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## ARTICLE 1 OF THE CRC AND NEW YORK STATE LAW

*Alexandra R. Harrington\**

### INTRODUCTION

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.<sup>1</sup>

The Convention on the Rights of the Child (“CRC”) was adopted in 1989 by a unanimous vote in the United Nations General Assembly.<sup>2</sup> The CRC entered into force in September 1990<sup>3</sup> and was ratified by more states parties than members of the United Nations.<sup>4</sup> Currently, the only states parties which have not ratified the CRC are the United States and Somalia.<sup>5</sup> All of the provisions of the CRC are unique in and of themselves; however the key Articles which frame the CRC are Articles 1, 2, 3, 6 and 12. Article 1 explains the scope of the CRC by defining the age of majority for children.<sup>6</sup> Article 2 contains non-discrimination principles, which extend not only to the status of the child but also protect the child from discrimination based on the status of his or her parents.<sup>7</sup> Article 3 establishes the best interest of the child as a “primary concern” in the decision-making process involving a child.<sup>8</sup> Article 6 enshrines the child’s right to life,<sup>9</sup> survival, and development.<sup>10</sup>

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<sup>1</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, art. 1, available at <http://www2.ohcr.org/english/law/crc.htm#> [hereinafter CRC].

<sup>2</sup> See CRC, *supra* note 1, Preamble, ¶ 9.

<sup>3</sup> See United Nations Treaty Collection, Chapter IV Human Rights: 11, Convention on the Rights of the Child, available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> CRC, *supra* note 1, art. 1.

<sup>7</sup> *Id.* art. 2, ¶ 2.

<sup>8</sup> *Id.* art. 3, ¶ 1.

<sup>9</sup> CRC, *supra* note 1, art. 6, ¶ 1.

Lastly, Article 12 provides for the child's right to expression in matters that affect him or her.<sup>11</sup>

Although the United States has not ratified the CRC and New York has not adopted any of the CRC provisions, a comparison of the age-related provisions in the CRC and under New York State law is nevertheless an important and illustrative study. This article, which is part of a symposium edition examining the CRC and New York State law, will first examine both Article 1 and New York State law's definition of the age of majority for children. Second, this article will examine the age-based provisions of New York State law in order to determine how age is used throughout a variety of legal areas in New York State, ranging broadly from voting rights to employment to criminal culpability to licensing. All of these areas are connected in that they have very specific age-based requirements that are incoherent. This article asserts that this incoherency has both negative and positive aspects, some of which—such as New York's Labor Law—reflect the concept of the evolving capacity<sup>12</sup> of a child, which is similar to the provisions of the CRC, while others—such as New York's Penal Law—are contradictory to the CRC. Ultimately, this article concludes that the CRC offers a way to address the negative aspects of New York's age-based legal incoherency while maintaining the positive aspects of this incoherency.

### I. ARTICLE 1: THE AGE OF MAJORITY

Article 1 of the CRC defines those subject to the CRC as all individuals who are under age eighteen.<sup>13</sup> In doing so, Article 1 defines the subject of the CRC itself. Article 1 does not address the issue of when the life of a child begins and is inherently neutral on the pro-choice/pro-life issue.<sup>14</sup> Article 1 does provide for some derogation from the designated age of majority in instances where the age of majority is less than eighteen years old.<sup>15</sup> However, Article 1 does not allow for the age of majority used by a state to be more than eighteen years old.<sup>16</sup>

New York State law codifies the concept that the age of major-

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<sup>10</sup> *Id.* art. 6, ¶ 2.

<sup>11</sup> *Id.* art. 12, ¶ 1.

<sup>12</sup> As used in the CRC, the "evolving capacities" standard evaluates the cognitive and functional abilities of a child in order to determine his/her fitness to perform a certain function. *Id.* art. 5.

