

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 462
HOUSE BILL 481

AN ACT TO REQUIRE PARENTAL OR JUDICIAL CONSENT FOR AN
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:

- (1) 'Unemancipated minor' or '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.
- (2) 'Abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant, for reasons other than to save the life or preserve the health of an unborn child, to remove a dead unborn child, or to deliver an unborn child prematurely, by accepted medical procedures in order to preserve the health of both the mother and the unborn child.

"§ 90-21.7. Parental consent required.

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

- (1) A parent with custody of the minor; or
- (2) The legal guardian or legal custodian of the minor; or
- (3) A parent with whom the minor is living; or
- (4) A grandparent with whom the minor has been living for at least six months immediately preceding the date of the minor's written consent.

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

- (1) None of the persons from whom consent must be obtained pursuant to this section is available to the physician performing the abortion or the

- physician's agent or the referring physician or the agent thereof within a reasonable time or manner; or
- (2) All of the persons from whom consent must be obtained pursuant to this section refuse to consent to the performance of an abortion; or
- (3) The minor elects not to seek consent of the person from whom consent is required.

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

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

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

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

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

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

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

(f) The court shall make written findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence be maintained. If the court finds that the minor has been a victim of incest, whether felonious or misdemeanor, it shall advise the Director of the Department of Social Services of its findings for further action pursuant to Article 44 of Chapter 7A of the General Statutes.

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

(h) The minor may appeal an order issued in accordance with this section. The appeal shall be a de novo hearing in superior court. The notice of appeal shall be filed within 24 hours from the date of issuance of the district court order. The de novo hearing may be held out of district and out of session and shall be held as soon as possible within seven days of the filing of the notice of appeal. The record of the de

novo hearing is a confidential record and shall not be open for general public inspection. The Chief Justice of the North Carolina Supreme Court shall adopt rules necessary to implement this subsection.

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

"§ 90-21.9. Medical emergency exception.

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

"§ 90-21.10. Penalty.

Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of Part 2 of this Article shall be guilty of a Class 1 misdemeanor."

Sec. 2. G.S. 7A-523(a) is amended by adding a subdivision to read:

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

Sec. 3. G.S. 7A-451(a) is amended by adding a subdivision to read:

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

Sec. 4. G.S. 7A-675 is amended by adding a subsection to read:

"(j) Notwithstanding subsection (a) of this section, the court's entire record of a proceeding involving consent for an abortion on an unemancipated minor under Article 1A, Part 2 of Chapter 90 of the General Statutes is not a matter of public record, shall be maintained separately from any juvenile record, shall be withheld from public inspection, and may be examined only by order of the court, by the unemancipated minor, or by the unemancipated minor's attorney or guardian ad litem."

Sec. 5. Notwithstanding any other State or local law to the contrary, no State or local government agency or entity shall deny eligibility for financial assistance under Aid to Families with Dependent Children to any infant or child on the basis that the mother of the infant or child was an unemancipated minor when the infant or child was born.

Sec. 6. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 20th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives