Party:** "The term 'third party' refers to any private individual other than a parent of the child, as distinguished from the state." [Fish v. Fish](#), 285 Conn. 24, 27, fn 1, 939 A. 2d 1040 (2008).
- "Accordingly, any third party, including a grandparent or a great-grandparent, seeking visitation must allege and establish a parent-like relationship as a jurisdictional threshold in order both to pass constitutional muster and to be consistent with the legislative intent." [Roth v. Weston](#) 259 Conn. 202, 225, 789 A.2d 431 (2002).
- **Parent-Child Relationship:** "First, the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship." [Roth v. Weston](#), 259 Conn. 202, 234-235, 789 A.2d 431 (2002).
- **Harm:** The petition must also contain specific, good faith allegations that denial of the visitation will cause real and significant harm to the child. As we have stated, that degree of harm requires more than a determination that visitation would be in the child's best interest. It must be a degree of harm analogous to the kind of harm contemplated by §§ 46b-120 and 46b-129, namely, that the child is 'neglected, uncared-for or dependent.' The degree of specificity of the allegations must be sufficient to justify requiring the fit parent to subject his or her parental judgment to unwanted litigation. Only if these specific, good faith allegations are made will a court have jurisdiction over the petition." [Roth v. Weston](#), 259 Conn. 202, 234-35, 789 A.2d 431 (2002).
- **Proof:** "Second, once these high jurisdictional hurdles have been overcome, the petitioner must prove these allegations by clear and convincing evidence. Only if that enhanced burden of persuasion has been met may the court enter an order of visitation. These requirements thus serve as the constitutionally mandated safeguards against unwarranted intrusions into a parent's authority." [Roth v. Weston](#), 259 Conn. 202, 235, 789 A.2d 431 (2002).
- "We can envision circumstances in which a nonparent and a child have developed such substantial emotional ties that the denial of visitation could cause serious and immediate harm to that child." [Roth v. Weston](#), 259 Conn. 202, 225 (2002).

Section 1: Child Visitation Action

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to actions seeking court ordered visitation.

DEFINITIONS:

- **"We recognize that, in many households, grandparents, as well as people who have no biological relationship with a child, undertake duties of a parental nature and that states have sought to ensure the welfare of children by protecting those relationships."** [Roth v. Weston](#), 259 Conn. 202, 220, 789 A.2d 431 (2002).
- **"Therefore, we acknowledge that a person other than a blood relation may have established a more significant connection with a child than the one established with a grandparent or some other relative. Conversely, we recognize that being a blood relation of a child does not always translate into that relative having significant emotional ties with that child. Indeed, as § 46b-59 implicitly recognizes, it is not necessarily the biological aspect of the relationship that provides the basis for a legally cognizable interest. Rather, it is the nature of the relationship that determines standing."** [Roth v. Weston](#), 259 Conn. 202, 221, 789 A.2d 431 (2002).
- **"Proof of the nature of a parent-like relationship** between a person seeking visitation and the child would provide the jurisdictional safeguard necessary to prevent families from **having to defend against unjustified petitions for visitation.**" (emphasis added). [Roth v. Weston](#), 259 Conn. 202, 221-222, 789 A.2d 431 (2002).
- **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).

- **Visitation vs. Custody:** "Specifically, visitation petitions challenge the decision of a fit parent who is presumed to be **acting in the child's** best interest to deny or limit the petitioner's request for visitation . . . The harm alleged in a visitation **petition results from the child's** lack of access to the petitioner rather than from the parent-child relationship, which is deemed to be beneficial." [Fish v. Fish](#), 285 Conn. 24, 47, 939 A. 2d 1040 (2008).
- ". . . **the parent-child relationship itself is at issue in a custody dispute, whereas it is not in a visitation dispute, in which the third party merely seeks the right to visit the child and the parents are presumed to be loving and caring.**" [Fish v. Fish](#), 285 Conn. 24, 61, 939 A. 2d 1040 (2008).

Conn. Gen. Stat. (2015)

- § [45a-604](#). Definitions
- § [45a-606](#). Father and mother joint guardians
- § [46b-54](#). Counsel for minor children. Duties.
- § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
- § [46b-57](#). Third party intervention re custody of minor children. Preference of the child.
- § [46b-59](#). Court may grant right of visitation to any person.
- § [46b-59a](#). Mediation of disputes re enforcement of visitation rights.
- § [Sec. 46b-59b](#). Court may not grant visitation to parent convicted of murder. Exception.
- § [46b-61](#). Orders re Children where parents live separately. Commencement of proceedings.
- § [46b-64](#). Orders of court prior to return day of complaint
- §§ [46b-115 through 46b-115jj](#) [Uniform Child Custody Jurisdiction & Enforcement Act](#).

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.

- Saul Spigel, Chief Analyst, [Department of Children and Families Visitation Criteria](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2004-R-0799 (October 5, 2004).

"You asked about the Department of Children and Families (DCF) criteria for deciding whether a child in foster care can visit overnight with a biological parent."

OLR Reports:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication.

Practice Book:

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

Connecticut Practice Book (2015)

- [Chapter 25, Superior Court - Procedure in Family Matters](#)
 - § [25-4](#). Action for visitation of minor child
 - § [25-5](#). Automatic orders upon service of complaint
 - § [25-7](#). Pleadings in general; Amendments to complaint or application
 - § [25-9](#). —Answer, cross complaint, claims for relief by

defendant

§ [25-23](#). Motions, requests, orders of notice, and short calendar

§ [25-24](#). Motions

§ [25-26](#). Modification of custody, alimony or support

§ [25-27](#). Motion for contempt

§ [25-28](#). Order of notice

§ [25-30](#). Statements to be filed

§ [25-38](#). Judgment files

§ [25-50](#). Case management

§ [25-57](#). Affidavit concerning children

§ [25-59](#). Closure of courtroom in family matters

§ [25-59A](#). Sealing files or limiting disclosure of documents in family matters

§ [25-60](#). Family Division evaluations and studies

§ [25-61](#). Family Division

§ [25-62](#). Appointment of Guardian Ad Litem

LEGISLATIVE HISTORY:

- 1983 Conn. Acts 96. An act concerning visitation rights. "as initially enacted . . . permitted only grandparents to petition for visitation. [Castagno v. Wholean](#) [239 Conn. 336, 684 A.2d 1181], supra, 239 Conn. 347-48. In 1983, however § 49-59 . . . was amended to its current form to allow 'any person' to petition for visitation" [Roth v. Weston](#), 259 Conn. 202, 219, 789 A.2d 431(2002).
- 1974 Conn. Acts 169, § 12, 17 H.R. Proc., Pt. 6, 1974 Sess., p. 2805 [§ 46b-61] "...expands the jurisdiction of the superior court involving minor children and further states that the section can be used in controversies not only involving a husband and wife but in controversies involving parents of minor children or children if they are no longer married or were never married."