<sup>13</sup> *Id.* art. 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *See* CRC, *supra* note 1, art. 1.

ity for children is eighteen years of age.<sup>17</sup> This concept is central to the intent and provisions of the CRC.<sup>18</sup> To this end, New York recognizes the right of people over age eighteen to vote in state and local elections.<sup>19</sup> It makes age eighteen the age which a child can typically be bound by a contract; therefore, children under the age of eighteen are not bound by contracts, which ensures that children are protected from undertaking obligations they cannot understand.<sup>20</sup> New York also recognizes that, except in certain circumstances, parents are obligated to support their children at least until age twenty-one.<sup>21</sup>

Despite the specific age of majority provisions in New York, there is an overall lack of correlation between these provisions and many areas of New York State law. Unfortunately, in legal areas of vital importance to children (such as emancipation before the age of majority, education, employment law, criminal law as it applies to child victims and perpetrators, representation of a child in various legal proceedings, in-court testimony of children, military enlistment, consent to medical treatment, corporate involvement, marriage and sexual relations, the consumption, purchasing and selling of alcohol, and licensing in a variety of contexts) there is little uniformity in age provisions, which creates inconsistencies in the law. It should also be noted that there is a glaring inconsistency in the administration of the New York Human Rights Law, which protects New Yorkers against a variety of bases for discrimination.<sup>22</sup> Generally, the New York Human Rights Law prohibits age-based discrimination, among other categories of discrimination.<sup>23</sup> However, certain reports from the New York State Division on Human Rights—the governmental agency responsible for administering the provisions of the Human Rights Law—indicate the Division's position that the Human Rights Law only protects against age-based discrimination above age 18.<sup>24</sup>

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<sup>17</sup> N.Y. DOM. REL. LAW § 2 (McKinney 2006).

<sup>18</sup> See CRC, *supra* note 1, art. 1.

<sup>19</sup> N. Y. ELEC. LAW § 5-102(1) (McKinney 2006). See also U.S. CONST. amend. XXVI, § 1 (reducing the voting age for federal elections to age 18).

<sup>20</sup> See N.Y. GEN. OBLIG. LAW. § 3-101(1) (McKinney 2006).

<sup>21</sup> See N.Y. FAM. CT. ACT § 413(1)(a) (McKinney 2006).

<sup>22</sup> See N.Y. EXEC. LAW. § 290 (McKinney 2006).

<sup>23</sup> *Id.* § 296.

<sup>24</sup> See N.Y. STATE DIV. OF HUMAN RIGHTS, ANNUAL REPORT: FISCAL YEAR: 2005 – 2006 16 (2006) (stating that “[t]he Human Rights Law protects persons age 18 or older.”).

## II. EMANCIPATION BEFORE THE AGE OF MAJORITY

In certain situations, a New York court may declare a child to be emancipated, meaning that the child is free from parental supervision and control and may make his or her own decisions regarding him or herself, before attaining age eighteen.<sup>25</sup> The emancipation process is initiated in court and is not governed by statute; therefore, the court takes factors, such as the child's ability to care for himself/herself and the family's situation, into account rather than basing its decision upon the particular age of the child seeking emancipation.<sup>26</sup> Emancipation per se is not provided for in the CRC.<sup>27</sup> These provisions in New York law are an area in which New York expands protections for the rights of the child, whereas the CRC is silent on the issue.

## III. EDUCATION

Children in New York are required to attend school from ages six to sixteen.<sup>28</sup> There is no level of education students must complete under the provisions of the New York State Education Law; rather, compulsory education simply ends at age sixteen regardless of the education level completed.<sup>29</sup> There is an exception for children between the ages of fourteen and sixteen, who are allowed to attend school only twenty hours a week if they possess a valid employment certificate.<sup>30</sup> In the event that a child is seventeen and unemployed, the child may be required by the state to continue attending school.<sup>31</sup>

These provisions contrast directly with the education provisions of the CRC, which stress the child's right to education and do not attempt to define that right by age outside of the CRC's age of majority provision in Article 1.<sup>32</sup> Specifically, the CRC requires that children be provided with free primary school education, various forms of secondary and/or vocational education, accessible high school level education for all children, and a system of measures to stop children from dropping out of school before the completion of their studies.<sup>33</sup>

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<sup>25</sup> See N.Y. JUR. 2D *Domestic Relations* § 578 (2007).

<sup>26</sup> See *id.*

<sup>27</sup> See generally CRC, *supra*, note 1.

<sup>28</sup> N.Y. EDUC. LAW § 3205(1)(a) (McKinney 2006).

<sup>29</sup> See *id.*

<sup>30</sup> *Id.* § 3205(2)(b).

<sup>31</sup> *Id.*

<sup>32</sup> See CRC, *supra* note 1, art. 28.

