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2017 Edition

Birth and Conception in Connecticut

A Guide to Resources in the Law Library

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Introduction

A Guide to Resources in the Law Library

- **Public policy:** "It is declared that the public policy of this state has been an adherence to the doctrine that every child born to a married woman during wedlock is legitimate." **Conn. Gen. Stat. [§ 45a-771](#)**(a) (2017).
- **"We are dealing** here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very **existence and survival of the race."** [Skinner v. Oklahoma](#), 316 U.S. 535, 541, 62 S. Ct. 1110, 88 L.Ed. 1655 (1942).
- **Words of inheritance to apply to child conceived through A.I.D.:** "(a) The words "child", "children", "issue", "descendant", "descendants", "heir", "heirs", "unlawful heirs", "grandchild" and "grandchildren", when used in any will or trust instrument, shall, unless the document clearly indicates a contrary intention, include children born as a result of A.I.D. (b) The provisions of this section shall apply to wills and trust instruments whether or not executed before, on or after October 1, 1975, unless the instrument indicates an intent to the contrary." Conn. Gen. Stat. [§ 45a-778](#) (2017).

Section 1: Artificial Insemination

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to artificial insemination with donor sperm or eggs (A.I.D.), including status of child born and the rights of the donor of the sperm in Connecticut.

DEFINITIONS:

- **Artificial insemination** "means a medical procedure in which the fertilization of a human egg is assisted through artificial means and includes, but is not limited to, intrauterine insemination and in vitro fertilization" Conn. Gen. Stat. [§ 45a-771a](#)(1) (2017).
- **Artificial insemination with donor sperm or eggs or A.I.D.** "'with donor sperm or eggs' or 'A.I.D.'" means artificial insemination with the use of donated sperm or eggs from an identified or anonymous donor." Conn. Gen. Stat. [§ 45a-771a](#)(2) (2017).
- "The words '**child**', '**children**', '**issue**', '**descendants**', '**descendant**', '**heirs**', '**heir**', '**unlawful heirs**', '**grandchild**' and '**grandchildren**', when used in the singular or plural in any will or trust instrument, shall, unless such document clearly indicates a contrary intention, be deemed to include children born after the **death of the decedent...**" Conn. Gen. Stat. [§ 45a-262](#)(b) (2017).

STATUTES:

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

- Conn. Gen. Stat. (2017)
 - [Chapter 802a](#). Wills: execution and construction
 - [§ 45a-257b](#). Failure of testator to provide for children born or adopted after execution of will. Determination of share of estate.
 - [Chapter 803](#). Termination Of Parental Rights And Adoption
 - [§ 45a-724](#)(a)(2) and (3). Who may give child in adoption
 - [§ 45a-731\(5\)\(6\)\(7\)](#). Effects of final decree of adoption. Surviving rights.
 - [Chapter 803a](#). Children Conceived Through Artificial Insemination
 - [§ 45a-771](#). Child born as a result of artificial insemination legitimate
 - [§ 45a-772](#). A.I.D. Who may perform. Consent required
 - [§ 45a-773](#). Request and consent to be filed in Probate Court. Confidentiality.
 - [§ 45a-774](#). Status of child born as result of A.I.D.
 - [§ 45a-775](#). No rights in donor of sperm or eggs
 - [§ 45a-776](#). Status of child determined by jurisdiction of birth

[§ 45a-777](#). Inheritance by child conceived as a result of A.I.D.

[§ 45a-778](#). Words of inheritance to apply to child conceived through A.I.D.

[§ 45a-779](#). Status of child conceived through A.I.D., born prior to October 1, 1975

LEGISLATIVE:

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

- P.A. 13-301, [An Act Concerning the Inheritance Rights of a Child Who is Born after the Death of a Married Parent](#).
 - [OLR Summary](#)
- Katherine Dwyer, *Inheritance Rights of Posthumously Conceived Children*, Connecticut General Assembly. Office of Legislative Research Report, [2012-R-0240](#) (June 19, 2012).
- Jennifer Brady, *Summary of Raftopol v. Ramey*, Connecticut General Assembly. Office of Legislative Research Report, [2011-R-0094](#) (February 25, 2011).
- Meghan Reilly, *Infertility Coverage and Age Discrimination*, Connecticut General Assembly. Office of Legislative Research Report, [2008-R-0106](#) (February 14, 2008).
- P.A. 07-93, [An Act Concerning Artificial Insemination by Donor](#).
 - [OLR Summary](#)
- 1975 Conn. Acts 233 (Reg. Sess.). (Substitute H.B. 5147). *An act concerning the status of children conceived through artificial insemination.*

FORMS:

