

STATUTORY AND JUDICIAL EMANCIPATION OF MINORS IN THE UNITED STATES

HISTORY:

In connection with on-going research conducted by law students at Northeastern University School of Law on the issue of the expansion of certain legal rights of homeless minors living in the Commonwealth of Massachusetts, the authors, students in "Law Office #2" of the 2001-2002 "Law, Culture, and Difference" class, investigated solutions to the various problems faced by such homeless youth. This research included exploring the possibility of suggesting a statutory emancipation scheme to the Massachusetts Legislature.

METHODOLOGY:

The 50 United States, and the District of Columbia, were examined in an effort to compare and contrast various statutory schemes and judicial legal postures toward emancipation. Using Lexis-Nexis™ for Law Schools, the authors employed a comprehensive system of alternative term searches (*e.g.*, "emancipation and minor," "emancipation," "emancipated," "relief and minority and disability") to ascertain if statutory schemes existed in the respective states. When no statute or statutory scheme allowing a minor to bring forth a proceeding for emancipated status was located, searches were conducted within the various states' family law cases, where the issue of emancipation often arises in child support contests under argument that a parent paying child support should be relieved of his or her duty to pay support because the child is effectively emancipated. This secondary methodology, with exceptions as noted,¹ yielded cases in which the issue of emancipation was expounded upon by the court with respect to the state's view toward, and/or criteria for a finding of, an effective circumstantial emancipated status of a minor. All materials, in written form, are contained in an appendix, entitled "Appendix: Statutory and Judicial Emancipation of Minors in the United States"; hyperlinks to the respective states' statutory or case law are provided on the World Wide Web version of this chart.

FOREWORD:

The doctrine of emancipation has been recognized in the United States since the turn of the century, and has developed as a legal status through both statutory enactment and judicial proceeding.² Many states provide by statute or at common law that by operation of certain events, such as marriage, pregnancy of a female, or military service, a minor becomes, or may become, partially or wholly emancipated.³ In contrast to such statutes or common law, the following chart and accompanying appendix portray statutory schemes in the respective states that provide

1 In some states, the case law is not particularly copious on the topic of emancipation (*see, e.g.*, Idaho and North Dakota).

2 *See*, William E. Dean, *Casenote and Comment. Ireland v. Ireland: Judicial Emancipation of Minors in Idaho: Protecting the Best Interests of the Child or Conferring a Windfall Upon the Parent?*, 31 Idaho L. Rev. 205, 215 (1994).

3 *See, e.g.*, Haw. Rev. Stat. § 577-25 (2001) (marriage of a minor shall be deemed to effectuate emancipated status, and such minor "shall be regarded as though he or she were of legal age and shall have all the rights, duties, privileges, and responsibilities provided by the civil law to a person who has reached the age of majority under civil law." However, such status neither confers "the right to vote in any federal, state, or county election or the right to purchase, possess, or sell alcoholic beverages," nor does it "change the status of such persons as minors in connection with any criminal law, nor affect the exclusive original jurisdiction of the family court over such persons under 571-11(1))." Haw. Rev. Stat. § 577-25 (2001).

procedural bases upon which a minor may seek a declaration of emancipated status in a judicial proceeding. In the absence of a statutory scheme in a given state, the common law with respect to emancipation is provided.

Because not all states wish to confer upon minors the status of “emancipated,” the cases in the “Judicial Emancipation” column are those that demonstrate those circumstances under which a court in the given state may find that emancipation of the minor has been or could be effectuated or, alternatively, demonstrate that the state restricts the status of minors, and is reluctant to find a minor, or allow a minor to be declared, emancipated.

This chart must be read with the following considerations in mind:

This research was conducted during the months of January, February, and March of 2002, and captures statutes and case law in effect during that time. The authors encourage readers to seek current information in conjunction with utilizing this chart.

Items that are footnoted were notated because the authors realized a need to call the reader’s attention to a particular issue during the process of research. However, no attempt was made to scrutinize each statute and case. Thus, other information that may be particularly informative was not footnoted.

The research was not aimed at examining whether the actual practice of emancipation in each state is consistent with, or diverges from, the common or statutory law as it is written.

The research was aimed at capturing specific material from state statutes or case law, and additional information located elsewhere may bear on the issue of emancipation depending upon the inquiry; thus, the authors encourage readers to consider additional sources of information.

