

THE LEGAL STATUS AND RIGHTS OF OLDER YOUTH

- I. The age of majority in North Carolina is 18. [G.S. 48A-2]
 - A. A minor – anyone under age 18 – is “subject to the supervision and control of [his or her] parents” unless the minor is
 1. married,
 2. judicially emancipated, or
 3. in the armed services.[G.S. 7B-3400]
 - B. Two primary means are available to a parent (or guardian or custodian) for judicially enforcing parental control.
 1. A proceeding under Subchapter II of the Juvenile Code alleging that the juvenile is *undisciplined*.
 - a. A juvenile must be at least 6 and not yet 18 in order to be undisciplined.
 - b. An undisciplined juvenile is one who
 - (1) is regularly disobedient to and beyond the disciplinary control of his or her parent, guardian, or custodian;
 - (2) is regularly found in places where it is unlawful for a juvenile to be;
 - (3) has run away from home for more than 24 hours; or
 - (4) while younger than 16, is unlawfully absent from school.
 - c. Complaints about undisciplined conduct are made to Juvenile Services, which
 - (1) screens and evaluates complaints;
 - (2) may divert a complaint and make a referral for services or enter into a diversion contract or agreement with the juvenile;
 - (3) must approve the filing of a complaint for filing as a petition before the matter can be taken to court.
 - d. Either a law enforcement officer or a juvenile court counselor may take a juvenile into *temporary custody*, without a court order, any time there are “reasonable grounds to believe” the juvenile is undisciplined. The officer or counselor
 - (1) must notify the juvenile’s parent, guardian or custodian.
 - (2) must release the juvenile to a parent, guardian, or custodian if continued custody is not necessary.
 - (3) if the juvenile is unlawfully absent from school, may take the juvenile to his or her school or another place designated by the local government and school board.
 - (4) must either (i) file a petition and obtain a court order for secure or nonsecure custody or (ii) release the juvenile within 12 hours (24 if a weekend or holiday is involved). The grounds for getting a secure custody order are very restrictive.
 - e. A juvenile alleged to be undisciplined is not entitled to court-appointed counsel or, apparently, a guardian ad litem. An indigent parent is not entitled to court-appointed counsel.

- f. Dispositions available after adjudication that a juvenile is undisciplined include:
 - (1) protective supervision by a court counselor for a maximum of six months.
 - (2) supervision in the juvenile's own home by DSS, a court counselor, other person the court designates, subject to conditions the court places on the juvenile and/or the juvenile's parent, guardian, or custodian.
 - (3) placement in the custody of a parent, relative, DSS, or other suitable person.
 - (4) release from compulsory attendance law if there is another suitable plan.
 - (5) evaluation and treatment alternatives similar to those available in other juvenile cases.
 2. A civil action under G.S. 7B-3404, by filing a complaint alleging that the defendant/juvenile has left home or the place where he or she has been residing and refuses to return and comply with the direction and control of the plaintiff.
 - a. The court may
 - (1) enter an order directing the juvenile to appear.
 - (2) order the sheriff "to enter any house, building, structure, or conveyance for the purpose of searching for the juvenile and serving the order and for the purpose of taking custody of the person of the juvenile in order to bring the juvenile before the court."
 - (3) order a named defendant other than the juvenile not to harbor, keep, or allow the juvenile to remain on the person's premises or in the person's home.
 - b. An order of the court can remain in effect until the juvenile is 18 or the court enters a different order.
 - c. Any defendant's failure to comply with a court's order is "punishable as for contempt." [See, however, *Taylor v. Robinson*, 131 N.C. App. 337, 508 S.E.2d 289 (1998), in which the court of appeals reversed an order holding a 15-year-old in contempt for violating such an order, holding that the commitment procedures under the Juvenile Code provided the exclusive enforcement mechanism for contact that was basically undisciplined. The case arose before the definition of "undisciplined juvenile" was amended to include 16- and 17-year-olds and before these parental control provisions were made part of the Juvenile Code when G.S. Chapter 7B was enacted in 1998.
- C. A minor who marries is automatically emancipated.
1. A person aged 16 or 17 may marry only with the written consent of
 - a. a parent who has full or joint legal custody of the minor, or
 - b. a person, agency, or institution with legal custody or guardianship of the minor.
 2. A person aged 14 or 15 may marry only with a court order authorizing the marriage.
 - a. The minor seeking the court order must file a civil action in district court.
 - b. The minor plaintiff must prove that
 - (1) the female (whether the plaintiff or the other party to the proposed marriage) either is pregnant or has given birth; and
 - (2) the proposed marriage is between the parents of the born or unborn child; and
 - (3) the plaintiff is capable of assuming the responsibilities of marriage and the marriage will be in his or her best interests.
 3. It is unlawful for anyone under age 14 to marry.
[G.S. 51-2 and 51-2.1]

