

**JUDICIAL WAIVER OF PARENTAL CONSENT REQUIREMENT
FOR A MINOR'S ABORTION**

- I. **Introduction.** G.S. Chapter 90, Part Two, deals with the controversial issue of parental consent for a minor's abortion. These provisions, G.S. 90-21.6 through G.S. 90-21.10, became effective October 1, 1995. They prohibit physicians in North Carolina from performing abortions on unemancipated minors without the written consent of the minor, and either (1) parental consent (as defined in the statute) or (2) a court order waiving the parental consent requirement.
- A. **Legal challenge to previous law.** The U.S. Supreme Court has held that a state may not lawfully impose an absolute parental veto over the decision of a minor to terminate her pregnancy. *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 49 L. Ed. 2d 788 (1976). If a state decides to require a pregnant minor to obtain one or both of her parents' consent to an abortion, it must also provide an alternative procedure whereby the minor may obtain authorization for the abortion. *Bellotti v. Baird*, 443 U.S. 662, 61 L.Ed. 2d 797 (1979). Following these U.S. Supreme Court decisions, the former North Carolina law was treated as unconstitutional. *See, i.e., Wilkie v. Hoke*, 609 F.Supp. 241, 242 (W.D.N.C. 1985), in which the U.S. District Court, Western District, noted that the North Carolina statute in effect at that time "appears to be unconstitutional to the extent that it prevents a minor from obtaining an abortion without parental consent."
- B. **Definitions.**
1. Unemancipated minor: any person under the age of 18 who has not been married and has not been emancipated according to the statutory procedures of G.S. 7A-717, *et. seq.* G.S. 90-21.6(1).
 2. Abortion: 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 pregnant, for reasons other than to save the life of or preserve the health of an unborn child, remove a dead unborn child, or deliver an unborn child prematurely.
G.S. 90-21.6(2).

3. Parental consent: the consent of any of the following:
 - a. a parent with custody of the minor;
 - b. the legal guardian or legal custodian of the minor;
 - c. a parent with whom the minor is living; or
 - d. a grandparent with whom the minor has been living for at least six months immediately before the date of the minor's written consent to an abortion.

G.S. 90-21.7.

C. Petition for waiver of consent.

1. Who may petition. The pregnant minor may petition for a waiver of the parental consent requirement, either on her own behalf or by a guardian ad litem. G.S. 90-21.7(b).
2. Jurisdiction. Jurisdiction is in the district court. G.S. 90-21.7(b).
3. Venue. The petition may be brought either where the minor resides or where she is physically present. G.S. 90-21.7(b).
4. Circumstances under which a waiver may be sought. A minor may bring a district court proceeding asking the court to waive the parental consent requirement if the persons who could give consent are not available, if the persons who could give consent refuse to do so, or if the minor chooses not to seek consent from them. G.S. 90-21.7(b).
5. Filing fee. The minor does not have to pay a filing fee or other court costs. G.S. 90-21.8(i).

II. Procedure for waiver of parental consent.

- A. **General procedures.** The pursuit of a judicial waiver of parental consent for a minor's abortion is a juvenile proceeding, G.S. 7A-523(a)(8), and the petition for waiver is heard by the district court judge assigned to juvenile proceedings in the district court where the minor resides or where she is physically present. G.S. 90-21.7(b). *See*, following this chapter, AOC forms J-600 through J-604.

1. Participation of minor. The minor may participate on her own behalf or through a guardian ad litem. G.S. 90-21.8(c).
2. Court to assist minor. The court is to ensure that the minor or her guardian ad litem is given assistance in preparing and filing the petition. G.S. 90-21.8(b).
3. Appointment of attorney. The minor has a right to court-appointed counsel, at no cost to her. G.S. 90-21.8.
4. Confidentiality. Court proceedings relating to judicial waiver of parental consent are confidential. G.S. 90-21.8(d). The court's entire record of the proceeding is not a matter of public record, must be maintained separately from any other juvenile record, and must be withheld from public inspection. G.S. 90-21.10(j). *See*, following this chapter, "Rules of Recordkeeping," promulgated by the AOC for judicial waiver of parental consent proceedings.
5. Waiver of notice. At the minor's request, no summons or other notice may be served on her parents, guardian, or custodian. G.S. 90-21.8(g).

B. Hearing on minor's petition to waive parental consent.

1. Timing. Court proceedings for waiver of parental consent must be given precedence over other pending matters to ensure that the court reaches a decision promptly. The district court must conduct a hearing and reach a decision within seven days after the minor files her petition. G.S. 90-21.8(d).
2. Evidence. G.S. 90-21.8(d). The court must hear evidence at the hearing related to the following:
 - a. the emotional development, maturity, intellect and understanding of the minor,
 - b. the nature, possible consequences, and alternatives to the abortion, and
 - c. any other evidence that the court may find useful.

3. Disposition. G.S. 90-21.8(e). The court must waive the parental consent requirement if it finds any of the following:
 - a. that the minor is mature and well-informed enough to make the abortion decision on her own;
 - b. that it would be in the minor's best interest for the parental consent requirement to be waived;
 - c. that the minor is a victim of rape; or
 - d. that the minor is a victim of felonious incest.
 4. Required findings.
 - a. The court must make written findings of fact and conclusions of law supporting its decision. G.S. 90-21.8(f).
 - b. If the court finds that the minor has been a victim of incest, it shall advise the county department of social services. In November, 1995, the federal District Court for the Western District of North Carolina, in an action challenging the constitutionality of the act on a variety of grounds, granted plaintiffs' motion for a preliminary injunction, but only as to this requirement that the court report incest to the department of social services. *Manning v. Hunt*, Civil Action No. 1:95cv229-T(W.D.N.C.). On March 1, 1996, the Fourth Circuit Court of Appeals issued a stay of the injunction, pending its ruling on the case. No decision has been rendered as of the publication of this manual.
- C. **Appeal.** See, following this chapter, Rules for Appeal, as adopted by the Supreme Court of North Carolina.
1. Jurisdiction. If the district court denies her petition, the minor may appeal to superior court for a de novo hearing. G.S. 90-21.8(h).
 2. Timing. The notice of appeal must be filed within twenty-four hours from the date of the district court order. G.S. 90-21.8(h).
 3. Timing of de novo hearing. The hearing before a superior court judge must be held as soon as possible, and at least within seven days after the filing of the notice of appeal. G.S. 90-21.8(h).

4. Confidentiality. The record of the de novo hearing is a confidential record and shall not be open to public inspection. G.S. 90-21.8(h).
5. Appeal from a decision by the superior court. The statute does not specify whether there is a right of appeal from a decision by the superior court. The Chief Justice of the North Carolina Supreme Court is directed in G.S. 90-21.8(h) to adopt rules necessary to implement the appeal of a minor from the decision of a district court judge. These rules anticipate the possibility of an appeal from the decision of a superior court judge, and provide for a transcript to be prepared for the use of the minor. AOC form J-602, "Order on minor's petition for waiver of parental consent requirement for abortion," includes a section on procedures for appeal from superior court, and states that the appeal "will be considered by the North Carolina Court of Appeals." Some experts have questioned whether or not the legislature intended a right of direct appeal to the Court of Appeals. In any event, appellate review is available through a writ of certiorari filed with the Court of Appeals.