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**2018 Edition**

# Parental Kidnapping and Custodial Interference

A Guide to Resources in the Law Library

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# Introduction

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- **“The Hague Convention on the Civil Aspects of International Child Abduction** generally requires courts in the United States to order children returned to their countries of habitual residence, if the courts find that the children have been wrongfully removed to or retained in the United States.” [Chafin v. Chafin](#), 133 S. Ct. 1017, 1021, 185 L. Ed. 2d 1 (2013).
- **International parental kidnapping** (18 USC Part I – Crimes). “Whoever removes a child from the United States or attempts to do so, or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years or both.” [18 USC § 1204\(a\)](#) (2018).
- “Congress enacted the **Parental Kidnapping Prevention Act (PKPA)**, 28 U.S.C. § 1738A, to avoid jurisdictional competition and conflict in matters of child custody and visitation and to promote cooperation between state courts. See Pub. L. No. 96-611, 94 Stat. 3569, § 7 (c).” [Scott v. Somers](#), 97 Conn. App. 46, 47, 903 A.2d 663 (2006).
- **“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. . . . The UCCJEA addresses inter-jurisdictional issues related to child custody and visitation.” [In re Iliana M.](#), 134 Conn. App. 382, 390, 38 A.3d 130 (2012).
- **Custodial interference in the second degree: Class A misdemeanor.** “(a) A person is guilty of custodial interference in the second degree when: (1) Being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; (2) knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution; or (3) knowing that he has no legal right to do so, he holds, keeps or otherwise refuses to return a child who is less than sixteen years old to such child's lawful custodian after a request by such custodian for the return of such child. (b) Custodial interference in the second degree is a class A misdemeanor.” Conn. Gen. Stat. [§ 53a-98](#) (2017).
- **Custodial interference in the first degree: Class D felony.** “(a) A person is guilty of custodial interference in the first degree when he commits custodial interference in the second degree as provided in section 53a-98: (1) Under circumstances which expose the child or person taken or enticed from lawful custody or the child held after a request by the lawful custodian for his return to a risk that his safety will be endangered or his health materially impaired; or (2) by taking, enticing or detaining the child or person out of this state.” Conn. Gen. Stat. [§ 53a-97](#) (2017).

# Section 1: Hague Convention on the Civil Aspects of International Child Abduction

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to parental child abduction to and from the United States, with specific emphasis on Connecticut courts.

## **SEE ALSO:**

- [Section 4: Family Violence and Parental Kidnapping](#)

## **DEFINITIONS:**

- [Avendano v. Smith](#), 806 F.Supp.2d 1149, 1163-1164 (2011). "The Hague Convention 'seeks to deter parents who are dissatisfied with current custodial arrangements from abducting their children and seeking a more favorable custodial ruling in another country.' *Navani v. Shahani*, 496 F.3d 1121, 1124 (10th Cir. 2007) (citing *Shealy v. Shealy*, 295 F.3d 1117, 1121 (10th Cir. 2002)). The Hague Convention 'creates an international legal mechanism requiring contracting states to promptly return children who have been wrongfully removed to, or wrongfully retained in, their jurisdiction, without deciding anew the issue of custody.' *Navani v. Shahani*, 496 F.3d at 1124 (citing *de Silva v. Pitts*, 481 F.3d 1279, 1282 (10th Cir. 2007)). ICARA implements the Hague Convention, and grants federal and state courts 'concurrent original jurisdiction of actions arising under the Convention.'"

- [Hague Convention on the Civil Aspects of International Child Abduction](#)

**Article 13:** "Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that —

**[Article 13]a** the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

**[Article 13]b** there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other

competent authority of **the child's habitual residence.**"  
[Emphasis added].

- **Habitual residence:** "To determine the habitual residence, the court must focus on the child, not the parents, and examine past experience, not future intentions." [Friedrich v. Friedrich](#), 983 F2d 1396, 1401 (6<sup>th</sup> Cir. 1993).
- **Comity:** "...judgments of courts of foreign countries are recognized in the United States because of comity due to the courts and judgments of one nation to another. Such recognition is granted to foreign judgments with due regard to international duty and convenience, on the one hand, and to rights of citizens of the United States and others under **the protection of its laws, on the other hand.**" [Litvaitis v. Litvaitis](#), 162 Conn. 540, 544, 295 A.2d 519 (1972).
- **Full Faith and Credit:** Full faith and credit shall be accorded by the courts of the States and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this chapter. 22 USC [§ 9003](#)(g) (2018).

#### **STATUTES:**

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

- Hague Convention on the Civil Aspects of International Child Abduction, 51 Fed. Reg. 10494 (March 26, 1986). [*Reprinted in* [Turner v. Frowein](#), 253 Conn. 312, 351, 752 A.2d 955 (2000)].
- International Child Abduction Remedies Act, Chapter 97, P.L.100-300, 22 USC §§ [9001-9011](#).
- **Enforcement of foreign child custody order re return of child under Hague Convention.** "A court of this state shall enforce a foreign child custody determination or an order of a federal court or another state court for return of a child under The Hague Convention on the Civil Aspects of International Child Abduction made under factual circumstances in substantial conformity with the jurisdictional standards of this chapter, including reasonable notice and opportunity to be heard to all affected persons, as a child custody determination of another state under sections 46b-115u to 46b-115gg, inclusive, unless such determination was rendered under child custody law which violates fundamental principles of human rights or unless such determination is repugnant to the public policy of this state." Conn. Gen. Stat. § [46b-115jj](#) (2017).

#### **LEGISLATIVE:**

- 1988 U.S.C.C.A.N. vol. 4, pp. 386-403. *Excerpts from H. Report # 100-525 including "section-by section analysis of the Committee amendment in the nature of a substitute"*

## **REGULATIONS:**

- International Child Abduction, [22 C.F.R. §§ 94.1 - 94.8](#) (2018).
  - § 94.5 Application
  - § 94.6 Procedures for children abducted to the United States
  - § 94.7 Procedures for children abducted from the United States

## **CASES:**

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

### **U.S. Supreme Court and 2nd Circuit Cases**

- [Tann v. Bennett](#), 807 F. 3d 51, 52-53 (2nd Cir. 2015). "Indeed, one of the primary purposes of the Hague Convention was to prevent situations where a family member would remove a child to jurisdictions more favorable to [his or her] custody claims in order to obtain a right of custody from the authorities of the country to which **the child ha[d] been taken.**" *Mota v. Castillo*, 692 F.3d 108, 112 (2d Cir.2012) (quoting *Gitter*, 396 F.3d at 129)."
- [Lozano v. Montoya Alvarez](#), 572 U.S. \_\_\_, 134 S. Ct. 1224, 1229, 188 L. Ed. 2d 200 (2014). "**This case concerns another** exception to the return remedy. Article 12 of the Convention states the general rule that when a court receives a petition for return within one year after the child's wrongful removal, **the court 'shall order the return of the child forthwith.'** *Id.*, **at 9.** Article 12 further provides that the court,

**'where the proceedings have been commenced after the expiration of the period of one year [from the date of the wrongful removal], shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.'** *Ibid.*

Thus, at least in some cases, failure to file a petition for return within one year renders the return remedy **unavailable."**

- [Chafin v. Chafin](#), 568 U.S. 165, 133 S. Ct. 1017, 1021, 185 L. Ed. 2d 1 (2013). "**The Hague Convention on the Civil Aspects of International Child Abduction generally requires courts in the United States to order children returned to their countries of habitual residence, if the courts find that the children have been wrongfully removed to or retained in the United States. The question is whether, after a child is returned pursuant to such an order, any appeal of the order is moot."**
- [Souratgar v. Fair](#), 720 F.3d 96 (2nd Cir. 2013). "The removal of a child under the Convention is deemed **'wrongful'** when **'it is in breach of rights of custody attributed to a person . . . under the law of the State in which the child was habitually resident immediately before the removal.'** *Abbott*, 130 S.Ct. at 1989 (quotation marks omitted). Under the Convention,

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when a parent wrongfully removes a child from one contracting state which is the child's country of habitual residence to another contracting state, the other parent may initiate a proceeding to repatriate the child to the first state. In the United States, the petitioning party bears the burden of proving that the child was wrongfully removed. 42 U.S.C. § 11603(e)(1)(A)."

- [Abbott v. Abbott](#), 560 U.S. 1, 130 S. Ct. 1983, 176 L. Ed. 2d 789 (2010). "While a parent possessing a *ne exeat* right has a right of custody and may seek a return remedy, a return order is not automatic. Return is not required if the abducting parent can establish that a Convention exception applies."
- [Blondin v. Dubois](#), 238 F. 3d 153 (2nd Cir. 2001). "The Hague Convention is not designed to resolve underlying custody disputes. See Hague Convention, art. 19; *Blondin II*, 189 F.3d at 245. This fact, however, does not render irrelevant any countervailing interests the child might have. According to the Explanatory Report of the Convention,

the dispositive part of the Convention contains no explicit reference to the interests of the child.... However, its silence on this point ought not to lead one to the conclusion that the Convention ignores the social paradigm which declares the necessity of considering the interests of children in regulating all the problems which concern them. On the contrary, right from the start the signatory States declare themselves to be firmly convinced that the interests of the children are of paramount importance in matters relating to their custody....

