

CONNECTICUT
PRACTICE SERIES™
VOLUME 11

RULES OF EVIDENCE

BY
THE PUBLISHER'S EDITORIAL STAFF



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PREFACE

Designed for use in the office or courtroom, this pamphlet brings together in one convenient publication the Connecticut Code of Evidence, Connecticut General Statutes, and Federal Rules of Evidence. John R. Downey provided the Foreword and the Author Commentary on Privileges in Article V of the Code.

WHAT'S NEW

This pamphlet includes new enactments or important amendments relating to:

- Connecticut Code of Evidence, current with amendments received through October 1, 2025.
- Connecticut General Statutes, Chapter 899, Evidence, through the 2025 Regular Session of the Connecticut General Assembly.
- Federal Rules of Evidence, current with amendments received through October 1, 2025.
- An updated, combined index to the Code of Evidence and the Connecticut General Statutes.
- An updated index to the Federal Rules of Evidence.
- New Notes of Decisions from the courts covering construction and interpretation of the Connecticut Code of Evidence and the Connecticut General Statutes, Chapter 899.

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CONNECTICUT PRACTICE

Volume 11 CONNECTICUT RULES OF EVIDENCE

CODE OF EVIDENCE

Foreword & Author Commentary

The development of a Code of Evidence (Code) for the Connecticut State Court System is one of the most significant developments in the history of Connecticut jurisprudence. In its totality, the Code memorializes what has been a steady adoption by the Supreme Court of the Federal Rules of Evidence (Fed.R.) in Court decisions.

Effective February 1, 2018, the Code of Evidence has been amended to include specific references to Attorney–Client, Sec. 5–2, and Marital Privileges, Sec. 5–3. Prior to this date, the Code relied upon the established Common Law, Statutory, and Practice Book Privileges, which were used but not organized in any coherent fashion, except by the undersigned and at least one other author.

It should be noted that the Code Section on Privilege – Article V, Sec. 5–1, has a detailed review of other privileges including Health Care Provider, Clergy, Self-incrimination, Settlement, Mediation, and Negotiation Privileges. No section designations apply to the other privileges above mentioned.

While the Connecticut Code of Evidence is very similar to the Federal Rules of Evidence (Fed.R.), there are some differences. The Code has reduced or eliminated sections found in the Federal Rules. For example, Sec. 4–11 of the Code, covering sexual conduct, reduces to one section what was covered in Fed.R. 412 through 415. Additionally, where Fed.R. 803 (Hearsay) lists subdivisions 1 through 24, the Code has reduced the exceptions to subsections 1 through 12.

A number of provisions of the Federal Rules have been dropped in the Connecticut Code. One entire Article that has been dropped and is not included in the Connecticut Code is Article XI, Miscellaneous Rules.

Some substantive differences with the Federal Rules still exist in regard to certain Connecticut evidence rules. For example, in the Code, Sec. 8–3(8) (Learned Treatise) allows a learned treatise or a portion of it to go to a jury. The federal counterpart has no such provision. Also, Code Sec. 8–3(9) (Ancient Documents) requires a 30 year timeframe to be considered “ancient.” The federal counterpart requires only 20 years. Fed.R. 804(b)(2) “Dying Declaration” allows usage in both civil and criminal cases. The Code counterpart, Sec. 8–6(2), only allows the use in a criminal prosecution for a homicide.

CODE OF EVIDENCE

In the 2026 edition, I have added a new privilege: (w) Emergency Vehicle, Section 14-283, C.G.S., provides a privilege to operators of emergency vehicles involved in motor vehicle accidents. This privilege does not relieve the driver and the sponsoring town from the common law duty of due care. Also, in regard to the Litigation Privilege, it applies to governmental entities.

John R. Downey, Judge Ret.

Acworth, Georgia — October, 2025

ARTICLE I. GENERAL PROVISIONS

Section

- Sec. 1-1. Short Title; Application.
- Sec. 1-2. Purposes and Construction.
- Sec. 1-3. Preliminary Questions.
- Sec. 1-4. Limited Admissibility.
- Sec. 1-5. Remainder of Statements.

Sec. 1-1. Short Title; Application

(a) Short Title. These rules shall be known and may be cited as the Code of Evidence. The Code of Evidence is hereinafter referred to as the “Code.”

(b) Application of the Code. The Code and the commentary apply to all proceedings in the Superior Court in which facts in dispute are found, except as otherwise provided by the Code, the General Statutes or any Practice Book rule adopted before June 18, 2014, the date on which the Supreme Court adopted the Code.

