

# EMANCIPATION OF MINORS

## I. GENERAL INFORMATION

Most people think someone less than 18 can just go to court and get emancipated. But in Pennsylvania, emancipation is not a right, and there are no clear procedures to get a declaration of emancipation from a court. However, rarely is such a declaration necessary for a minor to achieve his or her goal.

Certain actions automatically result in a minor becoming emancipated--these include marriage or entry into the military. However, a minor usually wants to be declared emancipated to get a specific benefit or service. Government agencies usually have the authority to decide if a minor is emancipated, to authorize the benefit or service they administer. Therefore, it is usually not necessary for a minor to go to court to be declared emancipated.

**Please note: specific laws forbid minors from participating in certain activities, such as alcohol purchase and consumption, whether or not a minor is emancipated.**

## II. SCHOOL ATTENDANCE AND RESIDENCE

A minor must normally attend school in the public school district where his or her parents reside. This is not required if the student is homeless or lives with a relative or other adult who resides in another school district. Pennsylvania law says if that adult provides all housing, financial support and parental guidance for the minor, the minor may attend school in the school district where the adult supporting him or her lives. However, before the minor can enroll, the adult resident must sign a notarized affidavit which says he or she is providing all financial support to the minor, and will be responsible for the minor's school attendance and behavior. **To follow are the affidavit forms that conform to the requirements of Pennsylvania law.** Homeless students, defined as: "individuals who lack a fixed, regular, and adequate nighttime residence...due to loss of housing, economic hardship, or a similar reason" do not need to get an adult to sign a residency affidavit. They can attend school in the district where they are staying, even if their "residence" is a homeless shelter, park or car. The law that provides this right is called the McKinney-Vento Act. If you are homeless and are having trouble getting accepted into school, call the McKinney-Vento state coordinator for Pennsylvania at (717) 772-2066 for help.

State law says a minor must stay in school from age eight until age 17. This is known as the compulsory age for school attendance. At age 17, a minor may leave school without permission from the school, or from the minor's parents or guardians. A 16-year-old minor who has a job during school hours, and holds an employment certificate, may also drop out of school. **However, dropping out of school is strongly discouraged; as most jobs that provide decent wages require a high school and/or additional education. In addition, the military services often refuse to enlist persons who have not graduated from high school.**

According to Pennsylvania truancy law, "Every parent, guardian, or person in parental relation, having control or charge of any child . . . of compulsory school age . . ." may be fined or put in jail if the child in their care does not go to school. Therefore, unless a minor's parents, guardians or other adult who has previously assumed responsibility for the minor, can prove they no longer have actual "control or charge" over the minor, they may be subject to a penalty if the minor in their care does not go to school.

The law does not require the minor, or the minor's parents/guardians or other adult who previously assumed care for the minor, to get a declaration of emancipation of the minor from the court, to be relieved from responsibility under truancy law. Instead, the school district can decide if a minor is still under "control or charge" of an adult, by evaluating the circumstances. The school district should focus on whether the minor still lives with his or her parents/guardians or other adult, and whether the minor is getting financial support from parents/guardians or another adult. If a school district is unwilling to collect the information it needs to determine if the minor is emancipated, legal assistance may be required.

### **III. FAMILY LAW**

#### **Custody and Adoptions**

Minors have the same legal rights as adults, to custody of their own child(ren). The actual custody or visitation granted in any case, depends on the best interest of the child involved, determined by the facts of the case. If the Court decides a minor needs help preparing and presenting his or her custody case to the court, a guardian may be appointed to assist the minor.

The Pennsylvania Adoption Act defines a minor parent as someone under the age of 18. A minor parent who wants to place his or her own child up for adoption does not need the consent of his or her parents or guardians. A minor 12 years of age or older cannot be adopted, unless he or she consents to the adoption.

#### **Marriage**

Minors under the age of 16 can marry, but only if a judge at the county courthouse decides the proposed marriage would be in the best interests of the minor.

Minors between the ages of 16 and 18 can marry with the written, notarized consent of a parent or legal guardian, witnessed by two other adults. Alternately, a parent or legal guardian may give oral consent for the marriage at the marriage license office. When the minor has no parent or guardian available to give consent, a judge can approve the marriage. If no judge is available, the marriage license office can appoint a guardian to consent to the marriage.

### **IV. MEDICAL CONSENT**

A minor less than 18 years of age may give consent for his or her own medical treatment, if he or she:

- was graduated from high school **or**
- was married **or**
- was pregnant.

In addition, a minor may consent to medical treatment for his or her minor child(ren).

## **V. PARENTAL LIABILITY**

Under the law, parents are liable for property damage and personal injury caused by their child. However, they can only be required to pay a maximum of \$300 of any damage claim where one person is injured, and \$1,000 where two or more persons are injured.