Elisa Pérez-Vera, *Explanatory Report: Hague Conference on Private International Law*, in 3 Acts and Documents of the Fourteenth Session 426 (1980) ("the "Explanatory Report" or "Report"), ¶ 23;"

### **Reported Connecticut Decisions**

- [Turner v. Frowein](#), 253 Conn. 312, 752 A.2d 955 (2000). "As stated previously, a trial court is authorized under article 13b to deny a petition for the child's return upon a showing, by **clear and convincing evidence, that 'there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.'** Our task, therefore, is to determine whether a finding that the child would be subject to a grave risk of harm if returned to the petitioning parent is, without more, sufficient to justify a trial court's decision to decline to order the child's return to his or her country of habitual residence. In doing so, we are mindful of the overarching

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conviction that inheres in the Hague Convention itself, that is, in adjudicating matters under the Hague Convention, **'the interests of the child are stated to be the guiding criterion....'** E. Perez-Vera, Explanatory Report: Hague Conference on Private International Law, in 3 Acts and Documents of the Fourteenth Session (1980) p. 432, para. 25 (Perez-Vera Report)."

### **Unreported Connecticut Decisions**

- Wittman v. Wittman, Superior Court, Judicial District of Tolland at Rockville, No. FA 07-4006469 S (Feb. 21, 2007) (42 Conn. L. Rptr. 814) (2007 WL 826536). **"The applicant, Josef R. Wittman initiated this action pursuant to the International Child Abduction Remedies Act, 42 U.S.C. 11601, commonly known as the Hague Convention (hereinafter ICARA)....The petitioner husband has alleged that the respondent wife wrongfully removed and retained the children in the United States and that he has formally requested their return to Germany. He alleges that he has custody rights under German law. . . . For the foregoing reasons, attorney Matthew Potter is appointed as guardian ad litem for the minor children."**
- Cruz v. Cruz, Superior Court, Judicial District of Danbury, No. CV 00-0341008-S (Dec. 27, 2002) (33 Conn. L Rptr. 594) (2002 Conn. Super. Lexis 4195) (2002 WL 31955020). **"The issue presented in a Hague Convention case for return of a minor child are:**
  1. Has there been a wrongful removal or retention?
  2. Is the child under the age of 18 years?
  3. Has the child been removed or retained from his or her habitual residence?
  4. Was the removal or wrongful retention of the child **committed in violation of the 'custody rights' of the 'left behind' parent?**

The Court's analysis of this case has been limited to determining whether the minor child has been removed or retained from **his 'habitual residence' in violation of the custody rights of the 'left behind' parent."**

### **Cases from Other Jurisdictions**

- Mendez v. May, 778 F.3d 337, 344 (1st Cir. 2015). **"We begin and end with the question of C.F.F.M.'s habitual residence at the time of removal. See *Redmond v. Redmond*, 724 F.3d 729, 742 (7th Cir.2013) ('[E]very Hague Convention petition turns on the threshold determination of the child's habitual residence; all other Hague determinations flow from that decision.');** *Tsai-Yi Yang v. Fu-Chiang Tsui*, 499 F.3d 259, 271 (3d Cir.2007) (same)."



- [Ohlander v. Larson](#), 114 F.3d 1531, 1534 (10<sup>th</sup> Cir. 1997). “The Convention is meant to provide for a child’s prompt return once it has been established the child has been ‘wrongfully removed’ to or retained in any affiliated state.”
- [Mohsen v. Mohsen](#), 715 F. Supp. 1063, 1065 (D. Wyo. 1989). “In light of the fact the petitioner’s daughter was last habitually resident in Bahrain, a noncontracting state, the court concludes that the petitioner has no rights under the Convention and is therefore not entitled to seek redress under its remedial provisions.”

**WEST KEY NUMBERS:**

- *Treaties* #8. Construction and operation of particular provisions
- *Child Custody* #800-830. International Issues

**DIGESTS:**

- ALR Digest: *Kidnapping*
- ALR Index: *Abduction and Kidnapping*
- Connecticut Family Law Citations: *Child Abduction*

**ENCYCLOPEDIAS:**

- 1 [Am. Jur. 2d](#) *Abduction and Kidnapping* (2016).  
Abduction or kidnapping by parent or person in loco parentis  
§ 35. Parental rights, custody, and kidnapping  
§ 38. International Aspects
- 59 [Am. Jur. 2d](#) *Parent and Child* (2012).  
§ 113. Enticement or abduction of child; interference with custody
- 67A [C.J.S.](#) *Parent and Child* (2013).  
§ 99. Jurisdiction and venue  
§ 396. Other offenses
- 51 [C.J.S.](#) *Kidnapping* (2010).  
§§ 30-32. Persons liable; defenses  
§ 4. —Kidnapping by parents, or custodians
- Kurtis A. Kemper, *Construction and Application of Consent and Acquiescence Defenses under Article 13 of Hague Convention on the Civil Aspects of International Child Abduction*, 5 A.L.R. Fed. 3d Art. 1 (2015).
- Jill M. Marks, *Construction and Application of Provision of Hague Convention on Civil Aspects of International Child Abduction Specifying One-Year Period for Parent to File for Return of Child Wrongfully Removed From or Retained Outside Country of Habitual Residence, as Implemented in International Child Abduction Remedies Act, 42 U.S.C.A. § 11603(b), (f)(3)*, 79 A.L.R. Fed. 2d 481 (2013).
- Tracy Bateman Farrell, Annotation, *Construction and Application of Grave Risk of Harm Exception in Hague*

*Convention on the Civil Aspects of International Child Abduction as Implemented in International Child Abduction Remedies Act*, 42 U.S.C.A. § 11603(e)(2)(A), 56 ALR Fed. 2d 163 (2011).

#### **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 Series, Family Law And Practice with Forms](#) (3d ed. 2010).  
Chapter 40. Jurisdiction to Enter and Enforce Custody Orders  
§ 40:27. International application  
§ 40:28. Enforcement jurisdiction under the UCCJEA, generally
- 1 Thomas R. Young, [Legal Rights of Children](#) (Rev. 3d Ed. 2017-2018).  
Chapter 5. Parental Kidnapping of Children  
§ 5:12. International Aspects of Child Abductions  
§ 5:13. International Child Abduction Remedies Act; The Hague Convention on the Civil Aspects of International Child Abduction
- 5 Sandra Morgan Little, [Child Custody and Visitation Law & Practice](#) (2017).  
Chapter 32. International Enforcement of Child Custody  
§ 32.02. Hague Convention on the Civil Aspects of International Child Abduction  
§ 32.03. International Enforcement Outside the Hague Convention
- Gloria F. DeHart, ed., [International Child Abductions: A Guide to Applying the Hague Convention, With Forms](#) (2d ed. 1993).

#### **LAW REVIEWS:**

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

- Kristina Daugirdas and Julian Davis, editors. *U.S. Supreme Court Interprets Child Abduction Treaty*, 108 Am. J. Int'l L. 557 (2014).
- Reid T. Sherard, [Demystifying International Child Abduction Claims Under the Hague Convention](#), South Carolina Lawyer (2013).
- Jennifer Paton, *The Correct Approach to the Examination of the Best Interests of the Child in Abduction Convention Proceedings Following the Decision of the Supreme Court in Re E (Children) (Abduction: Custody Appeal)*, Journal of Private International Law, Volume 8, Number 3 (December 2012), pp. 545-574.
- Elizabeth Pitman, *Making the Interests of the Child Paramount: Representation for Children in the Hague Convention on the Civil Aspects of International Child Abduction*, 17 Cardozo J. Int'l & Comp. L. 515 (2009).

- Carol A. Bruch, *The Unmet Needs Of Domestic Violence Victims And Their Children In Hague Child Abduction Convention Cases*, 38 Family Law Quarterly 529 (Fall 2004).
- Merle H. Weiner, *Using Article 20*, 38 Family L.Q. 583 (Fall 2004).
- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge's Guide To The UCCJA, PKPA, And The Hague Abduction Convention*, 48 Juvenile & Family Court Journal i (185) (1997).
- Robert J. Levy, *Memoir Of An Academic Lawyer: Hague Convention Theory Confronts Practice*, 29 Family Law Quarterly 171 (1995).
- Linda Silberman, *Hague Convention on International Child Abduction: A Brief Overview And Case Law Analysis*, 28 Family Law Quarterly 9 (1994). Special Issue on International Family Law.
- Carol S. Bruch, *The Central Authority's Role Under The Hague Child Abduction Convention: A Friend In Deed*, 28 Family Law Quarterly 35 (1994). Special Issue on International Family Law.
- Raymond R. Norko, *Mandatory Implementation Of The Hague Convention On International Child Abduction: An Open Letter To President William Clinton*, 8 Connecticut Journal of International Law 575 (1993).

**WEBSITES & DATABASES:**

- [U.S. Hague Convention Treaty Partners](#)
- [The International Child Abduction Database](#) (Case law search and analysis)

Table 1: Requirements of the Hague Convention

<p><a href="#">Caro v. Sher</a>, 687 A.2d 354, 356-357 (N.J. Super. Ch. 1996).</p>
<p>1. The nations involved must be signatories to the Convention</p>
<p>2. <b>The children must be “habitual resident(s) in a Contracting State immediately before any breach of custody or access right.”</b> (The Convention, art. 4);</p>
<p>3. The children must be under the age of sixteen. (The Convention, art. 4); and</p>
<p>4. <b>The children’s removal or retention in a country other than their place of habitual residence must have been wrongful, e.g. “it is in breach of rights of custody attributed to a person . . . , either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention.”</b> (The Convention, art. 3(a)).</p>

Table 2: Affirmative Defenses to International Parental Kidnapping

<p>International Parental Kidnapping - <a href="#">18 U.S.C. §1204(c) 1-3</a></p>
<p>1. The defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and Enforcement Act and was in effect at the time of the offense;</p>
<p>2. the defendant was fleeing an incidence or pattern of domestic violence; or</p>
<p>3. the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a <b>result of circumstances beyond the defendant’s control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.</b></p>

# Section 2: Federal Parental Kidnapping Prevention Act (PKPA)

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic resources relating to the Federal PKPA as it relates to Connecticut.

