**What is emancipation?**

Emancipation of a minor is a process by which a person under age 18 becomes independent of parents or guardians for important legal purposes. The minor gains some of the rights of an adult. The minor’s parents no longer control the minor and may no longer have any responsibility for the child. Emancipation may be partial or complete, express or implied.

In a complete emancipation the parents’ duty to the child, including the duty to support the child, is completely ended. Complete emancipation is rare.

In many recent cases courts have said a child is partially emancipated. In these cases the courts say the child is able to make decisions about himself or herself, but is still entitled to financial support from parents.

Whether a minor is emancipated depends on the specific facts of each case.

**Does Massachusetts have a formal court procedure for emancipation?**

No. Some states have a law that says how a minor may ask a court for an order of emancipation. Massachusetts does not have this.

Even though Massachusetts does not have a specific law about emancipation, a minor can still ask a court for an order of emancipation. The minor may file a *complaint (or petition) in equity* in the Probate and Family Court or Superior Court in the county where the minor lives or where the minor’s parents or guardian live.

Because Massachusetts does not have a specific emancipation law, the court has no formal guidelines to follow when it considers a complaint for emancipation. Looking at court decisions in earlier cases, it seems very unlikely that the court will grant a minor’s request for emancipation unless the judge is convinced it is in the best interests of the child, the child is able to support himself or herself, and the parents are not trying to claim the child is emancipated to avoid paying child support (which children sometimes get until they are 23).

Filing a complaint in equity for emancipation is not simple. Because Massachusetts does not have a special law, it is not clear how a minor files for emancipation. Even the people who work in courts might disagree about how to file. Court rules don’t even allow a minor to sue on his or her own behalf—the minor needs a “next friend” or “guardian ad litem” appointed by the court to even bring a case to court. Mass. R. Civ. Pro. 17(b). The Probate and Family Court has many fill-in-the-blanks court forms, but they currently do not have a form complaint in equity, or any other form to file for emancipation. These are just some of the reasons why a minor probably should not try to file for emancipation without help or legal advice.

***BE CAREFUL!*** *You may think you have a good case, but if you file a case in court, the judge may ask the Department of Children and Families (DCF) to investigate and become involved in your case. DCF could take custody of you and place you in foster care. This is especially true if someone might think your parent or guardian has abused, neglected, or abandoned you.*

**What is the age of majority in Massachusetts?**

The “age of majority” is 18. G.L. c. 4, § 7 (para. 51)

When a person turns 18, he or she gets “full legal capacity.” G.L. 231, § 85P. This means the person can make all legal decisions about himself or herself, unless there is some reason other than age the person can’t make decisions (such as mental inability). G.L. c. 231, § 85P. Reaching the age of majority is not the same thing as being emancipated.

Even though 18 is the “age of majority,” parents may still have some obligations to children 18 and older.

Massachusetts law says a parent may have to pay child support until a child turns 21 or even until a child turns 23 if the child is “enrolled in an education program.” In both of these cases, the child must still live with a parent and be “principally dependent” on that parent for support. G.L. ch. 208, § 28 (divorced parents), G.L. ch. 208, § 37 (separated parents), G.L. ch. 209C, § 9 (parents never married). Child support is paid to the custodial parent or guardian for the support of the child, not to the child directly.

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

It probably depends on the circumstances. By federal law, the minimum age for enlistment in the United States military is 17 with parental consent, and 18 without parental consent. 10 U.S.C. 505. In some states, enlistment in the military full-time on active duty automatically emancipates a minor. No court in Massachusetts has yet decided this issue, but based on recent court decisions, it seems a minor would not be automatically emancipated upon enlistment. For example, a minor’s parents may still be required to support a minor who has enlisted in the military, in particular a minor who enlisted before completing high school under a delayed enlistment program.

A minor who is enlisted in the military can consent to his or her own medical and dental treatment or decline treatment (and does not need parental consent). G.L. ch. 112, §12F.

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

It probably depends on the circumstances. In some states, a minor who gets married is allowed to make some decisions as an emancipated minor would. In Massachusetts, a person under 18 cannot marry without a court order and permission of parents or a guardian. A person under 18 must go to the Probate and Family Court or District Court where he or she resides to get a court order to marry. Depending on the situation, the minor also needs permission of one parent, both parents, or a legal guardian. G.L. c. 207, § 25. No Massachusetts court has yet decided that a minor’s marriage alone will make the minor emancipated, or that parents must financially support a married minor.

A minor who is married, widowed or divorced can consent to his or her own medical and dental procedures (and does not need parental consent). G.L. ch. 112, §12F.

