Denied Visitation, Its Impact on Children's Psychological Adjustment, and a Nationwide Review of State Code

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Recommended Citation
Denied Visitation, Its Impact on Children’s Psychological Adjustment, and a Nationwide Review of State Code

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ABSTRACT. Denied visitation occurs when one parent prevents the other parent from court mandated visitation allowances with the child. This complex issue affects many families of divorce, but unfortunately is an understudied topic. Additionally, the literature that is available on de-
nied visitation suffers from methodological challenges that are inherent to the complexity of the subject. Denied visitation is not a homogeneous event, but one that is conceptualized into two major categories: appropriate (i.e., concerning safety of the child) and inappropriate (i.e., involving interparent hostility). These two types of denied visitation are further divided into subcategories based on a review of the literature. A discussion of each is offered as well as recommendations for handling each type of situation. The implications of denied visitation on children’s well-being are considered. A review of the statutes from all fifty states concerning interference and changes in custody arrangements is presented. Alternatives for managing the situation are offered. [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <getinfo@haworthpressinc.com> Website: <http://www.HaworthPress.com> © 2002 by The Haworth Press, Inc. All rights reserved.]

KEYWORDS. Divorce adjustment, children and divorce, divorce visitation, custody

INTRODUCTION

Establishing and maintaining visitation arrangement after marital separation are another set of obstacles for families to overcome after their divorce. Even though courts may mandate that both parents have access to the child, parents do not always abide by the court’s decision. Allegations of denial of scheduled visits between a parent and his or her children are common. There is little objective information on the nature and extent of these denied visitations (Pearson & Thoennes, 1988). Some studies have indicated that there are more denied visitations when child support payments are inconsistent (Weitzman, 1985). This and other reasons, such as dislike for the other parent or continued anger about the divorce, suggest that revenge is the motivation and the children are used as a pawns when parents engage in ongoing post divorce “war” tactics. Legitimate and appropriate reasons for denied visitation are also forwarded. Children’s safety, severe psychopathology in the noncustodial parent, and the noncustodial parent’s refusal to support a child’s involvement in normal and necessary activities, such as Scouts, athletics, and religious meetings, are presented as examples.

The following report will be divided into four sections. The first will review the existing research literature on denied visitation, the fre-
frequency of its occurrence, and its impact on children's mental health. The second and third sections will then distinguish and discuss situations when visitation is denied for inappropriate reasons from those in which the denial was made for reasonable and appropriate reasons. Guidelines will be defined for the latter circumstances. Finally, a review of statutory provisions from all fifty of the United States will be presented to reflect how other states have attempted to resolve this problem.

Twenty-two percent of fathers in a study of divorced couples in mediation alleged that their ex-wives were in noncompliance of the visitation agreement (Pearson & Thoennes, 1988). Twenty percent of mothers were alleged to have denied visitation to the fathers in another study (Wallerstein & Kelly, 1980). In 1991, the National Council for Children’s Rights reported that the residential parent interferes with visitation in 37% of divorce cases. An accurate rate of occurrence is difficult to calculate since the number of divorce-related court disputes involving visitation issues has been reported at somewhere between 4 and 18 percent, and divorced parents are likely to exaggerate the wrong-doings of their ex-spouse.

The incidence of visitation being denied to the nonresidential parent, in terms of either its frequency or its impact on children, has been neither clearly nor objectively documented. Methodological problems with this body of research makes such studies very difficult and render suspect the conclusions of many of those that have been conducted. Four methodological concerns limit research findings. The primary caveat, which is also the most problematic, is the inability to substantiate reasons given for denied visitation. Similarly, it is difficult to corroborate allegations of denied visitation. In short, the allegations of the “denier” and the claims of the “denied” cannot be easily validated. Third, most studies do not distinguish the reasons for the denial and inappropriately group all underlying “causes.” For example, most studies consider denied visitation due to interparent hostility the same as those that reflect real and appropriate concerns for the children’s safety and normal developmental needs. Finally, as noted in Pearson and Anhalt (1993), problems with denied visitation seldom occur only once and appear to be related to other psychological factors, most frequently interparent hostility.