- D. The only other means of emancipation is through a judicial proceeding under Article 35 of G.S. Chapter 7B.
 - 1. An emancipation proceeding may be brought only by a 16- or 17-year-old who has resided in the county for at least 6 months.
 - 2. Respondents in the proceeding are the minor petitioner's parent, guardian, or custodian.
- II. Despite the age of majority, 16- and 17-year-olds are charged, prosecuted, and punished as adults when they commit crimes.
- A. See separate outline on procedures applicable to delinquent juveniles.
 - B. Juveniles charged with committing felonies while age 13, 14, or 15 may be tried as adults if their cases are transferred from juvenile court to superior court.
- III. Guardianship of a minor may come about in several ways.
- A. Juvenile court. The court may appoint a guardian of the person for the child in a juvenile proceeding
 - 1. pursuant to G.S. 7B-600 in an abuse, neglect, or dependency proceeding.
 - a. The appointment may occur at any point in the proceeding.
 - b. The court must ensure that the person appointed
 - (1) understands the legal significance of the appointment and
 - (2) has resources sufficient to care for the child.
 - c. The higher standard set out in G.S. 7B-600(b) for terminating a guardianship applies only when the court has made findings in a permanency planning hearing that guardianship is the permanent plan for the juvenile. *See, e.g., In re E.C.*, 174 N.C. App. 517, 621 S.E.2d 647 (2005); *In re J.D.C.*, 174 N.C. App. 157, 620 S.E.2d 49 (2005).
 - d. In order for the guardianship to remain in effect, the court must retain jurisdiction.
 - 2. pursuant to G.S. 7B-2001 in a delinquency or undisciplined juvenile proceeding.
 - a. The appointment may occur at any point in the proceeding.
 - b. In order for the guardianship to remain in effect, the court must retain jurisdiction.
 - B. Clerk – for incompetent child. The clerk may appoint a guardian pursuant to G.S. Chapter 35A for a minor who is at least 17 ½ years of age and has been adjudicated to be an “incompetent child.”
 - 1. G.S. 35A-1101(8) defines “incompetent child” to mean “a minor who is at least 17 ½ years of age and who, other than by reason of minority, lacks sufficient capacity to make or communicate important decisions concerning the child’s person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or similar cause or condition.”
 - 2. Depending on the needs of the child, the clerk may appoint a guardian of the person, a guardian of the estate, or a general guardian.

- C. Clerk – guardian of estate. The clerk may appoint a guardian of the estate for any minor. *See* G.S. 35A-1221. Not every child with assets requires a guardian of the estate.
1. Funds from the Social Security Administration can be paid to a representative payee.
 2. Funds owed to a minor, up to \$25,000, can be paid to and administered by the public guardian or clerk or superior court pursuant to G.S. 7A-111.
- D. Clerk – guardian of person. Except in the case of an incompetent child [*see* III.B., above], the clerk may appoint a guardian of the person or a general guardian only for a minor who has no natural guardian. *See* G.S. 35A-1221.
- E. Clerk or by designation – standby guardian. Article 21 of G.S. Chapter 35A creates two procedures for the appointment of a standby guardian.
1. A standby guardian is a guardian of the person or general guardian appointed or designated to serve as the child’s guardian beginning with the happening of a specified “triggering event” such as
 - a. the death of the petitioner or designator,
 - b. a determination of the debilitation or incapacity of that person, or
 - c. the consent of the petitioner or designator.
 2. A parent or guardian who suffers from a progressive chronic illness or an irreversible fatal illness, or a guardian or guardian ad litem acting on that person’s behalf, may petition the clerk for appointment of a standby guardian.
 3. A parent or guardian who suffers from a progressive chronic illness or an irreversible fatal illness, or a guardian acting on that person’s behalf, may designate a standby guardian, who must file a petition with the clerk within 90 days after the standby guardianship becomes effective due to a triggering event.
- F. DSS – before court order. Under G.S. 35A-1220, when a child has no natural guardian or has been abandoned, and the child needs services from DSS, the DSS director in the county where the child resides or is domiciled automatically is the guardian of the person of the child until
1. a guardian of the person or general guardian is appointed for the child pursuant to G.S. Chapter 35A, or
 2. a court of competent jurisdiction enters an order awarding custody of the child or appointing a general guardian or guardian of the person for the child.
- G. Clerk or judge – guardian ad litem. A guardian ad litem is a court-appointed individual whose role is very different from that of any of the guardians described above.
1. The role of a guardian ad litem appointed for a minor is limited to the proceeding in which the appointment is made.
 2. The role of the guardian ad litem varies depending on the statute pursuant to which the guardian ad litem is appointed. For example, see:
 - a. G.S. 1A-1, Rule 17. Rules of Civil Procedure.
 - b. G.S. 7B-601. Juvenile Proceedings.
 - c. G.S. 51-2 and 51-2.1. Marriage.
 - d. G.S. 48-2-201; 48-3-602. Adoption proceeding.

