

A GUIDE TO UNDERSTANDING THE EMANCIPATION OF A MINOR

Traditionally, any person under the age of 18 who was married or entered military service was considered emancipated. An additional category consisted of those young persons who lived separate and apart from their parents and were financially responsible for themselves. A declaration of emancipation traditionally entitled the child, among other things, to be treated as an adult for the purposes of consenting to medical treatment, entering contracts, suing or being sued, ending parental support, controlling the disposition of wages, obtaining a work permit and enrolling in school. In the late 1970s, a number of individuals became concerned that these traditional approaches to the concept of emancipation of a minor were too limiting. As result, across the country individual states adopted statutory grounds upon which a minor could obtain a judicial determination that they were emancipated.

In 1980, the State of Illinois adopted what is now known as the Emancipation of Minors Act (750 ILCS 30/1 et seq.). This statute allows a “mature minor,” a person aged 16 or 17, who has demonstrated the ability and capacity to manage their own affairs and to live wholly and partially independent of their parents or guardian to obtain the legal status of an emancipated person, if the court determines that emancipation is in the child’s best interest. This will enable the emancipated person to enter into valid legal contracts.

The Statute also provides a means by which a homeless minor may seek assistance, without consulting parents order or guardian. This second category is defined as a person 16 years of age but less than 18 years of age who lacks a regular, fixed, or adequate place to live and who desires to participate in a youth transitional housing program. The term includes, but is not limited to, a minor who is sharing the dwelling of another or living in a temporary shelter or who is unable or unwilling to return to the residence of a parent.

A homeless minor is not one who is in the custody or under the guardianship of the Department of Children and Family Services. Indeed, no child may be terminated from the custody or guardianship of the Department of Children and Family Services for the purpose of obtaining emancipation as a homeless minor. An order of emancipation as

a homeless minor will allow that individual to receive shelter, housing, and services provided by a licensed agency that has the ability and willingness to serve the person.

However, the legislation respects the rights of parents and guardians, as well as, the State's interest in preserving the integrity of the family unit. Consequently no order of complete or partial emancipation under this Act may be granted by a court if a parent or guardian objects. In addition, a petition for the partial emancipation of a homeless minor cannot be filed unless appropriate attempts have been made to reunify the homeless minor with his or her family through the services of a Comprehensive Community Based Youth Services Agency.

A legal determination that a minor is emancipated requires of the filing of a petition on behalf on the minor, by a "next friend", parent or guardian of the child which factually establishes the legal grounds for emancipation. **A minor may not file a petition on their own behalf.** (750 ILCS 30/4). The petition may be filed in the Circuit Court in the county where the minor resides, is found, owns property, or in which a court action affecting the interest of the minor is pending.

The petition for emancipation must be verified and set forth: (1) the age of the minor; (2) that the minor is a resident of Illinois at the time of the filing of the petition, or owns real estate in Illinois, or has an interest or is a party in any case pending in Illinois; (3) the cause for which the minor seeks to obtain partial or complete emancipation; (4) the names of the minor's parents, and the address, if living; (5) the names and addresses of any guardians or custodians appointed for the minor; (6) that the minor is (i) a mature minor who has demonstrated the ability and capacity to manage their own affairs or (ii.) a homeless minor who is located in the state; and (7) that the minor has lived wholly or partially independent of their parents or guardian.

If the proceeding is filed on behalf of a homeless minor, the petition shall also set forth the name of the youth transitional housing program that is willing and able to provide services and shelter or housing to the minor, the address of the program, and the name and phone number of the contact person at the program. This petition shall also assert the reason that the services and shelter or housing to be offered are appropriate and necessary for the well-being of the homeless minor.

All persons named in the petition filed by behalf of a child asserted to be a “mature minor” must be given written notice of the filing of the petition within 21 days after its filing. The persons named in the petition would include parents and/or guardians.

In the case of a homeless child seeking to be declared emancipated for the sole purpose of receiving housing or other services, notice of the proceedings need not be served on the persons named in the petition. This is due to the fact that the petition must allege what efforts to reconcile the family with the minor have been taken. There appears to be an inference in the law that the petition is being filed because the minor's parents have not been found or have declined to reconcile any differences that exist between day and the child.

The notice should include a copy of the petition for emancipation that was filed. This notice must be served personally by either the sheriff, a properly appointed process server or by “certified mail return receipt requested addressee only.” If you are unable to personally serve any of the individuals named in the petition for emancipation because their current address is unknown and after diligent search that person cannot be located, notice may be given by publication as outlined in the Code of Civil Procedure (735 ILCS 5/2-206). It is important, that if notice by publication is attempted, a detailed affidavit showing what steps were undertaken to locate the person who should receive actual notice of the proceedings. The affidavit must be filed and approved by the court.