The first two issues are related and reflect concerns with the validity or accuracy of the comments by either the custodial or noncustodial parent. Denied visitation may be a refusal to let a child and parent share previously scheduled time. It may also reflect a disagreement about that
which has not yet been agreed. Similarly, reasons for the denial are difficult to validate. What one parent sees as a legitimate concern for the child’s welfare may be of little concern by the other. For example, one parent may consider the child too ill to leave the home while the other considers him or herself able to care for the child. Both parents’ assertions are impossible for the outsider to validate.

Families in which allegations of denied visitation are frequent are usually engaged in other expressions of interparent hostility. Specifically, couples that have difficulties over visitation often have lingering hostility and resentment over the marital dissolution. Given the co-occurrence of unresolved divorce-related issues and the frequency of denied visitation, it is difficult to separate complaints that are genuine from those that stem from continued interparent conflict and hostility. Such methodological considerations make it difficult to separate the impact of the more problematic and destructive hostility from the denied visitation. Thus, adjustive problems in children that co-occur with denied visitation may really result from their parents ongoing conflict.

Mislabeled examples of interparent hostility as denied visitation also has significant clinical implications. Giving voice to a parent’s hostility-induced complaints about the other parent in the legal forum inappropriately empowers one parent in his or her struggle over the other, further polarizing their perspectives, and further complicating their ability to work together for their children.

With these limitations in mind, a brief review of the empirical literature will ensue. Children clearly display a better adjustment to their parents’ divorce when contact with the nonresidential parent is continued on a regular and frequent basis, when interparental conflict is low, and when the noncustodial parent engages in appropriate and constructive parent-child activities (Amato, 1993; Wallerstein & Kelly, 1980). Thus, denying scheduled visits between a parent and his or her children has the potential to be harmful to the children.

Children, in general, have a better adjustment to their parents’ divorce when contact with the nonresidential parent is continued on a regular and frequent basis (Amato, 1993; Wallerstein & Kelly, 1980). This is evidence to the potential detrimental effects of denied visitation on children. However, there is evidence that frequent contact with the nonresidential parent is only beneficial when interparent conflict is low and when the noncustodial parent engages in appropriate and constructive parent-child activities. Contact with the other parent might only expose the child to the hostility between the parents, putting that child in a position to experience guilt, internalizing problems, and confusion.
Contradictory data suggest that for adolescents, frequent visitation serves as a protective factor against the detrimental effects of parental conflict (Forehand, 1990).

Despite potential interaction effects with parental conflict, it is generally agreed that children need continued contact with their nonresidential parent, usually the father, after divorce, provided there is no severe psychopathology or social deviance on the part of that parent. The parent is likely to be a significant attachment figure and role model for the child. Children have a right to stable, involved relationships with both of their parents. Both mothers and fathers are important to children’s development.

Conclusions

1. Significant methodological concerns invalidate most of the existing research.
2. There is no valid and reliable procedure to determine frequency of the event or reasons for the behavior.
3. Denied visitation frequently reflects the more problematic and pervasive interparent hostility.
4. Classifying all cases of denied visitation as the same event, including those that are expressions of interparent hostility, may exaggerate the perceived negative influence of denied visitation on child adjustment.

CONCEPTUALIZING DENIED VISITATION AS APPROPRIATE AND INAPPROPRIATE DENIAL

Instances of denied visitation are frequent and are alleged to reflect concerns about children’s safety and about interruption of children’s participation in normal and necessary developmental activities. Visitation is also allegedly restricted inappropriately, when neither safety nor developmental needs are in question. In these cases, the action is generally the expression of anger and hostility by one parent toward the other.

Denial of visitation for reasons of safety include suspicion or proof of substance abuse, child neglect, child physical abuse, child sexual abuse (Fenaughty, Wolchik, & Braver, 1991), and domestic violence. Non-safety related reasons or examples of inappropriate denial of visitation include continuing parental anger and resentment (Dudley, 1991), uncooperativeness
in arranging visits (Fishbein, 1982), discouraging children from visiting by criticizing the nonresidential parent (Horowitz & Dodson, 1986), child reluctance, minor infractions (e.g., small delays in returning child), and issues related to child support status (Pearson & Anhalt, 1993).