<sup>33</sup> See *id.*

## IV. EMPLOYMENT

Except in certain limited instances, New York bars employment of children under the age of fourteen.<sup>34</sup> Between ages fourteen and fifteen, children may obtain paperwork from the State, which allows them to work when they are not required to be in school, for example, during summer vacation periods.<sup>35</sup> However, at no point is any child within this age group to be employed in a factory setting.<sup>36</sup> There are certain categories of employment, such as working as a newspaper carrier and working as a child performer or model, which New York classifies separately.<sup>37</sup> There is also a slight exception for children between age fourteen and fifteen working during the school day when that work is performed at their school cafeteria.<sup>38</sup> Children age sixteen and seventeen are allowed to work in a number of accepted areas, provided that they obtain the appropriate certificates from the State and are not employed in violation of the required education law provisions.<sup>39</sup> These restrictions do not apply to children age sixteen or older who are attending a university or other institution of higher education.<sup>40</sup> Regardless of age, New York State law provides an extensive list of employment from which children are expressly barred, in addition to the generic term "factory work."<sup>41</sup>

These provisions are similar to the requirements of the CRC that children are protected from dangerous and exploitative labor and that States provide for restrictions on the hours and conditions in which a child may work.<sup>42</sup>

## V. CRIMINAL LAWS

As a general rule, the age for criminal culpability in New York is age sixteen.<sup>43</sup> Infancy is classified as a defense under New York State law.<sup>44</sup> However, in certain instances involving especially violent or deviant felonies, criminal culpability under New York State

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<sup>34</sup> N.Y. LAB. LAW § 130(1) (McKinney 2006).

<sup>35</sup> N.Y. LAB. LAW § 131(2).

<sup>36</sup> *Id.*

<sup>37</sup> *See id.* §§ 130(2)(b), 131(6)(d).

<sup>38</sup> *Id.* § 131(6)(g).

<sup>39</sup> *Id.* § 132(2).

<sup>40</sup> *Id.* § 132(3)(a).

<sup>41</sup> *See id.* § 133(2).

<sup>42</sup> *See CRC, supra* note 1, art. 32.

<sup>43</sup> N.Y. PENAL LAW § 30.00(1) (McKinney 2006).

<sup>44</sup> *Id.* § 30.00(3).

law may exist for children as young as thirteen.<sup>45</sup> New York State law grades penalties for many crimes, especially sexual crimes, based on the age of the victim if the victim is under the age of majority.<sup>46</sup> Several of these offenses are also dependent upon the age of the perpetrator relative to the age of the victim at the time the crime was committed.<sup>47</sup> There are separate proceedings for declaring a minor a Juvenile Offender<sup>48</sup> or a Youthful Offender,<sup>49</sup> each of which carry a different impact in terms of sentencing and information placed on one's criminal record.<sup>50</sup> Even where a perpetrator is under the age of majority, there are certain crimes where it is not possible to have one's sentence adjusted based on one's age.<sup>51</sup> These New York State laws do not provide the same broad set of rights and duties to a child and to the State, once a child is in the penal system, as those mandated by the CRC.<sup>52</sup>

## VI. REPRESENTATION OF A CHILD IN VARIOUS LEGAL PROCEEDINGS

When a child is involved in any type of litigation or court proceeding, the court, *sua sponte* or at the request of any party, may appoint a guardian ad litem to represent the child's interest in the proceeding.<sup>53</sup> Once the child is over fourteen years old, he or she

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<sup>45</sup> See *id.* (providing that a person thirteen, fourteen or fifteen years of age is criminally responsible for violent and deviant crimes).

<sup>46</sup> See, e.g., N.Y. PENAL LAW §§ 230.00–230.35 (establishing criminal liability for those who patronize prostitutes and encourage or assist in prostitution based on the age of the prostitute); *id.* §§ 130.05–130.96 (providing the age-based requirements for criminal liability due to statutory rape, various classes of sexual abuse of a minor, and “predatory sexual assault against a child”).

<sup>47</sup> See generally *id.* §§ 130.05–130.96.

<sup>48</sup> See N.Y. PENAL LAW § 10.00(18) (defining as “Juvenile Offender” as: (1) a 13 year old who is “criminally responsible” for 2nd degree murder or any “sexually motivated felony”; and (2) a 14 or 15 year old who is “criminally responsible” for any of the following: 2nd degree murder; kidnapping in the 1st degree; arson in the 1st degree; manslaughter in the 1st degree; rape in the 1st degree; criminal sexual act in the 1st degree; aggravated sexual assault in the 1st degree; burglary in the 1st degree; arson in the 1st degree; robbery in the 1st degree; robbery in the 2nd degree; possession of a machine gun or firearm on school grounds; attempt to commit murder in the 2nd kidnapping in the 1st, “or such conduct as a sexually motivated felony”), N.Y. PENAL LAW § 70.05 (setting forth the changes to a sentence resulting from a finding of juvenile offender status).

