

From: Danny Varat <DannyVarat@scstatehouse.gov>
To: Catherine McNicollCatherineMcNicoll@scstatehouse.gov
Date: 6/12/2018 5:02:40 PM
Subject: Re: Marriage law

10-4

From: Catherine McNicoll
Sent: Tuesday, June 12, 2018 4:38 PM
To: Danny Varat
Subject: Marriage law

SECTION 20-1-250 allows a parent, relative, or guardian to give consent for a minor or at least sixteen to get married.

The statute does not have a clear limit to prohibit a 30 year old from marrying a 16 year old. Further, Criminal Sexual Conduct with a minor sets the age of consent at 16. 16-3-655

Further under 16-3-615, which outlines spousal sexual battery, a minor of 16 married to a person of 30 could be coerced into sex without it being sexual battery so long as it was non-violent. This is relevant to a situation where a 16 year old may be forced into the marriage by parents and without the spouse be without financial support. The 30 year would not be committing a crime to threaten to throw the 16 year old out if they do not engage in sexual acts.

SECTION 20-1-300. Issuance of license to unmarried female and male under eighteen years of age when female is pregnant or has borne a child.

Notwithstanding the provisions of Sections 20-1-250 to 20-1-290, a marriage license may be issued to an unmarried female and male under the age of eighteen years who could otherwise enter into a marital contract, if such female be pregnant or has borne a child, under the following conditions:

- (a) the fact of pregnancy or birth is established by the report or certificate of at least one duly licensed physician;
- (b) she and the putative father agree to marry;
- (c) written consent to the marriage is given by one of the parents of the female, or by a person standing in loco parentis, such as her guardian or the person with whom she resides, or, in the event of no such qualified person, with the consent of the superintendent of the department of social services of the county in which either party resides;
- (d) without regard to the age of the female and male; and
- (e) without any requirement for any further consent to the marriage of the male.

HISTORY: 1962 Code Section 20-24.5; 1962 (52) 1704; 1972 (57) 2382.

20-1-300 in combination with our sexual conduct with a minor statute (16-3-655) lowers the age at which a person could get married to 14, so long as the spouse was 18 years old or less.

Under these two statutes, it is less clear what would happen if someone were under 14 or over 18.

In theory, if someone in the marriage were under 14 or over 18, the pregnancy being clear evidence of sexual acts, then criminal sexual conduct with a minor would be implicated.

If a 13 year old attempted to marry a 17 year old under these statutes, the 17 year old would be guilty of criminal sexual conduct with a minor in the 2nd degree. Under the opening of 20-1-300 it appears that both actors need to be under 18 and under (d) there appears to be no other age requirement. I believe the criminal sexual conduct would

still trump the marriage law, but it could be argued that it does not.

If a 15 year old attempted to marry a 30 year old these statutes, the 30 year would be guilty of criminal sexual conduct with a minor in the 2nd degree. Under the opening of 20-1-300 it appears that both actors need to be under 18 and under (d) there appears to be no other age requirement, however the way (d) is drafted could create an ambiguity where you could argue that so long as one of the parties was under 18, then the statute applies. Again, I think that the criminal sexual conduct would trump, but it could be argued that it does not.

What is absolutely clear to me is that a 16 year old female that is pregnant could very easily find herself coerced into a marriage.

Best Regards,
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