While all of the aforementioned reasons have varying degrees of legitimacy, the issues regarding child safety are of greatest concern because they are of immediate danger to the child’s well-being. However, research data are not currently available to substantiate the prevalence or frequency of denied visitation based on child safety issues. Unfortunately, those who have been most vocal about attacking denied visitation have not responsibly explored this issue either, and tend to group all denied visitation instances in one category, or assume that lack of access is not legitimate and, thus, is grounds for legal intervention (Bertoia & Drakich, 1995).

There have been few attempts to investigate issues related to denied visitation from a psychological perspective; rather, the existing literature can be found primarily in legal journals and publications. Currently, research has identified five categories of reasons parents give for denying visitation (Pearson & Anhalt, 1993). They are:

1. Inappropriate denial of visitation usually resulting from the expression of anger and hostility of one parent to the other,
2. Inappropriate denial of visitation due to unsubstantiated allegations of safety concerns,
3. Appropriate denial of visitation for safety considerations,
4. Appropriate denial of visitation when the noncustodial parent does not support child(ren’s) participation in developmentally normal and necessary activities such as social events, athletics, academic requirements, and religious activities,
5. Appropriate denial of visitation when one parent displays significant signs of psychopathology.

**Appropriate Denial of Visitation**

Legitimate reasons for denied access focus on the *best interest and the safety of the child.* Few dispute that, in most circumstances, a child is better off when both parents play an important role in the child’s life (Pearson & Anhalt, 1993). Yet, the overriding theme of legitimate denied visitation is that in certain situations the child experiences more harm than good by allowing the visitation to continue unchanged.
Those situations include:

1. Appropriate denial of visitation FOR safety considerations.
2. Lack of support by the non-custodial parent for the child(ren’s) participation in developmentally normal and necessary activities such as social events, athletics, academic requirements, and religious activities.

The extent to which children’s safety is compromised during visitation is little studied. One examination in 1992 of cases handled in court mediation programs in California found that only one case in five was free of an allegation concerning safety. Domestic violence was mentioned in nearly two-thirds of the families studied, over one-third had problems with substance abuse and child neglect, and 18 percent and 8 percent involved child physical abuse and child sexual abuse, respectively (Depner, Cannata, & Simon, 1992). It is important to note that none of these studies validated allegations of safety concerns.

With denied visitation, the severity and the immediacy of the threat to the child’s safety vary with each situation. Suspected child abuse, for example, offers an immediate and severe danger to the child that warrants immediate denied child visitation. Alcohol and/or substance abuse by the parent could also threaten the physical well-being of the children, for example, if the parent operated a motor vehicle under the influence of alcohol while the child was present.

Indirect threats to a child’s physical safety and emotional well-being that warrant denied child visitation include lack of child supervision, excessive use of alcohol and/or drugs during visitation, and exposure of the child to poor role models (Fenaughty, Wolchik, and Braver, 1991). Research suggests that safety concerns such as these feature heavily in many access denial cases. In a 1991 study, a strong correlation was found between the nonresidential parents’ reports of visitation denial or threats of denial and the residential parents’ reports of the nonresidential parents’ excessive drinking during visitation, neglect of or failure to supervise the children, and exposure of the children to poor role models. In these cases, it was concluded that denied visitation was not an act of vengeance of the resident parent, but protected the child from potential harm scheduled visitation might permit (Fenaughty, Wolchik, & Braver, 1991).

Consideration for the child’s preferences and support for normal and necessary developmental activities are two additional issues that underlie some denied visitation cases. The research literature contains few references to these concerns. Despite visitation agreements it is impera-
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tive that both parents remain flexible and cooperative to suit the child’s needs (Ehrenberg, 1996).