A married minor may not be emancipated, but laws that apply to married people also apply to married minors. For example, laws that require a husband and wife to support each other, and laws that make married people responsible for each other’s debts both apply to minors.

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

No, a person does not become emancipated just because he or she has a child.

LeBreque v. Parsons, 74 Mass. App. Ct. 766, 771-772 (2009) When a court is trying to decide if a minor should be emancipated, the fact that the minor has a child might be one thing the court considers, but just having a child does not make a person emancipated.

In the LeBreque case, the Court said that 19-year-old Jill was not emancipated because she still lived with her mother, depended on her mother for support, and went to school. Jill wasn’t emancipated herself, but she could still make the decisions for her baby as the baby’s parent.

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

No. Being a runaway does not make a child legally emancipated. In fact, if a child runs away and the child is between 6 and 18, a parent, legal guardian, or custodian having custody of the child may file a CRA (Child Requiring Assistance) petition in Juvenile Court. G.L. c. 119, § 39E. This is similar to what used to be called a CHINS (Child in Need of Services) petition. The parent, guardian or custodian may also file a CRA petition if a child refuses to obey reasonable home rules G.L. c. 119, § 39E, and a school can file if a child repeatedly fails to obey school rules or willfully and without excuse misses 8 days of school in a quarter. G.L. c. 119, §39G (although if the child missing school is 16, the case must be dismissed because another law says children are required to go to school only until age 16). Parents or a police officer can also file a CRA petition if they believe the child is being trafficked for sex. G.L. c. 119, §39L.

If a CRA petition is filed, the Juvenile Court may order informal assistance to the child G.L. 119, §39E, or may, after a fact finding hearing, order treatment services or placement of the child with parents, another relative, in a licensed agency or in DCF custody. G.L. 119, §39G. *For more information, please see our brochure on CRA.*

**What factors do courts consider in determining whether a minor is emancipated?**

It’s difficult to say for sure. Massachusetts courts have not decided very many cases about emancipation, and many of the cases on emancipation were decided so long ago that a court today may not pay much attention to them. Most recent cases about emancipation have to do with a parent saying an older child is emancipated because the parent wants to stop paying child support.

Some things a court would likely consider:

* Is the minor living at home?
* How dependent is the child on the parents?
* Does the minor support himself or herself?
* Do the parents exercise disciplinary control over the minor?
* Is the minor married or parent of a child?
* Do the minor’s plans for education and/or work show the minor is thinking in a responsible, mature way?
* What is the intent of the parties? (Older cases say that courts should consider whether parents intended to emancipate their children. Some more recent cases, however, say that a parent can’t simply say he intends to emancipate his child as a way to get out of paying child support. 59 Am. Jur. 2d Parent and Child §§80-88. )

**What other options does a minor have if he or she does not want to or cannot live at home?**

Many times teens can find practical ways to improve their living situations. Parents often allow (or at least won’t try to stop) teens from living with relatives or friends who are able to provide some adult supervision and support. A teen should spend some time thinking about relatives or friends who might be willing to allow the teen to live with them. A teen who is having a lot of conflict with a parent might be able to reduce the conflict or calm down the situation if the teen can live with a relative or friend, even for a short time. This might make emancipation unnecessary. The cooperative parent should put it in writing that he or she gives the child’s caretaker the authority to make certain decisions, such as educational and medical decisions, on behalf of the child.

An alternate living arrangement may also be more formal. This more formal arrangement is called a *guardianship*, and is discussed more below.

If a minor’s living situation is terrible, he or she could consider calling the Department of Children and Families (DCF). DCF will investigate the child’s situation, and may remove a child from his or her parents, and file a case in Juvenile Court. DCF may take custody of the minor, and may place the minor in the care of a relative, in foster care, a group home, or other type of placement.

When DCF is involved, the agency will do what the agency thinks is best to protect the child. DCF has laws and regulations it must follow in determining what is best for the child, but the people at DCF will make the decisions, not the minor. In the Juvenile Court case, the minor will be appointed an attorney and will have a voice in the court case, but the judge will make the decisions.

**What is a guardianship?**

A guardianship is a court proceeding in which a court makes an order appointing a guardian for a minor. The court order gives the guardian legal authority and a duty to take care of the minor.