- 13C [American Jurisprudence Legal Forms](#) 2d (2002 rev.). Chapter 191. Parent and child
 - § 191:108. Agreement for artificial insemination—Between husband, wife, and donor—Identity of donor known
 - § 191:109. Agreement for artificial insemination—Between recipient and donor—Identity of donor known
 - § 191:110. Agreement for artificial insemination—By recipient and physician—Identity of donor unknown
 - § 191:111. Agreement for artificial insemination—By donor or intermediary—Identity of recipient unknown
- 6 Arnold H. Rutkin, [Family Law and Practice](#) (2010) § 63.09[2][a]. Form: Consent of Husband to Artificial Insemination of Wife

- 2 Jeff Atkinson, [Modern Child Custody Practice](#), 2nd Ed. (2016).
Chapter 9. Third party custody and visitation.
§ 9.20. Custody and visitation for children raised by couples of the same sex

CASES:

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

- [Barse v. Pasternak](#), Superior Court, Judicial District, New Britain, No. HHB-FA12-4030541-S. (Jan. 16, 2015) (2015 WL 600973). **"For the reasons discussed more particularly below, this court concludes that, under the circumstances in this case, the plaintiff is presumed to be the minor child's legal parent irrespective of whether she conceived or adopted the child, complied with the artificial insemination statutes, or entered into a valid gestational agreement, and, the child therefore is presumed to be legitimate."**
- [Commissioner of Social Services v. Lewis](#), Superior Court, Judicial District of Hartford, No. FA114059024S (Oct. 21, 2013). **"The defendant and the plaintiff did agree in their dissolution agreement that the parties would destroy the embryos (emphasis added). They did not. Further, the magistrate found that although the dissolution judgment required the destruction of the embryos, the defendant signed a prior consent for the IVF and then after the child was born, volitionally signed the acknowledgment of paternity and therefore the defendant 'essentially sandwiched the dissolution order with both prior and subsequent consent recognizing the subject child.'"**
- [Laspina-Williams v. Laspina-Williams](#), 46 Conn. Supp. 165, 171, 742 A.2d 840 (1999). **"Paraskevas v. Tunick**, Superior Court, judicial district of Litchfield, No. FA950072398 (April 23, 1997) (19 Conn. L. Rptr. 39) (couple cohabitated for several years and Ms. Tunick conceived a child by artificial insemination. Paraskevas petitioned for visitation of the minor child when the couple separated. Tunick moved to dismiss on several grounds including lack of jurisdiction. The court denied the motion concluding that the separation of a nontraditional family constituted a disruption of the family sufficient to bring the case within the jurisdictional requirements of § 46b-59 and the threshold requirements set forth in *Castagno*."
- [W. v. W.](#), 248 Conn. 487, 494, 728 A.2d 1076 (1999). [FN7] **"This court held that, although § 46b-56 no longer includes the phrase 'child of the marriage,' the concept 'remains implicit in our entire statutory scheme governing marital dissolutions and retains viability by continuing to define who is a parent. . . .' Doe v. Doe**, supra, 244 Conn. 403, 422, 710 A.2d 1297 (1998). The court continued: **"[T]he meaning of [the concept of a "child of the marriage"]**, in the context of a martial dissolution case, is

limited to a child conceived by both parties, a child adopted by both parties, a child born to the wife and adopted by the husband, a child conceived by the husband and adopted by the wife, and a child born to the wife and conceived through artificial insemination by a donor pursuant to [General Statutes] §§ 45a-771 through 45a-779.' *Id.*, 435."

- *In re Simon A. W.*, 1997 Ct. Sup. 5125, 5127-28 (Jud. District, New Haven, No. NO5-CP97-009105-A, May 27, 1997) 1997 WL 309576. "The provisions of Chapter 803a (Sec. 45a-771 through 779) entitled 'Children Conceived through Artificial Insemination' shed no light on this case since, despite its title, they relate exclusively to children conceived by married women through artificial insemination by anonymous donors."

ENCYCLOPEDIAS:

- 59 *Am. Jur.* 2d *Parent and Child* (2012).
 § 5. Definitions—"Surrogate parent"; "gestational mother"
 § 7. Definitions—"Child artificially inseminated"
 § 8. Definitions—"Family"
 § 36. Right of visitation
- *Sperm Bank Liability For Donor Semen Transmitting AIDS*, 25 *Am Jur POF 3d* 1 (1994).
- *Legitimation of Child by Father Seeking Custody of Child*, 14 *Am. Jur. POF 2d* 727 (1977).
- *Liability of Sperm Banks*, 50 *Am Jur Trials* 1 (1994).

