

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 93
Second Edition Engrossed 3/23/89

Short Title: Consent for Minor's Abortion.

(Public)

Sponsors: Representatives Stam; Abernathy, Albertson, Anderson, Arnold, Balmer, Barbee, Beall, Bowen, Bowie, Bowman, Brawley, Brown, Brubaker, Buchanan, Chapin, Church, Creech, Cromer, Culp, Dawkins, Decker, Devane, Dickson, Diggs, Esposito, L. Etheridge, B. Ethridge, Flaherty, Foster, Gardner, Grady, Grimmer, Hall, Hege, Holmes, Howard, Huffman, Hurley, Isenhower, Jones, Justus, Kimsey, Lail, Ligon, Lilley, Lineberry, Loflin, Lutz, Mills, Perdue, Pope, Privette, Redwine, Rhyne, Robinson, Sizemore, Tallent, Tart, Walker, Warner, Weatherly, P. Wilson, W. Wilson, Wood, and Woodard.

Referred to: Judiciary.

January 26, 1989

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PARENTAL OR JUDICIAL CONSENT FOR UNEMANCIPATED MINOR'S ABORTION.

The General Assembly of North Carolina enacts:

Section 1. Article 1A of Chapter 90 of the General Statutes is amended by designating all the existing language as "Part 1.", and by adding a new Part to read:

"PART 2.

"PARENTAL OR JUDICIAL CONSENT FOR ABORTION.

"§ 90-21.6. Definitions.

For the purposes of Part 2 only of this Article, unless the context clearly requires otherwise:

(a) 'Unemancipated minor' means any person under the age of 18 who has not been married or has not been emancipated pursuant to Article 56 of Chapter 7A of the General Statutes.

(b) 'Abortion' means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a woman known to be

1 pregnant for reasons other than to increase the probability of a live birth, to preserve the
2 life or health of the child or mother after live birth, or to remove a dead fetus.

3 **"§ 90-21.7. Parental consent required.**

4 (a) No physician licensed to practice medicine in North Carolina shall perform
5 an abortion upon an unemancipated minor unless he or his agent or another physician or
6 his agent, first obtains the written consent of the minor and of:

- 7 (1) A parent with custody of the minor;
- 8 (2) The legal guardian of the minor; or
- 9 (3) A parent with whom the minor is living.

10 (b) The pregnant minor may petition, on her own behalf or by guardian **ad litem**,
11 the district court judge assigned to the juvenile proceedings in the district court where
12 the minor resides or where she is physically present for a waiver of the parental consent
13 requirement if:

- 14 (1) Neither of the parents nor the legal guardian is available to the
15 physician performing the abortion or his agent or the referring
16 physician or his agent within a reasonable time or manner;
- 17 (2) All of the persons from whom consent must be obtained pursuant to
18 this section refuse to consent to the performance of an abortion; or
- 19 (3) The minor elects not to seek consent of the person from whom consent
20 is required.

21 **"§ 90-21.8. Procedure for waiver of parental consent.**

22 (a) The requirements and procedures under Part 2 of this Article are available
23 and apply to unemancipated minors seeking treatment in this State.

24 (b) The court shall ensure that the minor or her guardian **ad litem** is given
25 assistance in preparing and filing the petition and shall ensure that the minor's identity is
26 kept confidential.

27 (c) The minor may participate in proceedings in the court on her own behalf or
28 through a guardian **ad litem**. The court shall advise her that she has a right to court
29 appointed counsel and shall provide her with counsel upon her request.

30 (d) Court proceedings under this section shall be confidential and shall be given
31 the precedence over other pending matters necessary to ensure that the court may reach
32 a decision promptly. In no case shall the court fail to rule within seven days of the time
33 of filing the application. This time limitation may be extended at the request of the
34 minor.

35 (e) The parental consent requirement shall be waived if the court finds either:

- 36 (1) That the minor is mature and well-informed enough to make the
37 abortion decision on her own; or
- 38 (2) That it would be in the minor's best interests that parental consent not
39 be required; or
- 40 (3) That the minor is a victim of felonious incest under G.S. 14-178.

41 (f) The court shall make written findings of fact and conclusions of law
42 supporting its decision and shall order that a confidential record of the evidence be
43 maintained. If the court finds that the minor has been a victim of incest, whether

1 felonious or misdemeanor, it shall advise the Director of the Department of Social
2 Services of its findings for further action pursuant to Article 44 of Chapter 7A.

3 (g) If the female petitioner so requests in her petition, no summons or other
4 notice may be served upon the parents, guardian, or custodian of the minor female.

5 (h) No court costs shall be required of any minor who avails herself of the
6 procedures provided by this section.

7 **"§ 90-21.9. Medical emergency exception.**

8 The requirements of parental consent prescribed by G.S. 90-21.7(a) shall not
9 apply when, in the best medical judgment of the physician based on the facts of the case
10 before him, a medical emergency exists that so complicates the pregnancy as to require
11 an immediate abortion, or when the conditions prescribed by G.S. 90-21.1(4) are met.