Once, it has been established that all persons entitled to notice have either been served personally or by publication, the matter should be scheduled for a hearing before the court. In order to obtain a court date, the party of filing the petition should go to the County Division Motion Desk located in Room 1202 and schedule a hearing. The clerk or other court personnel will set the matter for a certain date, time and courtroom. Every person who was notified personally should be advised of the date, time, courtroom number, and courthouse location where the hearing will be held. This can be done by sending each of them a "Notice of Motion" on the form regularly published by the Clerk of Court. The notice can be served by regular mail, deposited not less than five business days prior to the scheduled court date, or delivered to the person entitled to notice not less than two business days prior to the scheduled court date. The "Notice of Motion" should

state that when the matter is presented to the court, an order declaring the minor to be emancipated will be requested. The names of those persons to whom the “Notice of Motion” was sent and the date and manner of service must be added to the form. This document must be presented to the Court at the time of hearing.

On the hearing date, the person filing the petition must produce sufficient evidence to establish that the persons entitled to notice of the proceeding and hearing date were served and the grounds which would justify the entry of an order of emancipation.

If, the minor is alleged to be a “mature minor,” a person who has demonstrated the ability and capacity to manage their own affairs and to live wholly or partially independent of parents or guardian, the petitioner must establish that the minor is of sound mind and has the capacity and maturity to manage their own affairs including finances and that the best interest of the minor and the minor's family will be promoted by declaring the minor emancipated.

While there is no exclusive list of what evidence should be presented to the court, the petitioners should anticipate producing evidence concerning the child's income source and any expenses. In addition, evidence concerning where the child intends to live should be produced. Finally, evidence as to why an order of emancipation is in the best interest of the minor and the minor's family must be presented.

Regardless of the nature or extent of the evidence produced by the petitioner on behalf of the minor's request for emancipation, if a parent or guardian objects to an order of emancipation the statute requires that it be denied.

If the court is convinced that in order of emancipation is justified under the statute, the judge may grant a full emancipation. This will entitle the individual to have the right to enter into valid legal contracts and what ever other rights and responsibilities the court may order that are not inconsistent with a specific age requirements of the State or Federal Constitution or any state or federal law. For example, a child who is emancipated cannot consume alcoholic beverages until their 21st birthday.

If the minor is homeless, the court is required to grant partial emancipation for the sole purpose of allowing the homeless minor to consent to the receipt of services and shelter or housing provided by the youth transitional housing program named in the petition, as well as, other services that the youth transitional housing program may

arrange by referral. The homeless minor must be present at any court hearing. It would be advisable for the person bringing the petition on behalf of the homeless minor make arrangements to have a representative of the youth transitional housing program appear in court on to answer any questions concerning the facts asserted in the petition. Unless the parents or guardian of the child have been notified of these proceedings and the hearing date, the court is unable to grant any additional rights to the homeless minor. Hence, this emancipated minor will only be allowed to contract for the receipt of services and shelter or housing provided by the youth transitional housing program or other services for the youth that the program may arrange by referral.

If at any time, the youth transitional housing program determines that its facility and services are no longer appropriate for the minor or that another program is more appropriate, the court retains jurisdiction, upon notification and after hearing, to modify its emancipation order.

Any order allowing or denying the petition for emancipation may be appealed to the appellate court.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

In re the Matter of the Emancipation of: _____)
_____)
 A Mature Minor) No.
 A Homeless Minor)
_____)

PETITION FOR DECLARATION OF EMANCIPATION OF A MINOR

1. Name of Petitioner:
 Parent Guardian Next Friend (select and check one. Minor cannot file Petition on their own behalf).
2. Name of Minor Child: _____
3. Child's Date of Birth: _____ Age Now: _____
4. The minor child: _____
 resides at (address): _____
within Cook County, Illinois; or
 was found in Cook County, Illinois at (location)

 Owns property at _____ in Cook
County, Illinois.
5. The Minor Child is a:
 Mature Minor, as defined by 750 ILCS 30/3-2, because of the following
facts (Detail):

OR

- Homeless Minor, as defined by 750 ILCS 30/3-2.5 because of the following facts (Detail);

That on behalf of the homeless minor the following efforts at family reunification were undertaken (Detail):

IF YOU NEED ADDITIONAL SPACE TO ANSWER ANY PORTION OF QUESTION 5, PLEASE ATTACH A SEPARATE SHEET.

- 6. The Mother of the Minor is (Name and Address):

- Deceased (Attach Death Certificate or state date and place of death).

- 7. The Father of the Minor is (Name and Address):

- Deceased (Attach Death Certificate or state date and place of death)

- 8. The Minor does have a Guardian does not have a Guardian
Name and Address of Guardian:

- 9. The Minor is not the subject of any proceeding in the Child Protection or Juvenile Justice Division of the Circuit Court of Cook County, Illinois.

- 10. The Minor is not the ward of any court.

11. The Minor has been living separate and apart from parents/legal guardian since (insert date): _____.

Wherefore your Petitioner, on behalf of the Minor Child requests this Court enter a Declaration of Emancipation consistent with the grounds set out in this Petition.

Signature

Print Name

Under the penalties of perjury as provided for in section 1-109 of the Code of Civil Procedure, the undersigned states the facts contained in this petition for emancipation of a minor are true and correct.

Signature

Print Name

Name: _____
Attorney for: _____
Address: _____
City: _____
Phone Number: _____