Assisted Reproduction, Surrogacy, Wrongful Birth, and Abortion in Connecticut
A Guide to Resources in the Law Library

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See also:

- Medical Malpractice

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“We are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race.” *Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S. Ct. 1110, 88 L.Ed. 1655 (1942).

“A parent-child relationship extends equally to every child and parent, regardless of the marital status or gender of the parent or the circumstances of the birth of the child.” Conn. Gen. Stat. § 46b-472 (new) (2022 supplement)


“1. provides for equal treatment under the law for children born to same-sex couples by, among other things, removing certain gender-specific references (e.g., changing “maternity” and “paternity” to “parentage”);

2. expands recognition of non-biological parents by (a) making marital or “hold-out” presumptions gender neutral and (b) establishing de facto parentage (i.e., the court adjudicates a person to be a parent under certain circumstances);

3. specifies criteria for adjudicating parentage and competing claims of parentage (e.g., creates best interest of the child factors that the court must consider);

4. provides the process for establishing acknowledged parentage through an acknowledgment agreement;

5. provides for adjudicating genetic parentage and updates the rules governing children born under a surrogacy agreement; and

6. establishes a procedure to enable children conceived through assisted reproduction to access medical and identifying information about gamete donors.”
Section 1: Assisted Reproduction
A Guide to Resources in the Law Library

SCOPE: Bibliographic sources relating to assisted reproduction with donor sperm or eggs, including status of child born and the rights of the donor in Connecticut.

DEFINITONS:

- “The words “child”, “children”, “issue”, “descendants”, “descendant”, “heirs”, “heir”, “unlawful heirs”, “grandchild” and “grandchildren”, when used in the singular or plural in any will or trust instrument, shall, unless such document clearly indicates a contrary intention, be deemed to include children born as a result of assisted reproduction. The provisions of this subsection shall apply to wills and trust instruments whether or not executed before, on or after October 1, 1975, unless the instrument indicates an intent to the contrary.” Conn. Gen. Stat. § 45a-262(a). (As amended by 2022 supplement).

- “The words “child”, “children”, “issue”, “descendants”, “descendant”, “heirs”, “heir”, “unlawful heirs”, “grandchild” and “grandchildren”, when used in the singular or plural in any will or trust instrument, shall, unless such document clearly indicates a contrary intention, be deemed to include children born after the death of the decedent, as provided in subsection (a) of section 45a-785. The provisions of this subsection shall apply to wills and trust instruments whether or not executed before, on or after October 1, 2013, unless the instrument indicates an intent to the contrary. Conn. Gen. Stat. § 45a-262(b). (As amended by 2022 supplement).


- Alleged genetic parent: “means a person who is alleged to be, or alleges that the person is, a genetic parent or possible genetic parent of a child whose parentage has not been adjudicated. “Alleged genetic parent” includes an alleged genetic and an alleged genetic mother.” Conn. Gen. Stat. § 45b-451 (new) (2022 supplement).

- Assisted reproduction: “means a method of causing pregnancy other than sexual intercourse. “Assisted reproduction” includes: (a) Intrauterine,
intracervical or vaginal insemination; (b) Donation of gametes; (c) Donation of embryos; (d) In-vitro fertilization and transfer of embryos; and (e) Intracytoplasmic sperm injection.” Conn. Gen. Stat. § 45b-451 (new) (2022 supplement).


• **Identifying information:** “means (a) The full name of a donor; (b) the date of birth of the donor; and (c) the permanent and, if different, current address of the donor at the time of the donation.” Conn. Gen. Stat. § 46b-542 (new) (2022 supplement).

• **Intended parent:** “means a person, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction.” Conn. Gen. Stat. § 45b-451 (new) (2022 supplement).

• **Medical history:** “means information regarding any: (a) Present illness of a donor; (b) past illness of the donor; and (c) social, genetic and family history pertaining to the health of the donor.” Conn. Gen. Stat. § 46b-542 (new) (2022 supplement).

• **Presumed parent:** “means a person who under section 46b-488 is presumed to be a parent of a child, unless the presumption is overcome in a judicial proceeding.” Conn. Gen. Stat. § 45b-451 (new) (2022 supplement).

• **Transfer:** “means a procedure for assisted reproduction by which an embryo or sperm is placed in the body of the person who will give birth to the child.” Conn. Gen. Stat. § 45b-451 (new) (2022 supplement).

**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.

Chapter 803. Termination Of Parental Rights And Adoption

§ 45a-724(a)(2) and (3). Who may give child in adoption

§ 45a-731(5)(6)(7). Effects of final decree of adoption. Surviving rights.

Chapter 803a. Children Conceived Through Artificial Insemination

§ 45a-777. Inheritance by child conceived as a result of A.I.D. (2022 supplement).