Taking into account the child’s wishes is an important, but potentially problematic, process. Children are frequently used as tools of one or both parents to convey a parent’s priorities. On many occasions, a child’s desire to increase or minimize visitation is simply a statement of the parent’s wishes. In addition, children frequently choose to avoid a parent who conveys greater work and maturity demands. Children frequently prefer to spend more time with the “fun” parent. Finally, children frequently lack the maturity and wisdom to discern the value of time spent with a parent. Thus, the influences on and reasons for a child’s stated preferences must be understood if potentially serious outcomes are to be avoided.

Children need to spend time with both parents because it is generally beneficial to the child’s psychological well-being (Wallerstein & Blakeslee, 1989). Children also have social, academic, and athletic needs, which often extend beyond the immediate family. Children’s needs continually evolve as they grow older and pass thorough different developmental stages (Berger & Thompson, 1998). They may become a part of one or more sports clubs, join academic or other clubs offered through school, attend religious education classes or dances at school, participate in music lessons, and other such activities. Children often desire to participate in a variety of these activities, which are usually found to be pleasurable and are thought to enhance the quality of life.

However, these activities can account for a significant amount of time in a child’s life that is sometimes “allotted to” the nonresidential parent. For example, an event related to one of the activities a child is participating in may fall on the nonresidential parents evening or weekend time. If this is the case, the parents have options such as arranging another time to have visitation or working the visitation around the event. The child should not, however, be denied the opportunity to engage in normal and necessary developmental activities (see Table 1).

It is important to differentiate between legitimate child need and parental interference when considering the issue of denied visitation. Meeting the needs of the child should be the top priority. Thus, flexibility and cooperation are required by both parents to maximally benefit the child (Ehrenberg, 1996). Only in the case where one parent remains rigid in adhering to a visitation schedule that conflicts with a child’s activity resulting in the prevention of visitation, should denied visitation be given any credence. If a parent is actively willing to rearrange sched-
TABLE 1. Guidelines for Appropriate Denial Due to Participation in Necessary Developmental Activities

<table>
<thead>
<tr>
<th>Developmental Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Preschool (ages 2-4):</strong> During this period, children are more involved in family life than in structured activities that occur outside of the family. However, some potentially important activities include special events, such as holiday parties at school, and sports and extracurricular events such as ballet recitals, gymnastics exhibitions, soccer/t-ball games, and the like. Also, the transition of leaving/graduating preschool and preparing for kindergarten is an important one, and should be incorporated into both parents’ schedules.</td>
</tr>
<tr>
<td><strong>School aged (5-11):</strong> Children find great happiness in spending time with friends and being involved in a couple activities that are pleasurable. Most extracurricular activities occur at the same times during the week—parents should be able to accommodate the child’s schedule of activity, and should be aware, at the onset, of special events, such as championship games, recital and exhibition dates, scouting camp-outs, etc. Parents should also be aware that events involving other children, e.g., trips to theme parks, sleepovers, and the like, pop up unexpectedly—parents should leave room for flexibility in order to give their children the opportunity to share these important activities with their friends. Also, many children at this age are involved in some kind of religious training, which often occurs over the weekend. Again, parents need to coordinate in order to make sure children are able to attend religious instruction and training regularly, and special events (e.g., participation in First Communion), should also take precedence over parent’s personal schedules.</td>
</tr>
<tr>
<td><strong>Middle school (ages 12-14):</strong> The period of pre-adolescence is the time when children are most drawn to their peers, while simultaneously moving away from parents. This process is developmentally appropriate. Unlike in earlier years when their children interacted with friends under more structured circumstances, parents can now expect their children to want to spend more “free” time with friends, just hanging out at home, at the mall, etc. Making time available at home for children to have friends around is important, and when visits are not possible, reasonable phone time is recommended. Other important activities: extracurricular activities, organized sports, scouting, religious training and special events (e.g., bar mitzvahs, confirmation, etc.).</td>
</tr>
<tr>
<td><strong>Adolescence (ages 15-18):</strong> Adolescence is a time for gaining independence and autonomy from parents. Boundaries and issues related to “coming of age” activities, such as dating, driving, and curfew, need to be negotiated and agreed upon by the adolescent and both parents. In addition, many adolescents also begin to work after school. Again, parents need to be aware of their child’s increasingly autonomous schedule, and be willing to sacrifice some of their time with their child to their child’s outside interests—this is developmentally appropriate, and should occur in all families. Particularly important during adolescence are: dates, special outings with friends, weekend plans with friends (e.g., movies, parties, sporting events, etc.), extracurricular/sporting in which the child participates, work commitments, and preparation for college.</td>
</tr>
</tbody>
</table>