**SEE ALSO:**

- [Section 3: Uniform Child Custody Jurisdiction and Enforcement Act](#)

**DEFINITIONS:**

- **Purpose:** "deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitations awards." P.L. 96-611 § 7(c)(7).
- "Under the PKPA, a court of one state generally must enforce, and may not modify, a child custody determination of another state when the custody determination was made consistent with the provisions of the PKPA." [Murphy v. Woerner](#), 748 P.2d 749, 750 (Alaska 1988).
- **Home state:** "means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six month or other period;" [28 USC §1738A\(b\)\(4\)](#) (2018).

**STATUTES:**

- [28 USC § 1738A](#) (2018) - Full faith and credit given to child custody determinations.

## **CASES:**

### **Connecticut**

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- [Scott v. Somers](#), 97 Conn. App. 46, 55, 903 A.2d 663 (2006). "Because Somers continues to reside in Florida, the Florida court has exclusive, continuing jurisdiction over its custody determination, under Florida law, until a Florida court determines that significant connections do not exist in Florida. Thus, a party seeking to modify Florida's custody determination must obtain an order from Florida stating that it no longer has jurisdiction. This was not done in the present case and, therefore, Connecticut did not have jurisdiction to modify Florida's order."
- [Brown v. Brown](#), 195 Conn. 98, 119-120, 486 A.2d 1116 (1985). "Geared as the PKPA is toward establishing national jurisdictional standards that endeavor to reduce interstate child abductions, the application of the PKPA to this case initially turns on the definition of a 'custody determination.' We believe that the orders of the Florida court which, in

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effect, generated this Connecticut action, fall squarely within **the PKPA definition of a 'custody determination.'** 28 U.S.C. § 1738A (b) (3)."

### Unreported Connecticut Decisions

- Perez v. Negron, Superior Court, Judicial District of Hartford at Hartford, No. HDD FA 14-4072256 (October 22, 2014) (59 Conn. L. Rptr. 170). "Jurisdiction in this case therefore comes down to the question of whether a court in Puerto Rico or a court in Connecticut, each having the authority to do so, first made a custody determination entitled to the other's full faith and credit. The following section of the PKPA is critical to resolving that question:

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

28 U.S.C. §1738A(e). In this case, both courts have entered child custody orders. Under the PKPA, the order entitled to full faith and credit is not simply the first one entered, but the first one entered with the benefit of the due process protections stated in 28 U.S.C. §1738A(e)."

- Lebejko v. Lebejko, Superior Court, Judicial District of Windham at Putnam, No. FA-064004870 (Feb. 8, 2007) (42 Conn. L. Rptr. 760). "**The purpose behind the PKPA was to eliminate the four 'bases' or 'factors' in the original UCCJA which had resulted in all of the conflicts and resulting inconsistencies which had created an unworkable and non-uniform interstate act. Instead, enforceability under the PKPA was to be based on the priority of home state jurisdiction. That provision of the uniform act was adopted in Connecticut as Conn. Gen. Stat. § 46b-115k.**"
- Venditti v. Plonski, Superior Court, Judicial District of Ansonia-Milford at Milford, No. FA-01 0076354 S (Feb. 5, 2002) (2002 WL 241376). "Even though the facts may be unclear as to the defendant's permanent intentions, this court does not need to find that Arizona is in fact the home state of the minor child. Using the significant connections test, it is clear that the child has more tied to Arizona and that jurisdiction should reside in that state. The plaintiff will have full opportunity to contest custody and to present all evidence necessary for a thoughtful custody and visitation determination in that state. Therefore, the motion to dismiss **is granted.**"
- Rowland v. Rowland, Superior Court, Judicial District of Ansonia-Milford at Milford, No. FA-97 0057152 S (Aug. 19,

1999) (1999 WL 669794). "The language of the federal Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. § 1738A must now be examined. That act requires the states to give full faith and credit to the custody decisions of other states that are consistent with federal law. The requirement, of course, is mandatory because of the Supremacy Clause of the federal constitution."

### Other States

- [Wilson v. Gouse](#), 441 S.E.2d 57, 59 (Ga. 1994). "As a preliminary matter, we find the PKPA applies in all interstate child custody disputes."
- [Murphy v. Woerner](#), 748 P.2d 749, 750 (Alaska 1988). "To the extent that the PKPA and the UCCJA conflict, the PKPA preempts state law."

### **WEST KEY NUMBERS:**

- *Child Custody* #700-789. Interstate Issues
- *Kidnapping* #10. In general

### **ENCYCLOPEDIAS:**

- 1 [Am. Jur. 2d](#) *Abduction and Kidnapping* (2016).  
Abduction or kidnapping by parent or person in loco parentis  
§ 35. Parental rights, custody, and kidnapping  
§ 36. Uniform Child Custody Jurisdiction and Enforcement Act  
§ 37. Federal Parental Kidnapping Act
- 24A [Am. Jur. 2d](#) *Divorce and Separation* (2008).  
§ 878. Parental Kidnapping Prevention Act.
- 59 [Am. Jur. 2d](#) *Parent and Child* (2012).  
§ 113. Enticement or abduction of child; interference with custody
- 67A [C.J.S.](#) *Parent and Child* (2013).  
§ 99. Jurisdiction and venue, Generally  
§ 396. Other offenses
- 51 [C.J.S.](#) *Kidnapping* (2010).  
§ 28. Persons liable; defenses, Generally  
§ 30. Kidnapping by parents, Generally  
§ 31. Custodial interference statutes; distinction from kidnapping  
§ 32. Agent or person assisting a parent
- *Cause of action against noncustodial parent for interference with custody rights to child*, 5 COA 799 (1983).
- David Carl Minneman, *Abandonment jurisdiction of court under §§ 3(a)(3)(i) and 14(a) of Uniform Child Custody Jurisdiction Act and Parental Kidnapping Prevention Act*, 28

*U.S.C.A. §§ 1738A(c)(2)(C)(i) and 1738A(f), notwithstanding existence of prior valid custody decree rendered by second state*, 78 A.L.R.5th 465 (2000).

- David Carl Minneman, *Declining jurisdiction to modify prior child custody decree under § 14(a)(1) of Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA)*, 28 U.S.C.A. § 1738A(f)(2), 73 A.L.R.5th 185 (1999).
- David Carl Minneman, Annotation, *Home state jurisdiction of court to modify foreign child custody decree under ss3(a)(1) and 14(a)(2) of Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA)*, 28 U.S.C.A. ss1738A(c)(2)(A) and 1738A(f)(1), 72 A.L.R. 5th 249 (1999).
- 8 Arnold H. Rutkin et al., [Connecticut Practice Series, Family Law And Practice with Forms](#) (3d ed. 2010).
  - Chapter 40. Jurisdiction to Enter and Enforce Custody Orders
    - § 40:1. In general
    - § 40:2. Purpose
    - § 40:3. Scope; definitions
    - § 40:10. Modification—Continuing exclusive jurisdiction
    - § 40:11. Personal jurisdiction; notice requirements
    - § 40:12. Prohibition on simultaneous proceedings
    - § 40:17. Relevance of best interests standard to jurisdictional determinations
    - § 40:22. Hearings and testimony in Connecticut
- 1 Thomas R. Young, [Legal Rights of Children](#) (Rev. 3d Ed. 2017-2018).
  - Chapter 5. Parental Kidnapping of Children
- Sandra Morgan Little, [Child Custody and Visitation Law & Practice](#) (2017).
  - Chapter 3. Impact of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA): an overview
    - § 3.01[3]. Parental Kidnapping Prevention Act
  - Chapter 5.
    - § 5.30 The Parental Kidnapping Prevention Act of 1980

### **TEXTS & TREATISES:**

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# Section 3: Uniform Child Custody Jurisdiction and Enforcement Act

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) which was effective in Connecticut on July 1, 2000.
- SEE ALSO:**
- [Section 5 \(Out of State Custody Orders\)](#) – Child Custody Actions in Connecticut (Research Guide)
- DEFINITIONS:**
- **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) (2017).
  - **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. A period of temporary absence of any such person is counted as part of the period;" Conn. Gen. Stat. [§ 46b-115a](#)(7) (2017).
  - **Indian Child Welfare Act:** "A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 USC Section 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act." Conn. Gen. Stat. [§ 46b-115c](#) (2017).
  - **Exclusive, continuing jurisdiction:** Conn. Gen. Stat. [§ 46b-115l](#) (2017).
  - **Modification of custody determination of another state:** Conn. Gen. Stat. [§ 46b-115m](#) (2017).
  - **Taking testimony in another state.** Conn. Gen. Stat. [§ 46b-115j](#) (2017).
  - **Temporary Emergency Jurisdiction:** Conn. Gen. Stat. [§ 46b-115n](#) (2017).
- STATUTES:**
- Connecticut**
- Conn. Gen. Stat. (2017).  
[Chapter 815p](#). Uniform Child Custody Jurisdiction and Enforcement Act

[§§ 46b-115](#) et seq.  
Part I. General provisions  
Part II. Jurisdiction  
Part III. Enforcement (see [Table 3](#))  
Part IV. Foreign child custody

## **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.

## **Connecticut**

- [Devone v. Finley](#), 148 Conn. App. 647, 653-54, 87 A.3d 1120 (2014). **"The Georgia Superior Court, in accordance with the law prescribed by its state, issued a temporary custody order giving the defendant immediate custody of the minor child. That court found that the plaintiff failed to legitimize the child and thus concluded that the defendant is the only party entitled to custody of the child. The full faith and credit clause requires our courts to recognize and enforce the judgment of the Georgia Superior Court. In so doing, the trial court held that the plaintiff, who has no recognized custody rights over the minor child, lacked standing to bring a custody application in this state."**
- [In re Iliana M.](#), 134 Conn. App. 382, 390, 38 A.3d 130 (2012). **"At the outset, we note our agreement with the decisions of the Superior Court that have set forth the goals of the UCCJEA. '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. . . . The UCCJEA addresses inter-jurisdictional issues related to child custody and visitation.'"**
- [In re Deleon J.](#), 290 Conn. 371, 377-378, 963 A.2d. 53 (2009). **"In addressing the issue of jurisdiction, the court noted that it had made an initial child custody determination, pursuant to General Statutes § 46b-115k, when it ordered protective supervision of the child on September 21, 2000, and that it subsequently had modified that disposition on April 22, 2002, when it ordered guardianship of the child to be transferred to the grandmother. The court further determined that the respondent and the grandmother both reside in Connecticut. The court concluded, therefore, that its exclusive, continuing jurisdiction had not expired pursuant to § 46b-115/(a)(1)."**
- [Temlock v. Temlock](#), 95 Conn. App. 505, 520-521, 898 A.2d 209 (2006). **"Even when a Connecticut trial court does not have exclusive jurisdiction over a child custody matter, it still may maintain concurrent jurisdiction under the UCCJEA pursuant to General Statutes § 46b-115l (b), but only 'if it has jurisdiction to make an initial determination under**

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section 46b-115k.’ General Statutes § 46b-115/(b).”