A parent does not have to pay damages for injury caused by their child if:

1. the parent does not have custody of the child and is not entitled to custody of the child **or**
2. the child is institutionalized **or**
3. the child is emancipated.

Again, emancipation is not defined under this statute. In this situation, a parent who is being sued for property damage and personal injury caused by their child should raise emancipation as a defense. A court would then determine the parent's liability, using the emancipation factors discussed in the section of this pamphlet on Judicial Determination of Emancipation.

## **VI. PUBLIC ASSISTANCE BENEFITS**

For a minor to get benefits from the county assistance office (cash/Food Stamps/medical assistance) in his or her name, the minor's age, and certain other factors, depending on the type of benefit requested, must be determined by the assistance office.

**Medical Assistance:** A health insurance program for very low income individuals. For medical assistance purposes, a minor is any person less than 21 years of age (19 if the person is applying for medical assistance under the Healthy Beginnings program). A minor can get medical assistance in his or her own name if he or she is under age 21. However, the assistance office must determine if the minor's parent's resources and income must be included in the eligibility determination, unless they find the minor is emancipated. For purposes of medical assistance eligibility, a minor is emancipated if:

- married **or**
- not under the care and control of his or her parents or legal guardians, whether living with them or not **or**
- not getting most of his or her financial support from his or her parents or legal guardians, whether living with them or not **or**
- the minor's parents or guardians are not viewed as the responsible party for the minor by the school district where the minor attends school.

**Food Stamps:** Vouchers that can be used to purchase food.

- If the minor is less than 22 years of age, and living with his or her natural, adoptive or stepparent(s), the Food Stamp grant must be in the parent(s) name, and the parent(s) income must be included in determining whether the minor is eligible. There are exceptions to this rule, but they all require the minor to purchase and prepare meals separately from his or her parents. The exceptions include:

1. A parent is elderly or disabled and the minor is at least 18 years old, or, if less than 18, not under parental control.
2. The minor has children of his or her own who live in the household.
3. The minor is married, and the minor's spouse lives in the household.

- If the minor is living with another adult, the Food Stamp grant must be in the other adult's name, and the income of the other adult must be included in determining eligibility for benefits, unless the adult is **not exercising care and control over the minor**.
- Once the minor is 22 years of age, he or she can establish separate eligibility for Food Stamps. However, the income of the parent(s) must still be included in determining eligibility, if the parent(s) and child are purchasing and preparing meals together.

**General Assistance:** A cash grant funded with state money. The age of the minor and certain other factors determine if the minor can get General Assistance in his or her name.

- A single minor, between the ages of 16 and 18, who is not the primary caretaker for his or her child, may get his or her own General Assistance grant, if otherwise eligible. (As a practical matter, it is unlikely that a minor actually living with and/or receiving financial support from his or her parents, would be otherwise eligible for General Assistance.)
- A single person, between the ages of 18 and 21, who is attending high school or vocational school, and is expected to graduate before age 21, may also get a General Assistance grant, if otherwise eligible.
- A minor who is married, even if he or she lives with his or her parents, may get a General Assistance grant, if otherwise eligible.

**Temporary Assistance to Needy Families:** A cash grant funded with federal and state money for parents who are caring for their own minor children.

- As a general rule, parents under age 18 must live in their parent(s) home to get cash assistance. In addition, the cash grant must be in the name of the minor parent's parent(s). There are exceptions to this rule, but those exceptions are limited. Contact Northwestern Legal Services for help, if you are a minor parent and need to get a cash grant in your name.

## VII. SUPPORT

Parents must support their children who are unemancipated and 18 years of age or younger. Parents are not required to support their emancipated children. The support law fails to give specific rules to decide if a minor child is emancipated. Instead, a parent desiring to stop paying support because he or she believes his or her child is emancipated, must file a petition with the court to get a declaration of emancipation. The next section, Judicial Determination of Emancipation, contains the rules the court would use to decide if the parent(s) of a minor must continue to support him or her.

Finally, a minor child may move "in and out of emancipation" for support purposes. In other words, circumstances may change the child's emancipated status so that he or she becomes again

dependent on parental support. In support matters, therefore, the main issue in determining if a minor child is emancipated is whether the child relies on the parents for support.

