

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H.B. 847  
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HOUSE PRINCIPAL CLERK

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HOUSE DRH30247-MGqq-68A (03/05)

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

Sponsors: Representative Jordan.

Referred to:

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

8 The General Assembly of North Carolina enacts:

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

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

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

22 "§ 90-21.5. **Minor's consent sufficient for certain medical health services.**

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

32 (a1) Except as otherwise provided by law, no person, corporation, association,  
33 organization, State-supported institution, or individual employed by any of these entities shall  
34 perform any of the following acts without first obtaining the notarized written consent of the  
35 parent or legal guardian of the minor:



- 1           (1) Procure, solicit to perform, arrange for the performance of, or perform a  
2           surgical procedure on a minor.  
3           (2) Perform a physical examination of a minor.  
4           (3) Prescribe any prescription drug for the treatment of a minor.

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

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

- 10           (1) A medical emergency exists and it is necessary to perform a surgical  
11 procedure on the minor in order to treat that medical emergency.  
12           (2) The minor is in need of treatment for substance abuse.  
13           (3) Treatment is necessary to save the life of the minor, and reasonable efforts to  
14 contact the parent or legal guardian of the minor have been unsuccessful.

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

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

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

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

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

26           "**§ 90-21.7. Parental consent required.**

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

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

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

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

50           (b) The ~~pregnant~~ minor may petition, on his or her own behalf or by guardian ad litem,  
51 the district court judge assigned to the juvenile proceedings in the district court where the

1 minor resides or where ~~she~~the minor is physically present for a waiver of the parental consent  
2 requirement ~~if~~if one of the following is true:

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

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

18 **"§ 90-21.8. Procedure for waiver of parental consent.**

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

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

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

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

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

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

49 (f) The court shall make written findings of fact and conclusions of law supporting its  
50 decision and shall order that a confidential record of the evidence be maintained. If the court  
51 finds that the minor has been a victim of incest, whether felonious or misdemeanor, it shall

1 advise the Director of the Department of Social Services of its findings for further action  
2 pursuant to Article 3 of Chapter 7B of the General Statutes.

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

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

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

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

15 "**§ 90-21.9. Medical emergency exception.**

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

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

23 "**§ 90-21.10A. Construction of Article; parents' fundamental rights.**

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

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

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

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