

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 847

Short Title: Amend Laws Re: Medical Treatment for Minors. (Public)

Sponsors: Representative Jordan (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Health, if favorable, Judiciary II.

April 15, 2015

A BILL TO BE ENTITLED

AN ACT PROTECTING PARENTS FROM REPORTS OF ABUSE OR NEGLECT BASED SOLELY ON A DECISION TO FOLLOW TREATMENT RECOMMENDED BY A HEALTH CARE PROVIDER OR MENTAL HEALTH CARE PROVIDER; AND ELIMINATING CERTAIN EXCEPTIONS FOR PARENTAL CONSENT FOR MEDICAL TREATMENT OF UNEMANCIPATED MINORS UNDER THE LAWS PERTAINING TO THE PRACTICE OF MEDICINE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-301 is amended by adding a new subsection to read:

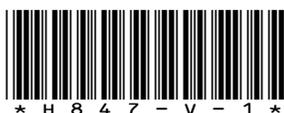
"(d) No person or institution shall file a report of abuse or neglect under this section based solely on the decision of a parent or legal guardian to follow treatment recommended by a licensed health care provider or licensed provider of mental health services. A parent or legal guardian has the right to follow the advice and treatment plan of a licensed health care provider or a licensed provider of mental health services over a contrary opinion or recommended treatment plan of another licensed health care provider or licensed provider of mental health services if the decision does not involve an immediate, life-threatening situation. Even in the case of an immediate, life-threatening situation, the decision of the parent or legal guardian to follow the advice or treatment plan of a licensed health care provider or a licensed provider of mental health services shall not be overridden unless there is clear and convincing evidence that warrants a different decision."

SECTION 2. G.S. 90-21.5 reads as rewritten:

"§ 90-21.5. Minor's consent sufficient for certain medical health services.

~~(a) Any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under G.S. 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance. This section does not authorize the inducing of an abortion, performance of a sterilization operation, or admission to a 24-hour facility licensed under Article 2 of Chapter 122C of the General Statutes except as provided in G.S. 122C-223. This section does not prohibit the admission of a minor to a treatment facility upon his own written application in an emergency situation as authorized by G.S. 122C-223.~~

(a1) Except as otherwise provided by law, no person, corporation, association, organization, State-supported institution, or individual employed by any of these entities shall



1 perform any of the following acts without first obtaining the notarized written consent of the
2 parent or legal guardian of the minor:

3 (1) Procure, solicit to perform, arrange for the performance of, or perform a
4 surgical procedure on a minor.

5 (2) Perform a physical examination of a minor.

6 (3) Prescribe any prescription drug for the treatment of a minor.

7 (a2) A hospital or medical center shall not permit a surgical procedure to be performed
8 upon a minor in any of its facilities without first obtaining the notarized written consent of the
9 parent or legal guardian of the minor.

10 (a3) The provisions of this section do not apply upon a determination of any of the
11 following by a physician licensed to practice medicine in North Carolina:

12 (1) A medical emergency exists and it is necessary to perform a surgical
13 procedure on the minor in order to treat that medical emergency.

14 (2) The minor is in need of treatment for substance abuse.

15 (3) Treatment is necessary to save the life of the minor, and reasonable efforts to
16 contact the parent or legal guardian of the minor have been unsuccessful.

17 (a4) A person who violates a provision of this section is guilty of an unclassified
18 misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000), or
19 imprisonment of not more than one year, or both.

20 (b) Any minor who is emancipated may consent to any medical treatment, dental and
21 health services for himself or for his child."

22 **SECTION 3.** The title of Part 2 of Article 1A of Chapter 90 of the General Statutes
23 reads as rewritten:

24 "Part 2. Parental or Judicial Consent for ~~Abortion~~. Abortion, Treatment for Sexually
25 Transmitted Diseases, Abuse of Controlled Substances or Alcohol, Mental Illness, and
26 Pregnancy."

