

A Review of the Year in Family Law: Parentage and Assisted Reproduction Problems Take Center Stage

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### I. Introduction

As the century turned, we noted that: “The increased federalization and nationalization of the law during this century, however, has led to increasing involvement by federal courts and Congress in affairs previously left to the states.”<sup>1</sup> During the 2004–05 reporting year, two of the most important reported cases that will make positive changes for children came from the federal bench. The first was *Roper v. Simmons* in which the United States Supreme Court found that the Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under age eighteen when their crimes were committed. Justice Kennedy referred to “the evolving standards of decency that mark the progress of a maturing society” to determine which punishments are so disproportionate as to be “cruel and unusual.” The Court cited three general differences between youths under eighteen and adults that demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First, juveniles lack maturity and responsibility and are more reckless than adults; juveniles are more vulnerable to outside influences because they have less control over their immediate surroundings; and a juvenile’s character is not as fully formed as that of an adult.<sup>2</sup> Justice Kennedy noted that while the overwhelming weight of international opinion against the juvenile death penalty was not controlling, it does provide respected and significant confirmation for the Court’s determination that the penalty is disproportionate punishment for offenders under eighteen. Child advocates hope that the next step will be to look at the issue of not sentencing children who commit crimes to jail without the possibility of parole.

The second case came out of the United States District Court for the Northern District of Georgia. The Court found that the right to counsel guaranteed to foster children in deprivation proceedings, pursuant to the Due Process Clause of the Georgia Constitution, means the right to effective counsel.<sup>3</sup> This case may result in children actually getting lawyers who meet with and advocate for them.

### II. Federal Law

Victims of domestic violence received mixed messages at the national level. On a positive note, the Violence Against Women Act was finally reauthorized, but it took all year to get it passed and signed. The law renews and increases funding for law enforcement, lawyers, judges, and advocates; stiffens criminal penalties for repeat domestic violence violations; and incorporates use of GPS technology. On the other hand, the United States Supreme Court held that the Colorado state law that commands law enforcement officials to enforce restraining orders in

domestic abuse situations did not constitute an “entitlement” warranting protection as a “property interest” under the Due Process Clause.<sup>4</sup> So even though a husband abducted, and several hours later murdered, the parties’ three daughters and the mother sought repeated enforcement of the temporary restraining order, the police were not liable for their failure to enforce the order. Despite the Colorado statute’s language directing that the police “shall use every reasonable means to enforce” the TRO, which mandated that Mr. Gonzales “not molest or disturb the peace of [Ms. Gonzales] or any child” and to stay one hundred yards away from the property at all times, the police were still vested with discretion as to how to proceed, especially when the perpetrator was not actually present and his whereabouts were uncertain.

A. Hague Convention on the Civil Aspects of International Child Abduction  
Several Hague Abduction appellate cases came down, mainly in federal courts. The Third Circuit held that the return of the child to the petitioner’s country does not render an appeal moot.<sup>5</sup> As to abstentions, it is improper for a federal court to abstain from deciding a Hague petition for the return of the child even though a custody case has been filed in state court since abstention is only proper if the Hague return issue is presented to the state court.<sup>6</sup>

Several cases looked at defining “habitual residence.” In determining whether the child has acquired a new habitual residence, the court should focus on the parents’ shared intent to establish the child’s residence. However, the court should also inquire into whether the child has acclimatized to the new residence regardless of the parents’ intentions.<sup>7</sup> A three-year stay in Mexico did not change the child’s habitual residence since it was not clear that the mother and father shared an intent to abandon their residency in the United States.<sup>8</sup> The same is true with an American family’s residence in Germany during the father’s military duty since there was no evidence that the family had a settled intention to abandon their United States habitual residence.<sup>9</sup> Where the father of a child born out of wedlock has allowed the mother to determine unilaterally where the child would live, it is her intention that governs where the child is habitually resident and, where mother and child have had a peripatetic lifestyle, there may be no state that is the child’s habitual residence.<sup>10</sup>

