



HOUSE BILL 465: Women and Children's Protection Act of 2015

2015-2016 General Assembly

Committee:	Senate Judiciary II	Date:	May 28, 2015
Introduced by:	Reps. Schaffer, McElraft, R. Turner, S. Martin	Prepared by:	Bill Patterson Committee Counsel
Analysis of:	Third Edition		

SUMMARY: *The Proposed Committee Substitute for House Bill 465 would:*

- *define statutory rape as engaging in a sexual act with a person who is 15 years old or younger*
- *make administrative changes to improve collection and payment of child support to families*
- *permit electronic filing of documents in Chapter 50B and 50C cases under local rules approved by the AOC or under any uniform state rules adopted by the Supreme Court*
- *make it an aggravating sentencing factor to knowingly commit an offense that is seen or heard by a minor who is not an accomplice to the offense*
- *clarify that an assault is committed "in the presence of a minor" when the minor can see or hear the assault*
- *permit the court to impose conditions of pretrial release in domestic violence cases to protect persons the defendant is dating or has dated*
- *require registered sex offenders to stay away from premises frequented by minors if they committed federal crimes or crimes in other States that are substantially similar to sex offenses under State law*
- *create a Maternal Mortality Review Committee within DHHS to study and recommend ways to prevent deaths resulting from complications of pregnancy or childbirth*
- *require annual inspection by DHHS of clinics where abortions are performed and publication of the results of such inspections conducted on or after January 1, 2013 on DHHS' Web site and on the "Woman's Right to Know Act" Web site, and prohibit such clinics from employing persons less than 18 years of age*
- *require physicians who perform abortions other than in a medical emergency to be board certified or certifiable in obstetrics or gynecology and to report certain information to DHHS*
- *increase to 72 hours the waiting period for women who voluntarily consent to an abortion*
- *make other technical and conforming changes*

O. Walker Reagan
Director



Research Division
(919) 733-2578

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CURRENT LAW AND BILL ANALYSIS:

Section 1

Current Law: It is a felony under G.S. 14-27.7A for a person to engage in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old.

Section 1.(a) would amend G.S. 14-27.7A to define the offense as engaging in vaginal intercourse or a sexual act with another person who is 15 years old or younger. **Section 1.(b)** and **Section 1.(c)** would make conforming changes.

This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

Section 2

Analysis: Section 2.(a) would amend G.S. 110-130.1 to provide that any fee imposed by the Department of Revenue or the Secretary of the Treasury to cover the costs of withholding for non-Work First arrearages for administrative offsets, as defined in federal regulation,¹ are to be borne by the client, and that any such administrative offsets later determined to have been incorrectly withheld and distributed to a client will constitute a debt to the State owed by the client.

Under certain circumstances, Child Support Services may withhold income from paychecks of parents owing past due child support. The parent's employer must be sent a notice that a portion of their employee's income will be withheld. **Section 2.(b)** of the bill would add provisions to G.S. 110-136.4, "*Implementation of withholding in IV-D cases*," permitting these required notices of obligation to withhold to be served by means of an electronic transmission that complies with specified federal procedures.

Section 2.(c) would require that a notice to the obligor of levy on an account with a financial institution must include a reference to the applicable law, rather than a copy of the applicable law.

Section 3

Analysis: Section 3.(a) would authorize the Administrative Office of the Courts ("AOC") to develop a program for electronic filing in Chapter 50B and Chapter 50C district court cases in all North Carolina counties, and would provide that chief district judges would submit local rules to the AOC for approval. Such rules would be superseded by any uniform state rules issued by the North Carolina Supreme Court.

Section 3.(b) would permit the electronic filing of documents relating to an ex parte, emergency or permanent domestic violence protective order in Chapter 50B cases, and would permit hearings on motions for ex parte relief under G.S. 50B-2(c) to be held via video conferences. Video conferences would not be permitted for hearings to consider emergency or permanent relief pursuant to G.S. 50B-2(a) or (b).

In Chapter 50C cases:

- **Section 3.(c)** would permit documents relating to an ex parte, emergency or permanent civil no-contact order to be filed electronically.
- **Section 3.(d)** would permit hearings to consider ex parte issuance of a temporary civil no-contact order to be held by video conference.

¹ "Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt." 31 C.F.R. 285.1(a).

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- **Section 3.(e)** would prohibit the use of video conferences to hold hearings on a motion for issuance of a permanent civil no-contact order.

Section 3 becomes effective December 1, 2015. Section 3.(a) applies to offenses committed on or after that date, and Sections 3.(b) – 3.(e) apply to documents filed and hearings held on or after that date.