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, Second Edition, Amy Calvo Manamara, Aidan R. Welsh, and Cynthia Coulter George, editors. (2014).
Custody and Visitation
Forms 5-012 thru 5-033

CASES:

- [Fish v. Fish](#), 285 Conn. 24, 38, 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

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 will cause real and significant [emotional] harm to the child. As we have stated, that degree of harm requires more than a determination that visitation would be in the child's best interest. It must be a degree of harm analogous to the kind of harm contemplated by §§ 46b-120 and 46b-129, namely, that the child is 'neglected, uncared-for or dependent.' The degree of specificity of the allegations must be sufficient to justify requiring the fit parent to subject his or her parental judgment to unwanted litigation. Only if these specific, good faith allegations are made will a court **have jurisdiction over the petition.**"

- [Raffino v. Bottass](#), Superior Court, Judicial District of Hartford, No. FA05-4019188-S (April 11, 2006) (41 Conn. L. Rptr. 181, 183) (2006 WL 1149131). **"This court recognizes the anguish that the grandparents are suffering in not being able to spend as much time with their grandchildren as they previously did and their concern that the children will suffer too. However, the court also recognizes that the father must devote his energies to re-establishing his family unit with the children, and, as the courts have indicated, there is a presumption that he is acting in the best interests of the children. It is that very principle that is so protected that the Connecticut Supreme Court has declared that a very high standard must be met so as to appropriately protect the father's right to not have to defend his decisions in a court of law. While adherence to the underlying principle may be very difficult for the grandparents at this time, the grandparents might consider that just as parents must give their children two things — roots and wings, grandparents must continue to do that for the parents of their grandchildren."**
- [Foster v. Foster](#), 84 Conn. App. 311, 320, 853 A.2d 588 (2004). **"As the plaintiff has no constitutionally protected right to counsel in a custody or visitation proceeding, we decline to require the court, in every custody or visitation dispute confronted with a pro se litigant, to grant a continuance simply because the request is founded on a parent's right to raise a child without undue interference. Although we recognize the value of family integrity, we acknowledge also that the state has an interest in the orderly presentation of cases and the ability of the court to manage its docket. We therefore conclude that, balancing all the interests, the court's refusal to grant a continuance did not result in a constitutional deprivation."**
- [Roth v. Weston](#), 259 Conn. 202, 789 A.2d 231 (2002). **"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."** Ibid, 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.**" Ibid, p. 235.

- [Laspina-Williams v. Laspina-Williams](#), 46 Conn. Supp. 165, 171, 742 A.2d 840 (1999). [Syllabus: Motion to dismiss; parent and child; visitation; guardianship of minor child; subject matter jurisdiction; standing; in petition for visitation rights with minor child, conceived through alternative insemination, who had been jointly raised by coguardian same sex partners, whether separation of parties constituted sufficient disruption of family unit to confer standing upon plaintiff noncustodial parent to petition for visitation rights so **as to warrant denial of defendant custodial parent's motion to dismiss for lack of subject matter jurisdiction; since defendant had brought separate action pursuant to statute (§ 45a-616) in Probate Court to terminate plaintiff's coguardianship, whether that statute exclusively vested jurisdiction over plaintiff's petition for visitation brought under state (§46b-59) in either Probate Court or Superior Court so as to warrant granting of defendant's motion to dismiss.**]
- [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 or neglect of child
- # 198. Physical condition of custodian
- # 199. Use of drugs or alcohol
- # 200. Commission of crime
- # 201. Mental condition
- # 202. Previous abandonment or relinquishment by custodian
- # 203. Agreements, contracts, or stipulations
- # 204. Child'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
- # 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
- ***Children out of Wedlock***
 - # 20.9. Visitation and joint custody

TREATISES:

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - Chapter 42. Custody and visitation
 - § 42.44. Visitation—General considerations
 - § 42.45. Visitation schedules—Allocation of vacations, holidays and the like
 - § 42.46. Visitation—Checklist of holidays, vacations and special events
 - § 42.47. —Parental access via mail, telephone, and the

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- like
 - § 42.48. —Supervision or denial of visitation rights
 - § 42.49. —With third parties
 - § 42.50. Parenting education program
 - § 42.52. Parenting plan
- Louise Truax, Editor, [LexisNexis Practice Guide Connecticut Family Law](#), (2015 edition).
 - 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.
- 3 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2015)
 - Chapter 16A. Visitation
 - § 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.06. Payment of Child Support Arrears
 - § 16A.08. The Impact of Interference with Visitation on a URESA Proceeding
 - § 16A.09. Bibliography
 - Appendix A. Uniform Reciprocal Enforcement of Support Act (1968 Revised Act)
- Donald T. Kramer, [Legal Rights of Children](#), Rev. 2d ed., (2005)
 - Chapter 3. Visitation rights
 - § 3:1. Visitation rights; Generally
 - § 3:2. —Noncustodial parents
 - § 3.3. —Stepparents and adoptive parents
 - § 3.4. —Foster parents
 - § 3.5. —Grandparents, generally
 - § 3.6. —Natural grandparents of adopted grandchildren
 - § 3.7. —Siblings and other family members
 - § 3.8. Other third parties
 - § 3.9. Factors considered in granting or denying visitation rights; Child abuse and sexual abuse
 - § 3.10. —Mental instability or physical handicap of

- parent
- § 3.11. —Use and abuse of alcohol or drugs
- § 3.12. —Sexual preferences or conduct of the noncustodial parent
- § 3.13. —Wishes of the child
- § 3.14. —**Parent’s domicile or place of residence**
- § 3.15. —Previous surrender of parental rights
- § 3.16. —**Parent’s incarceration**
- § 3.17. —**Parent’s or child’s religion**
- § 3.18. Terms of visitation
- § 3.19. Modification
- § 3.20. **Child’s best interest**

ENCYCLOPEDIAS:

- 59 [Am. Jur. 2d](#) Parent & Child § 36-38 (2012).
 - § 36. Right to visitation
 - § 37. —Denial to noncustodial parent
 - § 38. —By third party

Table 1: Practice Book Section 25-4

<p>Action for Visitation of Minor Child</p> <p>Conn. Practice Book § 25-4 (2015)</p>
<p>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 [s]ection 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 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.</p>

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: • [Grandparents' Rights in Connecticut](#)

DEFINITIONS:

- **Constitutional Issues:** "The relevant statutes concerning visitation and custody are overly broad in exactly the same fashion; they fail to define with particularity those persons who may seek visitation and custody other than parents. Accordingly, we conclude that, to avoid constitutional infirmity, the standing requirement that a third party allege a parent-like relationship with the child should be applied for all of the reasons described in *Roth* [*Roth v. Weston*, 259 Conn. 202 (2002)] to third party custody awards and to third parties seeking intervention in existing custody proceedings." [Fish v. Fish](#), 285 Conn. 24, 44 (2008).
- **Third Party:** "is not defined in the foregoing statutes or in any other related statutes. The legislative history of the statutes sheds no additional light on the matter. As we stated in *Castagno*, [*Castagno v. Wholean*, 239 Conn. 336, 684 A.2d 1181(1996)] 'courts are bound to assume that the legislature intended, in enacting a particular law, to achieve its purpose in a manner which is both effective and constitutional. . . . [T]his presumption of constitutionality imposes upon the trial court, as well as this court, the duty to construe statutes, whenever possible, in a manner that comports with constitutional safeguards of liberty'." [Fish v. Fish](#), 285 Conn. 24, 42-43 (2008).
- **Custody vs. visitation:** "In summary, we conclude that third party custody petitions challenge the liberty interest of a parent in a way that is fundamentally different from visitation petitions . . . in which the child's relationship with the parent has not been placed in issue." [Fish v. Fish](#), 285 Conn. 24, 55-56 (2008).
- **Harm:** "The harm alleged in a visitation petition results from the child's lack of access to the petitioner rather than from the parent-child relationship, which is deemed to be beneficial." [Fish v. Fish](#), 285 Conn. 24, 47 (2008).

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. Statutes (2015)

- § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
- § [46b-57](#). Third party intervention re custody of minor children. Preference of child.
- § [46b-59](#). Petition for right of visitation with minor child. Order for payment of fees.
- [Public Act No. 12-137](#): An Act Concerning Visitation Rights for Grandparents and Other Persons.

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.

- Duke Chen, [Updated Report: Caselaw on Grandparents' Visitation Right in Connecticut](#), Connecticut General Assembly, Office of Legislative Research Report No. 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*)."
- Mary M. Janicki, [Grandparents' Visitation Rights](#), Connecticut General Assembly, Office of Legislative Research Report No. 2011-R-0079 (February 7, 2011).
"You asked for a comparison of Connecticut's law on grandparents' right to visit their grandchildren with the laws on that subject in other states."
- Soncia Coleman, [Grandparents' Rights](#), Connecticut General Assembly, Office of Legislative Research Report No. 2009-R-0439 (Dec. 30, 2009).
"You asked several questions regarding grandparents' rights to petition the court for visitation with their grandchildren."
- Susan Price, [Grandparents' Rights](#), Connecticut General Assembly, Office of Legislative Research Report No. 2006-R-0383 (September 18, 2006).
"You have asked for an explanation of Connecticut law on grandparents' custody of, and visitation with, their grandchildren."
- Saul Spigel, [Grandparents' Custody of Grandchildren](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2003-R-0596 (September 22, 2003).