IV. Special Immigrant Legal Status

- A. Undocumented alien children can obtain lawful permanent residency when they
 1. are under the jurisdiction of the juvenile court;
 2. will not be reunified with their parents due to abuse, neglect or abandonment;
 3. apply for and are granted the special immigrant juvenile status before the court's jurisdiction terminates; and
 4. apply for and are granted adjustment of their status to permanent resident.
- B. A court order must include findings that
 1. the child is "deemed eligible for long-term foster care" (which may proceed to guardianship or adoption) because of abuse, neglect or abandonment, and parental reunification is not a viable option
 2. it is not in the child's best interest to return to his or her country of origin.
- C. Possible obstacles to obtaining SIJS include
 1. a record of involvement with drugs, prostitution, or criminal conduct;
 2. being HIV positive;
 3. being classified as mentally ill, suicidal, or a sexual predator;
 4. a history of visa fraud or prior deportation.
- D. Applying for SIJS requires
 1. completion by the juvenile or a responsible adult of
 - a. Petition for Special Immigrant Juvenile Status [Form I-360] and
 - b. Application for Adjustment of Status [Form I-485]
 - c. other CIS forms
 2. fingerprinting (for older children) for FBI background report on criminal or delinquency record
 3. providing special CIS photographs and proof of age
 4. a special medical exam and interview
 5. payment of application fee unless it is waived
 6. an interview within 36 months after the petition if filed
- E. Resources
 1. CIS – U.S. Citizenship and Immigration Services
 - a. web site: www.uscis.gov
 - b. national customer service at 1-800-375-5283
 2. Immigrant Legal Resource Center (ILRC) provides a great deal of information and several useful publications.
 - a. ILRC web page: www.ilrc.org
 - b. 2005 SIJS Manual: access from <http://www.ilrc.org/sijs.php>
 - c. 2005 Immigration Benchbook for Juvenile and Family Court Judges: access from <http://www.ilrc.org/sijs.php>
 3. Legal Aid of North Carolina: Immigrant Advocacy (IA) Task Force
http://www.legalaidnc.org/Legal_Services_Community/Task_Force/ImmigrantAdvocacyTASKFORCE.htm

4. North Carolina Legal Immigrants Legal Assistance Project
(a project of the NC Justice & Community Development Ctr.)
<http://www.ncjustice.org/cms/index.php?pid=36>
5. National Lawyers Guild National Immigration Law Project
<http://www.nationalimmigrationproject.org/>

V. Other statutes

- A. Certain contracts of minors. G.S. 48A-11 through -18.
- B. Learner's permit and provisional drivers license for a minor. G.S. 20-11.
- C. Statutes of limitations applicable to minors. G.S. 48A-3.
- D. Proceeding to change a minor's name. G.S. 101-2.
- E. Youth employment. G.S. 95-25.5; 95-25.23.
See also administrative rules at 13 N.C.A.C. 12.400.
- F. School law: assignment of student to a particular school. G.S. 115C-366.
- G. School law: free appropriate public education; ages. G.S. 115C-107.1.
- H. Adult children with disabilities; surrogate parents. G.S. 115C-109.

VI. Other Internet References

- A. Adolescent Pregnancy Project: <http://www.adolescentpregnancy.unc.edu/>
 1. "Pregnancy and Parenting: A Legal Guide for Adolescents: With special information for their parents" <http://www.adolescentpregnancy.unc.edu/books/>
 2. "Public Schools and Pregnant and Parenting Adolescents: A Legal Guide" http://www.adolescentpregnancy.unc.edu/pdf/PubSchool_PregAd_final.pdf
 3. "Health Care for Pregnant Adolescents: A Legal Guide for Healthcare Providers" <http://www.adolescentpregnancy.unc.edu/pdf/HCP91901.pdf>
 4. "Social Services for Pregnant and Parenting Adolescents: A Legal Guide" <http://www.adolescentpregnancy.unc.edu/pdf/appbook2.pdf>
- B. Office of North Carolina Juvenile Defender
<http://www.ncids.org/Juvenile%20Defender/JuvDef%20HomePage.htm>
- C. North Carolina Department of Juvenile Justice and Delinquency Prevention
<http://www.ncdjdp.org/>
- D. N.C. Youth Advocacy and Involvement Office <http://www.doa.state.nc.us/yaio/>
"Youth Rights and Responsibilities: A Handbook for North Carolina's Youth" (2000)
<http://www.doa.state.nc.us/yaio/documents/rights.pdf>

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