Even though the children had been wrongfully removed from Northern Ireland to Massachusetts, a federal court found that a thirteen and fourteen-year-old brother had attained sufficient maturity to object to being returned because the mother was abusive. Therefore their two younger brothers did not have to be returned.<sup>11</sup> Two courts disagreed about the issue of whether once a court has determined that there would be a grave risk of psychological harm to the children if returned to the country of their habitual residence, it does not need to examine the remedies available in that country for the protection of the children.<sup>12</sup> In an ongoing battle between two spouses under the Hague Abduction Convention, a federal district court whose nonreturn order was reversed by the Eighth Circuit decided that it would be clearly inappropriate to award the

prevailing father attorney fees since it would impair the mother's ability to care for the child.<sup>13</sup> In another case the trial court reduced the attorney fees by fifty percent because some of the billable hours could have been handled by the attorney's staff and some were not directly related to the abduction case, such as visitation by the left-behind parent and the grandparents.<sup>14</sup>

#### B. Uniform Laws

Forty-four states have enacted the Uniform Child Custody Jurisdiction and Enforcement Act,<sup>15</sup> with the latest additions being South Dakota and Wyoming. The National Conference of Commissioners on Uniform State Laws (NCCUSL) had first readings on two different new acts relating to family law. The Uniform Child Abduction Prevention Act (UCAPA) seeks to prevent the abduction of children through use of preventive measures. The Uniform Representation of Children in Abuse Cases and Custody and Visitation Cases endorses the concepts contained in the ABA Standards for Lawyers Representing Children in Abuse and Neglect Cases (1996) and in Custody Cases (2003). Both will be up for final reading in summer 2006.

#### Footnotes:

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1. Linda D. Elrod and Robert G. Spector, A Review of the Year in Family Law: Century Ends with Unresolved Issues, 33 Fam. L.Q. 865, 907 (2000).
2. Roper v. Simmons, 543 U.S. 551 (2005).
3. Kenny A. ex rel. Winn v. Perdue, 356 F. Supp. 2d 1353 (N.D. Ga. 2005) (finding that appointment of counsel was required as a matter of procedural due process under the Georgia constitution).
4. Town of Castle Rock v. Gonzales, 125 S. Ct. 2796 (2005), reversing 366 F.3d 1093 (10th Cir. 2004), which had found that the wife had a valid 1983 claim against the City of Castle Rock because she had a protected property interest in the enforcement of the TRO on procedural, not substantive, due process grounds.
5. Whitting v. Krassner, 391 F.2d 540 (3d Cir. 2004). Compare Beckier v. Beckier, 248 F.3d 1051 (11th Cir. 2001) (finding a return moots an appeal), with Fawcett v. McRoberts, 326 F.3d 491 (4th Cir. 2003) (finding a return does not moot appeal).
6. Yang v. Tsui, 416 F.3d 199 (3d Cir. 2005).
7. Gitter v. Gitter, 396 F.3d 124 (2d Cir. 2005).
8. Ruiz v. Tenorio, 393 F.3d 1247 (11th Cir. 2004).
9. Holder v. Holder, 392 F.3d 1009 (9th Cir. 2004).
10. Ferraris v. Alexander, 23 Cal. Rptr. 3d 592 (Ct. App. 2005).
11. McManus v. McManus, 354 F. Supp. 2d 62 (D. Mass. 2005).

12. Danaipour v. McLarey, 386 F.3d 289 (1st Cir. 2004); Gaudin v. Remis, 415 F.3d 1028 (9th Cir. 2005) (court erred when it refused to consider remedies that would allow the child to be returned to Canada without risking psychological harm).
13. Silverman v. Silverman, 2004 WL 2066778 (D. Minn. 2004) (unpublished; text in Westlaw).
14. Aldinger v. Segler, 338 F. Supp. 2d 296 (D. P.R. 2004).
15. See [nccusl.org](http://nccusl.org) for a listing of current enactments.