<sup>49</sup> See N.Y. CRIM. PROC. LAW § 720.20 (McKinney 2006) (setting forth the basic parameters of the Youthful Offender classification); N.Y. PENAL LAW § 60.02 (setting forth the sentencing procedure used for a Youthful Offender).

<sup>50</sup> See N.Y. CRIM. PROC. LAW §§ 720.20, 60.02 (McKinney 2006)

<sup>51</sup> See N.Y. PENAL LAW § 30.00(2).

<sup>52</sup> See CRC, *supra* note 1, art. 37.

<sup>53</sup> See N.Y. C.P.L.R. 1202 (McKinney 2006).

may request a guardian ad litem directly from the court.<sup>54</sup> The guardian ad litem's representation is for the duration of the particular legal proceeding.<sup>55</sup> When a child turns eighteen, the child must consent to continued representation by the guardian ad litem; if this consent is not given, the child is free to decide on alternative representation.<sup>56</sup> Among the many areas of law in which a guardian is appointed, a guardian is most needed in a proceeding to change the name of a child under the age of majority.<sup>57</sup> These laws do not allow for the use of the evolving capacities element, which is a part of the rights guaranteed to children under the CRC.<sup>58</sup>

#### VII. IN COURT TESTIMONY BY CHILDREN

Generally, New York laws and courts do not create an age bar below which a child cannot testify.<sup>59</sup> New York State law does, however, create an age distinction in regards to when a child witness can and cannot give testimony under oath.<sup>60</sup> Children under age nine are typically not required to be sworn-in in order to testify in open court unless the court determines that the child understands the meaning of giving evidence under oath.<sup>61</sup> Witnesses who are over nine years old are required to testify under oath unless the court determines that they are barred from doing so due to a defect or infirmity.<sup>62</sup> By evaluating the fitness of a child to testify rather than using a blanket age rule for the admission of testimony, these New York rules regarding child testimony reflect the concept of evolving capacities for court appearance and statements which is a part of the CRC provisions.<sup>63</sup>

#### VIII. MILITARY ENLISTMENT

Like many states in the United States, New York maintains its own military forces in the form of the National Guard and several state militia and navy entities.<sup>64</sup> State law requires that potential

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<sup>54</sup> *Id.*

<sup>55</sup> See DAVID SIEGEL, NEW YORK PRACTICE § 198 (4th ed. 2005).

<sup>56</sup> *Id.*

<sup>57</sup> See N.Y. CIV. RIGHTS LAW § 60 (McKinney 2006).

<sup>58</sup> See CRC, *supra* note 1, art. 5; see also *id.* art. 14, ¶ 2.

<sup>59</sup> N.Y. CRIM. PROC. LAW § 60.20 (McKinney 2006).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> CRC, *supra* note 1, art. 5; see also *id.* art. 14, ¶ 2.

<sup>64</sup> See generally N.Y. MIL. LAW (McKinney 2006).

entrants into the National Guard or state military entities meet the age limits established by the federal government for entry into the federal military forces.<sup>65</sup> The United States, in turn, requires that a person be age eighteen to enter the military, with an exception for those aged seventeen who enter the military with parental consent.<sup>66</sup>

The New York State and federal laws are in direct contrast to the terms of the CRC, which allow for military participation starting at age fifteen,<sup>67</sup> and the terms of the Optional Protocol to the Convention, which raise the minimum age for military enlistment to age eighteen.<sup>68</sup>

#### IX. CONSENT TO MEDICAL TREATMENT

As a rule, New York State requires that parents retain control over medical treatment decisions for their children until the child reaches age eighteen.<sup>69</sup> However, there is an exception where a teenage girl is pregnant. In that instance, the child has control over prenatal healthcare decisions.<sup>70</sup> Once a child of either gender becomes a parent, he or she becomes emancipated for the purposes of making decisions regarding his or her own medical care.<sup>71</sup> At this point, the teenage parent is also given control over medical decisionmaking for his or her child.<sup>72</sup>

These provisions contrast with those provisions of the CRC addressing the child's right to healthcare and to be involved in the healthcare decision-making process.<sup>73</sup> The CRC uses the evolving capacities standard to allow children to have increasing involve-

<sup>65</sup> See *id.* § 90.