A guardianship may be limited, giving the guardianship some authority and responsibility for the minor, and allowing the minor some authority to act for himself or herself. G.L.209B, §5-207(b)

A child who is 14 or older or any adult interested in the welfare of a child may file a petition for guardianship, G.L. 209B§, 206(a), in the Probate and Family Court in the county where the child resides at the time the petition is filed. 190B, §5-105. Sometimes a petition for guardianship may be filed in a different court. For example, if there is an open case in Juvenile Court about the minor, the petition for guardianship may be filed in that Juvenile Court. 190B, §105.

A child who is 14 or older can nominate a guardian; that is, name the person he or she wants to be guardian. The court must appoint the guardian the minor wants unless the court finds that it would not be in the “best interests” of the minor. G.L. 209B, §5-207(a)

If the minor’s parents both consent to the appointment of a guardian, the process is not too complicated. The court has fill-in-the-blank forms available at the Probate and Family Court. The forms are also on-line at the Massachusetts Court System website. The person requesting the guardianship has to fill out the forms and file them with the court clerk and send notice to all other people involved in the case (for example, the child’s parents, a child 14 years old or older, the proposed guardian, the person the child lives with, and sometimes other people, G.L. 290B, §5-207(b)). The court will set a date for a hearing. At the hearing, even if everyone agrees, the court still must make sure the appointment of the guardian is in the minor’s “best interests,” before appointing the guardian. G.L. 290B, §5-207(c).

If a guardian is appointed, the minor’s parents may still be required to pay child support to the guardian. G.L. 290B, §5-209(c).

If one or both of the minor’s parents do not agree to the appointment of a guardian, it is a lot more complicated. There will likely be more than one court hearing (and sometimes there will be many hearings), and the court may appoint someone to investigate the case. G.L. 290B, §5-106(b). There may have to be a trial. If there is a trial, the court will not appoint a guardian unless it finds that both parents are unfit to have custody of the child. G.L. 290B, §5-204(a). It can be difficult to show a parent is unfit. *For more information, please see our brochure on guardianship.*

**Can a minor lease or rent an apartment, get public housing, or be admitted to emergency shelter?**

Minors can enter into contracts, including apartment leases. But minors can also "void" some contracts at any time up until a reasonable time after turning 18. Frye v. Yasi, 327 Mass. 724, 728 (1951). "Voiding" a contract is similar to breaking or getting out of a contract. Because a minor can void a contract, most people do not want to enter into a contract with a minor.

But there are some contracts a minor may not be able to void. A minor cannot void a contract for “necessaries,” which include things the minor needs, for example, food or emergency medical care. Slaney v. Westwood Auto, Inc., 366 Mass. 688 (1975) and Carpenter v. Grow, 247 Mass. 133 (1923). A Massachusetts statute says that rent for a place a tenant lives is a “necessary.” G.L. ch. 186, §10. This means that a minor probably could not void or get out of a lease, but this still doesn’t mean a landlord will want to rent to a minor. A landlord may be worried a minor may try to get out of the lease or other contracts, like a utility bill.

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.

It may also be difficult for minors to get public housing. A federal court in a Pennsylvania case said public housing agencies are not required to rent to minors because minors may void contracts. Rivera v. Reading Public Housing Authority, 819 F.Supp. 1323 (E.D. Pa. 1993). The court said that minors may *sometimes* not be able to get out of contracts—a minor cannot void a contract for necessaries, and sometimes courts have said a minor is emancipated specifically for the purpose of being able to enter into a contract. But the court in this case said that the Public Housing Authority does have to look at each individual case and try to figure it out, and can simply decide not to rent to minors because they may be able to void the lease. So, although minors should be allowed to apply for public housing, and legally have the right to sign a lease, they may have trouble getting public housing.

Emancipated minors may have more luck seeking public or subsidized housing than unemancipated minors under federal and state housing regulations. See 42 USCS § 1437 and 760 CMR 5.03. A minor who already lives in public housing is often able to sign a lease and stay after the adult tenant leaves (for example, a 17-year-old may be able to stay in the apartment after the death of his mother).

It’s also difficult for a minor to get into an emergency shelter, not because he or she is a minor, but because it’s difficult for anyone to get into an emergency shelter. Massachusetts has a shelter program called Emergency Assistance (EA), which is run by the Department of Housing and Community Development (DHCD). Almost all homeless shelters in Massachusetts are part of this shelter system. This means that a person who wants to get into a shelter has to apply through DHCD, in the same building as the local Department of Transitional Assistance (DTA) office—also known as the welfare office.

In 2009 Massachusetts changed the EA rules, and it is now more difficult for people to get into shelter. People applying for shelter must be very poor. They must have very little income and own nothing of any significant value. In addition, the only people eligible for EA are:

* those with a child or children under age 21 (so a minor would have to have a minor child), or
* pregnant women. 760 CMR 67.02.