27 **SECTION 4.** G.S. 90-21.7 reads as rewritten:

28 "**§ 90-21.7. Parental consent required.**

29 (a) No physician licensed to practice medicine in North Carolina shall perform an
30 abortion upon an unemancipated minor unless the physician or agent thereof or another
31 physician or agent thereof first obtains the written consent of the minor and ~~of~~ the notarized
32 written consent of any of the following:

33 (1) A parent with custody of the ~~minor~~; ~~or~~ minor.

34 (2) The legal guardian or legal custodian of the ~~minor~~; ~~or~~ minor.

35 (3) A parent with whom the minor is ~~living~~; ~~or~~ living.

36 (4) A grandparent with whom the minor has been living for at least six months
37 immediately preceding the date of the minor's written consent.

38 (a1) Except as prohibited by federal law, unless a parent or legal guardian or legal
39 custodian of an unemancipated minor is present with the unemancipated minor and gives
40 consent, no health care provider duly licensed in the State of North Carolina, or agent thereof,
41 shall provide health care services for the prevention, diagnosis, and treatment of (i) sexually
42 transmitted diseases, including Human Immunodeficiency Virus/Acquired Immune Deficiency
43 Syndrome, (ii) abuse of controlled substances or alcohol, (iii) mental illness, or (iv) pregnancy
44 unless the health care provider or agent thereof, or another health care provider or agent
45 thereof, first obtains the written consent of the minor and the notarized written consent of any
46 one of the following:

47 (1) A parent with custody of the minor.

48 (2) The legal guardian or legal custodian of the minor.

49 (3) A parent with whom the minor is living.

50 (4) A grandparent with whom the minor has been living for at least six months
51 immediately preceding the date of the minor's written consent.

1 (b) The ~~pregnant~~ minor may petition, on his or her own behalf or by guardian ad litem,
2 the district court judge assigned to the juvenile proceedings in the district court where the
3 minor resides or where ~~she~~ the minor is physically present for a waiver of the parental consent
4 requirement ~~if~~ if one of the following is true:

- 5 (1) None of the persons from whom consent must be obtained pursuant to this
6 section is available to the physician performing the abortion or providing
7 health care services for the prevention, diagnosis, and treatment of (i)
8 sexually transmitted diseases, including Human Immunodeficiency
9 Virus/Acquired Immune Deficiency Syndrome, (ii) abuse of controlled
10 substances or alcohol, (iii) mental illness, or (iv) pregnancy or to the
11 physician's agent or the referring physician or the agent thereof within a
12 reasonable time or ~~manner; or~~ manner.
- 13 (2) All of the persons from whom consent must be obtained pursuant to this
14 section refuse to consent to the performance of an ~~abortion; or~~ abortion or the
15 provision of health care services as described in subdivision (1) of this
16 section.
- 17 (3) The minor elects not to seek consent of the person from whom consent is
18 required."

19 **SECTION 5.** G.S. 90-21.8 reads as rewritten:

20 **"§ 90-21.8. Procedure for waiver of parental consent.**

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

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

26 (c) The minor may participate in proceedings in the court on his or her own behalf or
27 through a guardian ad litem. The court shall advise ~~her that she has~~ the minor of the right to
28 appointed counsel, and counsel shall be provided upon ~~her~~ request in accordance with rules
29 adopted by the Office of Indigent Defense Services.

30 (d) Court proceedings under this section shall be confidential and shall be given
31 precedence over other pending matters necessary to ensure that the court may reach a decision
32 promptly. In no case shall the court fail to rule within seven days of the time of filing the
33 application. This time limitation may be extended at the request of the minor. At the hearing,
34 the court shall hear evidence relating to the emotional development, maturity, intellect, and
35 understanding of the minor; the nature, possible consequences, and alternatives to the
36 ~~abortion; abortion or other health care services sought by the minor;~~ and any other evidence that
37 the court may find useful in determining whether the parental consent requirement shall be
38 waived.

