

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 200

Short Title: Emancipation By Parents.

(Public )

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Sponsors: Senators Allran; and Carpenter.

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Referred to: Judiciary II.

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February 28, 1991

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE JUVENILE LAW STUDY COMMISSION TO  
CLARIFY THE EMANCIPATION LAW AND TO PROVIDE FOR  
EMANCIPATION BY PARENTS IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-718 reads as rewritten:

"§ 7A-718. **Petition.**

The petition shall be signed and verified by the petitioner and shall contain the following information:

- (1) The full name of the ~~petitioner, juvenile,~~ his birth date, and state and county of birth;
- (2) A certified copy of the ~~petitioner's juvenile's~~ birth certificate;
- (3) The name and last known address of the parent, guardian, or custodian;
- (4) The ~~petitioner's juvenile's~~ address and length of residence at that address;
- (5) The petitioner's reasons for requesting emancipation; and
- (6) The ~~petitioner's plan for meeting his own the juvenile's~~ needs and living expenses which plan may include a statement of employment and wages earned that is verified by his employer."

Sec. 2. G.S. 7A-719 reads as rewritten:

"§ 7A-719. **Summons.**

A copy of the filed petition along with a summons shall be served upon the ~~petitioner's parent, guardian, or custodian who shall be named as respondents. respondent.~~ The summons shall include the time and place of the hearing and shall notify the

1 respondents to file written answer within 30 days after service of the summons and  
2 petition. In the event that personal service cannot be obtained, service shall be in  
3 accordance with G.S. 1A-1, Rule 4(j)."

4 Sec. 3. G.S. 7A-720 reads as rewritten:

5 **"§ 7A-720. Hearing.**

6 The judge, sitting without a jury, shall permit all parties to present evidence and to  
7 cross-examine witnesses. The petitioner shall have the burden of showing by a  
8 preponderance of the evidence that emancipation is in ~~his-the best interest-interest of the~~  
9 juvenile. Upon finding that reasonable cause exists, the judge may order the juvenile to  
10 be examined by a psychiatrist, a licensed clinical psychologist, a physician, or any other  
11 expert to evaluate the juvenile's mental or physical condition. The judge may continue  
12 the hearing and order investigation by a court counselor or by the county Department of  
13 Social Services to substantiate allegations of the petitioner or respondents.

14 No husband-wife or physician-patient privilege shall be grounds for excluding any  
15 evidence in the hearing."

16 Sec. 4. G.S. 7A-721 reads as rewritten:

17 **"§ 7A-721. Considerations for emancipation.**

18 In determining the best interest of the ~~petitioner-juvenile~~ and the need for  
19 emancipation, the judge shall review the following considerations:

- 20 (1) The parental need for the earnings of the ~~petitioner-juvenile~~;
- 21 (2) The ~~petitioner's-juvenile's~~ ability to function as an adult;
- 22 (3) The ~~petitioner's-juvenile's~~ need to contract as an adult or to marry;
- 23 (4) The employment status of the ~~petitioner-juvenile~~ and the stability of his  
24 living arrangements;
- 25 (5) The extent of family discord which may threaten reconciliation of the  
26 ~~petitioner-juvenile~~ with his family;
- 27 (6) The ~~petitioner's-juvenile's~~ rejection of parental supervision or support;  
28 and
- 29 (7) The quality of parental supervision or support."

30 Sec. 5. G.S. 7A-722 reads as rewritten:

31 **"§ 7A-722. Final decree of emancipation.**

32 After reviewing the considerations for emancipation, the judge may enter a decree of  
33 emancipation if he determines:

- 34 (1) That all parties are properly before the court or were duly served and  
35 failed to appear and that time for filing an answer has expired; and
- 36 (2) That the petitioner has shown that the juvenile has a proper and lawful  
37 plan for adequately providing for his own needs and living expenses;  
38 and
- 39 (3) That the petitioner is knowingly seeking emancipation and fully  
40 understands the ramifications of his act; and
- 41 (4) That emancipation is in the best interest of the ~~petitioner-juvenile~~.