§ 45a-778. Words of inheritance to apply to child conceived through A.I.D.


Chapter 818. (new) Connecticut Parentage Act (2022 supplement)

Assisted Reproduction:


§ 46b-512. (new) Consent to assisted reproduction. (2022 supplement).


Chapter 818. (new) Connecticut Parentage Act (2022 supplement)

Information about donor:


§ 46b-545. (new) Declaration regarding identity disclosure. (2022 supplement).

PUBLIC ACTS:

  - OLR Summary
  - OLR Summary
  - OLR Summary

LEGISLATIVE:


FORMS:

- 13C American Jurisprudence Legal Forms 2d, Thomson West, 2022, (also available on Westlaw)
  Chapter 191. Parent and child
  § 191:110. Agreement for artificial insemination—Between husband, wife, and donor—Identity of donor known
  § 191:111. Agreement for artificial insemination—Between recipient and donor—Identity of donor known
  § 191:112. Agreement for artificial insemination—By recipient and physician—Identity of donor unknown
  § 191:113. Agreement for artificial insemination—By donor or intermediary—Identity of recipient unknown
- 6 Family Law and Practice, Arnold H. Rutkin, Matthew Bender, 2022 (also available on Lexis).
§ 63.09[2][a]. Form: Consent of Husband to Artificial Insemination of Wife

  Chapter 9. Third party custody and visitation.
  § 9.20. Custody and visitation for children raised by couples of the same sex

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.

- Bilbao v. Goodwin, 333 Conn. 599, 217 A.3d 977 (2019). As part of a storage agreement with the fertility clinic, the parties unequivocally stated that they wanted the pre-embryos discarded if they ever divorced. Their marriage has since been dissolved, and the plaintiff now seeks to have the pre-embryos discarded in accordance with the storage agreement. The defendant argues that the agreement is unenforceable, however, and wants the pre-embryos preserved or donated. The *981 trial court concluded that the storage agreement was unenforceable but awarded the pre-embryos to the plaintiff. We conclude that the storage agreement was unenforceable but awarded the pre-embryos to the plaintiff. We conclude that the storage agreement is enforceable and, therefore, reverse the trial court's judgment insofar as the court determined that the agreement was not enforceable... There are three leading approaches to determining the disposition of a pre-embryo upon divorce: (1) the contractual approach, (2) the balancing approach, and (3) the contemporaneous mutual consent approach. Each approach attempts to resolve disputes between progenitors by emphasizing different policies: the progenitors' autonomy in deciding the fate of pre-embryos created with their own gametic material, the reality that progenitors may change their minds as time passes, or both...Therefore, we conclude that, in the absence of formal legislative guidance on the question, the contractual approach is the appropriate first step in determining the disposition of pre-embryos upon divorce. As set forth in part IV of this opinion, we do not decide how a court should determine the disposition of pre-embryos in the absence of an enforceable agreement."

- Barse v. Pasternak, Superior Court, Judicial District, New Britain, No. HHB-FA12-4030541-S. (Jan. 16, 2015) (2015 WL 600973). "For the reasons discussed more particularly below, this court concludes that, under the circumstances in this case, the plaintiff is presumed to be the minor child's legal parent irrespective of whether she conceived or adopted the child, complied with the artificial insemination statutes, or entered into a valid gestational agreement, and, the child therefore is presumed to be legitimate."
- **Commissioner of Social Services v. Lewis**, Superior Court, Judicial District of Hartford, No. FA114059024S (Oct. 21, 2013) (56 Conn. L. Rptr. 937). “The defendant and the plaintiff did agree in their dissolution agreement that the parties would destroy the embryos (emphasis added). They did not. Further, the magistrate found that although the dissolution judgment required the destruction of the embryos, the defendant signed a prior consent for the IVF and then after the child was born, volitionally signed the acknowledgment of paternity and therefore the defendant ‘essentially sandwiched the dissolution order with both prior and subsequent consent recognizing the subject child.’”

- **Laspina-Williams v. Laspina-Williams**, 46 Conn. Supp. 165, 169-171, 742 A.2d 840 (1999). “The defendant argues that because the plaintiff has no biological tie to the child, the plaintiff cannot be and never was a parent to the minor child under Connecticut law and thus the plaintiff fails to meet the requirement that the ‘parents were not involved in any case or controversy currently before the court.’ (Emphasis added.)” … “The defendant further contends that although the parties were accepted by friends and others to be a family, because Connecticut law would not recognize the parties and the minor child as ‘family’ there can be no claim that the ‘family unit was no longer intact.’” … “The court finds the foregoing arguments of the defendant unpersuasive. Under § 46b–59 ‘any person’ may seek visitation of a minor child as opposed to only persons with a biological tie to the child.” … “Without addressing or labeling the status of the relationship of the parties, the defendant allowed, even encouraged, the plaintiff to assume a significant role in the life of the child such that she is a party entitled to seek visitation with the child. Accordingly, the defendant’s motion to dismiss on this ground is denied.”

