



CHILDREN'S LAW CENTER
OF MASSACHUSETTS

**EMANCIPATION
AND
THE LEGAL RIGHTS OF MINORS
IN
MASSACHUSETTS**

August 2005



OVERVIEW

Emancipation ends a parent's right to control his or her minor child and to participate in any decision-making about the child. If a child is emancipated, the parents no longer have the right to determine where the child lives or goes to school, or how the child's money is spent. The parent also has no right to the minor's wages or earnings.

The emancipated child's parents, in some situations, also would be relieved of certain responsibilities. For example, the parents would no longer be required to pay child support. The parents also would no longer remain responsible for harm that their minor child causes to other people or property. Because the parents no longer are responsible for damages the minor child causes, the minor could be sued personally and held responsible for damages s/he causes.

While emancipation relieves both the parent and child from certain obligations, the minor must still follow the law. For instance, even if s/he is emancipated, the child still cannot drive until age 16, and must attend school through his or her 16th birthday. An emancipated minor still cannot vote until age 18, and cannot purchase or consume alcohol until age 21. Also, gaining emancipated status will not allow a minor to remove himself or herself from undesired services of the Department of Social Services.

There is no formal procedure in Massachusetts for a child to become emancipated from his/her parents. Most judges will not grant a child emancipated status. However, a child may still file for emancipation in the Probate and Family Court of his or her county despite the lack of a formal procedure. In rare situations where a judge is convinced that emancipation is in the best interest of the minor and that the parents are not using it to get out of paying child support, the judge may grant emancipation.

Even if the child cannot be emancipated, s/he still may have options to live elsewhere, and may have independent rights. Remember that a minor does not have to be emancipated in order to receive welfare from the state, to consent to certain medical procedures, or to obtain an abortion.

1. *What is Emancipation?*

Emancipation is a legal process through which a minor child obtains a court order to end the rights and responsibilities that the child's parent owe to the child such as financial support for the child and decision making authority over the child. There can be either a *partial* or *complete* emancipation.

In a *partial* emancipation a child is free to make decisions about him/herself, but is still entitled to financial support from his parents.

In a *complete* emancipation a parent's duty of child support is completely terminated. Complete emancipations are rare, and are usually found when there is a specific written agreement between the parent and minor child.

2. *Does Massachusetts have a formal court procedure where a minor can achieve Emancipated status?*

No. Unlike several other states, Massachusetts does not have a formal procedure for a minor to ask the court for an order of emancipation. For this reason, there are no formal guidelines for a court to follow.

Despite the lack of a formal law outlining a right to emancipation, a child can still ask the court in the Probate and Family Court of the county where he or she lives to write an order for emancipation.

A judge may give a minor emancipated status when s/he is convinced that emancipation is clearly in the best interest of the minor, and that the parents are not using it as a way to avoid child support obligations.

******Even if you think that your situation is a very good case for emancipation, remember that, if the judge is not convinced that emancipation is clearly in your best interests and your story sounds like there may be abuse, neglect, or abandonment of you by your parent or guardian, the judge may call the Department of Social Services.******

3. *What is the age of majority in Massachusetts, and does this grant immediate emancipation?*

The "age of majority" in Massachusetts is eighteen. G.L. c. 4, § 7, cl. Fifty-one.

When a person turns eighteen, s/he is considered to have "full legal capacity." This means that the person can make all legal decisions for him/herself unless there is some reason other than age that legally prohibits him or her from making such decisions, such as mental inability. G.L. c. 231 § 85P.

Despite the fact that the "age of majority" is eighteen, this does not mean that all obligations between parents and children will end on the day a child turns eighteen. In fact,

Massachusetts courts have stated that in this state, there is no fixed age when complete emancipation occurs, and that it does not automatically occur when the child turns eighteen. For example, in some cases, parents can be required to support their children beyond the child's eighteenth birthday. See, Turner v. McCune, 4 Mass.App.Ct. 864, 357 N.E.2d 942 (1976) and Larson v. Larson, 30 Mass.App.Ct. 418, 469 N.E.2d 406 (1991). This may occur when the child lives with a parent and is principally dependent upon that parent for support, and there may be other instances.

4. *Is a minor emancipated if he or she enlists in the military?*

In some states, enlisting in the military is enough to allow a minor to make many decisions on his or her own, as an emancipated minor would. However, for that to be true, the minor generally must be enlisted on a full-time active duty basis. In addition, in all states, parental consent is required before a minor may enlist in any military service, and there are minimum age requirements that a minor must meet before enlisting. For example, to enlist in the Massachusetts Army National Guard a minor must be at least seventeen years old.