Section 4

Analysis: Section 4.(a) would amend G.S. 15A-1340.16, which governs the imposition of aggravated and mitigated sentences under the structured sentencing laws, to make it an aggravating factor that the defendant knew or reasonably should have known that offense was seen or heard by a person under 18 years of age who was not involved in committing the offense.

Section 4.(b) would amend G.S. 14-33(d) regarding misdemeanor assaults in a domestic violence situation that are committed in the presence of a minor to clarify that “in the presence of a minor” means the minor could see or hear the assault.

Section 4.(c) would amend G.S. 15A-534.1(a), which permits a judge to impose conditions on the pretrial release of a defendant charged with assault on, stalking, communicating a threat to, or committing certain felonies upon a spouse or former spouse or person with whom the defendant lives or has lived as if married, by permitting such conditions to be imposed in cases in which the victim is a person with whom the defendant is or has been in a dating relationship as defined by statute.²

Section 4 becomes effective December 1, 2015, and applies to offenses committed on or after that date.

Section 5

Current Law: G.S. 14-208.18(c)(1) prohibits persons registered as sex offenders for committing a sex offense under Chapter 7A of the General Statutes from knowingly being present on certain premises frequented by minors.

Analysis: Section 5.(a) would expand this prohibition to apply to registered sex offenders who committed a federal offense or an offense in another state which, if committed in this State, would be substantially similar to an offense in Chapter 7A.

Section 5 becomes effective December 1, 2015, and applies to offenses committed on or after that date.

Section 6

Analysis: Section 6.(a) would establish within the Department of Health and Human Services the Maternal Mortality Review Committee (Committee) comprising nine members chosen by the Secretary of DHHS from several academic disciplines and professional specializations. The Committee would review cases of mortality resulting from complications from pregnancy or childbirth and develop recommendations for the prevention of future maternal deaths. Information, records and other data collected by the Committee would not be admissible as evidence in any action unless available from another source.

Section 6 becomes effective on December 1, 2015.

Section 7

Section 7.(a) - Current Law: G.S. 14-45.1 sets forth the circumstances under which an abortion may be lawfully performed. Hospitals and clinics where abortions are performed are required to annually

² A dating relationship is "one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship." G.S. 50B-1(b)(6).

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provide to the Department of Health and Human Services (DHHS) statistical summary reports concerning the medical and demographic characteristics of the abortions allowed under this statute. The reports are for statistical purposes only and the confidentiality of the patient relationship is protected.

Analysis: Section 7.(a) would make it unlawful for a physician who is not board certified or eligible to be board certified in obstetrics or gynecology to advise, procure, or cause a miscarriage or abortion, unless the abortion is performed in response to a medical emergency as defined in G.S. 90-21.81(5). DHHS would be required to annually inspect clinics, including ambulatory surgical facilities, where abortions are performed, and to publish on its Web site and on the "Woman's Right to Know Act" Web site established by DHHS pursuant to G.S. 90-21.84, the results and findings of all such inspections performed on or after January 1, 2013.

Section 7.(a) would also require a physician advising, procuring, or causing a miscarriage or abortion after the sixteenth week of a woman's pregnancy to record and provide the following information to DHHS: (1) the method used by the physician to determine the probable gestational age of the unborn child; (2) the results of the methodology including the measurements of the unborn child; and (3) an ultrasound image of the unborn child that depicts the measurements. A physician who procures or causes a miscarriage or abortion after the 20th week of a woman's pregnancy would be required to record the findings and analysis on which the physician based the determination that there existed a medical emergency and to provide that information to DHHS. The information would be required to protect the confidentiality of the patient and the physician, and materials provided to DHHS by the physician would not be public records.

Section 7.(a) would also make other technical and conforming changes.

The substantive provisions in Section 7.(a) become effective January 1, 2016, and apply to abortions performed or attempted on or after that date.

Section 7.(b) and 7.(c) - Current Law: The Women's Right to Know Act (Article 1I of Chapter 90 of the General Statutes) outlines the requirements for informed consent to abortion. At least 24 hours prior to an abortion, a physician or qualified professional must provide certain information to a woman voluntarily consenting to an abortion. This can be done by telephone or in person.

Analysis: Section 7.(b) would require the information to be provided to the woman at least 72 hours in advance of the abortion, and **Section 7.(c)** would make a conforming change.

Sections 7.(b) and 7.(c) become effective October 1, 2015, and apply to abortions performed or attempted on or after that date.

Section 8.(a)

Analysis: Section 8.(a) provides that if any provision of the act is held invalid, the invalidity does not affect other provisions of the act that can be given effect without the invalid provisions.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.

Kelly Tornow, counsel to House Health Committee, and Janice Paul, counsel to Senate Judiciary II Committee, substantially contributed to this summary.