### Unreported Connecticut Decisions

- Byroo-Johnson v. Johnson, Superior Court, Judicial District of Hartford at Hartford, No. FA13-4068580S (May 3, 2016) (2016 Conn. Super. LEXIS 960). “Although the court is unable to decline jurisdiction under §46b-115l, the court may decline jurisdiction under General Statutes §46b-115q.”
- Dreiling v. Dreiling, Superior Court, Judicial District of Hartford at Hartford, Nos. FA-155040055S, FA-154080175S (Apr. 14, 2016) (2016 Conn. Super. LEXIS 779). “Under certain circumstances, a Connecticut court must treat a foreign custody determination as a child custody determination of another state, pursuant to General Statutes §46b-115ii. General Statutes §46b-115d sets out the international application of the Uniform Child Custody Jurisdiction **and Enforcement Act (UCCJEA)**: ‘[f]or purposes of [the UCCJEA], any child custody order of a foreign country shall be treated in the manner provided in section 46b-115hh.’ General Statutes §46b-115hh defines a ‘[f]oreign child custody determination,’ as used in §46b-115ii, as ‘any judgment, decree or other order of a court or tribunal of competent jurisdiction of a foreign state providing for legal custody, physical custody or visitation with respect to a child.’ Section 46b-115ii provides that ‘[a] court of this state shall treat a foreign child custody determination made under factual circumstances in substantial conformity with the jurisdictional standards of this chapter, including reasonable notice and opportunity to be heard to all affected persons, as a child custody determination of another state under sections 46b-115 to 46b-115t, inclusive, unless such determination was rendered under child custody law which violates fundamental principles of human rights or unless such determination is repugnant to the public policy of this state.’”
- Perez v. Negron, Superior Court, Judicial District of Hartford at Hartford, No. HHD FA 14-4072256 (October 22, 2014) (59 Conn. L. Rptr. 170). “The father argues that, as an emergency determination, the order of the Puerto Rico court is only temporary and must give way now to the jurisdiction of Connecticut, which can claim home state status. That might have been the case if Puerto Rico had adopted Connecticut’s version of the UCCJEA, which provides for emergency orders to remain in effect only until orders are issued in a state having jurisdiction under another basis (such as being the child’s home state). Section 46b-115n of the Connecticut General Statutes. But the present jurisdictional assessment must be made on the basis of the law of Puerto Rico, which has not adopted the UCCJEA and its limitations on emergency jurisdiction. *Scott v. Somers*, 97

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Conn.App. 46, 52 (2006). And nothing in the PKPA itself imposes a temporal limit on the jurisdiction that a state acquires in an emergency situation described in 28 U.S.C. §1738A(c)(2)(C).”

- Desjardins v. Charity, Superior Court, Judicial District of New London, No. FA 11-4115761 (Apr. 19, 2011). “It is this court's obligation to determine under the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA) that it has jurisdiction to make an initial determination as to the children's custody. *Scott v. Somers*, 97 Conn. App. 46 (2006). This duty implicates the subject matter jurisdiction of the court and hence must be raised and determined by the court on its own motion if not formally raised by the parties. Absent a statutory basis for such exercise of jurisdiction, the parties cannot by agreement confer jurisdiction upon the court. *Muller v. Muller*, 43 Conn. App. 327 (1996).”
- Lampthey-Mills v. Ward, Superior Court, Judicial District of Hartford, No. FA 01 0726826 (June 16, 2005) (39 Conn. L. Rptr. 523,525). “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 . . . The UCCJEA addresses inter-jurisdictional issues related to child custody and visitation. The UCCJEA allows a Connecticut court to maintain exclusive, continuing jurisdiction over child custody determinations until one of the enumerated events under § 46b-115l occurs . . . In subsection (a) of § 46b-115l, the decree-granting state retains exclusive continuing jurisdiction until: (1) A court of this state or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this state; or (2) a court of this state determines that (A) this state is not the home state of the child, (B) a parent or a person acting as a parent continues to reside in this state but the child no longer has a significant relationship with such parent or person, and (c) substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships. Subsection (b) provides: A court of this state which has made a child custody determination but does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 46b-115k.” (Citations omitted; internal quotation marks omitted.)
- Davis v. Kania, 48 Conn. Sup. 141, 146, 836 A.2d 480 (2003). “Since both the plaintiff and defendant were parties

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to the California action and the judgment neither contravenes Connecticut policy nor violates its laws, the plaintiff can, therefore, enforce his legal right in the state of **Connecticut.**”

- Lord v. Lord, Superior Court, Judicial District of Fairfield at Bridgeport, No. CV01 0380279 (Aug. 20, 2002) (33 Conn. L. Rptr. 88, 90) (2002 WL 31125621). **“If parties could consent to jurisdiction in any forum, provisions of the UCCJEA itself would be meaningless. General Statutes § 46b-115k provides that ‘a court of this state has jurisdiction to make an initial child custody determination if’ certain facts are present.** Notably, an agreement by the parties that a court shall have subject matter jurisdiction is not one of those factors. General Statutes § 46b-115l provides that ‘a court of this state which has made a child custody determination pursuant to sections 46b-115k to 46b-115m, inclusive, has exclusive, continuing jurisdiction over the determination until’ certain determinations are made by Connecticut or other state courts. Again, not included in this determination is whether the parties have agreed that a court shall take **subject matter jurisdiction.**”
- Crawford v. Calayag, Superior Court, Judicial District of Danbury, No. FA01-0344498 S (March 22, 2002) (2002 WL 653241). **“Connecticut is not the ‘home state’ of the minor child as that term is defined by § 46b-115a (7) of the Connecticut General Statutes.**  
Under the provisions of the UCCJEA, the court has exercised temporary jurisdiction in this matter and has entered the temporary emergency orders recited above in what it found to be the best interests of the minor child and to address the concerns raised by the plaintiff regarding alleged efforts by the defendant to deny the plaintiff access **to his minor child.**”
- Guillory v. Francks, Superior Court, Judicial District of Windham at Willimantic, No. FA01-0065736S (Feb. 14, 2002) (2002 WL 442145). **“From the record before this court the court concludes that the Florida court continues to exercise jurisdiction in the case . . . . This court is convinced, based upon the continuing activity in the Florida court, that Samantha's presence here in Connecticut is due to a temporary custody order in favor of the plaintiff and thus pursuant to § 46b-115(7) Florida remains the home state of Samantha.”**
- Graham v. Graham, Superior Court, Judicial District of Middlesex at Middletown, No. FA92-65185 (Feb. 6, 2002) (2002 WL 241493). **“Under the UCCJEA, jurisdiction largely depends on the status of the involved individuals on the date of the commencement of the proceeding. Jurisdiction attaches at the commencement of a proceeding. C.G.S. §**

46b-115a (5).”

- Gilman v. Gilman, Superior Court, Judicial District of New London at Norwich, No. 0121957S (May 22, 2001) (2001 WL 688610). “**The new act represents a marked difference from** what had been Connecticut General Statute § 46b-93. Under the former statute, a court of this state could exercise jurisdiction if this state was the home state of the child at the time the proceeding was commenced or it was in the best interest of the child that the court exercise jurisdiction because the child and his parents had a significant connection to the state. 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.’”**
- Anselmo v. Anselmo, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FA00-0181708 (March 28, 2001) (2001 WL 358851). “. . . **the question becomes** on what basis can this court, or any court for that matter, accept jurisdiction regarding custody of an unborn infant.”

**WEST KEY  
NUMBERS:**

- *Child Custody* #700-789. Interstate Issues

**ENCYCLOPEDIAS:**

- 1 Am. Jur. 2d *Abduction and Kidnapping* (2016).  
Abduction or kidnapping by parent or person in loco parentis  
§ 35. Parental rights, custody, and kidnapping  
§ 36. Uniform Child Custody Jurisdiction and Enforcement Act  
§ 37. Federal Parental Kidnapping Act
- 24A Am. Jur. 2d *Divorce and Separation* (2008).  
§ 868. Interstate custody disputes. In general  
§ 869. Personal jurisdiction  
§ 870. Generally (subject matter jurisdiction)  
§ 871. Home state jurisdiction; residency requirement  
§ 872. Significant connection  
§ 873. Exclusive, continuing jurisdiction  
§ 874. Inconvenient forum  
§ 875. Temporary emergency jurisdiction  
§ 876. Default jurisdiction  
§ 877. Jurisdiction declined by reason of conduct
- Claudia G. Catalano, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Significant Connection Jurisdiction Provision*, 52 A.L.R.6th 433 (2010).