A minor who is enlisted in the armed forces in Massachusetts can consent to certain medical procedures without his or her parental consent. The minor's parents might, however, still be required to financially support him or her. No court has ruled on this issue in Massachusetts yet. Also, enlistment in the armed forces may not be enough by itself, to give minors additional legal rights, such as the right to enter a binding contract.

5. *Is a minor emancipated if he or she gets married?*

In some states marriage is enough to allow a minor to make many decisions on his or her own, as an emancipated minor would. In Massachusetts, depending on the child's situation, consent from either one or both parents or a guardian is required for a minor to marry. G.L. c. 207 § 25. The child's marriage does not automatically increase his/her legal rights beyond allowing the minor to consent to certain medical treatments. However, all laws that apply to married people also apply to minors. For example, laws that require husbands and wives to support each other apply to minors, and laws that make married individuals responsible for each other's debts also apply. No Massachusetts court has specifically decided that parents still must financially support a married minor.

6. *Is a minor emancipated if he or she has a child?*

No. If a minor has a child, he/she **can** consent to medical treatment for himself/herself and the child, but he or she is not otherwise considered emancipated. The minor parent generally does have all the same parental rights as an adult parent.

7. *If a minor runs away from home, is he or she considered emancipated?*

No. Being a runaway does not make the child legally emancipated. In certain instances, if the parents consent to the minor's living arrangements away from home, and some of

the factors listed below are satisfied, the court may consider a child's request for emancipation and grant that status. This is unlikely, considering the lack of formal procedure in Massachusetts, and the general reluctance of judges to grant emancipated status.

In fact, if a child runs away, and the child is under the age of 17, a parent, legal guardian or police officer may file a CHINS (Children in Need of Services) petition stating that the minor frequently runs away from home. A parent can also file a CHINS if the child refuses to obey the reasonable rules of the home, and a school can file a CHINS if the child is often absent from school, or frequently refuses to obey the school's rules. The child can be arrested on a CHINS warrant as a runaway but cannot be held with for long periods or in prisons. (For more information please see our brochure describing the CHINS process) M.G.L.A. c 119 & 39G

8. *What factors do courts look to in determining whether a minor is emancipated?*

In the unlikely case where a court is considering a child's request for emancipated status, the court may evaluate the following factors on a case-by-case basis, although none are conclusive proof of emancipation.

- Has there been a specific agreement by the parents to give up their rights in exchange for the minor giving up his or her right to support?
- Is the minor living at home?
- Is the minor paying room and board if living at home?
- Does the minor pay rent elsewhere?
- Do the parents exercise disciplinary control over the minor and to what extent?
- Is the minor independently employed?
- Can the minor spend his or her earnings without control of the parents?
- Is the minor responsible for his or her own bills?
- Does the minor own a car?
- Have the parents listed the child as dependant for tax purposes?
- What are the child's educational and work plans for the future?

9. *What other options does a minor have if s/he does not want to or cannot remain living at home?*

Many times teens can find practical solutions to improving their living situations. Par-

ents often allow teens to live with relatives or friends who agree to care for them. This kind of arrangement makes sure that the teen has appropriate adult supervision. A teen should spend some time thinking about relatives or friends who might be willing to allow the teen to live with them for a period of time. This might calm the situation down and make emancipation unnecessary. The parent may have to give the person who is caring for the child the authority to make certain decisions, such as educational or medical decisions. The parent should put in writing that s/he gives the caretaker the right to make decision if necessary.

If an alternate living arrangement must be more formal, the minor should consider asking for a legal guardianship. A teen who is over age 14 can nominate his or her own guardian. If the minor's parents agree to the guardianship, obtaining it is relatively easy. If the minor's parents do not agree to it, there will probably need to be a trial.

If the minor's living situation is terrible, and involves abuse or neglect, s/he can also consider calling the Department of Social Services. If it is appropriate, the Department of Social Services will provide foster care or group care (group home or residential) services to the child. Be aware that the Department of Social Services can investigate the child's story, the entire family situation, and can remove the child and/or the child's brothers and sisters from the custody of his or her parents.