TEXTS & TREATISES:

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

- 8 Arnold H. Rutkin et al. *Connecticut Practice Series. Family Law and Practice With Forms* (3d ed. 2010).
 Chapter 42. Child custody and visitation
 § 42:3. Custody rights relating to adopted children, step children and other nonbiological relationships
 § 42:14. Custody claims by third parties – Assisted reproduction
- 6 Arnold H. Rutkin, *Family Law and Practice* (2016).
 Chapter 63. Paternity Proceedings
 § 63.09. Assisted conception
 Chapter 64-A. Law of alternative reproductive technologies
 § 64A.04. Legal issues involved in artificial insemination
 [1] Introduction
 [2] Who may perform artificial insemination
 [3] Donor and recipient
 [4] Parentage where artificial insemination is

by the husband
[5] Legal issues involved in artificial insemination by non-husband sperm donor

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

- 1 Sandra Morgan Little, [Child Custody & Visitation Law & Practice](#) (2015).
 - Chapter 1. Overview: development of the law of child custody and visitation
 - § 1.02. **The changing definition of “parent”**: assisted procreation
 - [2] Types of assisted procreation
 - [b] Artificial insemination
 - [3] Assisted procreation and the Constitution
 - [4] Preconception intentions versus genetic links
 - [5] State parentage laws and assisted procreation
 - [a] Generally
 - [b] Paternal rights
 - [i] Presumption of legitimacy
 - [ii] Artificial insemination
 - [c] Maternal rights
- 2 Sandra Morgan Little, [Child Custody & Visitation Law & Practice](#) (2015).
 - Chapter 11A. Assisted reproductive technologies and collaborative reproduction
 - § 11A.01. Clarification of terminology used in ARTs and collaborative reproduction
 - § 11A-02. Medical aspects of ART: What is ART?
 - § 11A-03. Parentage issues in ARTs
 - § 11A-04. Compare adoption: Why ARTs demands a different approach
 - § 11A-05. Statutory overview of collaborative reproduction
 - § 11A-06. Case law on ARTs
 - § 11A-07. Agreements on embryo preservation or other disposition
 - § 11A-08. Preparing collaborative reproduction agreements collaborative reproduction agreements
- 2 Nina M. Vitek, [Disputed Paternity Proceedings](#) (5th ed. 2015).
 - Chapter 17. Assisted reproduction: Constitutional and family law parameters
 - § 17.01. Keep your focus on the children
 - § 17.02. Assisted reproduction and collaborative reproduction
 - § 17.03. Directives and agreements
 - § 17.04. Adoptions is for children; Donation is for embryos
 - § 17.05. Checklist for counseling ART clients
 - § 17.06. Assisted reproduction case law

Appendix 17B.01 State laws on assisted reproduction

- 3 Joan Heifetz Hollinger et al., [Adoption Law and Practice](#) (2016).
Chapter 14. Assisted reproductive technologies, collaborative reproduction, and adoption
 - § 14.05. Statutory overview of collaborative reproduction
 - § 14.06. Case law on ARTs
 - § 14.08. Preparing collaborative reproduction agreements
 - § 14.20. Charts summarizing state statutes on ARTs [2]. Artificial insemination
- Samuel Green and John V. Long, [Marriage and Family Law Agreements \(1984\)](#).
Chapter 5. Birth, parenthood and adoption
 - § 5.02. Introduction to artificial insemination
 - § 5.03. Artificial insemination and adultery
 - § 5.04. Status and support rights of the child
 - § 5.05. The consent form
 - § 5.06. Ramifications of consent
 - § 5.07. Artificial insemination and the unmarried woman
 - § 5.08. Confidentiality of the parties
- 1 Thomas R. Young, [Legal Rights of Children](#), 3 Ed. (2016-17).
Chapter 7. Inheritance laws and paternity rights of illegitimate children
 - § 7:15. Artificial insemination as affecting paternity
 - § 7:16 - Same sex relationships

ALR INDEX:

- [ALR Index: Artificial Insemination](#)

LAW REVIEWS:

- Daryl Gordon-Ceresky, Note, *Artificial Insemination: Its Effect on Paternity and Inheritance Rights*, 9 Connecticut Probate Law Journal 245 (Spring, 1995).
- Family Advocate, *Assisted Reproductive Technologies*, Vol. 34, No. 2. (Fall 2011).
- Linda D. Elrod, *Child's Perspective of Defining a Parent: The Case for Intended Parenthood, A*, 25 BYU Journal of Public Law, no. 2 (2011) p. 245.
- William M. Lopez, *Artificial Insemination and the Presumption of Parenthood: Traditional Insemination and Modern Applications for Lesbian Mothers*, 86 Chicago-Kent Law Review. 897 (2011).
- Tiffany L. Palmer, *The Winding Road to the Two-Dad Family: Issues Arising in Interstate Surrogacy for Gay Couples*, 8 Rutgers J.L. & Pub. Pol'y 895 (2011).
- William S. Singer, *Exploring New Terrain: Assisted Reproductive Technology (ART), The Law and Ethics*, 8 Rutgers J.L. & Pub. Pol'y 918 (2011).