- Ann K. Wooster, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Temporary Emergency Jurisdiction Provision*, 53 A.L.R.6th 419 (2010).
- Ann K. Wooster, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Home State Jurisdiction Provision*, 57 A.L.R.6th 163 (2010).
- Claudia G. Catalano, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision--No Significant Connection\Substantial Evidence*, 59 A.L.R.6th 161 (2010).
- Claudia G. Catalano, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision--Other Than No Significant Connection/Substantial Evidence*, 60 A.L.R.6th 193 (2010).
- David Carl Minneman, Annotation, *Construction and Operation of Uniform Child Custody Jurisdiction And Enforcement Act*, 100 ALR5th 1 (2002).
- 8 Arnold H. Rutkin et al., [Connecticut Practice Series, Family Law and Practice with Forms](#) (2010).

**TEXTS & TREATISES:**

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- Chapter 40. Jurisdiction to enter and enforce custody orders
  - § 40.1. In general
  - § 40.2. Purpose
  - § 40.3. Scope; Definitions
  - § 40.4. Grounds for UCCJEA jurisdiction—Generally
  - § 40.5. Home state jurisdiction
  - § 40.9. Temporary emergency jurisdiction
  - § 40.10. Modification—Continuing exclusive jurisdiction
  - § 40.12. Prohibition on simultaneous proceedings
  - § 40.13. Jurisdiction declined due to inconvenient forum
  - § 40.14. —Criteria for determining inconvenient forum
  - § 40.15. —Effect of determination as to inconvenient forum
  - § 40.16. Jurisdiction declined due to unjustifiable conduct
  - § 40.17. Relevance of best interests standard to jurisdictional determinations
  - § 40.18. Pleading under UCCJEA
  - § 40.27. International application
  - § 40.28. Enforcement jurisdiction under the UCCJEA, generally
- Louise Truax, Editor, [Connecticut Family Law](#), LexisNexis Practice Guide (2018).
  - § 2.38. Checklist: Applying the UCCJEA

- § 2.39. Establishing Jurisdiction under the UCCJEA
- § 2.40. Determining Home State Jurisdiction
- § 2.41. Determining Significant Connections with the State
- § 2.42. Determining Jurisdiction When the Child's Home State Has Declined Jurisdiction**
- § 2.43. Determining That No Other Court Has Jurisdiction
- § 2.44. Declining Jurisdiction Based Upon Inconvenient Forum
- § 2.45. Determining Whether There Are Simultaneous Proceedings and Resolving Which Court Should Assume Jurisdiction
- § 2.46. Continuing Exclusive Jurisdiction
- § 2.47. Modifying the Custody Determination of Another State
- § 2.48. Asserting Temporary Emergency Jurisdiction
- § 2.49. Providing Notice of Proceedings

- 1 Thomas R. Young, [Legal Rights of Children](#) (Rev. 3d Ed. 2017-2018).  
Chapter 5. Parental Kidnapping of Children
- 9 Part 1A [Uniform Laws Annotated](#) 655 (1999).  
Prefatory Note, pp. 649-654
- 1 Sandra Morgan Little, [Child Custody and Visitation Law & Practice](#) (2017).

- Chapter 3. Impact of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA): An Overview
  - § 3.01[2]. Evolutionary developments—UCCJEA
  - § 3.01[4][b]. Interstate overview—UCCJEA
  - § 3.01[6][b]. Applicability—UCCJEA
  - § 3.02[2]. Objectives—UCCJEA
  - § 3.02A[2]. Jurisdiction to decide this dispute—UCCJEA
  - § 3.02B[2]. Enforcement provisions in UCCJEA
    - [b]. Duty to enforce foreign-state orders
    - [c]. Enforcement under Hague Convention
  - § 3.02C. Extraordinary enforcement under UCCJEA; warrant for physical custody—UCCJEA
  - § 3.04[2]. Due process requirements—UCCJEA
  - § 3.05[2]. Pleadings and testimony—UCCJEA
  - § 3.06[2]. Joinder of additional parties; appearances—UCCJEA
  - § 3.07[2]. Cooperation between courts—UCCJEA

Chapter 4. Interstate Child Custody Jurisdiction Under UCCJA, UCCJEA, and PKPA



Table 3: Enforcement under UCCJEA

<b>Enforcement under UCCJEA Conn. Gen. Stat. (2017)</b>	
<a href="#">§ 46b-115gg</a>	Appeals
<a href="#">§ 46b-115ee</a>	Costs, fees and expenses
<a href="#">§ 46b-115x</a>	Enforcement of child custody determinations
<a href="#">§ 46b-115v</a>	Enforcement under Hague Convention
<a href="#">§ 46b-115aa</a>	Expedited enforcement of child custody determination
<a href="#">§ 46b-115cc</a>	Hearing and order
<a href="#">§ 46b-115dd</a>	Order to take physical custody of child
<a href="#">§ 46b-115ff</a>	Recognition and enforcement of order issued by another state
<a href="#">§ 46b-115w</a>	Registration of child-custody determination
<a href="#">§ 46b-115bb</a>	Service of petition and order
<a href="#">§ 46b-115y</a>	Temporary visitation order

# Section 4: Family Violence and Parental Kidnapping

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to the affirmative defense of “risk of harm” to parental child abduction and the granting of “temporary emergency jurisdiction” under PKPA and UCCJEA.

## **SEE ALSO:**

- [Section 1:](#) Hague Convention on the Civil Aspects of International Child Abduction
- [Section 2:](#) Federal Parental Kidnapping Prevention Act (PKPA)

## **DEFINITIONS:**

- [Hague Convention on the Civil Aspects of International Child Abduction](#)  
**Article 13:** “Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that —  
**[Article 13]b** there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.”
- **Grave Risk of Harm:** “Article 13(b) of the Convention requires that the child be placed in a ‘grave risk’ of harm. Webster’s New World Dictionary, 2nd. College Edition defines grave as: ‘of a threatening nature; indicating great danger; ominous [a grave illness]’. In the psychological context this court accepts Dr. Grenier’s definition that ‘grave’ ... ‘would be that their day-to-day functioning and their ability to function at all would be most urgently wiped out or done away with to the point that the person could not conduct a normal kind of life.’” *Renovales v. Roosa*, Superior Court, Judicial District of Hartford-New Britain, No. FA91-0392232 (Sep. 27, 1991) (5 Conn. L. Rptr. 609).
- **Temporary Emergency Jurisdiction:** “(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and (1) the child has been abandoned, or (2) it is necessary in an emergency to protect the child because the child, a sibling or a parent has been, or is under a threat of being, abused or mistreated. As used in this subsection with respect to a child, ‘abused’ has the same meaning as provided in section 46b-120.” *Conn. Gen. Stat. § 46b-115n* (2017).
- **Abuse:** “A child or youth may be found ‘abused’ who (A) has been inflicted with physical injury or injuries other than by accidental means, (B) has injuries that are at variance with

the history given of them, or (C) is in a condition that is the result of maltreatment, including, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel **punishment;**" Conn. Gen. Stat. [§ 46b-120](#)(7) (2017).

- **Undertakings:** "Return plus conditions ('undertakings') can in some, maybe many, cases properly accommodate the interest in the child's welfare to the interests of the country of the child's habitual residence. Often the bulk of the evidence concerning risk of harm will be found in that country and the left-behind parent's defense to charges of abuse may be more difficult and costly to prepare and present in the country to which the abductor has fled. But in cases of child abuse the balance may shift against return plus conditions." [Van De Sande v. Van De Sande](#), 431 F.3d 567, 571-72 (7th Cir. 2005).

### **STATUTES:**

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

- 18 U.S.C. (2018) [§ 1204 \(c\)\(2\)](#). International parental kidnapping
- 22 U.S.C. (2018) Chapter 97. International Child Abduction Remedies [§§ 9001-9011](#)
- 25 U.S.C. (2018) [§ 1922](#). Emergency removal or placement of child; termination; appropriate action (Indian Child Welfare)
- 28 U.S.C (2018) [§ 1738A \(c\)\(2\)\(c\)](#). Full faith and credit given to child custody determinations
- Conn. Gen. Stat. (2017) Chapter 815p - Uniform Child Custody Jurisdiction and Enforcement Act [§ 46b-115n](#). Temporary emergency jurisdiction.

### **CASES:**

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- [Souratgar v. Lee](#), 720 F.3d 96, 103 (2d Cir. 2013). "Under Article 13(b), a grave risk of harm from repatriation arises in **two situations:** '(1) where returning the child means sending him to a zone of war, famine, or disease; or (2) in cases of serious abuse or neglect, or extraordinary emotional dependence, when the court in the country of habitual residence, for whatever reason, may be incapable or unwilling to give **the child adequate protection.**' *Blondin IV*, 238 F.3d at 162 (quotation marks omitted). The potential harm to the child must be severe, and the '[t]he level of risk and danger required to trigger this exception has **consistently been held to be very high.**' *Norden-Powers v. Beveridge*, 125 F. Supp. 2d 634, 640 (E.D.N.Y. 2000) (citing cases). The grave risk involves not only the magnitude of the potential harm but also the probability that the harm will

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materialize. *Van de Sande v. Van de Sande*, 431 F.3d 567, 570 (7th Cir. 2005)."

- [Turner v. Frowein](#), 253 Conn. 312, 351, 752 A.2d 955 (2000). "We emphasize that we do not disturb or modify the trial court's finding that returning the child to the defendant would expose him to a 'grave' risk of harm, within the meaning of article 13b. Thus, if the trial court remains unable to find any reasonable means of repatriation that would not effectively place the child in the defendant's immediate custody, either expressly or de facto, it should deny the petition under the Hague Convention."
- [Blondin v. Dubois](#), 189 F.3d 240, 249 (2nd Cir. 1999). "Under the circumstances presented, we think it appropriate to remand this matter to the District Court for further consideration of the range of remedies that might allow *both* the return of the children to their home country *and* their protection from harm, pending a custody award in due course by a French court with proper jurisdiction."
- [State v. Vakilzaden](#), 251 Conn. 656, 663, 742 A.2d 767 (1999) "Thus, a parent who temporarily 'abducts' a child in an effort to safeguard that child from an abusive situation, but seeks appropriate legal redress under § 46b-93 (a)(3)(B) as soon as is feasible under the circumstances, could not meet the necessary mens rea for custodial interference because he or she would have the legal right to take the child to protect him or her. We are confident that our law enforcement authorities and our courts will be sensitive to this reality."