# Charts\*

**Chart 1: Alimony/Spousal Support Factors**

STATE	Statutory List**	Marital Fault Not Considered	Marital Fault Relevant	Standard of Living	Status as Custodial Parent Considered
Alabama			x	x	
Alaska	x	x		x	x
Arizona	x	x		x	x
Arkansas		x			
California	x	x		x	
Colorado	x	x		x	x
Connecticut	x		x	x	x
Delaware	x	x		x	x
District of Columbia			x	x	
Florida	x		x	x	
Georgia	x		x	x	
Hawaii	x	x		x	x
Idaho	x		x	x	x
Illinois	x	x		x	x
Indiana	x	x			
Iowa	x	x		x	x
Kansas		x			
Kentucky			x <sup>1</sup>	x	
Louisiana	x		x		x
Maine	x	x			
Maryland	x		x	x	
Massachusetts	x		x	x	
Michigan			x	x	
Minnesota	x	x		x	x
Mississippi			x		
Missouri			x	x	x
Montana	x	x		x	x
Nebraska	x	x		x	x
Nevada		x		x	x
New Hampshire	x		x	x	x
New Jersey	x		x	x	x
New Mexico	x	x		x	
New York	x		x	x	x
North Carolina	x		x	x	
North Dakota			x	x	
Ohio	x	x		x	x
Oklahoma		x		x	x
Oregon	x	x		x	x
Pennsylvania	x		x	x	
Rhode Island	x		x	x	x
South Carolina	x		x	x	x
South Dakota	x		x	x	
Tennessee	x		x	x	x
Texas	x		x	x	x
Utah	x		x	x	x
Vermont	x	x		x	x
Virginia	x		x	x	
Washington	x	x		x	
West Virginia	x		x		x
Wisconsin	x	x		x	x
Wyoming			x		

\* Special thanks to Elizabeth Barker Brandt, James E. Rogers Distinguished Professor of Law, University of Idaho, and Angela Shapow, J.D., University of Idaho 2006, for reviewing these charts.

\*\* Although there is a statutory list of factors, the court may in its discretion consider other factors under the particular circumstances of the case.

1. Only fault on the part of the party seeking alimony.

Chart 2: Custody Criteria

STATE	Statutory Guidelines*	Child's Wishes	Joint Custody	Cooperative Parent	Domestic Violence**	Health	Attorney or GAL***
Alabama	x	x <sup>3</sup>	x	x	x		
Alaska	x	x	x	x	x		x
Arizona	x	x	x	x	x	x	x
Arkansas		x	x		x		x
California	x	x <sup>4</sup>	x <sup>7</sup>	x	x	x	x
Colorado	x	x	x <sup>1</sup>		x	x	
Connecticut	x	x	x	x	x	x	x
Delaware	x	x	x		x	x	x
District of Columbia	x	x	x	x	x	x	x
Florida	x	x	x <sup>1</sup>	x	x	x	x
Georgia	x	x <sup>4</sup>	x		x		x
Hawaii	x	x <sup>4</sup>	x		x		x
Idaho	x	x	x	x	x	x	
Illinois	x	x	x	x	x	x	x
Indiana	x	x	x	x	x	x	x
Iowa	x	x	x	x	x		x
Kansas	x	x	x	x	x		
Kentucky	x	x	x		x	x	
Louisiana	x	x	x	x	x	x	x
Maine	x	x	x <sup>1</sup>		x		x
Maryland		x <sup>3</sup>	x	x <sup>3</sup>	x		x
Massachusetts			x	x	x		x
Michigan	x	x	x	x	x	x	x
Minnesota	x	x	x		x	x	x
Mississippi	x	x <sup>3</sup>	x	x	x		x
Missouri	x	x	x	x	x	x	x
Montana	x	x	x <sup>1</sup>		x	x	x
Nebraska	x	x	x		x		x
Nevada	x	x <sup>4</sup>	x	x	x	x	
New Hampshire	x	x	x <sup>1</sup>	x	x		x
New Jersey	x	x	x		x		x
New Mexico	x	x <sup>2</sup>	x	x	x	x	x
New York		x		x	x		x
North Carolina		x <sup>3</sup>	x		x		
North Dakota	x	x	x	x <sup>3</sup>	x	x	
Ohio	x	x	x <sup>1</sup>		x	x	x
Oklahoma	x	x <sup>4</sup>	x	x	x		x
Oregon	x	x <sup>3</sup>	x	x			
Pennsylvania	x	x <sup>4</sup>	x	x	x		x
Rhode Island		x <sup>3</sup>	x <sup>3</sup>		x		
South Carolina		x <sup>4</sup>	x <sup>3</sup>		x		
South Dakota		x	x	x <sup>3</sup>	x		x
Tennessee	x	x	x <sup>3</sup>	x	x	x	x
Texas		x	x <sup>5</sup>	x	x		x
Utah	x	x	x	x			x
Vermont	x		x <sup>1</sup>	x	x <sup>6</sup>		x
Virginia	x	x	x	x	x	x	
Washington	x	x	x <sup>1</sup>		x		x
West Virginia	x	x	x <sup>1</sup>		x		x
Wisconsin	x	x	x	x	x	x	x
Wyoming	x	x <sup>3</sup>	x	x	x	x	

\* Although there is a statutory list of factors, the court may in its discretion consider other factors under the particular circumstances of the case.