- **In re Simon A. W.**, 1997 Conn. Super. LEXIS 1480 (Jud. District, New Haven, No. NO5-CP97-009105-A, May 27, 1997) 1997 WL 309576. "The provisions of Chapter 803a (Sec. 45a-771 through 779) entitled 'Children Conceived through Artificial Insemination' shed no light on this case since, despite its title, they relate exclusively to children conceived by married women through artificial insemination by anonymous donors. Simon A.W. was conceived by Wendy through artificial insemination by a known donor, Simon M.W., whose name appears on the birth certificate and who has regarded himself, and been regarded by both the Probate and Superior Court, as the acknowledged father of a child born out of wedlock, entitling him to all of the
rights of a joint guardian of the person of his biological son. Sec. 45a-606."

**ENCYCLOPEDIAS:**

  - § 5. Definitions—“Surrogate parent”; “gestational mother”
  - § 7. Definitions—“Child artificially inseminated”
  - § 8. Definitions—“Family”
  - § 36. Right of visitation


**TEXTS & TREATISES:**

  - Chapter 42. Child custody and visitation
    - § 42:3. Custody rights relating to adopted children, step children and other nonbiological relationships
    - § 42:14. Custody claims by third parties – Assisted reproduction

- **6 Family Law and Practice**, by Arnold H. Rutkin, Matthew Bender, 2022 (also available on Lexis).
  - Chapter 63. Paternity Proceedings
    - § 63.09. Assisted conception
  - Chapter 64A. Law of alternative reproductive technologies
    - § 64A.04. Legal issues involved in artificial insemination
      - [1] Introduction
      - [2] Who may perform artificial insemination
      - [3] Donor and recipient
      - [4] Parentage where artificial insemination is by the husband
- 1 Child Custody & Visitation Law & Practice, by Sandra Morgan Little, Matthew Bender, 2022.
  Chapter 1. Overview: development of the law of child custody and visitation
  § 1.02. The changing definition of “parent”: assisted procreation
  [2] Types of assisted procreation
  [b] Artificial insemination
  [5] State parentage laws and assisted procreation
  [a] Generally
  [b] Paternal rights
  [i] Presumption of legitimacy
  [ii] Artificial insemination
  [c] Maternal rights

- 2 Child Custody & Visitation Law & Practice, by Sandra Morgan Little, Matthew Bender, 2022.
  Chapter 11A. Assisted reproductive technologies and collaborative reproduction
  § 11A.01. Clarification of terminology used in ARTs and collaborative reproduction
  § 11A-02. Medical aspects of ART: What is ART?
  § 11A-03. Parentage issues in ARTs
  § 11A-04. Compare adoption: Why ARTs demands a different approach
  § 11A-06. Case law on ARTs
  § 11A-07. Agreements on embryo preservation or other disposition
  § 11A-08. Preparing collaborative reproduction agreements

- 2 Disputed Paternity Proceedings, by Nina M. Vitek, Matthew Bender, 2022 (also available on Lexis).
  Chapter 17. Assisted reproduction: Constitutional and family law parameters
  § 17.01. Keep your focus on the children
  § 17.02. Assisted reproduction and collaborative reproduction
  § 17.03. Directives and agreements
  § 17.04. Adoptions is for children; Donation is for embryos
  § 17.05. Checklist for counseling ART clients
  § 17.06. Assisted reproduction case law

Appendix 17B.02 State laws re: Artificial insemination
• 3 Adoption Law and Practice, by Joan Heifetz Hollinger, et al., Matthew Bender, 2021 (also available on Lexis).
  Chapter 14. Assisted reproductive technologies, collaborative reproduction, and adoption
  § 14.05. Statutory overview of collaborative reproduction
  § 14.06. Case law on ARTs
  § 14.08. Preparing collaborative reproduction agreements
  § 14.20. Charts summarizing state statutes on ARTs
  [2]. Artificial insemination

• 1 Legal Rights of Children, 3d ed., by Thomas R. Young, Thomson West, 2021-2022 ed. (also available on Westlaw).
  Chapter 7. Inheritance laws and paternity rights of illegitimate children
  § 7:17. Artificial insemination as affecting paternity
  § 7:18 -- Same sex relationships

**ALR INDEX:**

**LAW REVIEWS:**


• Family Advocate, Assisted Reproductive Technologies, Vol. 34, No. 2. (Fall 2011).