### **Unreported Connecticut Decisions**

- [Dreiling v. Dreiling](#), Superior Court, Judicial District of Hartford at Hartford, Nos. FA-155040055S, FA-154080175S (Apr. 14, 2016) (2016 Conn. Super. LEXIS 779). "A Connecticut court may have temporary jurisdiction to make a decision regarding custody if the child is within this state and it is necessary in an emergency to protect the child because the child or a sibling has been under a threat of being abused or mistreated. §46b-115n(a)(2). If there is no previous child custody determination enforceable under the UCCJEA and a child custody proceeding has not been commenced in a court having jurisdiction under a provision substantially similar to §46b-115k, §46b-115l, or §46b-115m, a child custody determination made pursuant to §46b-115n will remain in effect until an order is obtained from a court that has jurisdiction under a provision substantially similar to §46b-115k, §46b-115l, or §46b-115m. §46b-115n(b)."
- [Crowley v. Lounsbury](#), Superior Court, Judicial District of

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.

New London, Regional Family Trial Docket at Middletown, No. FA 99-0551913S (Apr. 24, 2003). **"Children need** - it is their best interest - to have a custodial parent who is physically and emotionally safe. Implicit in our laws is the notion that one parent must be free from abuse at the hands of the other. State and federal law recognize the legitimacy of domestic violence victims relocating with their children to **escape abuse."**

- Harliwich v. Harliwich, Superior Court, Judicial District of Tolland at Rockville, No. FA 98-68306 S (Dec. 3, 1998) (1998 Conn. Super. Lexis 3401) (1998 WL 867328). "There was no substantial evidence that the child's return would expose him to physical or psychological harm or otherwise place him in an intolerable situation."
- Pantazatou v. Pantazatou, Superior Court, Judicial District of Hartford-New Britain at Hartford, No. FA 960713571S (Sept. 24, 1997) (1997 WL 614519). **"Did the respondent mother** prove by clear and convincing evidence that there was grave risk of psychological harm of the child if returned to Greece? The answer is yes. The Court was clearly convinced that to return the child without the mother would create a grave risk of psychological harm to the child and more particularly to remove Nicole back to Greece without her mother would create greatest risk of serious psychological harm both short and long term.
- Renovales v. Roosa, Superior Court, Judicial District of Hartford-New Britain at Hartford, No. FA 91-0392232 (Sept. 27, 1991) (1991 Conn. Super. Lexis 2215) (1991 WL 204483). "The court finds that the respondent has failed to prove by 'clear and convincing ' evidence that the children will be 'exposed' to grave risk of either physical or psychological harm or that they will be placed in an intolerable situation."

### **Other Jurisdictions**

- Van de Sande v. Van de Sande, 431 F.3d 567, 571 (7<sup>th</sup> Circ. 2005). **"If handing over custody of a child to an abusive** parent creates a grave risk of harm to the child, in the sense that the parent may with some nonnegligible probability injure the child, the child should not be handed over, however severely the law of the parent's country might punish such behavior. In such a case, any order divesting the abducting parent of custody would have to be conditioned on the child's being kept out of the custody of the abusing parent until the merits of the custody dispute between the parents could be resolved by the court in the **abusive parent's country."**
- Danaipour v. McLarey, 386 F.3d 289, 295-296 (1st Cir.

2004). "Having found by clear and convincing evidence that C.D. was sexually abused by her father, the court then went on to conclude, also by clear and convincing evidence that returning the children to Sweden would create a grave risk of psychological harm and an intolerable situation for them."

**WEST KEY NUMBERS:**

- *Child Custody* #753. Emergency Jurisdiction
- *Child Custody* #800-830. International Issues

**DIGESTS:**

- ALR Digest: *Kidnapping*
- ALR Index: *Abduction and Kidnapping*
- Connecticut Family Law Citations: *Child Abduction*

**ENCYCLOPEDIAS:**

- Tracy Bateman Farrell, Annotation, *Construction and Application of Grave Risk of Harm Exception in Hague Convention on the Civil Aspects of International Child Abduction as Implemented in International Child Abduction Remedies Act*, 42 U.S.C.A. § 11603(e)(2)(A), 56 ALR Fed. 2d 163 (2011).
- David Carl Minneman, Annotation, *Emergency jurisdiction of court under §§3(a)(3)(ii) and 14(a) of Uniform Child Custody Jurisdiction Act and Parental Kidnapping Prevention Act, 28 U.S.C.A. §§1738A(c)(2)(C)(ii) and 1738A(f), to protect interests of child notwithstanding existence of prior, valid custody decree rendered by another state*, 80 ALR5th 117 (2000).
- Ann K. Wooster, Annotation, *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Temporary Emergency Jurisdiction Provision*, 53 A.L.R.6th 419 (2010).

**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, [Connecticut Family Law](#), LexisNexis Practice Guide (2018).
  - § 2.48. Asserting Temporary Emergency Jurisdiction
  - § 2.49. Providing Notice of Proceedings
- 8 Arnold H. Rutkin et al., [Connecticut Practice Series, Family Law and Practice with Forms](#) (3d ed. 2010).
  - Chapter 40. Jurisdiction to Enter and Enforce Custody Orders
    - § 40:9. Temporary emergency jurisdiction
    - § 40:32. Enforcement jurisdiction under the UCCJEA—Proceedings to take physical custody of a child
- 1 Sandra Morgan Little, [Child Custody and Visitation Law & Practice](#) (2017).
  - Chapter 4. Interstate Child Custody Jurisdiction under UCCJA, UCCJEA, and PKPA.
    - §4.21 Temporary Emergency Jurisdiction
  - Chapter 32. International Enforcement of Child Custody

§32.02 [3] Specific Provisions of the Convention  
[d] Chapter III - Return of the Child

- Ann M. Haralambie, [Handling Child Custody, Abuse, and Adoption Cases 3d](#) (2009).
  - § 2.8 Emergency Jurisdiction (UCCJEA)
  - § 2.9. Simultaneous Proceedings
  - § 2.21. Emergencies (PKPA)
  - § 2:38. Defenses to return—Grave risk (Hague Convention)

**LAW REVIEWS:**

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

- Valerie Brummel, *Parental Kidnapping, Criminal Contempt Of Court, and the Double Jeopardy Clause: A Recommendation for State Courts*, 106 J. Crim. L. & Criminology 315 (2016).
- Brian Quillen, *The New Face of International Child Abduction: Domestic-Violence Victims and Their Treatment under the Hague Convention on the Civil Aspects of International Child Abduction*. 49 Tex. Int'l L.J. 621-643 (2014).
- Laura Theresa Curcio Curry, *On the Border: The Country's Ambiguous Response to Out-of-State Domestic Violence Victims Fleeing Their Abusers*, 13 Holy Cross J.L. & Pub. Policy 9 (2009).
- Miranda Kaye, *The Hague Convention and the Flight from Domestic Violence: How Women & Children are Being Returned by Coach & Four*, 13 Int'l J.L., Pol'y & Fam. 191 (1999).
- Merle H. Weiner, *Intolerable Situations and Counsel for Children: Following Switzerland's Example in Hague Abduction Cases*, 58 American University Law Review 335.
- Merle H. Weiner, *International Child Abduction & the Escape from Domestic Violence*, 69 Fordham L. Rev. 593 (2000).
- Sudha Shetty, *Adult Domestic Violence in Cases of International Parental Child Abduction*, 11 Violence Against Women 115 (2005).
- Roxanne Hoegger, *What if She Leaves? Domestic Violence Cases Under the Hague Convention and the Insufficiency of the Undertakings Remedy*, 18 Berkeley Women's L.J. 181 (2003).
- Carol A. Bruch, *The Unmet Needs Of Domestic Violence Victims And Their Children In Hague Child Abduction Convention Cases*, 38 Family Law Quarterly 529 (Fall 2004).
- Julia Alanen, *When Human Rights Conflict: Mediating Intl. Parental Kidnapping Disputes Involving the Domestic Violence Defense*, 40 U. Miami Inter-Am. L. Rev. 49 (2008-09).

# Section 5: Custodial Interference

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to the crime of custodial interference and the tort of custodial interference.

## **SEE ALSO:**

- [Table 5](#): Criminal Custodial Interference

## **DEFINITIONS:**

- **Custodial interference in the first degree: Class D felony.** "(a) A person is guilty of custodial interference in the first degree when he commits custodial interference in the second degree as provided in section 53a-98: (1) Under circumstances which expose the child or person taken or enticed from lawful custody or the child held after a request by the lawful custodian for his return to a risk that his safety will be endangered or his health materially impaired; or (2) by taking, enticing or detaining the child or person out of this state." Conn. Gen. Stat. [§ 53a-97](#) (2017).
- **Custodial interference in the second degree: Class A misdemeanor.** "A person is guilty of custodial interference in the second degree when: (1) Being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; (2) knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution; or (3) knowing that he has no legal right to do so, he holds, keeps or otherwise refuses to return a child who is less than sixteen years old to such child's lawful custodian after a request by such custodian for the return of such child." Conn. Gen. Stat. [§ 53a-98\(a\)](#) (2017).
- **Effects of joint custody:** "We were wrong to conclude that a joint custodian could never, under any scenario, be liable for custodial interference." [State v. Vakilzaden](#), 251 Conn. 656, 664, 742 A.2d 767 (1999).
- **Conspiracy to interfere with custodial relations:** "The requisites of a civil action for conspiracy are: (1) a combination between two or more persons, (2) to do a criminal or an unlawful act or a lawful act by criminal or unlawful means, (3) an act done by one or more of the conspirators pursuant to the scheme and in furtherance of the object, (4) which act results in damage to the plaintiff." [Williams v. Maislen](#), 116 Conn. 433, 437, 165 A. 455 (1933).