ulring to accommodate the child’s activity and visitation, denied access is not an issue. Parents must work together to fulfill the needs, both emotional and social, of the child (Ehrenberg, 1996). Both parents need to understand that children need to be involved in activities and that they are an important part of a child’s life. Additionally, if these activi-
ties happen to interfere with visitation agreements, alternate arrangements need to be made because children also need to spend time with both parents.

The idea of denied access also becomes an issue when a child becomes ill. Again the needs of the child should be given precedence. The severity of the child’s illness needs to be considered when deciding to adhere to the visitation schedule. The illness should not be used solely as an excuse to deviate from the visitation agreement, and ultimately prevent visitation. If the illness is sufficiently severe enough to necessitate a change in the visitation schedule, then both parents should be flexible and cooperative in making a change. The non-residential parent must recognize the severity of the illness and realize that the child’s needs may be best met if he/she stays at home. Additionally, the residential parent must understand the importance of visitation with the non-residential parent and must not interfere with this, if not appropriately warranted.

Conclusions

1. Denied visitation between a parent and child occurs for five categories of reasons:

   • Inappropriate denial of visitation usually resulting from the expression of anger and hostility of one parent to the other (Examples: anger, resentment, criticism of one parent by the other in front of the children, non-cooperation in child matters),
   • Inappropriate denial of visitation due to unsubstantiated allegations of safety concerns,
   • Appropriate denial of visitation for safety considerations (Examples: substance abuse, child neglect, physical abuse, sexual abuse, domestic violence, illness, lack of appropriate supervision of child),
   • Appropriate denial of visitation when the non-custodial parent does not support child(ren’s) participation in developmentally normal and necessary activities (Examples: social events, athletics, academic requirements, and religious activities), and
   • Appropriate denial of visitation when one parent displays significant signs of psychopathology (Examples: Schizophrenia, Personality Disorders, Sociopathy, Substance Abuse, Criminal Behavior).

2. It may be more appropriate and more in the children’s best interest to consider reasons for the denial, at a minimum distinguishing appropriate and inappropriate actions by one parent.
3. Considering a child’s stated preferences is an important, but potentially problematic, process and must be considered only after the influences on and reasons for their stated preferences are understood.

4. The highest priority must be given to supporting the child’s active involvement in normal and necessary developmental activities, even if they interfere with this child’s time with one or both of his parents.

5. When considering strategies to reduce false allegations by one parent about the other, particularly in cases of denied visitation, extreme caution must be given to not punishing the child for the parents’ behaviors.

6. Some reasons for denial of visitation reflect differences in opinion that are not easily substantiated (Examples: differences in agreement about schedules, severity of the child’s illness).

**Inappropriate Denial of Visitation**

When denial of visitation is a problem and is not based on some potential danger to the child, it is likely to stem from previously existing bilateral hostility or conflict between the parents. Furthermore, interparent hostility will probably increase when visitation is denied. An angry response by one parent will lead to an angry reaction by the other. Based on interviews with divorced parents, Pearson and Thoennes (1988) found that when noncompliance with visitation arrangements was reported, couples also lacked cooperation and communication and had high levels of anger and conflict. Poor communication between parents has been connected with poorer outcomes for children of divorce. Inter-parent hostility is one of the most important determinants of negative outcomes.

Denial of visitation without substance is usually a manifestation of conflict between the parents. It is commonly an act of manipulation or vengeance. These types of interactions between parents undoubtedly put the children at risk for multiple behavioral and emotional problems. Construing denied visitation as an example of interparent hostility may also be a more productive perspective for the Court to take. When inappropriately denied visitation is considered an action independent of other co-parenting processes, a valid and powerful forum (the Court) may inappropriately lend weight to one parent’s anger toward the other. The Court may become a tool of one parent, being forced to take sides in what is most often a bilateral and ongoing conflict. It is also important
that solutions for inappropriately denied visitation not reflect “knee jerk” reactions (e.g., inaccurately viewing the process as only one parent’s “fault” when the conflict may involve both, automatic reversal of custody) that will inadvertently punish a child for his or her parents’ behaviors and that will entrench the conflict and further polarize the parents.