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STATUTORY AND JUDICIAL EMANCIPATION OF MINORS IN THE UNITED STATES

STATE	STATUTORY EMANCIPATION PROCEEDINGS	JUDICIAL EMANCIPATION
ALABAMA	Title 26, Chapter 13, Sections 26-13-1— 26-13-8	
ALASKA	Title 9, Chapter 55, Article 8, Section 09.55.590	
ARIZONA		<i>Tencza et al. v. Aetna Casualty and Surety Company</i> , 111 Ariz. 226 (Ariz. 1974)
ARKANSAS	Title 9, Subtitle 3, Chapter 26, Subchapter 1	
CALIFORNIA	Family Code, Division 11, Chapter 1, Sections 7000 — 7002; Chapter 2, Sections 7050 — 7052; Chapter 3, Article 1, Sections 7110 — 7111; Chapter 3, Article 2, Sections 7120 — 7123; Chapter 3, Article 3, Sections 7130 — 7135; Chapter 3, Article 4, Sections 7140 — 7143 Sections 7000 —7002	
COLORADO		<i>In re the Marriage of: Roal S. Robinson, Petitioner, and Lavelle S. Robinson, Respondent</i> , 629 P.2d 1069 (Colo. 1981)
CONNECTICUT	Title 46B, Chapter 815t, Part I, Section 150	
DELAWARE		<i>In the Matter of S. L., (date of birth 5/82), A Minor Child v. A. and Sh. L.</i> , 735 A.2d 433 (Del. Fam. Ct. 1999)
DIST. OF COLUMBIA		<i>Kuper v. Woodward</i> , 684 A.2d 783 (D.C. 1996)

STATE	STATUTORY EMANCIPATION PROCEEDINGS	JUDICIAL EMANCIPATION
FLORIDA	Title XLIII, Chapter 743, Sections 743.0 — 743.09 ¹	
GEORGIA		<i>Street v. Cobb County School District</i> , 520 F. Supp. 1170 (N.D. Ga. 1981)
HAWAII	Division 3, Title 31, Chapter 577, Section 25 ²	
IDAHO		<i>Embree v. Embree</i> , 85 Idaho 443 (Idaho 1963)
ILLINOIS	Chapter 750, Sections 30-1 — 30-11	
INDIANA	Title 31, Article 34, Chapter 20, Section 6; Title 31, Article 37, Chapter 19, Section 27	
IOWA ³		<i>Vaupel v. Bellach</i> , 261 Iowa 376 (Iowa 1967)
KANSAS	Chapter 38, Article 1, Sections 108 — 110 ⁴	
KENTUCKY		<i>Carricato v. Carricato, et al.</i> , 384 S.W.2d 85 (Ky. 1964)
LOUISIANA	Civil Code, Book I, Title VIII, Chapter 2, Section 4, Article 385; Code of Civil Procedure, Book VII, Title V, Articles 3991 — 3993	
MAINE	Title 15, Part 6, Chapter 511, Section 3506-A	

1 Removal of the disabilities of age of minors 16 and older must be initiated by a guardian or guardian ad litem, with the exception of borrowing money for educational purposes (automatically allowed at age 16 by Fla. Stat. § 743.05 (2001)) and donation of blood (automatically allowed at age 17 by Fla. Stat. § 743.06 (2001)), or if the minor previously has been adjudicated an adult by the Department of Correction (Fla. Stat. § 743.066 (2001)).

2 Under Division 3, Title 31, Chapter 577, Section 25, a minor becomes emancipated as a result of marriage. Because this statute does not form a procedural basis upon which a minor may become emancipated, and thus, did not fall within the scope of this analysis, and because Hawaii had no case law discussing emancipation of minors, this statute is included in the appendix.

3 Title VI, Subtitle 6, Chapter 252, Section 16 states, “An emancipated minor is one who is absent from the minor's parents with the consent of the parents, is self-supporting, and has assumed a new relationship inconsistent with being a part of the family of the parents.” However, this statute concerns state support of poor individuals. Iowa does not have statutes by which a minor could become emancipated.

4 Limited to contracts, and real and personal property.

STATE	STATUTORY EMANCIPATION PROCEEDINGS	JUDICIAL EMANCIPATION
MARYLAND		<i>Holly et al. v. Maryland Automobile Insurance Fund et al.</i> , 29 Md. App. 498 (Md. App. 1975)
MASSACHUSETTS		<i>Larson v. Larson</i> , 30 Mass. App. Ct. 418 (Mass. App. 1991)
MICHIGAN	Chapter 722, Section 4	
MINNESOTA		<i>In re Application of County of St. Louis to Determine Settlement of LaDean Fiihr. County of St. Louis v. County of Scott</i> , 289 Minn. 322 (Minn. 1971)
MISSISSIPPI	Title 93, Chapter 19, Section	
MISSOURI		<i>Wurth v. Wurth</i> , 322 S.W.2d 745 (Mo. 1959)
MONTANA	Title 41, Chapter 3, Part 4	
NEBRASKA		<i>Accent Serv. Co. v. Ebsen</i> , 209 Neb. 94 (Neb. 1981)
NEVADA	Title 11, Chapter 129, Sections 010, 020, 080, 100	
NEW HAMPSHIRE ⁵		<i>The Concord Group Insurance Companies v. Eric R. Sleeper and Kenneth J. Anderson</i> , 135 N.H. 67 (N.H. 1991)
NEW JERSEY ⁶		<i>Bishop v. Bishop</i> , 287 N.J. Super. 593 (N.J. Super. Ct. Ch. Div. 1995)
NEW MEXICO	Chapter 32A, Article 21, Sections 1 — 7	