\*\* The jurisdiction has enacted a statute permitting the consideration of domestic violence in conjunction with child custody. The statutes vary from making domestic violence a factor in custody determinations to imposing presumptions against custody in batterers or imposing special procedural considerations in cases involving domestic violence.

\*\*\* This column indicates whether a state has statutory authority for appointment of a guardian *ad litem* or attorney for a child specifically in child custody cases.

1. Does not use the term "child custody," but instead uses the term "parental responsibilities and rights" or similar terminology.
2. The wishes of children under fourteen are a factor to be considered; the court must consider the wishes of a child fourteen years of age or older.
3. By case law.
4. Court must consider the wishes of a child of sufficient maturity to express them.
5. Uses the terminology "managing conservator" of the child to describe a custodial parent.
6. The presence of domestic violence may be a defense for a parent who refuses to comply with a visitation order.
7. Joint custody may be ordered only if the parents agree to it.

**Chart 3: Child Support Guidelines\***

State	Model	Extraordinary Medical Expenses**	Child Care Expenses	College Support	Share Parenting
Alabama	Income Shares	Added on and prorated	Added on and prorated	Yes	Deviation
Alaska	Income Shares	Deviation	Deduction from income	No	Offset formula
Arizona	Income Shares	Court specifies percentage	Added on and prorated	No	Deviation
Arkansas	Percentage of Income	Deviation	Deviation	No	Deviation
California	Income Shares	Deviation	Added on and prorated	No	Offset formula
Colorado	Income Shares	Added on and prorated	Added on and prorated	No	Offset formula
Connecticut	Income Shares	Added on and prorated	Added on and prorated	Yes	Deviation
Delaware	Melson Formula	Added on and prorated	Added on and prorated	No	Offset formula
District of Columbia	Hybrid Formula	Case-by-case basis	Deduction from income	Yes	Offset formula
Florida	Income Shares	Deviation	Added on and prorated	No	Offset formula
Georgia <sup>1</sup>	Income Shares	Added on and prorated	Added on and prorated	No	Offset formula
Hawaii	Melson Formula	Deviation	Deduction from income	Yes	Offset formula
Idaho	Income Shares	Added on and prorated	Added on and shared equally	No	Offset formula
Illinois	Percentage of Income	No provision	No provision	Yes	No provision
Indiana	Income Shares	Added on and prorated	Added on and prorated	Yes	Offset formula
Iowa	Income Shares	Added on and prorated	Deduction from income	Yes	Offset formula
Kansas	Income Shares	No provision	Added on and prorated	No	Offset formula
Kentucky	Income Shares	Added on and prorated	Added on and prorated	No	Deviation
Louisiana	Income Shares	Added on and prorated	Added on and prorated	No	Offset formula
Maine	Income Shares	Added on and prorated	Added on and prorated	No	Offset formula
Maryland	Income Shares	Added on and prorated	Added on and prorated	No	Offset formula
Massachusetts	Hybrid Formula	Case-by-case basis	Deduction from income	Yes	Deviation
Michigan	Income Shares	Added on and prorated	Added on and prorated	No	Offset formula
Minnesota <sup>1</sup>	Income Shares	Added on and prorated	Added on and prorated	No	Offset formula
Mississippi	Percentage of Income	Deviation	Deviation	Yes	Deviation
Missouri	Income Shares	Added on and prorated	Added on and prorated	Yes	Offset formula
Montana	Melson Formula	Added on and prorated	Added on and prorated	No	Offset formula
Nebraska	Income Shares	Added on and prorated	Independent determination	No	Offset formula
Nevada	Percentage of Income	Equal allocation	Deviation	No	Deviation
New Hampshire	Income Shares	Deviation	Deduction from income	No	Deviation
New Jersey	Income Shares	Added on and prorated	Added on and prorated	Yes	Offset formula
New Mexico	Income Shares	Added on and prorated	Added on and prorated	No	Offset formula
New York	Income Shares	Added on and prorated	Added on and prorated	Yes	Deviation
North Carolina	Income Shares	Added on and prorated	Added on according to formula	No	Offset formula
North Dakota	Percentage of Income	Deduction from income	Deviation	Yes	Offset formula
Ohio	Income Shares	Separate order	Added on and prorated	No	Deviation
Oklahoma	Income Shares	Case-by-case basis	Added on and prorated	No	Offset formula
Oregon	Income Shares	Added on and prorated	Added on and prorated	Yes	Offset formula
Pennsylvania	Income Shares	Added on and prorated	Shared equally	No	Offset formula
Rhode Island	Income Shares	Deviation	Added on and prorated	No	Deviation
South Carolina	Income Shares	Added on and prorated	Added on and prorated	Yes	Offset formula
South Dakota	Income Shares	Deviation	Deviation	No	Deviation
Tennessee	Income Shares	Added on and prorated	Added on and prorated	No	Offset formula
Texas	Percentage of Income	Added on and prorated	Deviation	No	Deviation
Utah	Income Shares	Shared equally	Shares equally	Yes	Offset formula
Vermont	Income Shares	Added on and prorated	Added on and prorated	No	Offset formula
Virginia	Income Shares	Added on and prorated	Added on and prorated	No	Offset formula
Washington	Income Shares	Added on and prorated	Added on and prorated	Yes	Deviation
West Virginia	Income Shares	Added on and prorated	Added on and prorated	No	Offset formula
Wisconsin	Percentage of Income	Separate order	Deviation	No	Offset formula
Wyoming	Income Shares	Deviation	Deviation	No	Offset formula