12 **"§ 90-21.10. Penalty.**

13 Any person who intentionally performs an abortion with knowledge that, or with
14 reckless disregard as to whether, the person upon whom the abortion is to be performed
15 is an unemancipated minor, and who intentionally or knowingly fails to conform to any
16 requirement of Part 2 of this Article shall be guilty of a misdemeanor."

17 Sec. 2. Appeals. An expedited confidential appeal is available to any
18 unemancipated minor from the decision of the district court. Because time may be of
19 the essence regarding the performance of the abortion, the Supreme Court of North
20 Carolina is respectfully requested to promulgate rules to ensure that appeals under Part
21 2 of this Article are handled in an expeditious and confidential manner.

22 Sec. 3. G.S. 7A-523(a) is amended by adding a subdivision to read:

23 "(7) Proceedings involving judicial consent for an abortion on an unemancipated
24 minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes."

25 Sec. 4. G.S. 7A-451(a) is amended by adding a subdivision to read:

26 "(16) A proceeding involving judicial consent for an abortion on an unemancipated
27 minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes. G.S. 7A-
28 450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding."

29 Sec. 5. G.S. 7A-491 reads as rewritten:

30 **"§ 7A-491. Conflict of interest or impracticality of implementation.**

31 If a conflict of interest prohibits a local program from providing representation to an
32 abused, neglected, ~~or dependent~~ dependent, or pregnant juvenile, the court may appoint
33 any member of the district bar to represent said juvenile. If the Administrative Office of
34 the Courts determines that within a particular district court the implementation of a local
35 program is impractical, or that an alternative plan meets the conditions of G.S. 7A-492,
36 the Administrative Office of the Courts shall waive the establishment of the program
37 within the district."

38 Sec. 6. G.S. 7A-489 reads as rewritten:

39 **"§ 7A-489. Office of Guardian Ad Litem Services established.**

40 There is established within the Administrative Office of the Courts an Office of
41 Guardian Ad Litem Services to provide services in accordance with G.S. 7A-586 to
42 abused, neglected, ~~or dependent~~ dependent, or pregnant juveniles involved in judicial
43 proceedings, and to assure that all participants in these proceedings are adequately
44 trained to carry out their responsibilities. Beginning on July 15, 1983, and ending July 1,

1 1987, the Administrative Office of the Courts shall establish in phases a statewide
2 guardian **ad litem** program comprised of local programs to be established in all district
3 court districts of the State. Each local program shall consist of volunteer guardians **ad**
4 **litem**, at least one program attorney, a program coordinator who is a paid State
5 employee, and such clerical staff as the Administrative Office of the Courts in
6 consultation with the local program deems necessary. The Administrative Office of the
7 Courts shall promulgate rules and regulations necessary and appropriate for the
8 administration of the program.”

9 Sec. 7. G.S.7A-586 reads as rewritten:

10 "**§ 7A-586. Appointment and duties of guardian ad litem.**

11 When in a petition a juvenile is alleged to be ~~abused or neglected, abused, neglected,~~
12 or pregnant (if the pregnant juvenile has requested appointment of a guardian **ad litem**),
13 the judge shall appoint a guardian **ad litem** to represent the juvenile. When a juvenile is
14 alleged to be dependent, the judge may appoint a guardian **ad litem** to represent the
15 juvenile. The appointment shall be made pursuant to the program established by Article
16 39 of this Chapter unless representation is otherwise provided pursuant to G.S. 7A-491
17 or G.S. 7A-492. In every case where a nonattorney is appointed as a guardian **ad litem**,
18 an attorney shall be appointed in the case in order to assure protection of the child's
19 legal rights within the proceeding. The duties of the guardian **ad litem** shall be to make
20 an investigation to determine the facts, the needs of the juvenile, and the available
21 resources within the family and community to meet those needs; to facilitate, when
22 appropriate, the settlement of disputed issues; to explore options with the judge at the
23 dispositional hearing; and to protect and promote the best interest of the juvenile until
24 formally relieved of the responsibility by the judge.

25 The judge may order the Department of Social Services or the guardian **ad litem** to
26 conduct follow-up investigations to insure that the orders of the court are being properly
27 executed and to report to the court when the needs of the juvenile are not being met. The
28 judge may also authorize the guardian **ad litem** to accompany the juvenile to court in
29 any criminal action wherein he may be called on to testify in a matter relating to abuse.

30 The judge may grant the guardian **ad litem** the authority to demand any information
31 or reports whether or not confidential, that may in the guardian **ad litem's** opinion be
32 relevant to the case. Neither the physician-patient privilege nor the husband-wife
33 privilege may be invoked to prevent the guardian **ad litem** and the court from obtaining
34 such information. The confidentiality of the information or reports shall be respected by
35 the guardian **ad litem** and no disclosure of any information or reports shall be made to
36 anyone except by order of the judge."

37 Sec. 8. This act shall become effective October 1, 1989.