

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 559 (Senator Ruben) (By Request)
Judicial Proceedings

Family Law - Minors - Emancipation by Court Order

This bill provides that a minor who is at least 16 years old and meets specified requirements may petition an equity court for emancipation.

Fiscal Summary

State Effect: The bill could minimally increase expenditures in the Judiciary to address increased caseload.

Local Effect: The bill could minimally increase expenditures in the Judiciary to address increased caseload.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: This bill establishes that an equity court has jurisdiction over emancipation of a minor. The bill provides that a minor at least 16 years old and meets the requirements may file a petition for emancipation in the equity court in the county where the minor resides. The bill specifies the information that must be included in a valid petition and requires an affidavit from one of 10 specified individuals who can attest that emancipation is in the minor's best interests.

The bill specifies notice and hearing requirements for the petition and authorizes the court to appoint legal counsel for the minor and, under specified circumstances, for the minor's parent or guardian.

The equity court is required to issue an order of emancipation if the court finds that the parent or guardian does not contest the petition; or that the parent or guardian is contesting the petition, but unreasonably withholding consent or not providing the minor with support. In addition, the court must find that the minor meets age and residency requirements, is able to manage financial, personal and social affairs, understands the rights and responsibilities of emancipation, and that emancipation is in the minor's best interests.

A minor emancipated by court order has the same legal capacity, rights and responsibilities as an adult, with the exception of legal limitations regarding voting and prohibitions regarding the consumption of alcoholic beverages. The parent or guardian of an emancipated minor is not liable for any debts incurred by the minor after the court orders emancipation.

The bill provides that an emancipation obtained by fraud is voidable. Also, a parent or guardian or the emancipated minor may petition the court to rescind the emancipation order, as specified in the bill. A final order for emancipation or rescinding emancipation may be appealed, as provided by State law.

Current Law: A person who is 18 years of age or older is an adult for all purposes and has the legal capacity, rights, privileges, powers, and duties of adults. In Maryland, the "age of majority" is 18 years.

A person who is 18 years and is enrolled in secondary school does have the right to receive support and maintenance from both parents until one of the following events occurs:

- the person dies;
- the person marries;
- the person is emancipated;
- the person graduates from or is no longer enrolled in secondary school; or
- the person attains the age of 19.

Except as otherwise provided, the term "minor," as it pertains to legal age and capacity, refers to persons who are younger than the age of 18.

An equity court has jurisdiction over adoption of a child, alimony, annulment, divorce, custody or guardianship of a child generally, visitation, legitimation of a child, and child support.

Background: According to *Black's Law Dictionary*, the term “emancipation” is “principally used with reference to the emancipation of a minor child by his or her parents, which involves an entire surrender of the right to the care, custody, and earnings of such child as well as a renunciation of parental duties.” A child is emancipated on reaching the age of majority which is generally considered to be 18 years old. Certain events may cause a child to be emancipated earlier than that age. Marriage before the age of 18 and enlistment in military service are situations that terminate parental control over and the duty to support a minor child.

In *Holly v. Maryland Automobile Insurance Fund*, 29 Md. App. 498 (1975), the Court of Special Appeals held that emancipation of a minor may not be achieved by the voluntary action of the child, but may result from the abandonment or mistreatment by the parent or the voluntary relinquishment of parental rights. The court stated, “[w]hether or not a minor child has been emancipated depends upon the peculiar facts and circumstances of each case, and is therefore, generally a question for the jury. Emancipation of a minor child is never presumed, and the burden of proof is upon he who alleges it.”

Maryland law on emancipation is found primarily in case law. A minor under 18 years may be emancipated by marriage or military service. A minor may make certain personal health care decisions independent of parental authority. However, a minor who wants the court to rule that the minor is emancipated must persuade the court on the strength of the facts of that case. There is no court rule or statute that establishes the procedure for consideration of this petition.

Approximately 25 states have statutes specifying procedures to petition the court for emancipation. In general, the minor, the parent, or guardian may file the petition. The law may require a court to appoint an attorney or guardian *ad litem* to represent the minor's interests. If the minor files a petition that is contested by a parent, states may require the minor and the parent to be represented by counsel. In most states, a minor must be 16 years old to file a petition, although in California the age is 14, in Wyoming 17, and in Alabama, where the age of majority is 19, the age to petition for emancipation is 18.

State and Local Fiscal Effect: The Administrative Office of the Courts (AOC) advises that the bill could require an increase in staff and judges to process and rule on new cases. AOC also advises that counsel fees could cost from \$3,600 to \$5,400 for each emancipation case if all parties were appointed counsel by the court. However, the Department of Legislative Services advises that the number of new cases under this bill is likely to be minimal and may minimally increase expenditures for the Judiciary. Also, while the bill authorizes the courts to appoint counsel, the appointment of counsel is not mandatory, nor does the bill specifically require the courts to bear the cost of appointed counsel. Any impact on caseload from the bill's provisions is expected to be minimal.

Small Business Effect: Law firms may benefit to a minimal extent by providing legal services to minors or the parents or guardians of minors that may be involved in the emancipation cause of action authorized by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Office of the Attorney General, Department of Legislative Services

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mp/jr

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