39 (e) The parental consent requirement shall be waived if the court ~~finds;~~ makes any of the
40 following findings:

- 41 (1) ~~That the~~ The minor is mature and well-informed enough to make the decision
42 on his or her own regarding abortion decision on her own; or other health
43 care services for the prevention, diagnosis, and treatment of (i) sexually
44 transmitted diseases, including Human Immunodeficiency Virus/Acquired
45 Immune Deficiency Syndrome, (ii) abuse of controlled substances or
46 alcohol, (iii) mental illness, or (iv) pregnancy.
- 47 (2) ~~That it~~ It would be in the minor's best interests that parental consent not be
48 ~~required; or~~ required.
- 49 (3) ~~That~~ In instances where an abortion is sought, the minor is a victim of rape
50 or of felonious incest under G.S. 14-178.

1 (f) The court shall make written findings of fact and conclusions of law supporting its
2 decision and shall order that a confidential record of the evidence be maintained. If the court
3 finds that the minor has been a victim of incest, whether felonious or misdemeanor, it shall
4 advise the Director of the Department of Social Services of its findings for further action
5 pursuant to Article 3 of Chapter 7B of the General Statutes.

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

8 (h) The minor may appeal an order issued in accordance with this section. The appeal
9 shall be a de novo hearing in superior court. The notice of appeal shall be filed within 24 hours
10 from the date of issuance of the district court order. The de novo hearing may be held out of
11 district and out of session and shall be held as soon as possible within seven days of the filing
12 of the notice of appeal. The record of the de novo hearing is a confidential record and shall not
13 be open for general public inspection. The Chief Justice of the North Carolina Supreme Court
14 shall adopt rules necessary to implement this subsection.

15 (i) No court costs shall be required of any minor who avails ~~herself~~ of the procedures
16 provided by this section."

17 **SECTION 6.** G.S. 90-21.9 reads as rewritten:

18 "**§ 90-21.9. Medical emergency exception.**

19 The requirements of parental consent prescribed by G.S. 90-21.7(a) and G.S. 90-21.7(a1)
20 shall not apply when, in the best medical judgment of the physician based on the facts of the
21 case before the physician, a medical emergency exists that so complicates the pregnancy as to
22 require an immediate ~~abortion~~, abortion or the immediate provision of health care services, or
23 when the conditions prescribed by G.S. 90-21.1(4) are met."

24 **SECTION 7.** Article 1A of Chapter 90 of the General Statutes is amended by
25 adding a new section to read:

26 "**§ 90-21.10A. Construction of Article; parents' fundamental rights.**

27 The liberty of a parent to direct the upbringing, education, and care of his or her child is a
28 fundamental right. This Article shall not be construed to apply to a parent's action or decision
29 that would end life. Neither the State nor any agency or locality of the State shall infringe upon
30 on a parent's fundamental rights to the care, custody, and control of his or her child without
31 demonstrating a compelling State interest and use of the least restrictive means of furthering
32 that compelling State interest."

33 **SECTION 8.** G.S. 122C-221(a) reads as rewritten:

34 "(a) Except as otherwise provided in this Part, a minor may be admitted to a facility if
35 the minor (i) is mentally ill or a substance ~~abuser and in need of treatment~~, abuser, (ii) is in need
36 of treatment, and (iii) has complied with the consent requirements of G.S. 90-21.7. Except as
37 otherwise provided in this ~~Part~~, Part and to the extent allowed under G.S. 90-21.7, the
38 provisions of G.S. 122C-211 shall apply to admissions of minors under this Part. ~~Except as~~
39 ~~provided in G.S. 90-21.5, in~~ In applying for admission to a ~~facility, in consenting to medical~~
40 ~~treatment when consent is required, facility~~ and in any other legal procedure under this Article,
41 the legally responsible person shall act for the minor. If a minor reaches the age of 18 while in
42 treatment under this Part, further treatment is authorized only on the written authorization of
43 the client or under the provisions of Part 7 or Part 8 of Article 5 of this Chapter."

44 **SECTION 9.** This act becomes effective October 1, 2015.