42 The decree shall set out the court's findings.

43 If the judge determines that the criteria in subdivisions (1) through (4) are not met,  
44 he shall order the proceeding dismissed."

1           Sec. 6. G.S. 7A-723 reads as rewritten:

2   "**§ 7A-723. Costs of court.**

3       The judge may tax the costs of the proceeding to any party or may, for good cause,  
4   order the costs remitted.

5       The clerk of superior court may collect costs for furnishing to the ~~petitioner~~-juvenile  
6   a certificate of emancipation which shall recite the name of the ~~petitioner~~-juvenile and  
7   the fact of the ~~petitioner's~~-juvenile's emancipation by court decree and shall have the seal  
8   of the clerk of superior court affixed thereon."

9           Sec. 7. G.S. 7A-724 reads as rewritten:

10 "**§ 7A-724. Legal effect of final decree.**

11       As of entry of the final decree of emancipation:

12           (1)   The ~~petitioner~~-juvenile has the same right to make contracts and  
13           conveyances, to sue and to be sued, and to transact business as if he  
14           were an adult.

15           (2)   The parent or guardian is relieved of all legal duties and obligations  
16           owed to the petitioner and is divested of all rights with respect to the  
17           ~~petitioner~~-juvenile.

18           (3)   The decree is irrevocable.

19       Notwithstanding any other provision of this section, a decree of emancipation shall not  
20   alter the application of G.S. 14-322.2, 14-326.1, or the ~~petitioner's~~-juvenile's right to  
21   inherit property by intestate succession."

22           Sec. 8. G.S. 7A-725 reads as rewritten:

23 "**§ 7A-725. Appeals.**

24       Any ~~petitioner, parent, or guardian who is a party to a proceeding under this Article~~  
25       may appeal from any order of disposition to the Court of Appeals provided that notice  
26       of appeal is given in ~~open court at the time of the hearing or in writing within 10 days after~~  
27       ~~the hearing~~, accordance with the rule of appellate procedure. Pending disposition of an  
28       appeal, the judge may enter a temporary order affecting the custody or placement of the  
29       petitioner as he finds to be in the best interest of the ~~petitioner~~-juvenile or the State."

30           Sec. 9. G.S. 7A-726 reads as rewritten:

31 "**§ 7A-726. Application of common law.**

32       A married juvenile is emancipated by this Article. All other common law provisions  
33       for emancipation are superseded by this Article."

34           Sec. 10. Article 56 of Chapter 7 of the General Statutes is amended by  
35       adding a new section to read:

36 "**§ 7A-727. Emancipation by parents.**

37       All of the parents, guardians, or custodians of a juvenile who is 16 years of age or  
38       older may petition the court in the county of the juvenile's residence for a judicial decree  
39       of emancipation under the procedure set out in G.S. 7A-717 to G.S. 7A-726 except that  
40       the following rules are different:

41           (1)   The juvenile is the respondent.

42           (2)   The petitioner shall pay the costs of the proceeding. The costs shall  
43           include a reasonable fee for a guardian **ad litem** for the juvenile and, if  
44           the guardian **ad litem** is not an attorney, an attorney for the guardian

- 1                    ad litem. The court may require the petitioner to deposit a sum  
2                    sufficient to cover the estimated costs of court before proceeding with  
3                    the petition.
- 4                    (3) The judge shall order an investigation by a court counselor or by the  
5                    county Department of Social Services to substantiate allegations of the  
6                    petitioner or respondent.
- 7                    (4) The petition shall be dismissed if the court finds that avoidance of a  
8                    support obligation is a substantial motive for the petition.
- 9                    (5) Service of process may only be by personal delivery.
- 10                   (6) The decree may only be issued if the judge finds as a fact that  
11                   reconciliation within the family is not likely to occur prior to the  
12                   juvenile's eighteenth birthday."
- 13                   Sec. 11. This act becomes effective October 1, 1991, and applies to petitions  
14                   filed on and after that date.