⁵ New Hampshire does not have a statutory emancipation procedure; however, under Title 1, Chapter 21-B:2, the state will recognize the legally emancipated status of a minor conducted judicially in another state.

⁶ Emancipation is recognized under N.J. Stat. § 55:14L-1 (2001), but is there limited to individuals living with human immunodeficiency virus (HIV) who are currently homeless or at risk of homelessness, for the purposes of services relating to HIV status only. *See* N.J. Stat. § 55:14L-1 (2001).

STATE	STATUTORY EMANCIPATION PROCEEDINGS	JUDICIAL EMANCIPATION
NEW YORK ⁷		<i>In the Matter of Alice C. v. Bernard G. C.</i> , 602 N.Y.S.2d 623 (N.Y. App. Div. 2d Dep't 1993)
NORTH CAROLINA	Chapter 7B, Subchapter 4, Article 35, Sections 3500 - 3509	
NORTH DAKOTA ⁸	N/A	N/A
OHIO		<i>Powell v. Powell</i> , 111 Ohio App. 3d 418 (Ohio Ct. App., Athens County 1996)
OKLAHOMA ⁹	Title 10, Chapter 4, Sections 91 –94	
OREGON	Title 34, Chapter 419B, Sections 550, 552, 555, 558	
PENNSYLVANIA		<i>Berks County Children and Youth Services v. Margaret Rowan, et al.</i> , 428 Pa. Super. 448 (Pa. Super. Ct. 1993)
RHODE ISLAND		<i>Siravo v. Siravo</i> , 424 A.2d 1047 (R.I. 1981)
SOUTH CAROLINA		<i>Timmerman v. Brown</i> , 268 S.C. 303 (S.C. 1977)
SOUTH DAKOTA	Title 25, Chapter 25-5-19; 25-5-21; 25-5-24 — 25-5-28	
TENNESSEE		<i>Morgan v. Morgan</i> , 1988 Tenn. App. Lexis 792 (Tenn. Ct. App. Dec. 7, 1988)
TEXAS	Family Code, Title 2, Subtitle A, Chapter 31, Sections 001 — 007	

⁷ Chapter II, Subchapter B, Article 1, Part 349, Section 5 defines an emancipated minor as “a person over 16 years of age who has completed his compulsory education, who is living separate and apart from his family and is not in receipt of or in need of foster care,” but this statute only applies to grants of public assistance to emancipated minors.

⁸ North Dakota has neither a statutory emancipation scheme, nor a history of common law on emancipation. This may be because under Title 14, Chapter 10, minors are often afforded the rights and protections of adults despite their lack of majority (e.g., N.D. Cent. Code § 14-10-03 (2001), civil liability for wrong done; N.D. Cent. Code § 14-10-10 (2001), power to contract; N.D. Cent. Code § 14-10-17.1 (2001), receipt of emergency examination, care, or treatment in a life threatening situation).

⁹ Limited to contracts and conducting business in the state.

STATE	STATUTORY EMANCIPATION PROCEEDINGS	JUDICIAL EMANCIPATION
UTAH		<i>State of Utah, In The Interest of R.R. v. C.R. and R.R., et al.</i> 797 P.2d 459 (Utah Ct. App. 1990)
VERMONT	Title 12, Part 10, Chapter 217, Sections 7151 — 7159	
VIRGINIA	Title 16.1, Chapter 11, Article 15, Sections 331 — 334.1	
WASHINGTON	RCW 13.64, Sections 010 — 080	
WEST VIRGINIA	Chapter 49, Article 7-27	
WISCONSIN ¹⁰		<i>Niesen v. Niesen</i> , 38 Wis. 2d 599 (Wis. 1968)
WYOMING	Chapter 49, Article 7, Section 27; Title 14, Chapter 1, Article 1, Section 101; Title 14, Chapter 1, Article 2, Sections 201 — 206	

10 Wis. Stat. § 48.987 (2000), “Earnings of self-supporting minors,” allows that “During any time when a parent of a minor neglects or refuses to provide for the minor’s support, or support and education, the earnings of the minor shall be the minors’ sole property as against such parent or any creditor of such parent.”