

Family Matters e-Newsletter



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NEWS FOR OCTOBER 2015

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Medical Expenses and Child Support

By Amy A. Edwards

The NC Child Support Guidelines base support obligations on nationally generated data of average living expense for families. The Guidelines assume the custodial parent is paying for all of the day-to-day expenses of shelter, groceries, clothes, and other necessities. The general rule is that the parent paying child support doesn't have to pay amounts above that amount for support. One exception to this rule, when the other parent must pay for other expenses in addition to child support, is the child's medical expenses. The custodial parent is responsible for the first \$250.00 of the child's medical expenses per year. Beyond that amount, the judge will typically order the parents to share those expenses.

What Counts as a Medical Expense?

The 2015 Guidelines define medical expenses as "reasonable and necessary costs related to orthodontia, dental care, asthma treatments, physical therapy, treatment of chronic health problems, and counseling or psychiatric therapy for diagnosed mental disorders." Only out-of-pocket medical expenses that are not paid by insurance are subject to be divided. Examples of expenses to be divided include co-pays for visits to the doctor or prescription medications.

What Do Judges Do?

As is the case in many family law matters, the judge has a great deal of discretion to order what he or she believes is fair. In my experience, most of the judges equally divide these expenses between the parents. When there is a big difference in incomes, the court is more likely to divide the expenses unequally. Occasionally, a judge will assign all of the medical expenses to one parent. Judges are not required to use any specific manner of payment, although they will commonly have a parent who pays an expense give the other parent a copy of the receipt. Within some reasonable time period, the other parent must reimburse the parent who paid the expense for his or her share of the cost.

Read More: Child support and [health insurance](#).

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of October 2015. www.AmyEdwardsFamilyLaw.com © 2015.



New Identities for Domestic Violence Victims

By Amy A. Edwards

When North Carolina courts grant domestic violence protective orders (DVPOs) to victims, the orders legally prohibit the offender from contacting them. These orders also offer many protections such as temporary/emergency child custody or exclusive use of a vehicle. One effective feature of the orders is police response time. Ordinarily, people cannot be arrested for merely appearing at someone's place of business

or residence. The DVPO requires law enforcement to arrest someone merely for being present at a given location if they are violating the order. The court also has the authority to renew (*i.e.*, extend) a DVPO. Although these orders are civil in nature, it is a crime if the order is violated. There is certainly a stigma associated with having a DVPO entered against someone. However, there are those cases in which the offender does not care about the stigma, the criminal consequences or anything else. To them, a court order is just a piece of paper.

What can be done to further protect a victim chooses to flee?

There are many ways a person who truly wants to locate a victim can do so. Many of those ways are part of the public record, but other ways are not. The Social Security Administration (SSA) offers a way for domestic violence victims to help them [change their social security](#) numbers. The [SSA web site](#) has user accounts that are password protected, frequently used for things such as earnings history and other records. Victims can request the online account be blocked so no one can access it. In most situations, a victim can apply to the court to have a legal [name change](#). If a victims has obtained a name change through the court process, a new social security card is issued that reflects the new name. The North Carolina Department of Justice offers the [Address Confidentiality Program](#), which allows victims to have mail forwarded to them by the use a substitute mailing address. See their [brochure](#). The Department of Justice site has helpful [resources](#).

Read More:

Is someone you know in trouble? Look for the [signs](#).

What can you do if someone you know is in [trouble?](#)

Permanent [No-Contact](#) Orders For Victims of Sexual Assault

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Statutory Rape and the Age of Consent in NC

By Amy A. Edwards

In response to a case heard by the NC Court of Appeals, [State v. Hicks](#), 768 S.E.2d 373 (February 17, 2015), the NC Legislature has just overhauled and streamlined the laws related to rape and other criminal sexual offenses. Session Law 2015-181 (An Act To Reorganize, Rename, and Renumber Various Sexual Offenses . . .) and Session Law 2015-62 (The Women and Children's Protection Act of 2015).

By Force and Without Consent

The legal term *rape* is defined exclusively by intercourse against a female's will and by force, which is a felony. The legal definition of rape requires no minimum or maximum age of a victim; it simply means the female victim did not consent to the intercourse. The term rape also

applies where the victim is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that is the case. If a child is born as a result, the male has no parental rights, including custody, visitation or the right to give or withhold consent for the child to be placed for adoption. Nor does he have any inheritance rights should the child die (as may be the case if the mother files a wrongful death case related to the death of a child).

Without Force But Unable to Give Consent

Each state chooses an age when minor may legally consent to intercourse or other sexual acts. While adults may consent to intercourse and sexual acts, a minor in North Carolina cannot give legal consent until the age of 16, unless the parties are married. NC Gen. Stat. 14-27.23 and 14-27.7A. The victim can give legal consent to intercourse only when the victim reaches that age set out in the statute, which is the reason it is called *statutory rape*.

Females Under the Age of 13

Statutory rape occurs when an adult male (at least 18) has intercourse with a female who is under the age of 13. It is a Class B1 felony. However, there is also a lesser included offense (*i.e.*, a subdivision of that crime), called first-degree statutory rape that applies when the male is at least 12 years old and at least 4 years older than the female. Example: female is 12 and the defendant is 16. Under either law, if a child is born as a result of the intercourse, the male loses all parental rights, including custody, visitation or the right to give and withhold consent for the child to be placed for adoption. Nor does he have any inheritance rights should the child die. NC Gen. Stat. §14-27.23 and 27.24.

Female Age 15 or Younger

The age of the male is also critical to the statutory rape laws, particularly with females 15 or younger. Unless the parties are married, a male who is

at least 12 years old commits a Class B1 felony if he engages in intercourse with a female who is 15 or younger. However, this applies only when he is at least **6 years older** than the female. Example: female is 14 and the male is 20. NC Gen. Stat. §27.25.

Unless the parties are married, a male who is at least 12 years old commits a class C felony if he engages in intercourse with a female who is 15 or younger. However, this applies only when he is at least **4 years older** than the female (but less than 6 years older). The Class C felony punishment applies unless there is a law imposing a greater punishment. If so, the greater punishment applies. Example: female is 15 and the male is 19. NC Gen. Stat. §27.25.

Sex Acts with Minors

There is also a law that addresses statutory rape by committing sex acts, separate from whether or not there is sexual intercourse. It applies to any "person" and does not require either party be male or female. Those laws are different from the statutory rape laws described above, which apply only to female victims. NC Gen. Stat. §27.7A. There are also numerous other NC sex offenses, which are not included in this article.

Marriage and Minors Who Are Pregnant

If a female over age 14 and less than 16 is pregnant (or has given birth to a child) by a male over 14 and less than 16, she may agree to marry the father and obtain a marriage license. If a male over age 14 and less than 16, he may agree to marry the mother and obtain a marriage license. However, in either situation, the marriage cannot take place until a judge issues a court order allowing the minor to marry if the judge determines the underage party is capable of assuming the responsibilities of marriage and the marriage will serve the best interest of the underage party. If the judge denies the request, a new request to marry may be filed after one year has passed. NC Gen. Stat. §51-2.1.

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Amy A. Edwards

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