Practice Book:

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

Connecticut Practice Book (2015)

- [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.

- [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 Attend Hearing and Notice to the Defendant
 - JD-FM-158 Notice of Automatic Orders
 - JD-FM-164 Affidavit Concerning Children
 - JD-FM-164A Addendum to Affidavit Concerning Children
 - JD-FM-6-Long Financial Affidavit **or**
 - JD-FM-6-Short Financial Affidavit
 - JD FM-183 Custody/Visitation Agreement

CASES:

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

- [Warner v. Bicknell](#), 126 Conn. App. 588, 593 (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, [789 A.2d 431]; 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).” (emphasis added).
- [DiGiovanna v. St George](#), 300 Conn. 59, 61 (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

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.

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 (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, 120 S.Ct. 2054, 2061. (2000). "Accordingly, so long as a parent adequately cares for his or her children ... there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."
- [Roth v. Weston](#), 259 Conn. 202, 789 A.2d 231 (2002). "In the absence of a threshold requirement of a finding of real and substantial harm to the child as a result of the denial of visitation, forced intervention by a third party seeking visitation is an unwarranted intrusion into family autonomy. Accordingly, in the absence of any such requirement of harm, § 46b-59 does not justify interference with parental rights." (229)
"...the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that the denial of the visitation will cause real and significant harm to the child... **Second, the petitioner must prove these allegations by clear and convincing evidence.**" (235)
- [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, 743 A.2d 1160 (2000), *cert. denied*, 252 Conn. 952 (2000). Paternal grandparents were denied both custody and visitation in a case where the father's parental rights were terminated. "...they cannot safeguard and provide care in the children's best interests while clinging to the hope that their son did not sexually abuse their grandchildren" (p. 527).
- [Alexander v. Gomez](#), Superior Court, Judicial District of Danbury, No FA01-0344023-S (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.' *Id.*, 235... For the foregoing reasons, the defendant's motion to modify and eliminate the plaintiff's visitation rights is denied, without prejudice, and the plaintiff will be allowed an opportunity to amend her application and provide proof that it is consistent with all the requirements of Roth."
- [Pivnick v. Lasky](#), Superior Court, Judicial District of Hartford, No. FA99-0720419 (Mar. 24, 2003) (34 Conn. L. Rptr. 426) (2003 Conn. Super. Lexis 944). "The question presented by this motion is whether the standard articulated in *Roth v. Weston*, invalidates the prior orders in this case which have allowed for grandparent visitation... The court concludes that the decision of *Roth v. Weston* does override the prior court orders in this matter granting visitation rights to third parties against the wishes of a fit custodial parent."

WEST KEY NUMBERS:

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

TREATISES:

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - § 42.49. Visitation—With third parties
- 2 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2015).

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

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 Arnold H. Rutkin, Gen. Ed., [Family Law and Practice](#) (2015).
Chapter 32. Child custody and visitation
 - § 32.09. Visitation
 - [7] Nonparent visitation
 - [a] Generally
 - [b] Grandparents
 - [c] Stepparents, siblings, other nonparents
 - [d] Guidelines for granting and scheduling nonparent visitation
- 2 Ann M. Haralambie, [Handling Child Custody, Abuse and Adoption Cases](#), 3rd ed. (2009).
Chapter 10. Third-party custody and visitation
 - § 10.15. Third party visitation generally
 - § 10.17. Standing
 - § 10.19. Coordinating schedules
 - § 10.20. Representing the third party
 - § 10.21. Opposing third-party visitation
 - § 10.22. Effect of termination of parental rights or adoption
- 1 Donald T. Kramer, [Legal Rights of Children](#), Rev. 2d ed., (2005).
 - § 2:19. Preference of natural parent(s) over others; Generally—preference of natural parent(s) over grandparent(s)
 - § 2:20. Preference of the natural parent(s) over others; Generally—Preference of natural parent(s) over adult siblings or other relative
 - § 3:5. Visitation rights; Generally—Grandparents, generally
 - § 3:6. Visitation rights; Generally—Natural grandparents of adopted grandchildren
 - § 3:7. Visitation rights; Generally—Siblings and other family members
 - § 3:8. Other third parties

ENCYCLOPEDIAS:

- 59 [Am Jur 2d](#) Parent and Child (2012).
Custody; Visitation
 - § 36. Right of visitation
 - § 37. —Denial to noncustodial parent
 - § 38. —By third party

- 67A [C.J.S.](#) Parent and child (2013)
 § 132. Visitation
 § 134. Visitation—Rights of persons other than parents

ARTICLES:

- 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", [Conn. Lawyer](#) (Nov. 2000, at 4).
- 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** 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. (2015)
- § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
 - § [46b-61](#). Orders re children where parents live separately. Commencement of proceedings
 - § [46b-64](#). Orders of court prior to return day of complaint.

Practice Book:

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

- Connecticut Practice Book (2015)
- § [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)
- [JD-FM-176 Motion for Orders Before Judgment \(Pendente Lite\) in Family Matters](#)

Unofficial Forms

- MacNamara, Welsh, and George, editors. [Library of Connecticut Family Law Forms](#) (2d ed. 2014)
 - Pendente Lite Motions – Pendente Lite Motions—Custody & Visitation, Forms 5-012 through 5-033.
- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).
 - VI. Pendente Lite motions, p.98.
- [Gardner v. Falvey](#), 45 Conn. App. 699 (1997), Connecticut

TREATISES:

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

- Appellate Records & Briefs, February 1997.
Motion for Specific Visitation, Pendente Lite
- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - Chapter 41. Pendente lite custody and visitation
 - § 41.1. In general
 - § 41.2. Automatic orders affecting temporary custody
 - § 41.3. Determining necessity of motion for temporary custody
 - § 41.4. Significance of temporary custody determinations
 - § 41.5. Modification and enforcement of temporary orders
 - § 41.6. Appealability of temporary orders
 - § 41.7. Emergency temporary orders
 - Louise Truax, Editor, [LexisNexis Practice Guide Connecticut Family Law](#), (2015).
 - 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.
 - § 8.25 Filing Custody and Visitation Motions
 - Pendente Lite* – General Considerations
 - § 8.26 Filing a Motion for Custody and Visitation *Pendente Lite*
 - § 8.30 Modifying *Pendente Lite* Orders
 - Barbara Kahn Stark, [Friendly Divorce Guidebook for Connecticut](#) (2d ed., 2003).
 - Temporary (Pendente Lite) orders, pp. 124-127.
 - 2 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2015).
 - Chapter 8. Temporary custody determinations
 - § 8.01. Generally
 - § 8.02. Obtaining a temporary custody order
 - § 8.03. Third-party custody
 - § 8.04. Appealing a temporary custody order
 - § 8.05. Modification and enforcement of temporary custody orders
 - § 8.06. Forms
 - 3 Arnold H. Rutkin, Gen. Ed., [Family Law and Practice](#) (2015).
 - 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.

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. (2015)

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

PRACTICE BOOK:

Connecticut Practice Book (2015)

- [Sec. 25-60. Evaluations, Studies, Family Services Mediation Reports and Family Services Conflict Resolution Reports](#)

CASES:

- [Szczerkowski v. Karmelowicz](#), 60 Conn. App. 429, 434 (2000). "Indeed, as the court succinctly stated, 'We're trying to respond to the articulated needs of the children to spend more time with [the plaintiff].' No other rational reading of the court's language is possible but that it was acting in the children's best interests when it modified visitation..."
- [Knock v. Knock](#), 224 Conn. 776, 788, 621 A.2d 267 (1993). "Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes; it requires only that the court take the child's wishes into consideration."