\* Chart prepared by Laura W. Morgan from her treatise, *Child Support Guidelines: Interpretation and Application*.

\*\* Extraordinary expenses are to be distinguished from regularly incurred uninsured-health expenses.

1. Changed from Percentage of Income to Income Shares in June 2006.

**Chart 4: Grounds for Divorce and Residency Requirements**

STATE	No Fault Sole Ground	No Fault Added to Traditional	Incompatibility	Living Separate and Apart	Judicial Separation	Durational Requirements
Alabama		x	x	2 years	x	6 months
Alaska		x	x		x	None
Arizona	x	x <sup>2</sup>				90 days
Arkansas		x <sup>2</sup>		18 months	x	60 days
California	x				x	6 months <sup>1</sup>
Colorado	x				x	90 days
Connecticut		x		18 months	x	1 year
Delaware		x		6 months	x	6 months
District of Columbia	x			6 months	x	6 months
Florida	x					6 months
Georgia		x				6 months
Hawaii	x			2 years	x	6 months
Idaho		x		5 years		6 weeks
Illinois		x		2 years	x	90 days
Indiana	x				x	6 months
Iowa	x				x	1 year
Kansas			x		x	60 days
Kentucky	x				x	180 days
Louisiana		x <sup>2</sup>		6 months <sup>3</sup>	x	6 months
Maine		x			x	6 months
Maryland				12 months	x	1 year
Massachusetts		x			x	None
Michigan	x				x	180 days
Minnesota	x				x	180 days
Mississippi		x <sup>4</sup>				6 months
Missouri	x				x	90 days
Montana	x			180 days	x	90 days
Nebraska	x				x	1 year
Nevada			x	1 year	x	6 weeks
New Hampshire		x			x	1 year
New Jersey		x		18 months	x	1 year
New Mexico		x	x			6 months
New York		x		1 year <sup>5</sup>	x	1 year
North Carolina		x		1 year	x	6 months
North Dakota		x			x	6 months
Ohio		x	x	1 year		6 months
Oklahoma			x		x	6 months
Oregon	x				x	6 months
Pennsylvania		x		2 years		6 months
Rhode Island		x		3 years	x	1 year
South Carolina		x		1 year	x	1 year <sup>6</sup>
South Dakota		x			x	None
Tennessee		x		2 years	x	6 months
Texas		x		3 years		6 months
Utah		x		3 years	x	3 months
Vermont		x		6 months		6 months
Virginia		x		1 year	x	6 months
Washington	x					None
West Virginia		x		1 year	x	1 year
Wisconsin	x			12 months	x	6 months
Wyoming		x			x	60 days

1. California requires domicile as distinguished from residency for jurisdictional purposes.
2. Covenant Marriage Statutes establish specific grounds for divorce for covenant marriages.
3. Two years for covenant marriages.
4. No fault grounds only available in a jointly filed petition.
5. New York requires that the parties live separate and apart after the execution of a written separation agreement.
6. South Carolina's one-year residency requirement only applies where the Plaintiff is a resident of the state but the defendant is not. If both parties are residents of South Carolina, the durational requirement is three months.



