

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

1

SENATE BILL 720

Short Title: Emancipation by Parents.

(Public)

Sponsors: Senator Allran.

Referred to: Judiciary I/Constitution

April 13, 1995

A BILL TO BE ENTITLED

AN ACT 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, his name,~~ birth date, and state and county of ~~birth;~~ birth of the juvenile;
- (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~~ the juvenile's employer."

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

"§ 7A-719. **Summons.**

1 A copy of the filed petition along with a summons shall be served upon the ~~petitioner's~~
2 parent, guardian, or custodian who shall be named as respondents. The summons shall
3 include the time and place of the hearing and shall notify the respondents to file written
4 answer within 30 days after service of the summons and petition. In the event that
5 personal service cannot be obtained, service shall be in accordance with G.S. 1A-1, Rule
6 4(j)."

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

8 **"§ 7A-720. Hearing.**

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

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

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

20 **"§ 7A-721. Considerations for emancipation.**

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

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

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

34 **"§ 7A-722. Final decree of emancipation.**

35 After reviewing the considerations for emancipation, the judge may enter a decree of
36 emancipation if ~~he~~the judge determines:

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

1 (4) That emancipation is in the best interest of the ~~petitioner-juvenile~~.
2 The decree shall set out the court's findings.

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

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

6 **"§ 7A-723. Costs of court.**

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

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

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

14 **"§ 7A-724. Legal effect of final decree.**

15 As of entry of the final decree of emancipation:

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

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

22 (3) The decree is irrevocable.

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

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

27 **"§ 7A-725. Appeals.**

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

35 Sec. 9. Article 56 of Chapter 7A of the General Statutes is amended by adding
36 a new section to read:

37 **"§ 7A-727. Emancipation by parents.**

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

42 (1) The juvenile is the respondent.

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

15 Sec. 10. This act becomes effective October 1, 1995, and applies to petitions
16 filed on and after that date.