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- [Gennarini v. Gennarini](#), 2 Conn. App. 132, 137, 477 A.2d 674 (1984). "...whether the child's preferences and feelings as to custody and visitation are a significant factor in the court's ultimate determination ... will depend on all the facts of the particular case, including the child's age and ability intelligently to form and express those preferences and feelings." (p. 137)
- [Hamele v. Hamele](#), 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:

- Child Custody
Visitation.
#204. Child's preference

Treatises:

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

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
Chapter 42. Child custody and visitation
§ 42.26. Court conference or interview with child
§ 42.31. Preference of the child
- 3 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2015).
Chapter 16. Child visitation
§ 16.05. Child's preference

Law Reviews:

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

- Steven Sichel, *The Child's Preference in Disputed Custody Cases*, 6 [Conn. Family Law](#). 45 (1991).

Section 5: Modification of Child Visitation Orders

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the grounds and procedures for modification of child visitation orders.

DEFINITIONS:

- **Modification:** "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." Conn. Gen. Stats. [§ 46b-56](#)(b) (2015).
- "In ruling on a motion to modify visitation, the court is not required to find as a threshold matter that a change in circumstances has occurred. *Szczerkowski v. Karmelowicz*, 60 Conn.App. 429, 433, 759 A.2d 1050 (2000); see also *McGinty v. McGinty*, 66 Conn.App. 35, 40, 783 A.2d 1170 (2001). Instead, '[i]n modifying an order concerning visitation, the trial court shall "be guided by the best interests of the child...." General Statutes § 46b-56 (b).' *Kelly v. Kelly*, 54 Conn.App. 50, 57, 732 A.2d 808 (1999);" [Balaska v. Balaska](#), 130 Conn. App. 510, 515-16, 25 A.3d 680, 684 (2011).

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. (2015)

- [§ 46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
- [§ 46b-59](#). Petition for right of visitation with minor child. Order for payment of fees.
- [§ 46b-59a](#). Mediation of disputes re enforcement of visitation rights
- [§ 46b-61](#). Orders re children where parents live separately. Commencement of proceedings
- [§ 46b-71](#). Filing of foreign matrimonial judgment; enforcement in this state
 - (b) "Such foreign matrimonial judgment shall become a judgment of the court of this state where it is filed and shall be enforced and otherwise treated in the same manner as a judgment of a court in this state; provided such foreign matrimonial judgment does not contravene the public policy of the state of Connecticut. A foreign matrimonial judgment so filed shall have the same effect and may be enforced or satisfied in the same manner as any like judgment of a court of this state and is subject to the same

procedures for modifying, altering, amending, vacating, setting aside, staying or suspending said judgment as a judgment of a court of this state; provided, in modifying, altering, amending, setting aside, vacating, staying or suspending any such foreign matrimonial judgment in this state the substantive law of the foreign jurisdiction shall be **controlling.**"

- § [46b-115m](#). Modification of custody determination of another state.
- § [46b-115w](#). Registration of child custody determination

Practice Book:

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

Connecticut Practice Book (2015)

- § [25-26](#). Modification of Custody, Alimony or Support
- § [25-30](#). Statements to be filed

OLR Reports:

- Saul Spigel, [Modifying Visitation Orders After Divorce](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2001-R-0250 (February 23, 2001).

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 a Motion for Modification](#)

Unofficial Forms

- [Ruggiero v. Ruggiero](#), 76 Conn. App. 338 (2003), Connecticut Appellate Court Records & Briefs, January 2003.
Ex Parte Motion for Modification of Visitation and Custody (p.28)
- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
§ 44.3. Motion for modification of custody/visitation--
Form
- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991)
XVI-b-2. Motion to Fix Visitation, p. 245

Case Law:

- [Daddio v. O'Bara](#), 97 Conn. App. 286, 904 A.2d 259 (2006).
"To obtain a modification, the moving party must demonstrate that circumstances have changed since the last court order such that it would be unjust or inequitable to hold either party to it. Because the establishment of changed circumstances is a condition precedent to a party's relief, it is pertinent for the trial court to inquire as to what, if any, new circumstance warrants a modification of the existing order. In making such an inquiry, the trial court's

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discretion is essential. The power of the trial court to modify the existing order does not, however, include the power to retry issues already decided Rather, the trial court's discretion only includes the power to adapt the order to some distinct and definite change in the circumstances or conditions of the parties." (Citation omitted; emphasis added; internal quotation marks omitted.) *Kelly v. Kelly*, 54 Conn. App. 50, 55-56, 732 A.2d 808 (1999)."

- *McGinty v. McGinty*, 66 Conn. App. 35, 40, 783 A.2d 1170 (2001). "In *Szczerkowski*, as here, the defendant claimed that the court abused its discretion by modifying a visitation order without finding that there was a substantial change in circumstances... We concluded that when considering motions to modify visitation, the court's should apply the best interest of the child standard."
- [Szczerkowski v. Karmelowicz](#), 60 Conn. App. 429, 433, 759 A.2d 1050 (2000). "The defendant cites no case, and our independent research discloses none, that requires a court ruling on a motion to modify visitation to find as a threshold matter that a change of circumstances has occurred. Rather, the standard the court applies is that of the best interest of the child."
- [Kioukis v. Kioukis](#), 185 Conn. 249, 440 A.2d 894 (1981) At the time of the action to modify visitation Connecticut was not the "home state" of the child and therefore lacked jurisdiction to grant a modification. Support payments are independent of visitation rights.
- [Baumert v. Baumert](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FA96-0152534-S (Jan. 28, 1997) (19 Conn. L. Rptr. 59) (1997 WL 66500) (1997 Conn. Super. Lexis 268). The court concluded that Texas should have jurisdiction to hear a motion to modify visitation based on the fact that "all visitation took place in Texas" and "Texas would seem to possess the greater information as to the child's best interests".
- [Pfister v. Pfister](#), Superior Court, Judicial District of Fairfield at Bridgeport, No. FA890263992S (June 10, 1997) (1997 WL 334903) (1997 Conn. Super. Lexis 1578). "The children would benefit emotionally by increasing the father's visitation to allow their relationship to grow in a loving and positive manner. Section 46b-56(a)."
- [Serrel v. Serrel](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FA94-0138147-S (December 17, 1996) (1996 WL 745868) (1996 Conn. Super. Lexis 3373). "It is found to be in the best interests of the older child that visitation with her father be suspended. It is found to be in the best interests of the younger child that overnight visitation be suspended until suitable home or home-like quarters are obtained by the defendant and the court finds such to be the case in a future hearing."