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

- Naomi Cahn, *Do Tell! The Rights of Donor-Conceived Offspring*, 42 Hofstra L. Rev. 1077 (Summer, 2014)
- Deborah Zalesne, *The Contractual Family: The Role of the Market in Shaping Family Formations and Rights*, 36 Cardozo L. Rev. 1027 (2015).
- Kimberly M. Mutcherson, Procreative Pluralism, 30 Berkeley J. Gender L & Just. 22 (Winter, 2015)/
- Jeffrey A. Parness, Parentage Prenups and Midnups, 31 Ga. St. U. L. Rev. 343 (Winter, 2015).
V. Guidance on child creation via prenups and midnups

Section 2: Surrogacy

A Guide to Resources in the Law Library

SCOPE:

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

DEFINITION:

- “For a fee of \$10,000, a woman agrees to be artificially inseminated with the semen of another woman’s husband; she is to conceive a child, carry it to term, and after its birth surrender it to the natural father and his wife. The intent of the contract is that the child’s natural mother will thereafter be forever separated from her child. The wife is to adopt the child, and she and the natural father are to be regarded as its parents for all purposes.” [Matter of Baby M.](#), 537 A.2d 1227, 1234 (N.J., 1988).
- **Equitable parent doctrine:** [In re Joshua S.](#), 260 Conn. 182 (2002); [W. v. W.](#), 248 Conn. 487, 507 fn9, 728 A.2d 1076 (1999); [Barse v. Pasternak](#), Superior Court, Judicial District, New Britain, No. HHB-FA12-4030541-S. (Jan. 16, 2015) 2015 WL 600973.
- **Gestational agreement:** “means a written agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent or intended parents, which woman contributed no genetic material to the child and which agreement (A) names each party to the agreement and indicates each party’s respective obligations under the agreement, (B) is signed by each party to the agreement and the spouse of each such party, if any, and (C) is witnessed by at least two disinterested adults and acknowledged in the manner prescribed by law”. [C.G.S. § 7-36](#)(16).

STATUTES:

You can visit your local law library or [search the most recent statutes and public acts](#) on the CGA website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)
[Chapter 93](#) – Registrars of Vital Statistics
[§ 7-48a](#). Filing of original certificate of birth. Gestational agreement: Replacement certificate of birth.
[Chapter 815j](#) – Dissolution of Marriage, Legal Separation and Annulment
[§ 46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child.
[§46b-56b](#). Presumption re best interest of child to be in custody of parent

LEGISLATIVE:

- Katherine Dwyer, *Gestational Agreements*, Connecticut General Assembly. Office of Legislative Research Report, [2014-R-0074](#) (March 10, 2014).

- P.A. 11-153, [An Act Concerning the Creation of a Replacement Birth Certificate Pursuant to a Gestational Agreement](#).
 - [OLR Summary](#)

FORMS:

- 13C [American Jurisprudence Legal Forms](#) (2013).
Chapter 191. Parent and child
§ 191:97. Surrogate parenting agreement
§ 191:99. Agreement to select surrogate mother
- [Nichols Cyclopedia of Legal Forms Annotated](#) (2006).
Parent and Child
Surrogate parenting transactions §§ 148:69 - 148:87
§ 148.70 Surrogate parenting agreement
§ 148.80 Surrogate application form
- Louise Truax, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
Chapter 11. Surrogacy and gestational agreements

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.

- [Raftopol v. Ramey](#), 299 Conn. 681, 12 A.3d 783 (2011) "On the basis of our analysis of both the text of the statute, as well as its legislative history, we conclude that the legislature intended § 7-48a to confer parental status on an intended parent who is a party to a valid gestational agreement irrespective of that intended parent's genetic relationship to the children. Such intended parents need not adopt the children in order to become legal parents. They acquire that status by operation of law, upon an order by a court of competent jurisdiction pursuant to § 7-48a."
- [Griffiths v. Taylor](#), Superior Court, Judicial District of Waterbury, No. FA084015629, (June 13, 2008). "[I]t is clear that the legislature contemplated that a Superior Court would have the authority, under § 7-48a, to enter a judgment on the validity of a gestational agreement and that where there is a valid gestational agreement, the court may then order the Department of Health to issue a replacement birth certificate with the names of the intended parents on it."
- [Doe v. Roe](#), 246 Conn. 652, 653, 717 A.2d 706 (1998). "The narrow question presented by this appeal is whether the Superior Court has subject matter jurisdiction to render judgment in accordance with an agreement that includes a promise by a surrogate mother to consent to the termination of her parental rights in Probate Court."
- [In Matter of Baby M](#), 537 A.2d 1227, 109 N.J. 396, 77 ALR4th 1 (1988).

