

Bastardy ^[1]

Bastardy

by George Stevenson, 2006

Bastardy, as a legal term, designates the civil condition of a child born under illegitimate circumstances. Under English ^[2] common law ^[2], children born out of lawful wedlock ^[3] were classed as bastards. In the eyes of the law they had no parents, no kindred, and no ancestors. They were not, then, entitled to a surname ^[4] except such as they won for themselves by reputation, and they were heirs-at-law of no one. Although the early history of North Carolina furnishes occasional examples of illegitimate children who achieved fame and fortune, throughout the seventeenth and eighteenth centuries the great majority of them were apprenticed at a tender age to a master and condemned to a lowly existence.

In North Carolina, whose legal foundation was in common law, bastards ordinarily assumed the surnames of their birth mothers, but they otherwise suffered all of the common-law disabilities. Bastard children were thus disadvantaged from their birth. Bastardy proceedings were held to determine the probable paternity of an illegitimate child likely to become a charge on the public and to oblige the putative father to support the child. From as early as 1700, the mother of an illegitimate child could voluntarily appear before two justices of the peace ^[5] and name the father of her child in a sworn statement, or she could be summoned by them and interrogated as to the father. By force of the mother's sworn testimony, the man was usually adjudged the putative father and was compelled to enter into a bond with sureties, called a "bastardy bond," to support the child at a set amount. Or, if the man resisted the nomination, he could be bound over to a full session of the county court, but even there the matter was, for more than a century, summarily dealt with. Many a young man "went west" rather than submit to the proceedings.

In 1814 an amendment to the bastardy law made the mother's sworn testimony prima facie evidence rather than conclusive evidence, granted the putative father a trial by jury, and required the proceedings to be brought within three years of the child's birth. (An act of 1850 ^[6] strengthened the sworn testimony of the mother by making her evidence presumptive rather than prima facie.) Gradually the minimum age to which the child had to be supported was raised to 10 (the age stipulated by the bastardy act of 1933), then to 14 in 1937, and to 18 in 1951.

In 1917 the General Assembly ^[7] enacted a provision that automatically legitimated all children of parents who married each other either before or after the birth of the child. Legitimation by private act, by court order, and under the 1917 law entitled a child to the use of the father's surname and made him or her heir to, but not through, the father. By an act of 1955, legitimated children were made heirs-at-law to and through both mother and father, and were thus given complete families. Under the law, children born under illegitimate circumstances whose births are not legitimated by court order or by marriage of their birth parents remain without kindred and without ancestors.

Additional Resources:

Camin, Betty J., and Edwin A. Camin. *North Carolina bastardy bonds* ^[8]. Mount Airy, N.C.: B.J. and E.A. Camin. 1990. Read digitized version at: <https://digital.ncdcr.gov/Documents/Detail/north-carolina-bastardy-bonds/1229398?item=1231274> ^[9]

"NC Bastardy Bonds." Gaston County Public Library. 2021. <https://gastonlibrary.libguides.com/finding/famous-and-infamous-ancestor...> ^[10]

"Guilford County, NCGenWeb: Bastardy Bonds." Guilford NCGenWeb <https://www.ncgenweb.us/guilford/BastardyBonds.html> ^[11] (accessed October 15, 2012).

Subjects:

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Law and legal history ^[13]

Authors:

Stevenson, George, Jr. ^[14]

From:

Encyclopedia of North Carolina, University of North Carolina Press. ^[15]

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Links

^[1] <https://www.ncpedia.org/bastardy> ^[2] <https://www.ncpedia.org/common-law> ^[3] <https://www.ncpedia.org/marriage> ^[4] <https://www.ncpedia.org/personal-names> ^[5] <https://www.ncpedia.org/justices-peace> ^[6] <https://digital.ncdcr.gov/Documents/Detail/laws-of-the-state-of-north-carolina-passed-by-the-general-assembly-1850-1851/3889606?item=3894497> ^[7] <https://www.ncpedia.org/general-assembly> ^[8] <https://www.worldcat.org/oclc/23052129> ^[9] <https://digital.ncdcr.gov/Documents/Detail/north-carolina-bastardy-bonds/1229398?item=1231274> ^[10]

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