**TEXTS &
TREATISES:**

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

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - Chapter 44. Modification of custody and visitation orders
 - §44.1. In general
 - §44.2. Procedure for seeking modification
 - §44.3. Motion for modification of custody/visitation—Form
 - §44.4. Standards for modification
 - §44.5. Time of events and circumstances to be considered
 - §44.6. Parties entitled to seek modification
 - §44.7. Pleading specific facts justifying modification
 - §44.8. Temporary or interim orders
 - §44.9. Motion for temporary change of custody—Form
 - §44.10. Particular reasons for modifying orders
 - §44.11. Relocation of the child’s residence**
 - §44.12. Violation of visitation rights
 - §44.13. Needs of the child
 - §44.14. Fitness of parent
 - §44.15. Health of parent
 - §44.16. Remarriage or cohabitation of parent
 - §44.17. Default in support
 - §44.18. Preference of the child
 - §44.19. Death of custodial parent
 - §44.20. Burden of proof
 - §44.21. Effect of agreement for change in custody or visitation
 - §44.22. Automatic modification provisions
 - §44.23. Effects of prior modification
- Louise Truax, Editor, [LexisNexis Practice Guide Connecticut Family Law](#), (2015).
 - Chapter 8. Custody and Visitation
 - Part V. Assessing Considerations in Custody and Visitation Actions
 - § 8.25 Filing Custody and Visitation Motions ***Pendente Lite***--General Considerations
 - § 8.26 Filing a Motion for Custody and Visitation ***Pendente Lite***
 - § 8.30 Modifying ***Pendente Lite*** Orders
 - Part VI. Filing Custody or Visitation Actions Post Judgment
 - § 8.38 Filing Custody or Visitation Actions Post Judgment--In General
 - § 8.40 Seeking a Modification
- 4 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2015).
 - Chapter 25. Modification and enforcement of forum **state’s custody**-visitation directives
 - § 25.01. Preliminary considerations

§ 25.02. Modification proceedings: Procedural issues

§ 25.03. Modification standards

§ 25.04. Key modification factors

§ 25.05. Enforcement proceedings

Section 6: Contempt of Visitation Orders

A Guide to Resources in the Law Library

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

DEFINITIONS:

- “While particular acts do not always readily lend themselves to classification as civil or criminal contempts, a **contempt** is considered **civil** when the punishment is wholly remedial, serves only the purposes of the complainant, and is not intended as a deterrent to offenses against the public.” [McCrone v. United States](#), 307 U.S. 61, 64, 59 S. Ct. 685, 686 (1939)
- “**Civil contempt** is conduct directed against the rights of the opposing party.” [Tatro v. Tatro](#), 24 Conn. App. 180, 185 (1991)

STATUTES:

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. (2015)

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

COURT RULES

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

Connecticut Practice Book (2015)

- § [25-27](#). Motion for Contempt
- § [25-63](#). Right to Counsel in Family Civil Contempt Proceedings
- § [25-64](#). Waiver
- § [23-20](#). Review of Civil Contempt

FORMS:

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

- [Official Family Forms](#) (Connecticut Judicial Branch)

o See Also: [Filing a Motion for Contempt](#)

Unofficial Forms

- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) 188 (1991).
 - Form No. XI-A-1. Motion for Contempt [pendente lite], pp. 189-190
 - Form No. XI-A-3a. Application for Order to Show Cause and Contempt Citation [post judgment], pp. 193-194
 - Form No. XI-A-3b. Order for hearing, p. 195
 - Form No. XI-A-3c. Summons, p.196

CASES:

- [Wilson v. Wilson](#), 38 Conn. App. 263, 661 A.2d 621 (1995).
- [Tatro v. Tatro](#), 24 Conn. App. 180, 186, 587 A.2d 154 (1991). “The inability of a contemnor to obey a court order

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.

through no fault of her own is a defense to a claim of contempt... The act for which the penalty was imposed cannot constitute contempt if the actor was unable to obey **the order.**"

- [Tufano v. Tufano](#), 18 Conn. App. 119 (1989). The plaintiff mother was found in contempt for willful violation of the visitation rights granted to the paternal grandparents.
- [Gilman v. Gilman](#), 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 ... is reasonable.**"

WEST KEY NUMBERS:

- Child Custody
- 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:

- [How to get a contempt order \(when court orders are not being obeyed\)](#), [Connecticut Network for Legal Aid](#).

TEXTS & TREATISES:

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

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - 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

- Louise Truax, Editor, [LexisNexis Practice Guide Connecticut Family Law](#), (2015).
 - 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.

- 4 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2015).
 - Chapter 25. Modification and enforcement of forum **state's custody**-visitation directives
 - § 25.05. Enforcement proceedings
 - [1] Preliminary considerations
 - [a]. Types of enforcement proceedings and remedies
 - [i]. Contempt of court and habeas corpus
 - [ii]. Punitive modification
 - [iii]. Reduction, suspension or termination of child support
 - [iv]. Required posting of a bond
 - [v]. Money damages
 - [vi]. Criminal liability
 - [vii]. Injunctive relief
 - [viii]. Court's discretionary powers in enforcing visitation directives**
 - [ix]. Noncustodial parent compelled to exercise visitation
 - [2] Contempt of court proceedings

- [3] Punitive transfer of custody or modification of visitation directives
- [4] Reduction, termination or suspension of child support payments as an enforcement mechanism
- [5] Requirement that a bond be posted to secure custody or visitation rights
 - [a] Court's authority to require the posting** of bonds in child custody or visitation proceedings
 - [b] Appropriate circumstances for the imposition of a bond requirement
 - [c] Amount of the bond
 - [d] Execution on the bond

Section 7: Habeas Corpus Proceedings in Child Visitation Matters

A Guide to Resources in the Law Library

SCOPE:

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

DEFINITION:

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

STATUTES:

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. (2015)

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

COURT RULES

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

Connecticut Practice Book (2015)

- § [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:

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

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - § 43.9. Application for Writ of Habeas Corpus
- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).
 - Form No. X-A-1a. Application for writ of habeas corpus concerning custody /visitation of minor child(ren), pp. 176-177
 - Form no. X-A-1b. Affidavit, pp. 178-179
 - Form no. X-A-1c. Writ of habeas corpus, p. 180
 - Form no. X-A-1d. Certification into court

CASES:

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

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

TEXTS & TREATISES:

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - § 43.8. Habeas corpus proceedings
 - § 43.9. Application for writ of habeas corpus—Form

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

- 1 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2015).
 - Chapter 6. Commencement of action or proceeding
 - § 6.06. Habeas corpus
 - [1]. —Applicability to custody disputes
 - [2]. —Procedure

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

A Guide to Resources in the Law Library

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

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

STATUTES: Conn. Gen. Stat. (2015)

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

CASES:

- [Stancuna v. Stancuna](#), 135 Conn. App. 349, 41 A.3d 1156 (2012). **"Clearly, the court considered the best interests of the children in formulating its orders.... Although the defendant makes repeated reference to Russia's failure to ratify the Hague Convention's child abduction provisions, the court specifically found, on the basis of the evidence before it, that the plaintiff does not pose a flight risk.... Additionally, the court found that the plaintiff has made considerable progress toward United States citizenship and that she has invested significant time and money in establishing a home and career in Connecticut. In light of the foregoing, we conclude that the court did not abuse its discretion in permitting the plaintiff to travel with the minor children to Russia."**

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.

- [Emrich v. Emrich](#), 127 Conn. App. 691, 696, 15 A.3d 1104 (2011). **"The court found, pursuant to § 46b-56d (a), that the plaintiff proved by a preponderance of the evidence that the proposed relocation of the children to Maine was for a legitimate purpose, the proposed location was reasonable in light of such purpose, and the relocation was in the best interests of the children."**
- [Noonan v. Noonan](#), 122 Conn. App. 184, 191-192, 998 A.2d 231, 236 (2010). **"In 2006, the legislature enacted Public Acts 2006, No. 06-168, codified as § 46b-56d, which sets out the analysis a court is to apply when deciding a *postjudgment* motion to relocate with a couple's minor child. Section 46b-56d adopted the shift in the burden of proof to the relocating parent set forth in [Ireland v. Ireland](#), 246 Conn. 413, 425, 717 A.2d 676 (1998), and expanded the best interest of the child standard adopted through case law by providing specific factors that the court is to consider."** (Emphasis added.) [Taylor v. Taylor](#), 119 Conn. App. 817, 821-22, 990 A.2d 882 (2010)"
- [Taylor v. Taylor](#), 119 Conn. App. 817, 825, 990 A.2d 882, 887, 990 A.2d 882 (2010). **"This court has noted that employing the best interest of the child standard in a**

termination case 'is a difficult task that requires the court to weigh many different and sometimes competing interests.'

[In re Davonta V.](#), 98 Conn. App. 42, 48, 907 A.2d 126 (2006), [aff'd, 285 Conn. 483](#), 940 A.2d 733 (2008).