ENCYCLOPEDIAS:

- 48 [COA 2d](#) 687 (2011). *Cause of Action for Determination of Status as Legal or Natural Parents of Children Borne by Surrogate or Gestational Carrier*
- 17A [Am. Jur.](#) 2d Contracts (2016).
§287. *Contracts concerning familial relationships; gestational surrogacy*

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 Traux, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
Chapter 11. Surrogacy and Gestational Agreements
- 1 Joan H. Hollinger et al., [Adoption Law and Practice](#) (2016).
Chapter 2. Consent to adoption
- 3 Joan H. Hollinger et al., [Adoption Law and Practice](#) (2016).
Chapter 14. Assisted reproductive technologies, collaborative reproduction and adoption
§ 14.20. Charts summarizing state statutes on ART
[1] Surrogacy and gestational carriers
- 2 Sandra Morgan Little, [Child Custody & Visitation Law & Practice](#) (2016).
Chapter 11A. Assisted reproductive technologies and collaborative reproduction
§ 11A.05. Statutory overview of collaborative reproduction
§ 11A.06. Case law on ARTs
§ 11A.08. Preparing collaborative reproduction agreements
 - [2] Requirement of medical screening
 - [3] Requirement of psychological evaluation
 - [4] Compensation
 - [5] Relinquishment of parental rights
 - [6] Personal protection of donor or carrier
 - [7] **Nature of parties' relationship**
 - [8] Summary of elements for gestational carrier agreements
- 6 Arnold H. Rutkin, [Family Law and Practice](#) (2016).
Chapter 63. Paternity Proceedings
§ 63.09. Assisted conception
Chapter 64-A. Law of Alternative Reproductive Technologies
 - § 64A.02. Types of alternative reproductive technologies
 - [5] Surrogate parenting
 - § 64A.07 Legal issues involved in surrogate parenting.
 - [2] Parentage issues in surrogate parenting
 - [3] Fees for surrogacy
 - [4] Selecting the surrogate
 - § 64A.08 Proposed statutory provisions for alternative

reproductive technologies

- Ann M. Haralambie, [Handling Child Custody, Abuse and Adoption Cases](#) (3rd ed. 2009).
Chapter 9. Assisted conception and surrogacy
 - § 9.15. Surrogacy generally
 - § 9.16. Gestational surrogacy
 - § 9.17. Gratuitous surrogacy
 - § 9.18. Surrogacy for a fee
 - § 9.19. Rights of surrogate
 - § 9.20. **Status of the surrogate's** husband
 - § 9.21. Enforceability and remedies

- 2 Nina M. Vitek, [Disputed Paternity Proceedings](#) (2014).
Chapter 17. Assisted reproduction: Constitutional and family law parameters
 - § 17.02. Assisted reproduction and collaborative reproduction
 - § 17.03. Directives and agreements
 - § 17.05. Checklists for counseling ART clients
 - § 17.06. Assisted reproduction case law
 - § 17.10. Gestational carriers and surrogates: Why the distinction is significantAppendix 17B. State laws on assisted reproduction
 - §17B.01. State laws re: Surrogacy and gestational carriers

- Samuel Green and John v. Long, [Marriage and Family Law Agreements](#) (1984).
Chapter 5. Birth, parenthood and adoption
 - § 5.09. Introduction to surrogate motherhood
 - § 5.10. Presumption of legitimacy
 - § 5.11. Statutory impediments to surrogate motherhood
 - § 5.12. —Baby brokerage statutes
 - § 5.13. Surrogate motherhood as a constitutional right
 - § 5.14. Drafting surrogate motherhood contract
 - § 5.15. Issues to be considered before executing the surrogate motherhood contract
 - § 5.16. Compensating the surrogate mother
 - § 5.17. Enforcing the surrogate motherhood contract

- 15 Grace M. Giesel, [Corbin on Contracts](#), Rev. Ed. § 81.6 Surrogacy Contracts (2003).