• June Carbone and Naomi Cahn, Marriage and the Marital Presumption Post-Obergefell, 84 Univ. of Missouri L. Rev. 663 (Spring, 2016).
Section 2: Surrogacy
A Guide to Resources in the Law Library

**SCOPE:**
Bibliographic resources relating to surrogacy in Connecticut including payments to surrogate and contents of gestational agreement.

**DEFINITION:**
- “The relevant facts and procedural history are undisputed. On January 25, 1994, the petitioner, Mary Doe, signed a surrogacy contract with the named respondent, John Roe, to carry a child fathered by him through artificial insemination. The petitioner further agreed to voluntarily surrender custody of the child to the named respondent and his wife, Jane Roe, upon birth, and to allow for the subsequent adoption of the child by Jane Roe. Jack Roe (child), who was conceived pursuant to this surrogacy contract, was born on December 13, 1994. Immediately after the child’s birth, the petitioner turned him over to the respondents in accordance with the parties’ surrogacy contract.” Doe v. Roe, 246 Conn. 652, 653, 717 A.2d 706 (1998).

- **Surrogacy agreement:** “means an agreement between one or more intended parents and a person who is not an intended parent in which such person agrees to become pregnant through assisted reproduction and which provides that each intended parent is a parent of a child conceived under the agreement. Unless the context otherwise requires, “surrogacy agreement” includes an agreement with a person acting as a gestational surrogate and an agreement with a person acting as a genetic surrogate”. Conn. Gen. Stat. § 7-36 (16) (2021) (as amended by the 2022 supplement). Also Conn. Gen. Stat. § 46b-521 (3) (new) (2022 supplement).

- **Intended parent:** “means a person, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction”. Conn. Gen. Stat. § 7-36 (17) (2021) (as amended by the 2022 supplement).

- **Genetic surrogate:** “means a person who is not an intended parent and who agrees to become pregnant through assisted reproduction using that person’s own gamete, under a genetic surrogacy agreement as provided in sections 46b-521 to 46b-538, inclusive”. Conn. Gen. Stat. §46b-521 (1) (new) (2022 supplement)

- **Gestational surrogate:** “means a person who is not an intended parent and who agrees to become pregnant through assisted reproduction using gametes that are not that person’s own, under a gestational surrogacy
agreement as provided in sections 46b-521 to 46b-538, inclusive”. Conn. Gen. Stat. §46b-521 (2) (new) (2022 supplement)

STATUTES:

  Chapter 93 – Registrars of Vital Statistics
  § 7-48a. Filing of original certificate of birth.
  Gestational agreement: Replacement certificate of birth. (2022 supplement)

  Chapter 815j – Dissolution of Marriage, Legal Separation and Annulment
  § 46b-56. Orders re custody, care, education, visitation and support of children. Best interests of the child. (2022 supplement)
  § 46b-56b. Presumption re best interest of child to be in custody of parent

Chapter 818. (new) Connecticut Parentage Act (2022 supplement)

Surrogacy agreements:
  § 46b-522. (new) Eligibility to enter into gestational or genetic agreement. (2022 supplement)
  § 46b-523. (new) Requirements of gestational or surrogacy agreement: process. (2022 supplement)
  § 46b-524. (new) Requirements of gestational or surrogacy agreement: content. (2022 supplement)
  § 46b-525. (new) Effect of subsequent change of marital status of surrogate. (2022 supplement)
  § 46b-526. (new) Effect of subsequent change of marital status of intended parent. (2022 supplement)
  § 46b-527. (new) Exclusive, continuing jurisdiction. (2022 supplement)
  § 46b-528. (new) Termination of gestational surrogacy agreement. (2022 supplement)
  § 46b-529. (new) Parentage under gestational surrogacy agreement. (2022 supplement)
  § 46b-530. (new) Gestational surrogacy agreement: parentage of deceased intended parent. (2022 supplement)
  § 46b-531. (new) Gestational surrogacy agreement: judgement of parentage. (2022 supplement)
  § 46b-532. (new) Effect of gestational surrogacy agreement. (2022 supplement)
  § 46b-533. (new) Requirements to validate genetic surrogacy agreement. (2022 supplement)
  § 46b-534. (new) Termination of genetic surrogacy agreement. (2022 supplement)
  § 46b-535. (new) Parentage under validated genetic surrogacy agreement. (2022 supplement)
  § 46b-536. (new) Effect of nonvalidated genetic surrogacy agreement. (2022 supplement)
§ 46b-537. (new) Genetic surrogacy agreement: parentage of deceased intended parent. (2022 supplement)
§ 46b-538. (new) Breach of genetic surrogacy agreement. (2022 supplement)

PUBLIC ACTS:
  - OLR Summary

LEGISLATIVE:

FORMS:
- 13C American Jurisprudence Legal Forms 2d, Thompson West, 2022, (also available on Westlaw).
  - Chapter 191. Parent and child
    - § 191:99. Surrogate parenting agreement

- Nichols Cyclopedia of Legal Forms Annotated, Thompson West, 2021 (also available on Westlaw).
  - Chapter 148. Parent and Child
    - Surrogate parenting transactions §§ 148:90 - 148:112
      - § 148.90 Surrogate parenting agreement
      - § 148.106 Surrogate application form

CASES:
- Raftopol v. Ramey, 299 Conn. 681, 708, 12 A.3d 783 (2011) "On the basis of our analysis of both the text of the statute, as well as its legislative history, we conclude that the legislature intended § 7-48a to confer parental status on an intended parent who is a party to a valid gestational agreement irrespective of that intended parent's genetic relationship to the children. Such intended parents need not adopt the children in order to become legal parents. They acquire that status by operation of law, upon an order by a court of competent jurisdiction pursuant to § 7-48a."
- Griffiths v. Taylor, Superior Court, Judicial District of Waterbury, No. FA084015629, (June 13, 2008). 45 Conn. L. Rptr. 725. “[I]t is clear that the legislature
contemplated that a Superior Court would have the authority, under § 7–48a, to enter a judgment on the validity of a gestational agreement and that where there is a valid gestational agreement, the court may then order the Department of Health to issue a replacement birth certificate with the names of the intended parents on it.”

- Doe v. Roe, 246 Conn. 652, 653, 717 A.2d 706 (1998). “The narrow question presented by this appeal is whether the Superior Court has subject matter jurisdiction to render judgment in accordance with an agreement that includes a promise by a surrogate mother to consent to the termination of her parental rights in Probate Court.”

**ENCYCLOPEDIAS:**

- 77 ALR5th 567, *Determination of status as legal or natural parents in contested surrogacy births*, by Ardis L. Campbell, 2000 (also available on Westlaw).


- 48 COA 2d 687, *Cause of Action for Determination of Status as Legal or Natural Parents of Children Borne by Surrogate or Gestational Carrier*, Thomson West, 2011, with 2021 supplement (also available on Westlaw).

- 17A Am. Jur. 2d Contracts, Thomson West, 2016 (also available on Westlaw).
  - §287. *Contracts concerning familial relationships; gestational surrogacy*

**TEXTS & TREATISES:**

  - Chapter 11. Surrogacy and Gestational Agreements

  - Chapter 6. Domestic Relations
    - Section IV. Related Issues
      - § 6:11 Parentage

- 1 *Adoption Law and Practice*, by Joan Heifetz Hollinger. et al., Matthew Bender, 2021 (also available on Lexis).
  - Chapter 2. Consent to adoption

- 3 *Adoption Law and Practice*, by Joan Heifetz Hollinger, et al., Matthew Bender, 2021 (also available on Lexis).
  - Chapter 14. Assisted reproductive technologies, collaborative reproduction and adoption
    - § 14.20. Charts summarizing state statutes on ART
[1] Surrogacy and gestational carriers

- 2 Child Custody & Visitation Law & Practice, by Sandra Morgan Little, Matthew Bender, 2022.
  Chapter 11A. Assisted reproductive technologies and collaborative reproduction
  § 11A.06. Case law on ARTs
  § 11A.08. Preparing collaborative reproduction agreements
  - [2] Requirement of medical screening
  - [4] Compensation
  - [5] Relinquishment of parental rights
  - [6] Personal protection of donor or carrier
  - [8] Summary of elements for gestational carrier agreements

- 6 Family Law and Practice, by Arnold H. Rutkin, Matthew Bender, 2022 (also available on Lexis).
  Chapter 63. Paternity Proceedings
  § 63.09. Assisted conception
  Chapter 64-A. Law of Alternative Reproductive Technologies
  § 64A.02. Types of alternative reproductive technologies
  - [6] Surrogate parenting
  § 64A.07 Legal issues involved in surrogate parenting.
    - [2] Parentage issues in surrogate parenting
    - [3] Fees for surrogacy
    - [4] Selecting the surrogate
  § 64A.09 Uniform Parentage Act

  Chapter 9. Assisted conception and surrogacy
  § 9.15. Surrogacy generally
  § 9.16. – Gestational surrogacy
  § 9.17. – Gratuitous surrogacy
  § 9.18. – Surrogacy for a fee
  § 9.19. Rights of surrogate
  § 9.20. Status of the surrogate’s husband
  § 9.21. Enforceability and remedies