Similarly, the trial court was faced with the same challenge when deciding the issue of relocation. It candidly stated that both options, allowing or disallowing relocation, had negative aspects. For example, the court recognized that by allowing relocation, the plaintiff would not be able to coach the parties' minor child or attend his sporting events with the same frequency. Overall, however, the court found that although this relationship would not be the same, the parties' minor child would be able to maintain a relationship **with the plaintiff while gaining a mother who "can work with some emotional support and be able ... to care for her family."** **Because the defendant is the sole custodian of the parties' minor child, the court found that this result was in the best interest of the child."**

TEXTS & TREATISES:

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

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - § 42.39. Parental residence within or outside Connecticut
 - § 42.41. Limitation on location of residence
 - § 42.41.50 Limitations on Travel
- Louise Truax, Editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2015).
 - Chapter 8. Custody and Visitation
 - Part VI. Filing Custody or Visitation Actions Post Judgment.
 - § 8.43 Making Orders Regarding Relocation Post Judgment
- 3 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2015).
 - Chapter 16. Visitation
 - § 16.11 Jurisdictional restrictions on visitation
 - [1] Removal of child from jurisdiction
 - [2] Distance between noncustodial parent and child due to relocation of noncustodial parent

Table 2: P.A. 06-168 (An Act Concerning Relocation of Parents)

2006 Conn. Acts 168 (Reg. Sess.)

An Act Concerning Relocation of Parents Having Custody of Minor Children
Conn. Gen. Stats. § [46b-56d](#)

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

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

Factors

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

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

Approved June 6, 2006

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

A Guide to Resources in the Law Library

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

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

FORMS:

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

- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) 109 (1991). Motion for Restraining Order.
- [Ireland v. Ireland](#), 246 Conn. 413, 428, 717 A.2d 676 (1998), Connecticut Supreme Court Records and Briefs, May/June 1998.
Amended Motion to Enjoin and Restrain Motion for Permission for Plaintiff to Reside in California with the Minor Child
- 7 [Am. Jur. Pleading & Practice Forms](#). Contempt § 130. "Removal of child from jurisdiction with intent to deprive person of part-time custody and visitation rights"

CASES:

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.

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

- [Azia v. Dilascia](#), 64 Conn. App. 540, 550, 780 A.2d 992 (2001). "Because the court did apply the *Ireland* factors in reaching its custody decision, we will assume, without deciding, that such application was proper... *Ireland* does not mandate that a court consider each factor individually and separately."
- [Raymond v. Raymond](#), 165 Conn. 735, 740, 345 A.2d 48 (1974). "A divorce decree which awards the custody of a child to one parent with permission to the other to visit the child at reasonable times and places but which does not expressly restrict the residence of the child, does not impliedly prohibit the removal of the child from the state."
- [Jones v. Jones](#), Superior Court, Judicial District of Middletown, No. FA99-0173261 (Nov. 10, 2003) (2003 Conn. Super. Lexis 3369). "The court finds that Ms. Jones has failed to sustain her burden of proof that the move to Florida is reasonable in light of the reason therefor: **Marriage... That said, then the quality and depth and continuity of these children's very important relationship with their father should not be disturbed.** The court grants the injunction applied for by Mr. Jones: Ms. Jones is enjoined from relocating the residence of the two minor children to Florida."
- [Armstrong v. Armstrong](#), Superior Court, Judicial District of Hartford, No. FA01-10828168-S (July 25, 2002). "The court concludes that the plaintiff should be designated as the primary physical custodian and that relocation of the children to Chicago will be in the best interest of the children." "In addition to the traditional modes of visitation, the parties should consider Internet visitation or videoconferencing (dubbed "virtual visitation") between the children and the defendant father."

WEST KEY NUMBERS:

- Child Custody
 - Geographical Considerations
 - # 260. Geographic limitations. In general
 - # 261. Removal from jurisdiction
 - # 262. Construction and operation of court order
 - # 263. Agreements
- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010)
 - § 42.39. Parental residence within or outside Connecticut
 - § 42.41. Limitation on location of residence
- 3 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2015).
 - Chapter 16. Visitation
 - § 16.11 Jurisdictional restrictions on visitation
 - [1] Removal of child from jurisdiction
 - [2] Distance between noncustodial parent and child due to relocation of noncustodial parent

TEXTS & TREATISES:

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LAW REVIEWS:

- Kathryn E. Abare, *Protecting the New Family: Ireland v. Ireland and Connecticut's Custodial Parent Relocation Law*. 32 [Conn. L. Rev.](#) 307 (1999).

Table 3: Sibling Visitation in Connecticut (Juvenile Matters)

<p>Legislation</p>	<p>Public Act No. 15-199 An Act Expanding Guardianship Opportunities For Children And Implementing Provisions Of The Federal Preventing Sex Trafficking And Strengthening Families Act.</p> <p>Sec. 17. Section 17a-10a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2015):</p> <p>(a) The Commissioner of Children and Families shall ensure that a child placed in the care and custody of the commissioner pursuant to an order of temporary custody or an order of commitment is provided visitation with such child's parents and siblings, unless otherwise ordered by the court.</p> <p>(b) The commissioner shall ensure that such child's visits with his or her parents shall occur as frequently as reasonably possible, based upon consideration of the best interests of the child, including the age and developmental level of the child, and shall be sufficient in number and duration to ensure continuation of the relationship.</p> <p>(c) If such child has an existing relationship with a sibling and is separated from such sibling as a result of intervention by the commissioner including, but not limited to, placement in a foster home or in the home of a relative, the commissioner shall, based upon consideration of the best interests of the child, ensure that such child has access to and visitation rights with such sibling throughout the duration of such placement. In determining the number, frequency and duration of sibling visits, the commissioner shall consider the best interests of each sibling, given each child's age and developmental level and the continuation of the sibling relationship. If the child and his or her sibling both reside within the state and within fifty miles of each other, the commissioner shall, within available appropriations, ensure that such child's visits with his or her sibling occur, on average, not less than once per week, unless the commissioner finds that the frequency of such visitation is not in the best interests of each sibling.</p> <p>(d) The commissioner shall include in each child's plan of treatment information relating to the factors considered in making visitation determinations pursuant to this section. If the commissioner determines that such visits are not in the best interests of the child, that the occurrence of, on average, not less than one visit per week with his or her sibling is not in the best interests of each sibling, or that the number, frequency or duration of the visits requested by the child's attorney or guardian ad litem is not in the best interests of the child,</p>
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the commissioner shall include the reasons for such determination in the child's plan of treatment.

Sec. 18. Section 45a-715 of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2015):

(o) For any child who is the subject of a petition for adoption under this chapter, the court shall consider the appropriateness of postadoption communication or contact with a sibling of such child, including, but not limited to, visitation, written correspondence or telephone calls. If the court determines such postadoption communication or contact is in the best interest of the child, the court shall order that such child has access to and visitation rights with such sibling until the child reaches eighteen years of age.

(p) The court shall consider the following factors in determining whether postadoption communication or contact with a sibling is in the best interest of the child: (1) The age of the child and his or her sibling; (2) the extent of the existing relationship between the child and his or her sibling; (3) the physical, emotional and psychological needs, including any special needs, and stability of the child and his or her sibling; (4) the child's opinion and the opinion of his or her sibling regarding such postadoption communication or contact; (5) the opinion of the adoptive parent regarding such postadoption communication or contact; (6) opinions of experts, including any individuals who may have provided services to the child or his or her sibling; (7) the long-term plans for the child and his or her sibling; and (8) any relevant logistical concerns.

(q) Any determination of the court pursuant to subsection (o) of this section shall be included in the final adoption order, but such determination shall not affect the validity of the adoption. Nothing in this subsection shall limit the authority of the court to enforce its orders in any manner permitted by law.

(r) An adoptive parent may, at any time, petition the court to review its determination regarding postadoption communication or contact between a child and his or her sibling. Upon receiving such petition, the court shall conduct a review of its determination using the factors listed in subsection (p) of this section and may order the communication or contact to be terminated or modified if the court determines that such termination or modification is in the best interest of the child. If any dispute arises pursuant to such review, the court may order the parties to engage in mediation.

