



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

2015-2016 General Assembly

Committee:

Introduced by:

Analysis of: S.L. 2015-62

Date:

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SUMMARY: *S.L. 2015-62 modifies certain criminal laws pertaining to sexual crimes and offenders; permits electronic filing of documents in specified domestic violence and civil no-contact proceedings; makes administrative changes to improve child support collection and payment; and establishes a Maternal Mortality Review (MMR) Committee within the Department of Health and Human Services; and makes various changes to North Carolina's abortion laws.*

Section 1 changes the offense of statutory rape to apply to engaging in a sexual act with a person who is 15 years old or younger, rather than with someone who is 13, 14, or 15 years old. This section became effective December 1, 2015, and applies to offenses committed on or after that date.

Section 2 makes administrative changes to improve collection and payment of child support to families. This section became effective June 5, 2015.

Section 3 permits electronic filing of certain documents in Chapter 50B and 50C cases under local rules approved by the Administrative Office of the Courts or under any uniform State rules adopted by the North Carolina Supreme Court. Sections 3.(b) through 3.(e) became effective December 1, 2015, and apply to documents filed and hearings held on or after that date; Section 3.(a) directing the establishment of rules became effective June 5, 2015.

Section 4 makes the following statutory amendments, effective December 1, 2015, and applies to offenses committed on or after that date:

- Section 4.(a) provides an aggravating sentencing factor for knowingly committing an offense that is seen or heard by a minor who is not an accomplice to the offense.
- Section 4.(b) clarifies that an assault is committed "in the presence of a minor" when the minor can see or hear the assault.
- Section 4.(c) permits the court to impose conditions of pretrial release in domestic violence cases to protect persons the defendant is dating or has dated.

Section 5 extends the prohibition against certain sex offenders being on premises frequented by minors to sex offenders committed of federal crimes or crimes in other states that are substantially similar to sex offenses under State law. This section became effective December 1, 2015, and applies to offenses committed on or after that date.

Section 6 establishes the Maternal Mortality Review Committee within the Department of Health and Human Services. The Committee is directed to reduce maternal mortality in North Carolina by conducting multidisciplinary maternal death reviews and developing recommendations for the prevention of future maternal deaths. This section became effective December 1, 2015.

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Section 7 makes various changes to North Carolina's abortion laws. (Please see the full summary for more detail.) The substantive provisions regarding abortion laws become effective January 1, 2016, and apply to abortions performed or attempted on or after that date; the remainder of this Section became effective October 1, 2015, and applies to abortions performed or attempted on or after that date.

Except as otherwise provided, this act became effective June 5, 2015.

CURRENT LAW AND BILL ANALYSIS:

SECTION 1 – SEXUAL OFFENSES

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.

Analysis: Section 1.(a) of this act amends 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)** make conforming changes.

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

SECTION 2 – CHILD SUPPORT

Analysis: Section 2.(a) amends G.S. 110-130.1(d) 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) adds provisions to G.S. 110-136.4, *"Implementation of withholding in IV-D cases,"* permitting required notices of obligation to withhold to be served by means of an electronic transmission that complies with specified federal procedures.

Section 2.(c) requires 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 2 Effective Date: This section became effective when the Governor signed the bill into law on June 5, 2015.

SECTION 3 – CIVIL NO-CONTACT ORDERS

Analysis: Section 3.(a) authorizes 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.

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.(b) permits the electronic filing of documents relating to an ex parte, emergency or permanent domestic violence protective order in Chapter 50B cases, and permits 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)** permits documents relating to an ex parte, emergency or permanent civil no-contact order to be filed electronically.
- **Section 3.(d)** permits hearings to consider ex parte issuance of a temporary civil no-contact order to be held by video conference.
- **Section 3.(e)** prohibits the use of video conferences to hold hearings on a motion for issuance of a permanent civil no-contact order.

Section 3 Effective Date: Section 3.(a) became effective when the Governor signed the bill into law on June 5, 2015. Sections 3.(b) through 3.(e) became effective December 1, 2015, and apply to documents filed and hearings held on or after that date.

SECTION 4 – SENTENCING PROVISIONS

Analysis: Section 4.(a) amends 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 a person under the age of 18, who was not involved in the commission of the offense, was in a position to see or hear the offense.

Analysis: Section 4.(b) amends 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.

Analysis: Section 4.(c) amends 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. G.S. 50B-1 defines a dating relationship as “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.”

Section 4 Effective Date: Section 4 became effective December 1, 2015, and applies to offenses committed on or after that date.

SECTION 5 – SEX OFFENDERS

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) expands 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 Effective Date: Section 5 became effective December 1, 2015, and applies to offenses committed on or after that date.

SECTION 6 – MATERNAL MORTALITY REVIEW COMMITTEE

Analysis: Section 6 of S.L. 2015-62 establishes 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 is tasked with reviewing cases of mortality resulting from complications from pregnancy or childbirth and developing recommendations for the prevention of future maternal deaths. Licensed health care providers, health care facilities, and pharmacies must provide reasonable access to the Committee to all relevant medical records associated with a case under the Committee's review. Information, records and other data collected by the Committee would be not admissible as evidence in any action unless available from another source, and all information obtained by the Department or the Committee is confidential.

Section 6 Effective Date: Section 6 of S.L. 2015-62 became effective December 1, 2015.

SECTION 7 – ABORTION LAWS

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 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) of this act makes it unlawful for a physician who is not board certified or eligible to be board certified in obstetrics or gynecology or a physician who does not possess sufficient training based on established medical standards in safe abortion care, abortion complications, and miscarriage management, 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). Section 7(a) requires DHHS 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. DHHS is not required to annually inspect hospitals licensed under Chapter 131E of the General Statutes.

Section 7(a) requires 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 is 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 is for statistical purposes only, and the confidentiality of the patient and the physician must be protected. Materials provided to DHHS by the physician are not public records.

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

Sections 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.

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

Section 7 Effective Date: The substantive provisions in Section 7(a) become effective January 1, 2016, and apply to abortions performed or attempted on or after that date. The remainder of this section became effective October 1, 2015, and applies to abortions performed or attempted on or after that date.

EFFECTIVE DATE: Except as otherwise provided, S.L. 2015-62 became effective when the Governor signed it into law on June 5, 2015.