<sup>66</sup> See UNITED STATES, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html>.

<sup>67</sup> CRC, *supra* note 1, art. 38, ¶ 3 (“States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.”).

<sup>68</sup> See Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res. 54/263, art. 1, U.N. Doc. A/RES/54/263, available at <http://www.crin.org/Law/instrument.asp?InstID=1003> (Feb. 12, 2002) (“States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.”); *id.* art. 2 (“States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.”).

<sup>69</sup> See N.Y. PUB. HEALTH LAW § 2504 (McKinney 2006).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> CRC, *supra* note 1, art. 24.

ment with their medical treatment and choices as they advance in age.<sup>74</sup>

#### X. CORPORATE INVOLVEMENT

Generally, children may not be involved in the creation or governance of a corporation because they lack capacity until they reach the age of majority.<sup>75</sup> There are some provisions of New York law which protect the rights of children as corporate shareholders. However, these provisions also aim to protect corporations from liability based on the activities of infant holders of stocks and shares.<sup>76</sup> The CRC is generally silent on the issue of child corporate involvement.<sup>77</sup>

#### XI. MARRIAGE AND SEXUAL RELATIONS

The age of sexual consent in New York is seventeen years old, except where a child is married and under age seventeen.<sup>78</sup> Marriage under age fourteen is barred in New York.<sup>79</sup> The official marriage age in New York is eighteen, however persons between age sixteen and eighteen may marry with the consent of a parent or other legal guardian.<sup>80</sup> Persons between ages fourteen and fifteen may marry with the consent of a parent, other legal guardian, or court.<sup>81</sup> Where a person under age eighteen is married, the marriage is not void, but is voidable.<sup>82</sup> Indeed, there is support for a reading of New York State law which would allow the marriages of children as young as eleven to be upheld by courts.<sup>83</sup> Although New York courts will generally recognize valid foreign marriages using principles of comity, the courts do have the ability to deny recognition to marriages which violate New York State public policy.<sup>84</sup> Since this is a subjective determination, the issue of whether a foreign child-marriage would be recognized by a New York court is uncertain. These provisions are in contrast to the provisions of the CRC in that they allow for marriages to occur and to be upheld

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<sup>74</sup> *Id.* art. 5.

<sup>75</sup> *See* N.Y. BUS. CORP. LAW § 401 (McKinney 2006).

<sup>76</sup> *Id.* § 625.

<sup>77</sup> *See generally* CRC, *supra* note 1.

<sup>78</sup> N.Y. PENAL LAW §§ 130.05, 130.25 (McKinney 2006).

<sup>79</sup> N.Y. DOM. REL. LAW § 15-a (McKinney 2006).

<sup>80</sup> *Id.* §§ 7, 15(2).

<sup>81</sup> *Id.* § 15(3).

<sup>82</sup> *Id.* § 140.

<sup>83</sup> *See id.* § 15-a.

<sup>84</sup> *See* N.Y. DOM. REL. LAW § 7 (McKinney 2006).

when at least one party is below the age of majority, while the CRC has strict limitations on the age below which a child may not marry.<sup>85</sup>

## XII. CONSUMPTION, PURCHASE AND SALE OF ALCOHOL

Employers may not employ children under age eighteen in situations where they would be exposed to the consumption or sale of alcohol, except in a limited number of situations where the child is under adult supervision.<sup>86</sup> There are also extensive requirements for a child performer who wishes to perform in a venue where alcohol is available.<sup>87</sup> It is illegal for a person under age twenty-one to purchase alcohol in New York State.<sup>88</sup> It is also illegal for a merchant to sell alcohol to persons under age twenty-one.<sup>89</sup> There is no such provision in the CRC itself, outside of the prohibitions on hazardous child labor.<sup>90</sup> These provisions in New York law illustrate where the CRC fails to positively impact the rights of the child.

## XIII. LICENSING

New York State allows children under the age of majority to obtain licenses to hunt and fish, depending on the specific type of activity in which the child wishes to engage.<sup>91</sup> Children under the age of majority may also obtain boating licenses,<sup>92</sup> and may obtain licenses to drive automobiles with certain restrictions and requirements based on age.<sup>93</sup> However, no one may obtain a pistol permit in New York unless they are at least twenty-one years old.<sup>94</sup> Additionally, children under the age of majority may be eligible to become professional and volunteer firefighters and to serve as Emergency Medical Services technicians.<sup>95</sup> These licensing requirements take into account the evolving capacities element of

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<sup>85</sup> See CRC, *supra* note 1, art. 1 (establishing the age of majority as age eighteen).