(s) The court shall not, pursuant to the review required under subsection (r) of this section, increase communication or contact between the

	<p>adopted child and his or her sibling unless the court (1) receives consent from the adoptive parent; and (2) inquires about and considers the opinion of the child regarding such increase.</p>
Statutes	<p>§ 46b-59 Petition for right of visitation with minor child. Order for payment of fees.</p>
Legislative Reports	<p>Saul Spigel, Department of Children and Families Policy on Siblings, Connecticut General Assembly, Office of Legislative Research Report No. 2000-R-0895 (Sept. 25, 2000).</p>
Caselaw	<p>Quail v. Quail, Superior Court, Judicial District of Hartford, No. FA-02 0729549-S (July 25, 2002) (2002 Conn. Super Lexis 2685). “Both parties have filed ... motions for visitation of their youngest sibling. The applications are considered under Connecticut General Statutes §. 46b-59...</p> <p>This matter is controlled by the Connecticut Supreme Court decision in Roth v. Weston, 259 Conn. 202, 789 A.2d 431 (2002)... In applying those standards to the case at hand, the court reaches the following conclusions:</p> <p>The petitioners did have a relationship approaching a parent to child relationship with their sibling... However, that relationship lasted a relatively brief period, and the intensity and nature of that relationship ended some time ago...Accordingly, the court concludes that the plaintiffs lack standing to bring this action.</p> <p>In addition, an exam of the second jurisdictional requirement reveals that the evidence does not show by clear and convincing evidence that this parent’s decision regarding visitation is causing, or would cause, the child to suffer real and substantial emotional harm...”</p>

Section 9: Out of State Child Custody Orders

A Guide to Resources in the Law Library

SCOPE:

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

DEFINITIONS:

- “The purposes of the UCCJEA are to avoid jurisdictional competition and conflict with courts of other states in matters of child custody; promote cooperation with the courts of other states; discourage continuing controversies over child custody; deter abductions; avoid re-litigation of custody decisions; and to facilitate the enforcement of **custody decrees of other states.**” *Radlo v. Radlo*, Superior Court, Judicial District of Putnam, No. FA92-0044260 (Dec. 2, 2003) (36 Conn. L. Rptr. 136) (2003 Conn. Super. Lexis 3309).
- “**Child custody determination** means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.” (Conn. Gen. Stat. § [46b-115a](#)(3))
- “**Child custody proceeding** means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under sections 22 to 34, inclusive, of this act.” (Conn. Gen. Stat. § [46b-115a](#)(4))
- “**Commencement** means the filing of the first pleading in a proceeding.” (Conn. Gen. Stat. § [46b-115a](#)(5))
- “**Home state** means the state in which a child lived with a parent or person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months old, the term means the state in which the child lived from birth with any such parent or person acting as a parent...” (Conn. Gen. Stat. § [46b-115a](#)(7))
- “**Initial determination** means the first child custody determination concerning a particular child. (Conn. Gen. Stat. § [46b-115a](#)(8))
- “**Modification** means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the prior custody determination.” (Conn. Gen. Stat. § [46b-115a](#)(11))

- **“Physical custody** means the physical care and supervision of a child.” (Conn. Gen. Stat. § [46b-115a](#)(14))
- “As used in sections 46b-115u to 46b-115gg of this act, **petitioner** means a person who seeks enforcement of a child custody determination, and **respondent** means a person against whom a proceeding has been commenced for enforcement of a child custody determination.” (Conn. Gen. Stat. § [46b-115u](#))

STATUTES:

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. (2015)

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

LEGISLATIVE:

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

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

INTERNATIONAL CONVENTION:

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

CASES:

- [Veecock-Little v. Little](#), Superior Court, Judicial District of New Haven, No. FA06-4020140-S (Aug. 18, 2006) “. . . when children move with a parent from a state with home state status to another state, the former state does not lose its home state status if the other parent stays there until the children have lived in the new state for six months, at **which point that state has acquired home state status.**”
- [Radlo v. Radlo](#), Superior Court, Judicial District of Putnam, No. FA92-0044260 (Dec. 2, 2003) (36 Conn. L. Rptr. 136) (2003 Conn. Super. Lexis 3309). **“The purposes of the**

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.

UCCJEA are to avoid jurisdictional competition and conflict with courts of other states in matters of child custody; promote cooperation with the courts of other states; discourage continuing controversies over child custody; deter abductions; avoid re-litigation of custody decisions; and to facilitate the enforcement of custody decrees of **other states.**"

- [Gilman v. Gilman](#), Superior Court, Judicial District of New London-Norwich at Norwich, No. FA01-21957-S (May 22, 2001) (2001 WL 688610) (2001 Conn. Super. Lexis 1453). "The UCCJEA alters the analysis of the initial determination of child custody. Specifically, the new act requires that the 'home state' determination be made as a condition precedent to an examination as to whether the child and parent have significant connections with this state. The new act also eliminates that analysis on the basis of "the best interest of the child."

WEST KEY NUMBERS:

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

ENCYCLOPEDIAS:

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

TEXTS & TREATISES:

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

- Louise Truax, Editor, [LexisNexis Practice Guide Connecticut Family Law](#), (2015).
 - Chapter 2. Jurisdiction
 - Part IX. Applying the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).
 - § 2.39 Establishing Jurisdiction Under the UCCJEA
 - § 2.40 Determining Home State Jurisdiction
 - § 2.47 Modifying the Custody Determination of Another State
 - § 2.48 Asserting Temporary Emergency Jurisdiction
 - § 2.49 Providing Notice of the Proceedings
 - § 2.50 Applying the UCCJEA to Native Americans
 - Chapter 8. Custody and Visitation
 - Part II. Establishing Jurisdiction and Analyzing Statutory Provisions for Child Custody and Visitation.
 - § 8.04 Establishing Jurisdiction Under the Uniform Child Custody Jurisdiction

and Enforcement Act

- 1 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2015).

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

§ 3.01. Evolutionary developments

§ 3.02. Objectives

§ 3.02A. Jurisdiction to decide this dispute

§ 3.02B. Enforcement

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

§ 3.03. Definitions

§ 3.04. Due process requirements

§ 3.05. Pleadings and testimony

§ 3.06. Joinder of additional parties; Appearances

§ 3.07. Cooperation between courts

§ 3.08. Miscellaneous provisions

§ 3.09. Bibliography

LAW REVIEWS:

- Mitchell A. Jacobs and David L. Marcus, *The Uniform Child Custody Jurisdiction and Enforcement Act*, 18 [GP Solo](#), Oct.-Nov. 2001, at 48.