- 1 Jeff Atkinson, [Modern Child Custody Practice](#), 2nd Ed. (2016).
Chapter 8. Surrogate parenting

- 1 Thomas R. Young, [Legal Rights of Children](#), 3d. (2016-17).
Chapter 7. Inheritance laws and paternity rights of illegitimate children
 - § 7:13. Establishing parentage through paternity

actions
§ 7:14. Children of surrogate mothers and sperm
donor fathers

LAW REVIEWS:

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

- Leslie I. Jennings-Lax, *Surrogacy –The law in Connecticut*, 79 Conn. B.J. 59 (2005)
- Christine A. Bjorkman, *Sitting in Limbo: The Absence of Connecticut Regulation of Surrogate Parenting Agreements and Its Effect on Parties to the Agreement*, 21 Quinnipiac Prob. L.J. 141 (2008)
- Linda D. Elrod, *Child's Perspective of Defining a Parent: The Case for Intended Parenthood, A*, 25 BYU Journal of Public Law, no. 2 (2011) p. 245
- Martha A. Field, *Compensated Surrogacy*, 89 Wash. L. Rev. 1155 (December, 2014)
- Mark Strasser, *Traditional Surrogacy Contracts, Partial Enforcement, and the Challenge for Family Law*, 18 J. Health Care L. & Policy 85 (2015)
- Amanda M. Herman, *The Regulation of Gestation: A Call for More Complete State Statutory regulation of Gestational Surrogacy Contracts*, 18 Chap. L. Review, 553 (2015)

Section 3: Wrongful Birth or Life

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the tort of wrongful birth or life in Connecticut.
- DEFINITION:**
- “The terms **‘wrongful birth’** and **‘wrongful life’** are but shorthand phrases that describe the causes of action of parents and children when negligent medical treatment deprives parents of the option to terminate a pregnancy to **avoid the birth of a defective child.**” [Procanik by Procanik v. Cillo](#), 478 A2d 755, 760 (N.J. 1984).
 - “**‘wrongful life’** refers to a cause of action brought by or on behalf of a defective child who claims that but for the **defendant doctor’s negligent advice to or treatment of its** parents, the child would not have been born.” Ibid.
- STATUTES:**
- Conn. Gen. Stat. (2017)
[Chapter 899](#) Evidence
[§52-184c](#). Standard of care in negligence action against health care provider
- FORMS:**
- Frederic S. Ury and Neal L. Moskow, [Connecticut Torts: The Law and Practice](#) (2016).
 - § 9.06.1 Complaint-Wrongful Life/Wrongful Birth
 - *Complaint, petition, or declaration – Birth of child after sterilization operation*, 19B [AmJur Pleading & Practice Forms](#) §234 (2007).
 - *Cause of action for wrongful birth or wrongful life*, 7 [COA](#) 589 (1985).
 - § 25. Sample complaint. Wrongful birth action
 - *Cause of action for wrongful birth or wrongful life*, 23 [COA2d](#) 55 (2003).
 - § 39. Sample complaint. Wrongful birth action
- CASES:**
- [Bujak v. State](#), Superior Court, Judicial District of Hartford, No. HDD CV 08-6003355-S (Oct. 24, 2014) (59 Conn. L. Rptr. 218). “While the question of whether parents may recover for emotional injury to themselves in wrongful birth cases has not been addressed by our higher courts, our Supreme Court has twice clearly rejected the opportunity in wrongful conception cases to carve out an exception ‘to the normal duty of a tortfeasor to assume liability for all the damages **that he has proximately caused.**’ *Ochs v. Borrelli*, 187 Conn. 253, 258 (1982); *Burns v. Hanson*, 249 Conn. 809, 819 (1999). In *Ochs*, where a child was conceived after an unsuccessful sterilization procedure, the court held that the defendant was liable for not only the expenses

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.

resulting from medical care to treat the child's orthopedic disability, but also for the costs of raising the child to majority. In *Burns*, a defendant physician who incorrectly advised a severely disabled mother that she was sterile and failed to diagnose her pregnancy was held liable for damages arising from the costs of raising the child who was born healthy.

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

- [Bujak v. State](#), 49 Conn. L. Rptr. 221 (2010), WL 6804595. **Court declined to recognize "wrongful life" cause of action.**
- [Rich v. Foye](#), 51 Conn. Sup. 11, 976 A.2d 819 (Conn. Super. Ct. 2007). Damages for emotional distress in wrongful birth action. **Wrongful life claim. "Being born with a handicap instead of not being born is not a legally cognizable injury. Damages for living life with impairments are damages that cannot be calculated or, alternatively, are ones already recoverable under a wrongful birth action."**
- [Burns v. Hanson](#), 249 Conn. 809, 811, 734 A.2d 964 (1999). **"The issues in this action for malpractice arise out of the birth of a healthy child to a severely disabled mother, who, in accordance with medical advice, had decided not to have another child."**
- [Martinez v. Hartford Hospital](#), 4 Conn. L. Rptr. 57, 60 (1991), WL 88085. **"In the instant case, plaintiff has alleged sufficient facts to support a cause of action for medical malpractice. Further, damages arising from defendant's negligence relating to the birth of the twins and the costs of raising them are properly pleaded and recoverable."**
- [Ochs v. Borrelli](#), 187 Conn. 253, 258, 445 A.2d 883 (1982). **"In our view, the better rule is to allow parents to recover for the expenses of rearing an unplanned child to majority when the child's birth results from negligent medical care."**