- 2 Disputed Paternity Proceedings, by Nina M. Vitek, Matthew Bender, 2022 (also available on Lexis).
  Chapter 17. Assisted reproduction: Constitutional and family law parameters
  § 17.02. Assisted reproduction and collaborative reproduction
  § 17.03. Directives and agreements
§ 17.05. Checklists for counseling ART clients
§ 17.06. Assisted reproduction case law
§ 17.10. Gestational carriers and surrogates: Why
the distinction is significant
Appendix 17B. State laws on assisted reproduction
§17B.01. State laws re: Surrogacy and gestational

- 15 Corbin on Contracts, Rev. ed., by Joseph M. Perillo,
  1993 (with 2021 supplement).
  Chapter 81. Contracts involving familial
  relationships
  § 81.6 Surrogacy Contracts

- 1 Modern Child Custody Practice, 2d ed., by Jeff Atkinson,
  Chapter 8. Surrogate parenting

- 1 Legal Rights of Children, 3d ed., by Thomas R. Young,
  Thomson West, 2021-2022 ed. (also available on
  Westlaw).
  Chapter 7. Inheritance laws and paternity rights of
  illegitimate children
  § 7:15. Establishing parentage through paternity
  actions
  § 7:16. -- Children of surrogate mothers and
  sperm donor fathers

**LAW REVIEWS:**

- Leslie I. Jennings-Lax, Surrogacy –The Law in
- Courtney G. Joslin, Nurturing Parenthood Through the
- Douglas NeJaime, The Nature of Parenthood, 126 Yale
  Donation, and Gestational Surrogacy.
- Deborah S. Mazer, Born Breach: The Challenge of
  Remedies in Surrogacy Contracts, 28 Yale J.L. &
  Feminism 211 (2016).
- Jennifer L. Laporte, Note, Connecticut’s Intent Test to
  Determine Parentage: Equality for Same-Sex Couples at
- Christine A. Bjorkman, Sitting in Limbo: The Absence of
  Connecticut Regulation of Surrogate Parenting
  Agreements and Its Effect on Parties to the Agreement,
**Section 3: Wrongful Birth or Wrongful Life**

**SCOPE:**
Bibliographic resources relating to the torts of wrongful birth or wrongful life in Connecticut.

**DEFINITION:**
- “The terms ‘wrongful birth’ and ‘wrongful life’ are but shorthand phrases that describe the causes of action of parents and children when negligent medical treatment deprives parents of the option to terminate a pregnancy to avoid the birth of a defective child.” Procanik by Procanik v. Cillo, 478 A2d 755, 760 (N.J. 1984).
- “‘wrongful life’ refers to a cause of action brought by or on behalf of a defective child who claims that but for the defendant doctor’s negligent advice to or treatment of its parents, the child would not have been born.” Ibid.

**STATUTES:**

**FORMS:**
  - § 9.06.1 Complaint-Wrongful Life/Wrongful Birth
  - §298 Complaint, petition, or declaration – Birth of child after sterilization operation – Damages for medical expenses, loss of earnings, and physical pain and mental anguish
- 23 COA2d 55, Cause of action for wrongful birth or wrongful life, Thomson West, 2003 (also available on Westlaw).
  - § 39. Sample complaint. Wrongful birth action

**CASES:**
- Bujak v. State, Superior Court, Judicial District of Hartford, No. HHD CV 08-6003355-S (Oct. 24, 2014) (59 Conn. L. Rptr. 218). "While the question of whether
parents may recover for emotional injury to themselves in wrongful birth cases has not been addressed by our higher courts, our Supreme Court has twice clearly rejected the opportunity in wrongful conception cases to carve out an exception 'to the normal duty of a tortfeasor to assume liability for all the damages that he has proximately caused.' Ochs v. Borrelli, 187 Conn. 253, 258 (1982); Burns v. Hanson, 249 Conn. 809, 819 (1999). In Ochs, where a child was conceived after an unsuccessful sterilization procedure, the court held that the defendant was liable for not only the expenses resulting from medical care to treat the child's orthopedic disability, but also for the costs of raising the child to majority. In Burns, a defendant physician who incorrectly advised a severely disabled mother that she was sterile and failed to diagnose her pregnancy was held liable for damages arising from the costs of raising the child who was born healthy.

“In light of this authority, the plaintiff specifically seeks non-economic damages, i.e. damages for pain and suffering as a result of having to raise a child with such severe disabilities which they assert are causally related to the defendants' negligence. Given our Supreme Court's clear direction to impose upon a defendant liability for all damages proximately caused by his negligence, this court cannot discern how emotional injuries as encompassed by a claim for non-economic damages should be excluded from a jury's consideration. Likewise and given the holdings in Ochs and Burns, other superior courts have also concluded that non-economic damages, including emotional pain and suffering, are appropriate claims for damages resulting from the negligence of a defendant in a wrongful birth case.”

