

EMANCIPATION IN WI

Definition: In family law cases, emancipation of a minor (also called "divorce from parents") refers to a court process through which a minor can become legally recognized as an independent adult. Through emancipation, a minor can take responsibility for his or her own welfare, and make the major decisions their parents typically would handle.

In Wisconsin, a child becomes legally emancipated at the age of 18. If the child is still enrolled in high school, he becomes a legal adult when he turns 19 or graduates, whichever comes first. Emancipation provides children the rights to take care of themselves without the legal supervision of their parents

THE "WHAT, WHEN & WHY" OF EMANCIPATION IN WISCONSIN

This document, created by the Wisconsin Coalition Against Domestic Violence (WCADV) Legal Department, does not constitute legal advice.

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I. What is meant by emancipation?

- A. Emancipation is the act of changing the legal relationship between parent and child while the child is a minor. Emancipation can be total or partial.
- B. Generally, even if emancipation is granted, some parental duties continue to exist and the minor is still subject to certain constraints, such as the right to contract.
- C. The underlying philosophy is that parents are responsible for their children - to provide for and control them - and that children are subject to their parents.
- D. The concept of emancipation originated from a single issue, of concern in the 19th Century, which states that a child has the right to retain his or her wages, against the parents' legal right to receive those wages.

II. There is no clear legal authority in Wisconsin to explain the term emancipation. Examples of how the legislature and courts have addressed emancipation follow:

- A. Sec. 48.987, Wis. Stats., states that a minor's earnings are his or her sole property if his or her parent neglects or refuses to provide for the minor's support or for the minor's education.
- B. Sec. 48.375(2)(e), Wis. Stats., defines emancipation solely for purposes of parental consent to abortion and judicial waiver.

- C. Sec. 880.04(1), Wis. Stats., states that upon marriage, a competent minor shall no longer be a proper subject for guardianship or if a guardianship exists, it is revoked upon marriage. This means the married minor is an adult for some purposes, including the right to file a legal action.
- D. Sec. 803.01(3), Wis. Stats., states that if a party to an action or proceeding is a minor, the party shall appear by attorney, by the general guardian of the party's property or by a guardian ad litem. The statute goes on to state a guardian ad litem shall be appointed in all cases where the minor has no general guardian of property. Because Sec. 880.04(1) does not specify what the minor may legally do without a guardian, Sec. 803.01(3) is saying a married, and so-called emancipated minor, does require a guardian ad litem in legal proceedings. This means an "emancipated" minor could file an injunction, but the court is to appoint a guardian ad litem to represent the best interests of the minor.
- E. There is no legal procedure in Wisconsin for requesting emancipation status.
- F. Courts deal with a request for emancipation in a given situation on a case-by-case basis. Such situations included school residency, court jurisdiction and debts.

III. Summary of what emancipation means in Wisconsin

- A. There is no formal process to request emancipation.
- B. Courts do grant emancipation, on a case-by-case basis, for a variety of reasons.
- C. Even if minor is emancipated, the parent may still be responsible for some duties

Emancipation in Other States:

Alabama, the age of majority is nineteen. The Alabama code describing the emancipation procedure is designed to expand the rights of minors over the age of 18 but under the age of majority. Parents can file an emancipation petition with the court or the minor seeking emancipation can file the petition if that minor has no parents or if a living parent is insane or has abandoned the minor. The court will then decide if a decree of emancipation is in the "interest of such minor."

California, the age of majority is eighteen. Minors are considered emancipated without court intervention if they are married, are a member of the armed forces, or have previously been declared emancipated by a California court. Otherwise, in order to seek court mandated emancipation, the minors must be no younger than fourteen years old, be already living apart from their parents, be able to demonstrate the ability to take adequate care of themselves financially, and not receive any income from illegal or criminal activity. If the court grants the order of emancipation, the minor then has the privilege and right to sign contracts; approve medical care; buy, lease, and sell real property; be the plaintiff or defendant in a law suit; write a will; live in their own home; go to school and get a work permit. If the minor's situation changes, the court has the ability to end the emancipation and advise the minor's parents that they are once again responsible for the minor.