Construing inappropriately denied visitation as interparent hostility is consistent with the broader research literature on children’s adjustment to divorce and more accurately explains any negative impact of the denied visitation on children. Marital hostility in both intact and divorced families has a detrimental effect on children. The evidence for this connection is compelling and consistent (Amato, 1993; Amato & Keith, 1991; Arbuthnot, Poole, & Gordon, 1996; Lee, 1997). Studies reveal that children in high-conflict intact families exhibit the same or lower levels of well-being as children of divorce. Cooperation and low conflict between parents predicts optimal post-divorce adjustment for children (Amato, 1993). A study of longitudinal data sets by Cherlin et al. (1991) found that the behavior problems and academic failures experienced by children of divorce were often present before the divorce, attesting to the notion that children are subject to negative outcomes based on the existence of marital hostility. Conflict is a better predictor of children’s adjustment than family composition (divorce vs. intact) (Camara & Resnick, 1988; Demo & Acock, 1988; Ellwood & Stolberg, 1993).

When parents consistently fight and demonstrate hostility toward each other, children experience feelings of fear, anger, and distress. Children are harmed by habitual displays of parental combative ness and manipulations (Cummings & Davies, 1994). Ongoing conflict in the family is a cause of low self-esteem, anxiety, and decreased self-control in children (Johnson & Hutchinson, 1989). When parents fight, conflict is modeled for the children as an acceptable resolution style. Conflict also interferes with parenting by consuming the available attention of the parents. Parents may inadvertently force children to “take sides” in their disagreements. Children, particularly the younger ones, are likely to internalize the conflict and place blame on themselves because they are commonly the subject of the parents’ fighting.

Construing the inappropriate denial of visitation as bilateral, interparent hostility and poor co-parenting has an additional benefit. It gives the Court the authority to order parents to participate in programs intended to promote effective co-parenting and to minimize interparent
conflict. This growing body of clinical procedure and literature has been gaining national acceptance.

**Conclusions**

1. Inappropriately denied visitation is more often an example of bilateral and recurrent interparent conflict.
2. Viewing inappropriately denied visitation as a process that is independent of other co-parenting behaviors may allow the Court to be used as a pawn of one parent.
3. When the Court “takes sides” in instances of bilateral conflict, polarization of parents’ views rigidifies and interparent conflict increases.
4. Rather than participating in the parents’ conflict, the Court has the option to require parents to participate in co-parenting training programs to reduce their conflict and to increase cooperation and joint problem solving.

**SUMMARY AND CONCLUSIONS**

The previous review of the relevant psychological literature on denied visitation, divorce and child adjustment, and interparent conflict following divorce presents a coherent and consistent perspective on denied visitation. The area is difficult to study. It is not a single and homogeneous process. On some occasions, it is sometimes an appropriate action by one parent and on others is not. Perhaps most important are two conclusions. Judicial review is the only way to insure an objective review of allegations. Judges now have available a legal avenue to remove themselves from the interparent conflict and polarization and to ameliorate some of the underlying co-parenting problems, co-parenting training.

1. Existing research on denied visitation and its impact on child adjustment and development is scant and is wrought with methodological problems.
2. Denied visitation is more accurately divided into two categories: *appropriate denial of visitation* due to safety, parent’s mental health, and children’s developmental concerns, and *inappropriate denial of visitation* due to inter-parent hostility and unsubstantiated allegations of safety concerns.
3. Inappropriate denial of visitation is often an expression of interparent conflict, is usually a process engaged in by both parents, and is better considered as joint expression of hostility.

4. Procedures currently used by judges are appropriate, necessary, and effective to insure the “best interests of the children” standard.