WEST KEY NUMBERS:

- *Health #687 "Wrongful life" or birth of unhealthy child.*

ENCYCLOPEDIAS:

- *Cause of action against physician for wrongful conception or wrongful pregnancy*, 3 [COA](#) 83 (1984).
- *Cause of action for wrongful birth or wrongful life*, 7 [COA](#) 589 (1985).
- *Cause of action for wrongful birth or wrongful life*, 23 [COA2d](#) 55 (2003).

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.

- Frederic S. Ury and Neal L. Moskow, [Connecticut Torts: The Law and Practice](#) (2016).
Chapter 9: Claims stemming from the conception and birth of a child: Wrongful pregnancy, birth, and life
§ 9.04 Bringing a wrongful birth claim
- Michael S. Taylor and Daniel J. Krisch, [Encyclopedia of Connecticut Causes of Action](#) (2017).
 - 1W-4. Wrongful birth
 - 1W-6. Wrongful life
- 2 Nina M. Vitek, [Disputed Paternity Proceedings](#) (2015).
Chapter 29. Challenging the obligation to pay child-rearing costs
Liability of third parties affecting the support obligation
§ 29.10. Negligence as basis for "Wrongful Conception" claim
§ 29.11. Events which may create a 'wrongful conception' claim
§ 29.12. Theory and validity of "wrongful conception" cause of action
§ 29.13. Other theories of liability
§ 29.14. Recoveries available
§ 29.15. Rationales for the denial of child-rearing costs
§ 29.16. Rationales for the recovery of child-rearing costs
§ 29.17. Constitutional dimensions of the issue: privacy and procreational choice
§ 29.18. Author's strategies
- 1 Thomas R. Young, [Legal Rights of Children](#), 3d. (2016-17).
Chapter 9. Children and the law of torts
IV. Wrongful life and wrongful death

LAW REVIEWS:

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

- Garrett M. Moore, *Life As An Injury: There Is A Debate Going On Over Whether Actions Known As 'Wrongful Conception' And 'Wrongful Life' Are Valid Causes Of Action*, 23 Connecticut Law Tribune no. 47, p. 15 (Nov. 24, 1997).

- Michael T. Murtaugh, *Wrongful Birth: The Courts' Dilemma in Determining a Remedy for a "Blessed Event,"* 27 Pace L. Rev. 241 (Winter 2007).
- Christopher T. Hurley, Mark R. McKenna, *'Wrongful Birth' Plaintiffs Can Recover for Emotional Distress*, 101 Ill. B.J. 580 (November, 2013).
- Paul L. Barber, *Prenatal Diagnosis: An Ethical and a Regulatory Dilemma*, 13 Hous. J. Health L. & Policy 329 (Fall, 2013).

Section 4: Abortion Law

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to abortion laws, including abortion clinics.

DEFINITIONS:

- **Medically Necessary or Therapeutic Abortions:** "abortions necessary to ameliorate a condition that is deleterious to a woman's physical and or psychological health." *Doe v. Maher*, 40 Conn. Supp. 394, 515 A.2d 134 (1986).

STATUTES:

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

- Conn. Gen. Stat. (2017)
[Chapter 368y](#) Abortion
[§19a-600](#). Definitions
[§19a-601](#). Information and counseling for minors required. Medical emergency exception.
[§19a-602](#). Termination of pregnancy prior to viability. Abortion after viability prohibited; exception.
- Conn. Gen. Stat. (2017)
Chapter 802h. Protected Persons and Their Property
[§ 45a-677](#)(e). Powers and duties of plenary or limited guardian

REGULATIONS:

- Conn. Agencies Regs. Department of Public Health.
[§ 19-13-D54](#). Abortions.
[§ 19a-116-1](#). Abortion services in outpatient clinics.