### **VIII. JUDICIAL DETERMINATION OF EMANCIPATION**

As stated earlier, a minor may ask a court to declare him or her emancipated but, as shown above, court action is often unnecessary for the minor to get what he or she wants. A minor may petition a court to confirm his or her emancipated status by either submitting a "Petition for Emancipation" or by filing a "Complaint For Declaratory Judgment On Plaintiff's Emancipation Status." A minor should get legal assistance when asking a court for a judicial decree of emancipation. A hearing will be held on any request for emancipation, so the court can get the information necessary to decide if the minor should be declared emancipated. Information given to the court at the hearing should include facts showing: whether the minor is living with his or her parents or guardians; whether the minor is dependent on his or her parents for financial support; whether the parents and the minor intend for the minor to be independent; whether the parents are actually exercising control and authority over the minor; and whether the minor can financially support him or herself. For example, a 13-year-old who wants to leave home is not likely to be declared emancipated because he or she cannot support him/herself. In effect, the minor child must already be living independently for a court to determine that the child is emancipated.

Parents or guardians of a minor emancipated by court order, are no longer required to give the minor any financial support. This means they do not have to provide food, housing, clothing or any other assistance to the minor.

**Please call Northwestern Legal Services at the phone number below if you have any questions about this pamphlet.**

**(800) 665-6957**

**In Erie County call 452-6957**

*We have attempted to insure the accuracy of the information in this pamphlet at the time it was created or revised. However, the law does change, sometimes quickly and unexpectedly. Therefore, you should consult an attorney before taking or refraining from any action based on the information in this pamphlet.*



SWORN STATEMENT BY RESIDENT UNDER §13-1302  
(TO BE COMPLETED BY RESIDENT ONLY)

Instructions: Please complete the following statement. If the potential student is living, or will be living, in a household with two resident adults who will assume responsibility for the student, both residents must complete and sign this statement.

1. Your Name \_\_\_\_\_ Name of Spouse \_\_\_\_\_

Home Address \_\_\_\_\_

Home Telephone Number \_\_\_\_\_ Work Number \_\_\_\_\_

Is residency affidavit attached? Yes \_\_\_ No \_\_\_

2. Child's Full Name \_\_\_\_\_

Birth Date \_\_\_\_\_ Grade \_\_\_\_\_

Name & Address of Last School Attended \_\_\_\_\_

Date child began/will begin to reside in your home? \_\_\_\_\_

3. Do you intend to keep and support the child continuously and not merely through the school term? Yes \_\_\_ No \_\_\_

4. Will anyone contribute to the child's support? Yes \_\_\_ No \_\_\_

If yes, explain. \_\_\_\_\_

5. Is there currently a support order for the child that has been entered by a court or other party? Yes \_\_\_ No \_\_\_ If yes, to whom are the payments made?

6. Who will claim this child as a dependent for state/federal income tax purposes?

7. Will you assume all personal obligations related to school requirements for this child that may include providing for required immunizations, uniforms, fees/fines, citations/fines for truancy, attending parent-teacher conferences, attending meetings/hearings concerning discipline, and fulfilling any special education requirements? Yes \_\_\_ No \_\_\_

8. Will you assume the responsibility and obligation for making all education decisions?

Yes \_\_\_ No \_\_\_

I grant the school district permission to investigate the information I have presented in this statement by discussing the presented information with all appropriate parties, as necessary to confirm the factual accuracy.

\_\_\_\_\_  
(Signature of Resident)

County of \_\_\_\_\_  
State of \_\_\_\_\_

Sworn before me this \_\_\_\_\_ day of

In the presence of \_\_\_\_\_ (Notary)

RESIDENCY AFFIDAVIT, 24 PS §13-1302

I/We attest that all information provided here is correct and current. I/We understand that if residency should change, for any reason, it is the responsibility of the resident to notify the school district and amend the residency affidavit. Any false statements can and will be punishable by law.

I/We, \_\_\_\_\_, currently reside at

(Resident's name)

Address \_\_\_\_\_

Phone \_\_\_\_\_

**Homeowner's Verification**

Homeowner's name \_\_\_\_\_ Telephone number \_\_\_\_\_

Approval has been granted for \_\_\_\_\_ to reside with

(Child's name)

\_\_\_\_\_, at the address identified above.

(Resident's name)

Homeowner's signature \_\_\_\_\_ Date \_\_\_\_\_

**Landlord Verification**

Landlord's name \_\_\_\_\_ Telephone number \_\_\_\_\_

Approval has been granted for \_\_\_\_\_ to reside with

(Child's name)

\_\_\_\_\_, at the address identified above.

(Resident's name)

Landlord's signature \_\_\_\_\_ Date \_\_\_\_\_

Through my notarized signature, I/we grant the school district permission to investigate the above information that I/we have presented in this affidavit for confirmation and factual accuracy.

\_\_\_\_\_  
(Signature of Resident)

County of \_\_\_\_\_

State of \_\_\_\_\_

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_

In the presence of \_\_\_\_\_ (Notary)