10. *Can a minor lease or rent an apartment, get public housing, or emergency shelter?*

Minors can enter into contracts (including apartment leases). But they can also "void" any contract that does not involve a "necessity" and no longer be held to its terms. Slaney v. Westwood Auto, Inc., 366 Mass. 688 (1975) and Carpenter v. Grow, 247 Mass. 133 (1923). "Voiding" a contract is similar to breaking a contract. If a contract is for a "necessity," such as food or emergency medical care, the minor cannot void the contract. If housing is considered a necessity, then the minor can enter into the contract, and the landlord is not at risk of the child breaking the contract.

Housing may be considered a necessity depending on the minor's status and situation, however the Massachusetts courts have not clearly defined whether housing classifies as a "necessity." In addition, public housing agencies are *not* required to determine on a case-by-case basis whether housing for a particular minor is a necessity. G.L. c. 186 § 10 and Rivera v. Reading Housing Authority, 8 F.3d 961 (3rd. Cir. 1993).

A private landlord who believes that a minor might skip out on his/her lease, can decide to not rent to that minor. Minors are not guaranteed public housing for the same reason. So, although minors should be allowed to apply for public housing, and legally have the right to sign a lease, they are not guaranteed this housing. To improve their chances of obtaining housing, minors might want to provide their landlord with proof that they have a job or a means to pay the rent. Providing references, finding a co-signer over 18 years of age, or giving evidence of a good credit history can also help. Rivera v. Reading Housing Authority, 8 F.3d 961 (3rd Cir. 1993).

Minors who have obtained a court ordered emancipation will have more luck seeking public or subsidized housing than unemancipated minors under federal and state housing regulations. See 42 USCS § 1437 and 760 C.M.R. 5.03

Temporary housing can also be hard for a minor to obtain on his or her own, because shelters must notify either a minor's parents or the Department of Social Services within 72 hours after a minor arrives at a shelter. M.G.L.A. c. 119 § 23G. It may be easier for a teen parent to obtain housing independent of his or her parents through the welfare department. Again, however, in many cases where the teen parent is on his or her own, and especially where the teen parent is quite young, the Department of Social Services will be asked to figure out what is the best living situation for the teen parent and his or her child.

11. *Can a minor consent to medical and dental care without a parent's consent?*

Generally, for regular doctor visits, in non-emergency situations, a minor must obtain parental consent, UNLESS the minor is:

- Married, widowed or divorced.
- The parent of a child, in which cases he or she may also give consent for medical or dental care of the child.
- In the armed forces.
- Pregnant or believes herself to be pregnant.
- Living separate and apart from parents or a legal guardian and is managing his or her own financial affairs.
- Reasonably believes he or she has contracted a disease dangerous to the public health, such as a sexually transmitted disease, (see 105 CMR 300:100), and he or she seeks treatment for such disease. M.G.L.A. c. 112 § 12F.

In addition to the above categories Massachusetts Courts have adopted the "mature minor rule." This means that if a doctor believes that 1) the child is mature enough and able to give informed consent to the medical care and 2) it is in the best interests of the minor not to notify the child's parents, the doctor may accept the child's consent alone. Baird v. Attorney General, 371 Mass. 741, (1977).

Minors may also consent to their own treatment for drug addiction (if they are at least 12 years old), family planning services, or treatment for sexually transmitted diseases (including HIV or AIDS). M.G.L.A. c. 112 & 12E, c. 111 § 24E, and c. 111 § 117.

A minor who is at least 16 years old may commit himself or herself for mental health treatment without parental consent. M.G.L.A. c. 123 § 10

12. *Does a minor need parental consent to obtain an abortion in Massachusetts?*

Not necessarily. A pregnant minor who is not married, divorced, or widowed must either obtain the consent of either one parent/guardian or must go to court to get the necessary consent. A minor need not obtain the consent of both parents. *Planned Parenthood League v. AG*, 424 Mass. 586 (1997)

If the minor cannot obtain the consent of one parent or chooses not to ask either parent for consent, the child may petition a judge of the superior court to obtain consent. A minor is entitled to an attorney during this proceeding. *Baird v. Atty. Gen.*, 371 Mass. 741 (1977). A judge may consent to the abortion after deciding about the minor's maturity level, independence and living circumstances. M.G.L.A. c. 112 § 12S.

Although the process of obtaining consent from a judge can be stressful, it is designed to be confidential and as take as little time as possible. Please call (617) 616-1616 for information about this process.

Emancipated minors and minors who are married, divorced, or widowed may consent to abortion or sterilization without judicial or parental consent. *In re Rena*, 46 Mass. App. 335 (1999).

13. *What hours and types of jobs can minors work?*

Until a minor turn eighteen, he or she cannot work in certain places or during particular hours. The rules are complicated and exceptions exist for certain jobs, but the most basic rules are as follows. (See Mass. Ann. Laws c. 149, § 56-105.)