Florida The age of majority in Florida is eighteen. In order to seek a court mandated emancipation, minors must submit a statement of "character, habits, income, and mental capacity for business, and an explanation of how the needs of the minor with respect to food, shelter, clothing, medical care, and other necessities will be met." In addition, minors must state whether they are party to any court action taking place in Florida or another state. Minors must also submit a statement explaining why they seek an order of emancipation. Parents must be notified of any such proceeding. The court then asks for any additional evidence to determine if the decree of emancipation is in the minors 'best interest. If the order of emancipation is granted, the minor will have all of the rights, responsibilities, and privileges of anyone who has reached the age of majority (eighteen years of age).

Illinois The age of majority in Illinois is eighteen. The Illinois statute allows the court to give an order of emancipation to a "mature minor who has demonstrated the ability and capacity to manage his (or her) own affairs and to live wholly or partially independent of his (or her) parents." The Illinois statute also seeks to tailor the content of the emancipation order to fit the needs of the minor seeking the order. The statute states that for an order of emancipation from the court to be valid, neither the parents nor the minor can offer any objections. Also, the court will examine the situation and determine whether a full or partial order of emancipation will be given. Also, once the emancipation order is entered, the court will determine what adult privileges and rights, in addition to the right to enter into contracts, will be given the minor. Only those rights listed in the order will be in effect for that minor. In order to seek a court mandated emancipation order, the minor must be at least sixteen years old but under eighteen years old. The minor must confirm that he or she lives in Illinois, explain why he or she wants a complete or partial order of emancipation, demonstrate that he or she is a "mature minor," and show that he or she has lived on their own.

Michigan The age of majority in Michigan is eighteen. The Michigan statute defines emancipation as the "termination of the rights of the parents to the custody, control, services and earnings of a minor." Absent an order of emancipation, the statute confirms that parents are responsible for supporting their minor children. In fact, one or both parents can object to the emancipation proceedings. In that case, the court may decide to dismiss the proceedings. The Michigan statute states the four ways that a minor can be emancipated without a court order as being by marriage, reaching the age of majority (eighteen years of age), joining the armed forces, and temporarily while in police custody in order to consent to needed medical treatment. The statute requires the petition to the court to be brought by the minor. The minors must submit information showing that they can take care of themselves financially, without seeking assistance from the state of Michigan. Minors must also show the court that they can take care of their other personal needs as well. The petition to the court must include a statement from an adult sufficiently familiar with the minor that the individual can offer information that explains to the court why emancipation is "in the best interest of the minor." At this point, the court may seek additional information and may ask someone from the court staff to investigate the situation further and report back to the court. The court then determines if an order of emancipation is in the minor's best interests. If the minor is emancipated, the adult rights and responsibilities applicable to the minor do not include those limited by age and by law such as using and purchasing alcohol and voting. However, they do include signing contracts, being a plaintiff or defendant to a law suit, keeping whatever money the minor earns, living away from the parents, approving health care and medical procedures, getting married, writing a will, and enrolling in school. If the minor's circumstances change, the emancipation order can be rescinded by the court. If that happens, the parents "are not liable for any debts incurred by the minor during the period of emancipation."

North Carolina The age of majority in North Carolina is eighteen. A minor must be at least sixteen years of age in order to seek an order of emancipation from the court. The court will consider several factors including the parents' need for the minor's earnings as well as the minor's ability to accept adult responsibilities in determining the best interests of the minor. If the emancipation is granted, the minor will have the adult rights to sign contracts, take part in law suits, and conduct other adult-related business. The parents' duties of support to the minor are thereby ended.

Oregon The age of majority in Oregon is eighteen. A minor must be sixteen years of age to seek an order of emancipation from the court. The minor must show that they can support him or herself and otherwise assume adult responsibilities. If the court determines that an order of emancipation is in the best interests of the minor, then the minor "has all of the rights and is subject to all liabilities of a citizen of full age."

Vermont A minor must be at least sixteen years old in order to seek an order of emancipation from the court. Minors are considered to be emancipated without a court order if they are married or have entered the armed forces. In order for the court to consider making an order of emancipation, the minors must have already lived separately from their parents, successfully taken care of their own finances, shown that they can take care of other personal business, either have received a high school diploma or are working toward one, and not be a ward of the social services or corrections department.

West Virginia A minor must be at least sixteen years old in order to seek an order of emancipation from the court. Minors must also show the court that they can provide for themselves and their "physical and financial well-being and has the ability to make decisions" for themselves. If an emancipation order is entered, minors have the rights and privileges of adults.

See more at: <http://family.findlaw.com/emancipation-of-minors/selected-state-minor-emancipation-laws.html#sthash.Sa7uGeUX.dpuf>