**Chart 5: Property Division**

STATE	Community Property	Only Marital/Community Property Divided	Statutory List of Factors	Nonmonetary Contributions	Economic Misconduct	Contribution to Education
Alabama		x		x		x
Alaska	x <sup>1</sup>		x	x	x	
Arizona	x	x			x	x
Arkansas		x	x	x	x	
California	x	x <sup>2</sup>			x	x
Colorado		x	x	x	x	
Connecticut			x	x	x	x
Delaware		x	x	x	x	x
District of Columbia		x	x	x	x	
Florida		x	x	x	x	x
Georgia		x				
Hawaii		x	x	x <sup>3</sup>	x <sup>4</sup>	
Idaho	x	x	x			
Illinois		x	x	x	x	
Indiana			x	x	x	
Iowa			x	x	x	x
Kansas					x	
Kentucky		x	x	x	x	x
Louisiana	x	x <sup>2</sup>				
Maine		x	x	x	x	
Maryland		x	x	x	x	
Massachusetts			x	x	x	x
Michigan		x		x	x	x
Minnesota		x	x	x	x	
Mississippi				x	x	
Missouri		x	x	x	x	x
Montana			x	x	x	
Nebraska			x	x		
Nevada	x	x		x	x	x
New Hampshire			x	x	x	x
New Jersey						
New Mexico	x	x				
New York		x	x	x	x	x
North Carolina		x	x	x	x	x
North Dakota				x	x	x
Ohio		x	x	x	x	x
Oklahoma		x		x	x	
Oregon				x	x	x
Pennsylvania		x	x	x	x	x
Rhode Island		x	x	x	x	x
South Carolina		x	x	x	x	x
South Dakota				x	x	
Tennessee		x	x	x	x	x
Texas	x	x			x	
Utah						
Vermont			x	x	x	x
Virginia		x	x	x	x	x
Washington	x		x			
West Virginia		x	x	x	x	x
Wisconsin	x	x	x	x	x	x
Wyoming			x	x	x	x

1. The parties may contract to make some or all of their marital property community property.
2. Community property must be divided equally.
3. Nonmonetary contributions during marriage do not affect property division nor does the lack of them.
4. No statutory provision; case law is mixed.

**Chart 6: Third-Party Visitation**

STATE	Stepparents	Grandparents— generally*	Grandparents— Death of their child	Grandparents— Child divorced	Grandparents— Parents never married	Any Interested Party
Alabama			x <sup>1</sup>	x <sup>1</sup>		
Alaska	x		x	x	x	
Arizona			x	x	x	x <sup>2</sup>
Arkansas	x		x	x	x	
California	x <sup>1</sup>		x <sup>1</sup>	x <sup>1</sup>		
Colorado	x <sup>2</sup>		x	x	x	x <sup>2</sup>
Connecticut						x <sup>1</sup>
Delaware		x				x <sup>2,4</sup>
District of Columbia						
Florida			x <sup>1</sup>	x <sup>1</sup>	x <sup>1</sup>	
Georgia		x				
Hawaii		x				
Idaho	x <sup>2,4</sup>	x				
Illinois	x <sup>1</sup>		x	x	x	
Indiana <sup>3</sup>			x	x	x	
Iowa <sup>3</sup>			x <sup>1</sup>	x <sup>1</sup>	x <sup>1</sup>	
Kansas <sup>3</sup>	x	x <sup>1</sup>				
Kentucky		x				
Louisiana	x <sup>2,4</sup>		x	x		
Maine		x	x			x <sup>2,4</sup>
Maryland		x <sup>1</sup>				
Massachusetts		x	x	x		x <sup>2,4</sup>
Michigan		x	x	x		
Minnesota	x		x	x	x	
Mississippi		x	x	x		
Missouri <sup>3</sup>		x	x	x		
Montana		x				
Nebraska			x	x	x	
Nevada			x	x	x	x <sup>5</sup>
New Hampshire		x				
New Jersey		x <sup>1</sup>				x <sup>2,4,7</sup>
New Mexico		x	x	x		
New York		x	x			x <sup>2,4</sup>
North Carolina				x		
North Dakota		x				
Ohio			x <sup>1</sup>	x <sup>1</sup>	x <sup>1</sup>	
Oklahoma		x <sup>1</sup>	x <sup>1</sup>	x <sup>1</sup>	x <sup>1</sup>	
Oregon		x <sup>6</sup>				x <sup>2</sup>
Pennsylvania	x <sup>2,4</sup>	x		x		x <sup>2,4,7</sup>
Rhode Island		x	x	x		x <sup>2,4</sup>
South Carolina						
South Dakota		x				x <sup>2</sup>
Tennessee	x	x	x	x		
Texas			x	x		x <sup>2,4</sup>
Utah		x				
Vermont			x	x		
Virginia	x	x				x
Washington						x <sup>8</sup>
West Virginia <sup>3</sup>		x				
Wisconsin	x <sup>1</sup>	x <sup>1</sup>	x <sup>1</sup>		x	x <sup>2,4</sup>
Wyoming		x				x <sup>2</sup>