- Minors can sell or deliver newspapers once they are nine years old.
- Minors under sixteen cannot
 - i. work in a factory.
 - ii. work during school hours.
 - iii. work before 6:30 a.m. or after 7:00 p.m. during the school year
 - iv. work before 6:30 a.m. or after 9:00 p.m. during the summer
 - v. work more than eight hours a day.
 - vi. work more than six days in a week.
 - vii. work with dangerous machinery or hazardous chemicals or in the immediate area where alcohol is served.
- Minors who are between sixteen and seventeen years old cannot
 - i. work more than nine hours per day.
 - ii. work more than forty-eight hours per week.
 - iii. work more than six days in a week.
 - iv. work before 6:00 a.m. or after 10:00 p.m. (If the minor works at a restaurant or racetrack, s/he can work until 12:00 midnight on Friday and

- Saturday nights, and during school vacations).
- v. work with dangerous machinery or hazardous chemicals or in the immediate area where alcohol is served.

14. Can a minor get welfare from the state?

YES. A minor does not need to be legally emancipated from his or her parents to obtain public assistance in Massachusetts. Some minors who are pregnant or teen parents are eligible for cash (TAFDC), food stamps, and medical (Medicaid) benefits on behalf of their babies. However, under welfare reform the rules have become much more complicated.

The welfare rules require most teen parents under 18 either to live at home with their parent(s), relatives, or a guardian, in order to be eligible to receive TAFDC for themselves and their children. If the teen claims, and the Department of Social Services investigates and confirms, that the teen parent is unable to live at home or with adult relatives because of abuse, neglect, or addiction in the home, or other extraordinary circumstances, the teen and his or her child will not be forced to move home but will be required to live in a group home for teen parents in order to receive TAFDC. In some limited circumstances, such as if the teen parent has graduated from an independent living program, a teen parent may live on her own and still be eligible for welfare.

In addition, all young parents who are under age 20 must either attend school full-time, participate in a full-time GED program combined with other employment-related activities totaling 20 hours per week, be a high school graduate or have their GED. Childcare and transportation should be provided. If childcare is not available, a teen parent is exempt from the school requirement.

The amount of cash assistance available to teen parents depends upon how much income and resources the teen has and also upon the income of the teen's parents if the teen lives at home. If the parents also receive TAFDC, the teen and the baby are just added to the family's welfare grant. If not, the parents will be required to reveal their income so the teen's grant can be calculated. If the teen is not required to live with her parents then the parents' income does not count. Parents may be contacted by the Welfare Department to pay child support for children under the age of eighteen. There are many other rules that must be followed in order to obtain benefits.

Minors who are not pregnant or not parents may also be eligible for welfare under a separate program. A minor may be able to receive assistance through the Emergency Aid to the Elderly, Disabled and Children (EAEDC) program. A minor may receive EAEDC if he or she is living on his or her own, has little or no income, and is in high school or a vocational/technical program full time or is disabled. EAEDC recipients are automatically eligible for Mass Health Basic health care coverage. 130 C.M.R. § 505.006

Because of the recent complex changes in the law, teens should check with the Children's Law Center or their local legal services office to learn of their rights before they apply.

Free Legal Services

Contact the Legal Service Office in your area to learn more about your legal rights concerning emancipation, benefits and other concerns. These offices can also sometimes give you information about other agencies that can assist you

Children's Law Center of Massachusetts	781-581-1977
Cambridge and Somerville Legal Services	617-603-2700
Greater Boston Legal Services	617-371-1234
Legal Services for Cape Cod and Islands	
Hyannis	508-775-7020
Plymouth	508-746-2777
Legal Assistance of Central Massachusetts	
Worcester	508-752-3722
Fitchburg	800-649-3718
Merrimack Valley Legal Services	
Lowell	978-458-1465
Lawrence	978-687-1177
Neighborhood Legal Services (Lynn)	781-599-7730
Southeastern Massachusetts Legal Assistance Corporation	
Brockton	508-586-2110
Fall River	508-676-6265
New Bedford	508-979-7150
New Center for Legal Advocacy, New Bedford	508-979-7160
South Middlesex Legal Services	
Framingham	508-620-1830
Western Massachusetts Legal Services	
Springfield	413-781-7814
Holyoke	413-536-2420
Northampton	413-584-4034
Greenfield	413-774-3747
Pittsfield	413-499-1950
North Adams	413-663-9709