5. Careful judicial review of the circumstances underlying each case and its allegations is necessary.

6. Solutions to this co-parenting problem, such as automatic reversal of custody, can have disastrous effects on children.

7. When determining solutions for this problem, the child should not be punished for his or her parent’s behavior.

8. Construing inappropriate denial of visitation allows judges to order parents to participate in co-parenting training programs to reduce their conflict and to increase cooperation and joint problem solving.

**NATIONWIDE REVIEW OF STATE CODE CONCERNING DENIED VISITATION STATUTES**

**Methodology**

Custody statutes for all states and the District of Columbia were surveyed with particular attention being given to what each state considered when awarding or modifying custody. Special attention was given to three points:

1. Whether any states permit modification of custody or visitation in the absence of a hearing,

2. Whether any state considered unjustified interference with visitation alone to be the basis for a change in custody,

3. Whether states currently view interference with visitation, or the likelihood of interference with visitation, as a consideration when awarding or modifying custody. (See Table 2.)

Although not part of the assigned research, different alternatives that states were implementing to address the problem of interference with visitation were noted.
### TABLE 2. State Statute Research Results

<table>
<thead>
<tr>
<th>State</th>
<th>Can changes in visitation or custody absence of court be triggered in the process?</th>
<th>Can changes in custody be ordered solely b/c parent has interfered w/visitation w/o considering why?</th>
<th>Is interference w/visitation a factor to consider in modifying custody?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>No</td>
<td>No</td>
<td>Yes § 30-3-152</td>
</tr>
<tr>
<td>Alaska</td>
<td>No</td>
<td>No</td>
<td>Yes § 25.24.150</td>
</tr>
<tr>
<td>Arizona</td>
<td>No</td>
<td>No</td>
<td>Yes § 25-403</td>
</tr>
<tr>
<td>Arkansas</td>
<td>No</td>
<td>No</td>
<td>Yes § 9-13-101</td>
</tr>
<tr>
<td>California</td>
<td>No</td>
<td>No</td>
<td>Yes § 3011 (Cal. Fam. Code)</td>
</tr>
<tr>
<td>Colorado</td>
<td>No</td>
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<td>Yes § 14-10-124(1.5)</td>
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<td>Yes T. 13 § 722</td>
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<td>D.C.</td>
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<td>Yes § 16-911</td>
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<td>Florida</td>
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<td>Yes § 61.13</td>
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<td>Yes § 571-46</td>
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<td>Yes §32-1115</td>
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<td>No</td>
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<td>Yes § 31-17-2-8; § 31-17-2-21</td>
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<td>Iowa</td>
<td>No</td>
<td>No</td>
<td>Yes § 598.41</td>
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<td>Yes § 60-1612</td>
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<td>Kentucky</td>
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<td>Yes § 403.340</td>
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<td>Louisiana</td>
<td>No</td>
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<td>Yes La. Civ. Code Ann. art. § 133</td>
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<td>Maine</td>
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<td>Yes T.19A, §1653</td>
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<td>Yes Md. Code Ann., Fam. Law § 9-105</td>
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<td>Yes ch. 208, § 28</td>
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<td>Yes § 518.18</td>
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<td>Yes § 93-5-24</td>
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<td>Montana</td>
<td>No</td>
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<td>Yes § 40-4-212</td>
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<td>Nebraska</td>
<td>No</td>
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<td>Yes § 42-364.15</td>
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<td>State</td>
<td>Can changes in visitation or custody absence of court be triggered in the process?</td>
<td>Can changes in custody be ordered solely b/c parent has interfered w/visitation w/o considering why?</td>
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<td>Nevada</td>
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<td>New Hampshire</td>
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<td>New Jersey</td>
<td>No</td>
<td>No</td>
<td>Yes § 9:2-4</td>
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<tr>
<td>New Mexico</td>
<td>No—Can stipulate to binding arbitration—§40-4-7.2</td>
<td>No</td>
<td>Yes § 40-4-9.1</td>
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<td>New York</td>
<td>No</td>
<td>No</td>
<td>Yes, N.Y. Dom. Rel. Law §70</td>