- Vasquez v. Roy, 66 Conn. L. Rptr. 602 (2018), WL 625836. “This court finds that Xavier’s claim does not sound in wrongful life because he is seeking to hold the defendants accountable for causing his physical injuries and deformities. Xavier does not allege any failure on the part of the defendants to predict or diagnose a disease or defect, and he does not allege that the injury suffered is his birth or existence.”

- Rich v. Foye, 51 Conn. Sup. 11, 43, 976 A.2d 819 (Conn. Super. Ct. 2007). Damages for emotional distress in wrongful birth action. Wrongful life claim. "Being born with a handicap instead of not being born is not a legally cognizable injury. Damages for living life with impairments are damages that cannot be calculated or, alternatively, are ones already recoverable under a wrongful birth action.”
• **Burns v. Hanson**, 249 Conn. 809, 811, 734 A.2d 964 (1999). "The issues in this action for negligence and malpractice arise out of the birth of a healthy child to a severely disabled mother, who, in accordance with medical advice, had decided not to have another child."

• **Martinez v. Hartford Hospital**, 4 Conn. L. Rptr. 57, 60 (1991), WL 88085. "In the instant case, plaintiff has alleged sufficient facts to support a cause of action for medical malpractice. Further, damages arising from defendant’s negligence relating to the birth of the twins and the costs of raising them are properly pleaded and recoverable."

• **Ochs v. Borrelli**, 187 Conn. 253, 258, 445 A.2d 883 (1982). "In our view, the better rule is to allow parents to recover for the expenses of rearing an unplanned child to majority when the child’s birth results from negligent medical care."

**WEST KEY NUMBERS:**

- Health #687 “Wrongful life” or birth of unhealthy child.

**ENCYCLOPEDIAS:**

- 3 COA 83, *Cause of action against physician for wrongful conception or wrongful pregnancy*, Thomson West, 1984, with 2012 supplement (also available on Westlaw).

- 23 COA2d 55, *Cause of action for wrongful birth or wrongful life*, Thomson West, 2003, with 2021 supplement (also available on Westlaw).

**TEXTS & TREATISES:**

  Chapter 9: Claims stemming from the conception and birth of a child: Wrongful pregnancy, birth, and life  
  § 9.04 Bringing a wrongful birth claim

  - 1W-4. Wrongful birth  
  - 1W-6. Wrongful life
• 2 Disputed Paternity Proceedings, by Nina M. Vitek, Matthew Bender, 2022 (also available on Lexis).
  Chapter 29. Challenging the obligation to pay child-rearing costs
  Liability of third parties affecting the support obligation
  § 29.10. Negligence as basis for “wrongful conception” claim
  § 29.11. Events which may create a ‘wrongful conception’ claim
  § 29.12. Theory and validity of “wrongful conception” cause of action
  § 29.13. Other theories of liability
  § 29.14. Recoveries available
  § 29.15. Rationales for the denial of child-rearing costs
  § 29.16. Rationales for the recovery of child-rearing costs
  § 29.17. Constitutional dimensions of the issue: privacy and procreational choice
  § 29.18. Author’s strategies

• 1 Legal Rights of Children, 3d ed., by Thomas R. Young, Thomson West, 2021-2022 ed. (also available on Westlaw).
  Chapter 9. Children and the law of torts
  IV. Wrongful life and wrongful death

LAW REVIEWS:

  Paul L. Barber, Prenatal Diagnosis: An Ethical and a Regulatory Dilemma, 13 Hous. J. Health L. & Policy 329 (Fall, 2013).
Section 4: Abortion Law
A Guide to Resources in the Law Library

**SCOPE:** Bibliographic sources relating to abortion laws, including abortion clinics.

**DEFINITIONS:**
- **Medically Necessary or Therapeutic Abortions:** “Abortions necessary to ameliorate a condition that is deleterious to a woman’s physical and or psychological health.” *Doe v. Maher*, 40 Conn. Supp. 394, 396 n.4, 515 A.2d 134 (1986).

**STATUTES:**
- **Chapter 319** Medical Assistance
  - § 17b-259b. “Medically necessary” and “medical necessity” defined. Notice of denial of services.
- **Chapter 368** Abortion
  - § 19a-600. Definitions
  - § 19a-601. Information and counseling for minors required. Medical emergency exception.
  - § 19a-602. Termination of pregnancy prior to viability. Abortion after viability prohibited; exception.
- **Chapter 802** Protected Persons and Their Property
  - § 45a-677(e)(9). Powers and duties of plenary or limited guardian. *(2022 supplement)*

**PUBLIC ACTS:**
- **Public Act No. 22-19**, (March Sess.), *An Act Concerning The Provision of Protections For Persons Receiving and Providing Reproductive Health Care Services In The State And Access To Reproductive Health Care Services In The State.*
- **Public Act No. 90-113**, (Feb. Sess.), *An Act Concerning the Repeal of Certain Statutes.*

**REGULATIONS:**
- **Conn. Agencies Regs.** (2021)
  - Licensing Outpatient Clinics Operated by Corporations or Municipalities
  - Regulations on Abortions
    - § 19a-116-1. Abortion services in outpatient clinics

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.