FORMS:

- 3 [COA](#) 83 (1984). *Cause of Action Against Physician for Wrongful Conception or Wrongful Pregnancy*
- Abortion, [1 AmJur Pleading & Practice Forms](#) (2003)
II. Blockade and harassment of abortion clinics
III. Parental consent of minor's abortion
IV. Medical malpractice involving abortion
V. Restrictions on abortion rights

CASES:

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

- [State v. Clarke](#), 24 Conn. App. 541 (1991). *Demonstration at an abortion clinic.*
- [Doe v. Maher](#), 40 Conn. Supp. 394, 515 A.2d 134 (1986). "The court declares that the regulation; 3 Manual, Department of Income Maintenance Medical Assistance Program, c. III, Policy 275; which provides for the funding of abortion under the medicaid program only when necessary to preserve the physical life of the woman or when pregnancy is the result of rape or incest, to be: (a) contrary to the statutory provisions of the medicaid program; General Statutes § 17-134a et seq.; and specifically § 17-134b of the General Statutes, and that

therefore the commissioner of income maintenance exceeded his authority in adopting it; (b) in violation of the plaintiff class of poor women's and the plaintiff class of physicians' constitutional rights of due process under article first, § 10, of the constitution of the state of Connecticut; (c) in violation of the plaintiff class of poor women's constitutional right of equal protection under article first, §§ 1 and 20 (including the equal rights amendment, article five of the amendments), of the constitution of the state of Connecticut."

**ATTORNEY
GENERAL
OPINIONS:**

- Senator George Jepsen, State Capitol, [2001-015 Formal Opinion](#), Attorney General of Connecticut. "In response to your request, this is a formal opinion regarding whether **advanced practice registered nurses ('APRNs'), licensed nurse-midwives and physician assistants in Connecticut are authorized to dispense, prescribe and administer the drug mifepristone (brand name 'Mifeprex', also known as 'RU-486')** to women in licensed clinics for the purpose of terminating early pregnancies in a non-surgical manner."
- Joyce A. Thomas, Department of Social Services, [1998-022 Formal Opinion](#), Attorney General of Connecticut. "This is a formal opinion regarding whether abortion must be included in the coverage provided under the Husky Plan, Part B ("Husky B"), a program designed to ensure health care coverage to all children in Connecticut."

LEGISLATIVE:

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

- Janet Kaminski Leduc, *Abortion Coverage in Plans Offered on the Insurance Exchange*, Connecticut General Assembly. Office of Legislative Research Report no. [2014-R-0121](#) (April 14, 2014).
- Alexander Reger, *Abortion Clinics in Connecticut – Update*, Connecticut General Assembly. Office of Legislative Research Report no. [2014-R-0026](#) (January 21, 2014).
- Robin K. Cohen, *State Payment for Abortions*, Connecticut General Assembly. Office of Legislative Research Report no. [2010-R-0136](#) (March 17, 2010).
- Susan Price-Livingston, *Abortions for Minors: Other States' Parental Involvement*, Connecticut General Assembly. Office of Legislative Research Report no. [2003-R-0050](#) (February 3, 2003).
- 1990 Conn. Acts 113 (Reg. Sess.). "An act concerning the repeal of certain statutes"
Repealed: Conn. Gen. Stat. (1999) §§53-29, -30, -31, -31a, -31b

ENCYCLOPEDIAS:

- 1 [Am. Jur.](#) 2d *Abortion and Birth Control* (2016).
- 1 [C.J.S.](#) *Abortion and Birth Control* (2005).

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.

- 1 Mark I. Soler and Michael J. Dale, [Representing the Child Client](#) (2016).
Chapter 3. The legal status of minors
3.02 Rights restricted based on age
[c] Medical care
- 2 Thomas A. Jacobs, [Children and the Law: Rights & Obligations](#), 2016 Ed.
Chapter 10. Health Care.
Sec. II. C. Medical care and treatment; Reproductive rights
§ 10:17 Abortion

LAW REVIEWS:

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

- David B. Kopel and Glenn H. Reynolds, *Taking Federalism Seriously: Lopez And The Partial Birth Abortion Ban Act*, 30 Connecticut Law Review 30 (Fall 1997).
- Maya Manian, *The Consequences of Abortion Restrictions for Women's Healthcare*, 71 Wash. & Lee L. Rev. 1317 (Spring, 2014).
- Bebe J. Anderson, *Litigating Abortion Access Cases in the Post-Windsor World*, 29 Colum. J. Gender & L. 143 (2015).
- *Physically Intrusive Abortion Restrictions as Fourth Amendment Searches and Seizures*, 128 Harv. L. Rev. 951 (January, 2015).
- Linda Greenhouse and Reva B. Siegel, *Casey and the Closings: When "Protecting Health" Obstructs Choice*, 125 Yale L.J. 1428 (2016).
- Linda Greenhouse and Reva B. Siegel, *The Difference a Whole Woman Makes: Protection for the Abortion Right After Whole Woman's Health*, 126 Yale L.J. Forum 149 (2016).