## **LEGISLATIVE:**

- Susan Price-Livingston, *Moving Out Of State in Violation Of Child Custody Order*, Connecticut General Assembly. Office



of Legislative Research Report No. [2003-R-0491](#) (June 18, 2003).

- Susan Price, *Custodial Interference*, Connecticut General Assembly. Office of Legislative Research Report No. [2008-R-0644](#) (November 24, 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. Stat. (2017)
  - [§ 53a-97](#). Custodial interference in the first degree: Class D felony.
  - [§ 53a-98](#). Custodial interference in the second degree: Class A misdemeanor.
  - [§ 46b-16](#). Petition to Superior Court for ex parte order re temporary care and custody of child when parent arrested for custodial interference. Duration of order.

### **JURY INSTRUCTIONS:**

- CT Judicial Branch Criminal Jury Instructions
  - [6.6 Custodial Interference](#)
    - 6.6-1. Custodial Interference in the First Degree
      - § 53a-97
    - 6.6-2. Custodial Interference in the Second Degree
      - § 53a-98 (a) (1)
    - 6.6-3. Custodial Interference in the Second Degree
      - § 53a-98 (a) (2)
    - 6.6-4. Custodial Interference in the Second Degree
      - § 53a-98 (a) (3)

### **FORMS:**

- **Sample Complaint**, 5 COA 799 (1984), *Cause Of Action Against Noncustodial Parent For Interference With Custody Rights To Child*.

### **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.

- [Bouchard v. Sundberg](#), 80 Conn. App. 180, 201-02, 834 A.2d 744, 758 (2003). "In *Vakilzaden*, the Supreme Court considered for the first time whether the tort of child abduction or custodial interference applied to a parent who had joint custody of the subject child. *State v. Vakilzaden*, supra, 251 Conn. at 662, 742 A.2d 767. That case did not, as the plaintiff argues, abrogate the requirement of an extralegal taking of custody for the tort of custodial interference. The Supreme Court expressly decided that a parent enjoying joint custody could be liable for the crime of custodial interference and, in that respect, overruled *Marshak*. See *id.*, at 664, 628 A.2d 964."
- [Streeter v. Bruderhof Communities in New York, Inc.](#), Superior Court, Judicial District of Waterbury, Complex Litigation, No. X01 CV-02-0179481-S (Nov. 3, 2003) (36 Conn. L. Rptr. 69). "This action concerns the claimed abduction of the plaintiff's two (2) minor children by the children's father, the plaintiff's ex-husband. The claim is that he, with the assistance of the other named defendants, removed the children from the United States to Egypt via Ireland. The other named defendants are the owner and/or

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carrier for the international flight, a global aviation and manufacturing business, and a private airline charter service. The mother and the father share joint legal custody; the plaintiff mother has physical custody. The complaint asserts four (4) causes of action: 1) Interference with Custodial Relations; 2) Negligence; 3) False Imprisonment; and 4) Emotional Distress.”

- [State v. Vakilzaden](#), 251 Conn. 656, 742 A.2d 767 (1999). “. . . a joint custodian is not inherently immune from criminal prosecution based solely on his or her status as joint custodian if the state can prove all elements of the custodial interference statute, including both knowledge and intent beyond a reasonable doubt.”
- [Zamstein v. Marvasti](#), 240 Conn. 549, 566, 692 A.2d 781 (1997). “The plaintiff in the present case has failed to allege sufficient facts to state a cause of action for the tort of child abduction or custodial interference, as defined in *Marshak v. Marshak*, [below] . . . because the plaintiff did not allege any facts suggesting an unlawful custody of his children.”
- [Marshak v. Marshak](#), 226 Conn. 652, 665-666, 628 A.2d 964 (1993), **overruled** by [State v. Vakilzaden](#). “We disagree with the trial court’s conclusion, however, that, under the circumstances of this case, the defendant was liable for such a tort. In order to impose liability on a third party for conspiring with or aiding another in the removal of children from the custodial parent, the third party must have conspired with, or aided the other, ‘to do a criminal or an unlawful act or a lawful act by criminal or unlawful means’ . . . . In this case, however, civil liability was predicated on acts that were not themselves unlawful when they occurred because on August 7, 1985, the date on which the defendant drove the children and their father to New York, the father still had joint legal custody of the children.”
- [Brown v. Brown](#), 195 Conn. 98, 119-120, 486 A.2d 1116 (1985). “Geared as the PKPA is toward establishing national jurisdictional standards that endeavor to reduce interstate child abductions, the application of the PKPA to this case initially turns on the definition of a ‘custody determination.’ We believe that the orders of the Florida court which, in effect, generated this Connecticut action, fall squarely within the PKPA definition of a ‘custody determination.’” 28 U.S.C. § 1738A(b)(3)
- [Agnello v. Becker](#), 184 Conn. 421, 432-433, 440 A.2d 172 (1981). “The defendant also claims that the ‘reprehensible conduct’ of the plaintiff, in taking the child from the home of the defendant and allegedly ‘concealing’ her from the defendant, supports the trial court’s conclusion that the New Jersey decree should not be recognized . . . . We initially

note that this provision [Conn. Gen. Stats. §46b-98(a) and N.J. Stat. Ann. §2A:34-36(a)] does not set forth any new bases for jurisdiction. Secondly, under this section, the **determination of whether the plaintiff's conduct was reprehensible** was more properly a question for the New Jersey court. Thirdly, we point out that the act does not **require** a state to decline to exercise its jurisdiction over the **matter for such conduct."**

**WEST KEY NUMBERS:**

- Kidnapping
  - 10. In general
  - 13. Validity
  - 20. Want of consent
  - 23. Criminal custodial interference
  - 24. —In general
  - 25. —Intent
  - 26. —Consent or wishes of child

**DIGESTS:**

- Connecticut Family Law Citations: *Child Abduction*

**ENCYCLOPEDIAS:**

- 1 [Am. Jur. 2d](#) *Abduction and Kidnapping* (2016).  
Abduction or kidnapping by parent or person in loco parentis  
§ 35. Parental rights, custody, and kidnapping  
§ 36. Uniform Child Custody Jurisdiction and Enforcement Act  
§ 37. Federal Parental Kidnapping Act
- 51 [C.J.S.](#) *Kidnapping* (2010).  
§ 31. Custodial interference statutes; distinction from kidnapping  
§ 32. Agent or person assisting a parent
- 59 [Am. Jur. 2d](#) *Parent and Child* (2012).  
§ 113. Enticement or abduction of child; interference with custody  
§ 114. Action by child  
§ 115 —Against third person for act of parent
- 67A [C.J.S.](#) *Parent and Child* (2013).  
§ 342. Action by parent for enticing away child or other interference with relationship  
§ 343. — Nature and elements of cause of action  
§ 344. — Pleading  
§ 345. — Evidence  
§ 346. — Trial and recovery for damages  
§ 347. Action by child for enticing away or harboring parent
- William B. Johnson, Annotation, *Liability Of Legal Or Natural Parent, Or One Who Aids And Abets, For Damages Resulting From Abduction Of Own Child*, 49 ALR4th 7 (1986).

- William B. Johnson, Annotation, *Kidnapping Or Related Offense By Taking Or Removing Child By Or Under Authority Of Parent Or One In Loco Parentis*, 20 ALR 4th 823 (1983).
- 5 COA 799 (1984), *Cause Of Action Against Noncustodial Parent For Interference With Custody Rights To Child*.
  - I. Introduction
    - a. Prima Facie Case
    - b. Defenses
    - c. Parties
  - II. Substantive law overview
  - III. Practice and procedure
    - a. In general
      - § 11. Advantage of action over other remedies
    - b. **Plaintiff's proof**
    - c. Recovery
  - IV. Appendix
    - § 20. Sample case
    - § 21. Sample complaint
    - § 22. Research guide

**TEXTS & TREATISES:**

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- 8 Arnold H. Rutkin et al., [Connecticut Practice Series, Family Law And Practice with Forms](#) (3d ed. 2010).
  - Chapter 43. Enforcement of Custody and Visitation Orders
    - § 43:11. Criminal sanctions
    - § 43:12. Tort claims
- 1 Sandra Morgan Little, [Child Custody and Visitation Law & Practice](#) (2017).
  - Chapter 5. Recognition and Enforcement of Foreign Judgments
    - PART D. Enforcement Under Federal and International Law
      - § 5.40. Tort remedy for child-snatching
      - § 5.41. State Criminal Statutes: Custodial Interference
- American Law Institute, [Restatement of the Law of Torts 2d](#) (1977).
  - § 700. Causing minor child to leave home or not return to home

Table 4: Tort of Custodial Interference or Child Abduction - Key Connecticut Cases