You can visit your local law library or browse the Connecticut eRegulations System on the Secretary of the State website to check if a regulation has been updated.
- **Conn. Agencies Regs.** (2021)
  Department of Social Services.
  § 17b-262-348(r)(3). Payment limitations (Family planning, abortion and hysterectomy).

**FORMS:**
- 3 COA 83, *Cause of Action Against Physician for Wrongful Conception or Wrongful Pregnancy*, Thomson West, 1984, with 2022 supplement (also available on Westlaw).
- 1 Am. Jur. Pleading & Practice Forms, Abortion, Thomson West, 2018 rev. (also available on Westlaw).
  - II. Blockade and harassment of abortion clinics
  - III. Parental consent to minor's abortion
  - IV. Medical malpractice involving abortion
  - V. Restrictions on abortion rights

**CASES:**
- **Doe v. Maher**, 40 Conn. Supp. 394, 450, 515 A.2d 134 (1986). "The court declares that the regulation; 3 Manual, Department of Income Maintenance Medical Assistance Program, c. III, Policy 275; which provides for the funding of abortion under the medicaid program only when necessary to preserve the physical life of the woman or when pregnancy is the result of rape or incest, to be: (a) contrary to the statutory provisions of the medicaid program; General Statutes § 17-134a et seq.; and specifically § 17-134b of the General Statutes, and that therefore the commissioner of income maintenance exceeded his authority in adopting it; (b) in violation of the plaintiff class of poor women's and the plaintiff class of physicians' constitutional rights of due process under article first, § 10, of the constitution of the state of Connecticut; (c) in violation of the plaintiff class of poor women's constitutional right of equal protection under article first, §§ 1 and 20 (including the equal rights amendment, article five of the amendments), of the constitution of the state of Connecticut."
- **Anselmo v. Anselmo**, Superior Court of Connecticut, No. FA000181708 (Mar. 28, 2001) (2001 WL 358851). "In the recent case of *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992), the court found that at all stages of a pregnancy, but in particular, after the point of viability is reached, the state has an interest in protecting the unborn infant. So much so that following viability, the state's interest overrides the long-established right of the mother to terminate the pregnancy."

- 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.
• **Vasquez v. Roy**, 66 Conn. L. Rptr. 602 (2018), WL 625836. “This court finds that the physician-patient relationship between the defendants and Xaver, while in utero, was not extinguished because the medical judgment at issue related to a termination of the pregnancy. The defendants’ professional relationship with Xavier gave rise to a duty to conform to professional standards with regard to the choice of an appropriate abortion technique.”

**ATTORNEY GENERAL OPINIONS:**

• Senator George Jepsen, State Capitol, [2001-015 Formal Opinion](#), Attorney General of Connecticut. “In response to your request, this is a formal opinion regarding whether advanced practice registered nurses (‘APRNs’), licensed nurse-midwives and physician assistants in Connecticut are authorized to dispense, prescribe and administer the drug mifepristone (brand name ‘Mifeprex’, also known as ‘RU-486’) to women in licensed clinics for the purpose of terminating early pregnancies in a non-surgical manner.”

• Joyce A. Thomas, Department of Social Services, [1998-022 Formal Opinion](#), Attorney General of Connecticut. “This is a formal opinion regarding whether abortion must be included in the coverage provided under the Husky Plan, Part B ("Husky B"), a program designed to ensure health care coverage to all children in Connecticut.”

**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.


**ENCYCLOPEDIAS:**

• 26 ALR7th Art. 9, *Validity, construction, and application of state statutes limiting or conditioning receipt of government funds by abortion providers*, by Deborah F. Buckman, Thompson Reuters, 2017.
- 1 Am. Jur. 2d Abortion and Birth Control, Thompson West, 2016 (also available on Westlaw).
- 1 C.J.S. Abortion and Birth Control, Thompson West, 2005 (also available on Westlaw).

**TEXTS & TREATISES:**

You can contact us or visit our catalog to determine which of our law libraries own the treatises cited.

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

- 1 Representing the Child Client, by Mark I. Soler and Michael J. Dale, Matthew Bender, 2022 (also available on Lexis).
  Chapter 3. The legal status of minors
  3.02 Rights restricted based on age
  [c] Medical care

  Sec. II. C. Medical care and treatment;
  Reproductive rights
  § 10:17 Abortion