\* Grandparents may obtain visitation when the parents are alive and regardless of their marital status. Many of these statutes contain requirements such as the establishment of a substantial relationship, the best interests of the child, the existence of a residential relationship, the parent's unreasonable denial of visitation, or a combination of these.

1. A court of the state has declared the statute unconstitutional either on its face or as applied.
2. A person who stands "in loco parentis," who is a "de facto," "equitable" or "psychological parent," or who has a substantial residential relationship with a child may seek visitation or custody without showing that a parent is unfit or other extraordinary circumstances.
3. Pending legislation would substantially revise existing statute.
4. By case law where stepparent is a de facto parent.
5. Any person may seek visitation if they have resided with the child and formed a "meaningful relationship."
6. Grandparent may petition for visitation in stepparent adoption situations.
7. Case law is mixed.
8. Washington's third-party visitation statute has been declared unconstitutional, but its supreme court has recognized that de facto parents have custody & visitation rights.

**Chart 7: Appointment Laws in Adoption, Guardianship, Unmarried Parent and Divorce Cases\***

STATE	Adoption	Guardianship	Unmarried Parent	Divorce: Role, When, Who
Alabama	Req'd if contested	Discretionary	Req'd if minor is a party	GAL - Discretionary - Att'y
Alaska	Discretionary	Discretionary	No statute	Att'y or GAL - Discretionary - Att'y/Gov't Att'y
Arizona	Discretionary	Discretionary; Req'd if to terminate guardianship	No statute	Att'y - Discretionary - Att'y
Arkansas	Discretionary	Discretionary	No statute	Att'y - Discretionary - Att'y
California	Discretionary	Req'd if abuse or neglect	Req'd if minor is a party	Hybrid - Discretionary - Att'y/Gov't Att'y
Colorado	Discretionary	Discretionary	Discretionary	Att'y or GAL - Discretionary - GAL - Att'y/Other Prof.
Connecticut	Discretionary	Req'd if abuse or neglect	Req'd if minor is a party	Att'y or GAL - Discretionary - GAL - Att'y/Other Prof.
Delaware	Discretionary	Required	Discretionary	Att'y or GAL - Discretionary - GAL - Att'y/Other Prof.
District of Columbia	Discretionary	Discretionary	No statute	GAL - Discretionary - Att'y
Florida	Discretionary	Discretionary	Discretionary	Att'y or GAL req'd if abuse involved - GAL - Att'y/Certified Citizen
Georgia	Discretionary	Discretionary	Discretionary	GAL - Discretionary - Att'y
Hawaii	Discretionary	Discretionary	Req'd if minor is a party	GAL - Discretionary - Att'y/Gov't Att'y/Professional
Idaho	No statute	Required	No statute	Att'y - Discretionary - Att'y
Illinois	Required	Discretionary	Discretionary	Att'y - Hybrid or GAL - Discretionary - Att'y/Gov't Att'y
Indiana	Discretionary	Discretionary	Req'd if minor is a party	GAL - Discretionary - Att'y/CASA trained
Iowa	Discretionary	Discretionary	Discretionary	Att'y or GAL - Discretionary - Att'y
Kansas	Discretionary	Required	Req'd if minor is a party	GAL - Discretionary - Att'y/Other Professional
Kentucky	Req'd if contested	Required	Req'd if minor is a party	GAL - Discretionary - Att'y
Louisiana	Discretionary	Discretionary	No statute	Att'y - Req'd if abuse involved - Att'y