Table 4: Uniform Child Custody Jurisdiction and Enforcement Act

Conn. Gen. Stat. (2015)

PART I	GENERAL PROVISIONS
§46b-115a	<p>Definitions:</p> <p>(3) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual;</p> <p>(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under sections 46b-115u to 46b-115gg, inclusive;</p>
§46b-115b	Proceedings governed by other law
§46b-115c	Application to Indian tribes
§46b-115d	International application of chapter
§46b-115e	Effect of child custody determination
§46b-115f	Priority
§46b-115g	Notice to persons outside state; submission to jurisdiction
§46b-115h	Communication between courts
§46b-115i	Taking testimony in another state
§46b-115j	Cooperation between courts; preservation of records
PART II	JURISDICTION
§46b-115k	Initial child custody jurisdiction
§46b-115l	Jurisdiction
§46b-115m	Modification of custody determination of another state:
§46b-115n	Temporary emergency jurisdiction:
§46b-115o	Notice and opportunity to be heard and the right to intervene:
§46b-115p	Simultaneous proceedings
§46b-115q	Inconvenient forum
§46b-115r	Jurisdiction declined by reason of conduct; assessment of fees and costs
§46b-115s	Information required by the court
§46b-115t	Appearance of parties and child
PART III	ENFORCEMENT
§46b-115u	Definitions
§46b-115v	Enforcement under Hague Convention
§46b-115w	Registration of child custody determination
§46b-115x	Enforcement of child custody determination

§46b-115y	Temporary visitation orders
§46b-115z	Simultaneous proceedings
§46b-115aa	Expedited enforcement of child custody determination
§46b-115bb	Service of petition and order
§46b-115cc	Hearing and order
§46b-115dd	Order to take physical custody of child
§46b-115ee	Costs, fees and expenses
§46b-115ff	Recognition and enforcement of order issued by another state
§46b-115gg	Appeals
PART IV	FOREIGN CHILD CUSTODY
§46b-115hh	Definitions
§46b-115ii	Foreign child custody determination
§46b-115jj	Enforcement of foreign child custody order re return of child under Hague Convention

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

[Link to Legislative History](#)

May 2, 2006

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

DEPUTY SPEAKER GODFREY:

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

(GAVEL)

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

REP. SPALLONE: (36th)

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

DEPUTY SPEAKER GODFREY:

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

REP. SPALLONE: (36th)

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

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

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

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

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

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

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

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

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

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

DEPUTY SPEAKER GODFREY:

Representative Klarides of the 114th.

REP. KLARIDES: (114th)

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

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

DEPUTY SPEAKER GODFREY:

I thank the gentlewoman. Representative Farr.

REP. FARR: (19th)

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

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

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

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

DEPUTY SPEAKER GODFREY:

Please frame your question, Sir.

REP. FARR: (19th)

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

DEPUTY SPEAKER GODFREY:

Representative Spallone, you look pensive.

REP. SPALLONE: (36th)

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

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

DEPUTY SPEAKER GODFREY:

Representative Farr.

REP. FARR: (19th)

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

DEPUTY SPEAKER GODFREY:

Representative Spallone.

REP. SPALLONE: (36th)

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

DEPUTY SPEAKER GODFREY:

Representative Farr.

REP. FARR: (19th)

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

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

DEPUTY SPEAKER GODFREY:

Thank you, Sir. Representative Walker.

REP. WALKER: (93rd)

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

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

DEPUTY SPEAKER GODFREY:

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

REP. WALKER: (93rd)

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

DEPUTY SPEAKER GODFREY:

Representative Spallone.

REP. SPALLONE: (36th)

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

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

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

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

DEPUTY SPEAKER GODFREY:

Representative Walker.

REP. WALKER: (93rd)

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

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

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

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

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

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

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

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

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

DEPUTY SPEAKER GODFREY:

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

CLERK:

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

DEPUTY SPEAKER GODFREY:

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

CLERK:

House Bill Number 5536.

Total Number Voting 140

Necessary for Passage 71

Those voting Yea 132

Those voting Nay 8

Those absent and not voting 11

DEPUTY SPEAKER GODFREY:

The Bill is passed.

Appendix B: C.G.S. Sec. 46b-56e. Orders of Custody or Visitation re Children of Deploying Parent

Sec. 46b-56e. Orders of custody or visitation re children of deploying parent. (a) For the purposes of this section:

(1) **"Armed forces"** means the United States Army, Navy, Marine Corps, Coast Guard and Air Force and any reserve component thereof, including the Connecticut National Guard performing duty as provided in Title 32 of the United States Code;

(2) **"Deploy"** means military service in compliance with military orders received by a member of the armed forces to report for combat operations, contingency operations, peacekeeping operations, a remote tour of duty or other active duty, except state active duty. **"Deployment"** includes a period of time during which a member of the armed forces remains subject to deployment orders and remains deployed on account of sickness, wounds or other lawful cause;

(3) **"Deploying parent"** means a parent who is a member of the armed forces and has been notified by military leadership that he or she will deploy or mobilize with the armed forces;

(4) **"Mobilize"** means the call-up of National Guard or Reserve service members to extended active duty. **"Mobilization"** does not include National Guard or Reserve annual training, inactive duty days, drill weekends, temporary duty or state active duty; and

(5) **"Nondeploying parent"** means a parent who has not been notified by military leadership that he or she will deploy or mobilize with the armed forces.

(b) If a deploying parent is required to be separated from a child of such parent during a deployment or mobilization, a court shall not enter a final order of custody or visitation modifying a final order of custody or visitation issued pursuant to section 46b-56, 46b-56a or 46b-61 until ninety days after such parent's deployment or mobilization ends, unless such modification is agreed to by the deploying parent.

(c) If a parent is a member of the armed forces, has sole or joint custody of a child or court ordered visitation, parental access or parenting time and receives notice from military leadership that he or she will deploy or mobilize in the near future and will be required to be separated from such child due to such deployment or mobilization, then upon motion of such deploying parent or the nondeploying parent, a court may enter temporary orders of custody or visitation modifying final orders of custody or visitation during the period of such deployment or mobilization if: (1) The **deployment or mobilization would have a material effect upon the deploying parent's** ability to exercise parental rights and responsibilities or parent-child contact as set forth in the existing final orders of custody or visitation, and (2) the court finds that such modification is in the best interests of the child. In issuing such temporary modification orders, the court shall be guided by the provisions of the general statutes pertaining to custody and visitation. Motions for temporary modification of

final orders of custody or visitation because of deployment or mobilization shall be given priority for this purpose.

(d) A temporary court order modifying final orders of custody or visitation issued under subsection (c) of this section shall require that: (1) Whenever the deploying parent is granted leave from such deployment or mobilization, the nondeploying parent shall make the child available to the deploying parent to the extent requested by the deploying parent, provided (A) such request for visitation time is not inconsistent with that provided for in the final orders of custody or visitation being modified by such temporary court order, and (B) the child shall not be absent from school unless ordered by the court or agreed to, in writing, by both parents; (2) the nondeploying parent facilitate opportunities for telephonic, electronic mail, and other such contact between the deploying parent and the child during deployment or mobilization; and (3) the deploying parent provide timely information regarding his or her leave schedule to the nondeploying parent. Changes in actual leave dates shall not be used by the nondeploying parent as a justification to limit contact between the deploying parent and the child.

(e) A temporary court order modifying final orders of custody or visitation issued under subsection (c) of this section shall specify that deployment or mobilization is the basis for the order and shall be entered by the court as a temporary order. The order shall further require the nondeploying parent to provide the court and the **deploying parent with thirty days' advance written notice of any change of address** and any change of telephone number, unless a court has ordered that the deploying party is not entitled to this information.

(f) If pendente lite orders of custody or visitation are in place or if there are no existing orders of custody or visitation establishing the terms of parental rights and responsibilities or parent-child contact and it appears that deployment or mobilization of a parent who is a member of the armed forces is imminent, upon motion by either parent, the court shall expedite a hearing to establish temporary parental rights and responsibilities and parent-child contact to (1) ensure the deploying parent has access to the child, provided such access is in the best interests of the child; (2) ensure disclosure of information; (3) grant other rights and duties set forth in this section; and (4) provide other appropriate relief. Any initial pleading filed to establish parental rights and responsibilities or parent-child contact with a child of a deploying parent shall be so identified at the time of filing by stating in the text of the pleading the specific facts related to deployment or mobilization.

(g) Nothing in this section shall preclude the court from hearing a motion at least ninety days after the return of the deploying parent for permanent modification of final orders of custody and visitation issued pursuant to section 46b-56, 46b-56a or 46b-61. The nondeploying parent shall bear the burden of showing that reentry of final orders of custody or visitation, issued pursuant to section 46b-56, 46b-56a or 46b-61, in effect before the deployment or mobilization is no longer in the best interests of the child. The absence of a deploying parent due to deployment or mobilization shall not be the sole basis for modifying such orders.

(P.A. 12-90, S. 1.)

History: P.A. 12-90 effective July 1, 2012.