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<td>North Carolina</td>
<td>No</td>
<td>No</td>
<td>Yes § 50A-3</td>
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<td>No</td>
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<td>Yes § 14-09-06</td>
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<td>Ohio</td>
<td>No</td>
<td>No</td>
<td>Yes § 3109.04</td>
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<td>Oklahoma</td>
<td>No</td>
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<td>Yes T. 43, §112</td>
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<td>Oregon</td>
<td>No</td>
<td>No—Best interests shall not be determined by isolating any one of the relevant factors § 107.137</td>
<td>Yes § 107.137</td>
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<td>Pennsylvania</td>
<td>No</td>
<td>No</td>
<td>Yes 23 Pa. Cons. Stat. §5303</td>
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<tr>
<td>Rhode Island</td>
<td>No</td>
<td>No—In event of visitation interference, noncustodial parent can file contempt. If ct. order has not been complied with, ct. orders remedy. On a second finding of noncompliance, ct. shall consider this to be grounds for change of custody to noncustodial parent. §15-5-19</td>
<td>Yes § 15-5-19</td>
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<td>South Carolina</td>
<td>No</td>
<td>No</td>
<td>Yes § 20-7-933</td>
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<td>South Dakota</td>
<td>No</td>
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<td>Yes § 25-4A-2</td>
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<td>Tennessee</td>
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<td>Yes § 36-6-106</td>
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<td>Texas</td>
<td>No</td>
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<td>Yes Tex. Fam. Code Ann. § 156.301</td>
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<td>Utah</td>
<td>No—Has pilot expedited visitation program§30-3-38</td>
<td>No</td>
<td>Yes § 30-3-10</td>
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<tr>
<td>Vermont</td>
<td>No</td>
<td>No—Visitation is not to be interfered with for non-payment of support; support is not to be withheld for interference with visitation—§ 668a</td>
<td>Yes § 665</td>
</tr>
<tr>
<td>State</td>
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<tr>
<td>Virginia</td>
<td>No</td>
<td>No</td>
<td>Yes § 20-124.3(6) Courts can consider a parent’s “propensity” to actively support the child’s contact and relationship with the other parent, including whether a parent has “unreasonably” denied the other parent access to or visitation with the child</td>
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<tr>
<td>Washington</td>
<td>No</td>
<td>No—Conviction for custodial interference shall constitute a substantial change in circumstance, but custody alteration must still be in the child’s best interest— § 26.09.260</td>
<td>Yes § 26.09.260</td>
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<tr>
<td>West Virginia</td>
<td>No</td>
<td>No</td>
<td>Yes § 48-11-604.</td>
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<td>Wisconsin</td>
<td>No</td>
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<td>Yes § 767.24</td>
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<tr>
<td>Wyoming</td>
<td>No</td>
<td>No</td>
<td>Yes §20-2-113</td>
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</table>

**Findings**

1. All states look at the best interests of the child as paramount when awarding or modifying custody.
2. No state permits the modification of custody or visitation without due process.
3. No state considers unjustified interference with visitation alone to be a basis for a change in custody. Rhode Island appears to come the closest with a provision that permits a second court finding of visitation interference or noncompliance to be grounds for a change in custody.
4. Virtually all states will consider interference with visitation, or the likelihood of interference with visitation, when making or modifying custody decrees that are in the best interests of the child. Many mention these considerations in their codes. Many others simply suggest they will consider anything that impacts the best interests of the child. In other states, these considerations are established in case law.
**Alternatives**

1. Many states have initiated procedures to expedite settling disputes involving interference with visitation or custody rights. These involve:
   A. Mediation—The most commonly mentioned alternative is voluntary mediation to resolve the dispute. Mediation, however, is not binding and, if it fails, parties can return to court.
   B. Binding arbitration—In New Mexico, the parties can agree to binding arbitration of visitation (and other) disputes.
   C. Expedited Visitation Enforcement Program—Utah initiated a pilot expedited visitation enforcement project.

2. Many states have passed custodial or visitation interference laws that criminalize such behavior. These statutes can be used to punish an offending parent without punishing the child.

**REFERENCES**