Maine	Discretionary	Discretionary	No statute	GAL - Discretionary - Att'y/Other Professional
Maryland	Req'd if minor over 10	Required	Required	GAL - Discretionary - Att'y
Massachusetts	Req'd if contested	Discretionary	Discretionary	Att'y or GAL - Discretionary - Att'y/Disinterested Person
Michigan	Discretionary	Discretionary	Discretionary	Hybrid - Discretionary - Att'y
Minnesota	Discretionary	Discretionary	Discretionary	GAL - Req'd if abuse involved - Att'y/Professional
Mississippi	Req'd if contested	Discretionary	Discretionary	GAL - Req'd if abuse involved - Att'y/Professional
Missouri	Required	Discretionary	Required	GAL - Req'd if abuse - Att'y
Montana	Discretionary	Discretionary	Required	GAL - Discretionary - Att'y
Nebraska	Discretionary	Discretionary	Required	Att'y or GAL - Discretionary - Att'y
Nevada	No statute	Discretionary	Required	GAL - Discretionary - Att'y/Other Professional
New Hampshire	Discretionary	Discretionary	Discretionary	GAL - Discretionary - Att'y/Other Professional
New Jersey	Req'd if minor was removed from home	Discretionary	Discretionary	Att'y or GAL - Discretionary - GAL - Att'y/Other Prof.
New Mexico	Req'd if contested	Discretionary	Req'd if minor is a party	GAL - Discretionary - Att'y
New York	Required	Required	Required	Att'y or GAL - Discretionary - Att'y/Gov't Att'y
North Carolina	Discretionary	Discretionary	Required	GAL - Discretionary - Does not specify
North Dakota	Required	Discretionary	Required	GAL - Discretionary - Att'y
Ohio	Discretionary	Discretionary	Requires party's request	Att'y or GAL - Discretionary - GAL - Att'y/Other Prof.
Oklahoma	Req'd if contested	Discretionary	No statute	GAL - Discretionary - Att'y
Oregon	No statute	No statute	No statute	Att'y - Req'd if a minor requests - Att'y
Pennsylvania	Req'd if contested	Discretionary	No statute	Att'y or Hybrid - Discretionary - Att'y
Rhode Island	Discretionary	Discretionary	Discretionary	Att'y or GAL - Discretionary - Does not specify
South Carolina	Required	Discretionary	Req'd if action seeks to legitimize minor	GAL - Discretionary - Att'y/Other
South Dakota	No statute	Discretionary	No statute	Att'y - Discretionary - Att'y
Tennessee	Discretionary	Required	Discretionary	Att'y or GAL - Discretionary - Does not specify
Texas	Discretionary	Discretionary	Discretionary	Att'y or GAL or Att'y <i>ad Litem</i> - Req'd if in best interest - GAL can be Att'y/Adult
Utah	Discretionary	Discretionary	Req'd if minor is a party	Att'y or GAL - Discretionary - GAL - Att'y/Gov't Att'y
Vermont	Req'd if contested	Discretionary	Req'd if minor is a party	Att'y req'd if minor is a witness - GAL is discretionary - Att'y
Virginia	Required	Required	Req'd if minor is a party	Att'y or GAL - Req'd if abuse involved - Att'y
Washington	Discretionary	Discretionary	Discretionary	GAL - Discretionary - Att'y/Other
West Virginia	Discretionary	Discretionary	Req'd if father brings action	Att'y or GAL - Req'd if abuse involved - GAL - does not specify
Wisconsin	Req'd if contested	Discretionary	Required	GAL - Req'd if contested - Att'y
Wyoming	Discretionary	Discretionary	Req'd if minor is a party	Hybrid - Req'd if abuse involved - Att'y

\* Prepared by Linda Rio Reichmann, Director, ABA Child Custody and Adoption Pro Bono Project.