<sup>86</sup> N.Y. ALCO. BEV. CONT. LAW § 100(2-a) (McKinney 2006).

<sup>87</sup> *Id.* § 100.2-b.

<sup>88</sup> *Id.* § 65-b.

<sup>89</sup> *Id.*

<sup>90</sup> See generally CRC, *supra* note 1.

<sup>91</sup> See N.Y. ENVTL. CONSERV. LAW §§ 11-0701, 11-0929 (McKinney 2006).

<sup>92</sup> New York State Office of Parks, Recreation, Boating Education, <http://nys.parks.state.ny.us/recreation/boating/frequently-asked-questions.aspx> (last visited Apr. 6, 2010).

<sup>93</sup> See N.Y. VEH. & TRAF. LAW §§ 501-b, 503-a (McKinney 2006).

<sup>94</sup> N.Y. PENAL LAW § 400.00 (McKinney 2006).

<sup>95</sup> See New York State Department of State, How to Become a Firefighter?, <http://www.dos.state.ny.us/fire/firehowto.html> (last visited Apr. 13, 2009).

the CRC by gradually allowing children to engage in adult acts, although the CRC does not explicitly address the issue of licensing itself.<sup>96</sup>

#### XIV. CONCLUSION

The CRC sets the age of majority for children as age eighteen unless a state specifically chooses a lower age.<sup>97</sup> It does not allow for an age of majority higher than age twenty-one and does not take a stand on when life itself begins.<sup>98</sup> The age of majority provision defines the class of people who are covered by the protections of the CRC.<sup>99</sup> Many of New York's laws addressing the age at which children enjoy certain rights and privileges and are deemed to be accountable to society for their actions predate the CRC. However, children in New York were afforded some of the age-based protections sought by the CRC prior to the enactment of the CRC. It is important to note the areas in which there is a serious disparity between the provisions of the CRC and New York State law.

Overall, New York State's child employment policies are in-line with the evolving capacities standard of the Convention in that they gradually allow children into the workplace—especially children who might have economic issues which necessitate employment while still in school—while also preserving the rights of children to attend school and to be shielded from forms of employment which pose threats to their short and long-term health. These employment policies are an area in which New York uses a standard for children which approaches the evolving capacities standard used in the CRC.<sup>100</sup> Other areas which use a standard similar to evolving capacities are: criminal law, in-court testimony by children, marriage, and obtaining certain licenses, such as driver's licenses.<sup>101</sup> In other areas, however, New York strictly applies its age of majority standard, such as children's legal representation, consent to medical treatment, and corporate involvement.<sup>102</sup> New York uses an under-eighteen standard for leaving school and for sexual relations, and an over-eighteen standard for the consumption, purchase, and sale of alcohol gener-

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<sup>96</sup> See generally CRC, *supra* note 1.

<sup>97</sup> *Id.* art. 1.

<sup>98</sup> *Id.*

<sup>99</sup> See *id.*

<sup>100</sup> See *supra* Section IV.

<sup>101</sup> See *supra* Sections V, VII, XI, XIII.

<sup>102</sup> See *supra* Sections VI, IX, X.

ally.<sup>103</sup> It should be noted that the twenty-one drinking age is a result of federal funding initiatives that tie highway funding to the use of age twenty-one as a state's legal drinking age.<sup>104</sup>

Thus, New York's age laws in regards to children are already in compliance with some provisions of the CRC and in direct conflict with other provisions. Even where there is a direct conflict between the CRC's age of majority provision and New York State law, this conflict is typically reconcilable under the CRC's use of evolving capacities, as seen in the employment law context. However, in some instances, such as the age-based standards used to determine eligibility for Juvenile Delinquent or Youthful Offender status, New York law is in direct contradiction to the CRC because it does not take into account the best interests of the child or the child's evolving capacities. Overall, while the CRC might first appear to be antithetical to the established laws of New York State, a closer reading of the CRC and New York State law together reveals that they do not exist in direct opposition to each other.

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<sup>103</sup> See *supra* Sections III, XI, XII.

<sup>104</sup> See 23 U.S.C. § 410 (2008).