

# North Carolina Personal Injury Claims Involving Minors

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August 9, 2019



**Everyday individuals unfortunately are injured across North Carolina in all sorts of different ways—from car wrecks, to 'slip/trip and falls,' to other accidents.**

And, sadly, these injuries sometimes involve children or other minors—those under 18 years old. When injuries occur because someone was legally liable and caused the injury, there may be a

valid legal claim on behalf of the injured minor. Such cases involving minors can be heartbreaking, and they involve unique legal issues. This article provides a basic overview of personal injury claims involving minors.

## **Is There a Legal Claim?—Liability and Damages**

Under our civil legal system, everyone has a duty to act with reasonable care in their actions. We all must act as a "reasonably prudent person," including when our actions may harm a minor. It's a broad concept, and what is reasonable depends on the specific situation. But, when one fails to act with reasonable care, and their actions cause injury, that party is deemed negligent. Unless a legal defense applies, a negligent party is liable for the damages their negligence causes. Examples include a negligent driver causing a wreck; a property owner failing to correct or warn of an unsafe condition that hurts a visitor; or medical malpractice. When someone's negligence harms a minor, that minor or their representative has a valid legal claim against the at-fault party.

Once negligence is established, the negligent party typically is liable for any damages their negligence caused (assuming a legal defense does not apply). Just like with adults, the aim of awarding damages is to make the injured minor "whole" under the law. When dealing with serious personal injuries or death, of course, no amount of money can ever compensate someone or their family. Still, the only mechanism our civil legal system has to compensate an injured party is through the payment of money. So, the payment of money is how North Carolina law compensates for bodily injury and death to "balance the harm" incurred. The negligent party or their insurance company is responsible for paying these damages.

There are several types of potentially applicable damages, including those meant to reimburse past or future medical expenses, lost future earning capacity, pain and suffering, scarring or disfigurement, loss of use of part of the body, or the permanency associated with any continuing injuries. There are particular legal issues involved when damages are paid for the benefit of a minor, and some of those issues are discussed below.

## **Issues Unique to Minors' Personal Injury Claims**

When a minor is injured, there are specific legal issues that must be addressed. If a parent or guardian is responsible for paying the minor's medical expenses, the parent/guardian also has their own independent claim. The parent/guardian is entitled to reimbursement for any medical expenses before the minor turns 18 years old. Any claim for post-18 medical expenses, however, belongs to the minor. The minor also has their own claim for other damages, such as pain and suffering, scarring or disfigurement, loss of use of part of their body, lost earning capacity as an adult, or the permanency associated with any continuing injuries.

If a lawsuit is necessary, then the Court will appoint a "guardian ad litem" to prosecute the case on behalf of the minor. The GAL will ensure that the case is being pursued in the minor's best interest and that any settlement is fair and proper.

Any settlement of a minor's claim will require approval by the Court. This is so a judge can review the settlement and ensure it is in the minor's best interest. Any payments to the parents/guardians for medical expenses or other out-of-pocket costs can be paid to the parents/guardians at that time. However, payments made for the minor's own claims (pain and suffering, scarring/disfigurement, post-18 loss of earning capacity, post-18 medical bills, etc.) will be held by the Court until the minor turns 18. This is to ensure that the funds are protected and still available when the minor becomes an adult. There may be some other options for these funds—such as a "structured settlement"/annuity—that an attorney can explore. However, the funds still will have to be protected until the minor turns 18. A "special needs trust" may also be necessary based on various factors.

The statute of limitations (the time limit to bring a lawsuit) may also be different with minors, giving them time until after they turn 18 to file a lawsuit. However, this is not the case with all types of damages, and there can be other legal considerations that need to be carefully analyzed regarding legal time limits. Thus, as with all personal injury cases, the best course of action is to contact a skilled attorney as soon as possible if an injury occurs.

## **The Role of Contributory Negligence**

Contributory negligence also is different with minors. North Carolina is one of only a few states that continue to recognize the doctrine of "contributory negligence." That means that if the injured party negligently contributed to the incident in the slightest manner—even 1%—they cannot recover at all. There are exceptions to this rule, such as the doctrine of "last clear chance," or possibly where the other party is "grossly negligent," but those exceptions are somewhat rare.

Again, contributory negligence is applied differently with kids and other minors. If a child is under seven years old, they are absolutely incapable of contributory negligence. It does not matter what the child did—they cannot be deemed negligent by our legal system such that contributory negligence would bar their claim. Once a child turns seven, and before they turn 14, they are *presumed* to be incapable of contributory negligence. This presumption can be overcome if it is determined the child did not use the care that another child of their same age and capacity would have used. For instance, it might be possible for a defense attorney to establish that a 13-year-old child was contributorily negligent for not looking before crossing a busy road. Once a child reaches 14, and until they turn 18, the presumption flips. A child 14 years old or older is presumed to be capable of contributory negligence just like an adult. However, the presumption is rebuttable. If it can be shown that this particular child did not have sufficient knowledge, capacity, or experience to use reasonable care in the specific situation, then it may be that contributory negligence will not apply.

Thus, North Carolina follows the "rule of sevens": No contributory negligence for children under seven; a presumption against contributory negligence from seven before a child turns 14; then a presumption of having to use normal, reasonable care (and thus being capable of contributory negligence) until the child turns 18.

## **Conclusion**

When injuries to a minor happen as a result of another party's negligence, that negligent party is responsible for paying damages. Injuries to a kid or other minor are particularly difficult and heartbreaking. These cases almost always require an experienced, committed attorney to fight for the injured minor and guide their family through a challenging situation.

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