(c) Rules of Privilege. Privileges shall apply at all stages of all proceedings in the court.

(d) The Code Inapplicable. The Code, other than with respect to privileges, does not apply in proceedings such as, but not limited to, the following:

(1) Proceedings before investigatory grand juries, as provided for in General Statutes §§ 54-47b through 54-47f.

(2) Proceedings involving questions of fact preliminary to the determination of the admissibility of evidence as provided in Section 1-3(a) of the Code.

(3) Proceedings involving sentencing.

(4) Proceedings involving probation.

(5) Proceedings involving small claims matters.

(6) Proceedings involving summary contempt.

(7) Certain pretrial criminal proceedings in which it has been determined as a matter of statute or decisional law that the rules of evidence do not apply.

[Adopted November 17, 1999, effective January 1, 2000. Amended June 26, 2000, effective retroactively January 1, 2001. Amended June 20, 2011, effective January 1, 2012; December 14, 2017, effective February 1, 2018; March 29, 2022, effective June 13, 2022.]

COMMENTARY

(b) Application of the Code. When the Code was initially adopted by the judges of the Superior Court in 1999 and then readopted by the Supreme Court in 2014, the adoption included both the rules and the commentary, thereby making both equally applicable. See *State v. Pierre*, 277 Conn. 42, 60, 890 A.2d 474, cert. denied, 547 U.S. 1197, 126 S. Ct. 2873, 165 L. Ed. 2d 904 (2006).

The Code is broadly applicable. The Code applies to all civil and criminal bench or jury trials in the Superior Court. The Probate Assembly adopted Probate Rule 62.1, effective July 1, 2013, making the Code applicable to all issues in which facts are in dispute. The Code applies, for example, to the following proceedings:

(1) court-ordered fact-finding proceedings conducted pursuant to General Statutes § 52-549n and Practice Book § 23-53; see General Statutes § 52-549r;

(2) probable cause hearings conducted pursuant to General Statutes § 54-46a, excepting certain matters exempted under General Statutes § 54-46a (b); see *State v. Conn*, 234 Conn. 97, 110, 662 A.2d 68 (1995); *In re Ralph M.*, 211 Conn. 289, 305-306, 559 A.2d 179 (1989);

(3) juvenile transfer hearings conducted pursuant to General Statutes § 46b-127 as provided in subsection (b) of that provision; *In re Michael B.*, 36 Conn. App. 364, 381, 650 A.2d 1251 (1994); *In re Jose M.*, 30 Conn. App. 381, 384-85, 620 A.2d 804, cert. denied, 225 Conn. 921, 625 A.2d 821 (1993);

(4) juvenile proceedings; however, adoption of subsection (b) is not intended to abrogate the well established rule that the court may relax its strict application of the formal rules of evidence to reflect the informal nature of juvenile proceedings provided the fundamental rights of the parties are preserved; *In re Juvenile Appeal (85-2)*, 3 Conn. App. 184, 190, 485 A.2d 1362 (1986); see *Anonymous v. Norton*, 168 Conn. 421, 425, 362 A.2d 532, cert. denied, 423 U.S. 925, 96 S. Ct. 294, 46 L. Ed. 2d 268 (1975); Practice Book § 32a-2(a); and

(5) proceedings involving family relations matters enumerated under General Statutes § 46b-1.

The Code is not intended to apply to matters to which the technical rules of evidence traditionally have not applied. Thus, for example, the Code would be inapplicable to hearings on the issuance of bench warrants of arrest or search warrants conducted pursuant to General Statutes §§ 54-2a and 54-33a, respectively; see *State v. DeNegrís*, 153 Conn. 5, 9, 212 A.2d 894 (1965); *State v. Caponigro*, 4 Conn. Cir. Ct. 603, 609, 238 A.2d 434 (1967).

Matters to which the Code specifically is inapplicable are set forth in subsection (d).

(c) Rules of Privilege. Subsection (c) addresses the recognition of evidentiary privileges only with respect to proceedings in the court. See Article V—Privileges. It does not address the recognition of evidentiary privileges in any other proceedings outside the court, whether legislative, administrative or quasi-judicial, in which testimony may be compelled.

(d) The Code Inapplicable. Subsection (d) specifically states the proceedings to which the Code, other than with respect to evidentiary privileges, is inapplicable. The list is intended to be illustrative rather than exhaustive, and subsection (d) should be read in conjunction with subsection (b) in determining the applicability or inapplicability of the Code. The removal of these matters from the purview of the Code