<b>Tort of Custodial Interference or Child Abduction: Key Connecticut Cases</b>	
<p><a href="#">Mirjavadi v. Vakilzadeh</a>, 128 Conn. App. 61, 76-77, 18 A.3d 591 (2011), affirmed by 310 Conn. 176, A.3d 1278 (2013).</p>	<p>"...the court's conclusion that the concern over possible abduction was 'wither[ing]' and that, as a consequence, the <b>foreseeability</b> of abduction was 'decreasing' is not supportable. The question is not whether the risk of abduction was low or had diminished over time, but whether it remained foreseeable that Saba could be abducted by her father. See <i>Lodge v. Arett Sales Corp.</i>, 246 Conn. 563, 572, 717 A.2d 215 (1998)."</p>
<p><a href="#">Bouchard v. Sundberg</a>, 80 Conn. App. 180, 198-199, 834 A.2d 744 (2003).</p>	<p>"In <i>Vakilzaden</i> [infra], the Supreme Court considered for the first time whether the tort of child abduction or custodial interference applied to a parent who had joint custody of the subject child . . . . That case did not, as the plaintiff argues, abrogate the requirement of an extralegal taking of custody for the tort of custodial interference. The Supreme Court expressly decided that a parent enjoying joint custody could be liable for the crime of custodial interference and, in that respect, overruled <i>Marshak</i> [infra]."</p>
<p><a href="#">State v. Vakilzaden</a>, 251 Conn. 656, 662-663, 742 A.2d 767 (1999).</p>	<p>"The state argues that we should overrule <i>Marshak</i> [infra] and allow joint custodians to be held criminally liable if, in abducting their own child, their intent is to deprive the other joint custodian of his or her equal parental rights permanently or for a protracted period of time in accordance with General Statutes § 53a-98. We agree that <i>Marshak</i> should be overruled and that a joint custodian is not inherently immune from criminal prosecution based solely on his or her status as joint custodian if the state can prove all elements of the custodial interference statute, including both knowledge and intent, <b>beyond a reasonable doubt.</b>"</p>
<p><a href="#">Zamstein v. Marvasti</a>, 240 Conn. 549, 565, 692 A.2d 781 (1997)</p>	<p>"Although we have recognized that the <b>tort of child abduction or custodial interference</b> may have a place in our jurisprudence; see <i>Marshak v. Marshak</i>, 226 Conn. 652, 665, 628 A.2d 964 (1993); we conclude that the plaintiff has failed to allege sufficient facts to state such a cause of action." (Emphasis added).</p>
<p><i>Continued Next Page</i></p>	

[Marshak v. Marshak](#),  
226 Conn. 652, 665,  
628 A.2d 964  
(1993). **Overruled**  
by [State v.](#)  
[Vakilzaden](#).

"We agree with the trial court that the recognition of **the tort of child abduction or custodial interference**, as applied to either a parent or a third party, might well play an important role in encouraging the speedy return of abducted children to the custodial parent and in compensating that parent for the harm suffered from the child's absence. We also agree that such a tort may have a place in our jurisprudence. We disagree with the trial court's conclusion, however, that, under the circumstances of this case, the defendant was **liable for such a tort.**" (Emphasis added).

Table 5: Criminal Custodial Interference

<b>Criminal Custodial Interference</b>	
<p>Conn. Gen. Stat. <a href="#">§ 53a-97</a> (2017).</p>	<p><b>Custodial interference in the first degree: Class D felony.</b> "(a) A person is guilty of custodial interference in the first degree when he commits custodial interference in the second degree as provided in section 53a-98: (1) Under circumstances which expose the child or person taken or enticed from lawful custody or the child held after a request by the lawful custodian for his return to a risk that his safety will be endangered or his health materially impaired; or (2) by taking, enticing or detaining the child or person out of this state."</p>
<p>Conn. Gen. Stat. <a href="#">§ 53a-98</a> (2017).</p>	<p><b>Custodial interference in the second degree: Class A misdemeanor.</b> "(a) A person is guilty of custodial interference in the second degree when: (1) Being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; (2) knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution; or (3) knowing that he has no legal right to do so, he holds, keeps or otherwise refuses to return a child who is less than sixteen years old to such child's lawful custodian after a request by such custodian for the return of such child."</p>
<p>Legislative:</p>	<p>George Coppolo, <i>Attempted Kidnapping</i>, Connecticut General Assembly. Office of Legislative Research Report No. <a href="#">2004-R-0272</a> (February 27, 2004).</p> <p>" . . . in 1995, the legislature increased the penalty, from a <b>class A misdemeanor to a class D felony for 'detaining' a child</b> under 16 out of state when, knowing he has no legal right to do so, someone refuses to return the child to his lawful custodian after the custodian requests his return (PA 95-206)(See CGS § 53a-97). Generally, refusing to return a child after a request is second-degree custodial interference, a class A misdemeanor. Prior law it first-degree custodial <b>interference, a class D felony, only for 'taking' or 'enticing the child out of state.'</b>"</p>
<p>Treatise:</p>	<p>1 Sandra Morgan Little, <a href="#">Child Custody and Visitation Law &amp; Practice</a> (2017).                      Chapter 5. Interstate review                      § 5.41. State criminal statutes: Custodial interference</p>

## Section 6: Indian Child Welfare Act (ICWA)

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic resources relating to the federal Indian Child Welfare Act (ICWA) and parental kidnapping of an Indian child.

- DEFINITIONS:**
- **Indian child:** "means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;" [25 U.S.C. § 1903\(4\)](#) (2018).
  - **Indian tribe:** "means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602 (c) of title 43;" [25 U.S.C. § 1903\(8\)](#) (2018).
  - **Exclusive jurisdiction:** "An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child." [25 U.S.C. § 1911](#) (2018).

- GUIDELINES:**
- Federal Register: [Guidelines for State Courts and Agencies in Indian Child Custody Proceedings](#), 80 Fed. Reg. 10146 (February 25, 2015).

- STATUTES:**
- **Indian Child Welfare Act, [25 U.S.C. §§ 1901 et seq.](#) (2018).**

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

**[§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception.](#)** "Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger."

**[§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of](#)**



**Indian child** "In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard."

**§ 1922. Emergency removal or placement of child; termination; appropriate action.** "Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate."

- Conn. Gen. Stat. (2017)  
[Chapter 815p](#) – *Uniform Child Custody Jurisdiction and Enforcement Act.*  
**Application to Indian tribes.** "A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 USC Section 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act." Conn. Gen. Stat. § [46b-115c](#) (2017).

**LEGISLATIVE HISTORY:**

- H.R.Rep. No. 1386, 95<sup>th</sup> Cong., 2d Sess. 25 (1978). Reprinted in 1978 U.S.C.C.A.N. 7530, 7548.  
"Section 110 [25 U.S.C. §1920] establishes a 'clean hands' doctrine with respect to petitions in State courts for the custody of an Indian child by a person who improperly has such child in physical custody. It is aimed at those persons who improperly secure or improperly retain custody of the child without the consent of the parent or Indian custodian and without the sanction of law. It is intended to bar such person from taking advantage of their wrongful conduct in a subsequent petition for custody. The child is to be returned to the parent or Indian custodian by the court unless such return would result in substantial and immediate physical damage or threat of physical danger to the child. It is not

intended that any such showing be by or on behalf of the wrongful petitioner.”

**REGULATIONS:**

- [25 C.F.R. Part 23](#) (2018). Indian Child Welfare Act

**POLICIES:**

- [Connecticut Department of Children and Families Policy Manual](#)  
31-8-14: Native American Families

**CASES:**

- [In re Kadence P.](#), 241 Cal. App. 4th 1376, FN. 10 (2015).  
“Although not binding on state courts, the BIA Guidelines are ‘instructive.’”
- [D.E.D. v. State](#), 704 P.2d 774, 780 (Alaska 1985). “Thus, as the State’s notes, there was nothing in R.S.’s petition which demonstrated that there was any basis for declining jurisdiction under either § 1913 or § 1920.”

**WEST KEY NUMBERS:**

- *Indians* #126 et seq. Protection of persons and personal rights
- *Indians* #238 et seq. Actions. Jurisdiction

**DIGESTS:**

- ALR Digest: *Indians* #1

**ENCYCLOPEDIAS:**

- 41 [Am. Jur. 2d Indians, Native Americans](#) (2015).  
§ 99. Purpose and Validity of Indian Child Welfare Act;  
§ 100. –Role of tribe  
§ 101. Applicability of the ICWA  
§ 102. Indian Child and Tribe under the ICWA  
§ 103. Rules of Construction for ICWA  
§ 104. Exclusive Jurisdiction of Tribal Court under ICWA  
§ 105. Concurrent Jurisdiction of Tribal Court and State Court  
§ 106. Transfer of Proceedings to Tribal Court  
§ 107. Full Faith and Credit
- 42 [C.J.S. Indians](#) §§138 et seq. (2017).
- 19 [Federal Procedure Lawyers Edition](#) (2016).  
Indians and Indian Affairs. Child custody Proceedings under Indian Child Welfare Act  
§ 46: 451. Exclusive jurisdiction of tribes  
§ 46: 454. State court’s declining jurisdiction upon improper removal of child from custody

**TEXTS & TREATISES:**

- Louise Truax, Editor, [Connecticut Family Law](#), LexisNexis Practice Guide (2018).  
§ 2.50. Applying the UCCJEA to Native Americans
- 5 Sandra Morgan Little, 4 [Child Custody and Visitation Law & Practice](#) (2017).  
Chapter 29. The Indian Child Welfare Act and Laws Affecting Indian Juveniles.

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- § 29.01. Introduction
- § 29.02. Domestic relations law and Indians: General principles
- § 29.03. Indian Child Welfare Act: Policy and Legislative History
- § 29.04. Indian Child Welfare Act: General application
- § 29.05. Involuntary child custody proceedings
- § 29.06. Voluntary child custody proceedings
- § 29.07. Placement of Indian children
- § 29.08. Post trial matters
- § 29.10. Bibliography

**LAW REVIEWS:**

- Marcia Yablon, *The Indian Child Welfare Act Amendments Of 2003*, 38 Family L.Q. 689 (Fall 2004).

**WEBSITE:**

- U.S. Department of the Interior - Bureau of Indian Affairs [Indian Child Welfare Act](#)