In addition, the person applying has to show the family is homeless for one of these four reasons:

* domestic violence
* fire, flood, other natural disaster
* certain kinds of eviction that are not the person’s fault
* the family is living in a place unfit for human habitation and there’s a substantial health or safety risk likely to result in significant harm if the family stays there. 67.06(1)(a).

If the minor could live with a parent or other family member or any other “feasible” place and just doesn’t want to, the minor is not eligible for EA. 67.06(1)(b). There’s some exceptions. A minor does not have to live with a parent who is abusive, for example. A minor with an abusive parent who applies for EA could be referred to the Department of Children and Families.

There are a number of other requirements for EA. If a minor is found eligible for EA, DHCD might place the minor in a “Teen Living Program.”

*For more information about Emergency Shelter, please see “Applying for Emergency Assistance Shelter: A Guide for Families,” published by Massachusetts Law Reform, Inc. and Rosie’s Place, July 2014.*

**Can a minor consent to medical and dental care without a parent’s consent?**

Usually, no, but there are a lot of exceptions. For regular doctor or dentist visits and other non-emergency care, the general rule is that a parent must provide consent for the minor to receive treatment.

But a minor will always be able to get *emergency* medical care, even without a parent’s consent, if not getting the care would endanger the minor. M.G.L. c. 112, § 12F.

In addition, Massachusetts has something called the “mature minor rule.” Under this rule, minors can consent to medical treatment, except abortion, when a doctor believes the minor can give informed consent and it is in the best interest of the minor not to notify his or her parents. Baird v. Attorney General, 371 Mass. 741 (1977). This means that the doctor does not need to get consent from parents if the doctor thinks the child is mature enough to be able to understand the risks and benefits and make a decision about medical treatment, and the doctor also thinks its best for the minor not to tell the parents.

In addition, a Massachusetts law says that a minor may give consent to his or her own medical or dental care if he or she is:

* married, widowed or divorced
* the parent of a child, in which cases he or she may also give consent to medical or dental care of the child
* in the armed forces
* pregnant or believes herself to be pregnant (except she cannot consent to abortion or sterilization, 109 CMR 11.06)
* living separate and apart from parents or a legal guardian and is managing his or her own financial affairs
* reasonably believes himself to be suffering from or to have come in contact with a disease dangerous to the public health (defined under G.L. ch. 111, §6) but in this case the minor may only consent to care related to the disease.

If a minor gets care under this law, his or her medical records are kept confidential (between the minor and the doctor or dentist), and the minor’s parents will not be responsible for paying for the care.

Minors may also consent to treatment for family planning (birth control), G.L. ch. 112, §12E, and for sexually transmitted diseases G.L. ch. 112, §117. Minors at least 12 years old may consent to treatment for drug addiction (except methadone treatment). G.L. ch. 111, §12E. Minors at least 16 years old may consent to mental health treatment. G.L. ch. 123, §10(a)(1).

For more information, see “Consent to Medical Treatment for Minors in Massachusetts: A Practitioner’s Guide, published by Boston College Law School’s Juvenile Rights Advocacy Project, 2006

**Does a minor need parental consent for an abortion?**

Yes, but if the parents won’t consent, the minor can ask a court to allow her to have an abortion. Massachusetts law says that a woman under 18 who is not married must get consent from both of her parents for an abortion. G.L. ch. 112, §12S. One parent may be able to consent if the other parent is not available or doesn’t have custody of the minor. If both parents are dead, the minor’s guardian must consent. In deciding whether to consent, the law says the parents have to consider only their child’s “best interests.”

If the parents won’t consent, or the minor does not want to ask them for consent, the minor can file a case in Superior Court in the county where she lives asking the court to authorize the abortion. The minor can file the case herself on her own behalf (she doesn’t need a next friend or guardian ad litem to file, although the court can appoint a guardian ad litem for her). The minor may ask the judge to appoint her a free attorney. The judge will order the abortion if he or she determines the minor is mature and able to give informed consent to the abortion, or, if she is not mature, if it is in her best interests to have an abortion.

A woman under 18 who is or was married does not need to get parental consent or a judge’s approval for an abortion. G.L. ch. 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. For information about this process please call (617) 1-800-258-4448, option 3.

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

Massachusetts law says a minor cannot work in certain places or during particular hours. The law is designed to protect children and to prevent work from interfering with education.

The rules are complicated and exceptions exist for certain jobs, but the most basic rules are as follows. See, generally, G.L. ch. 149, § 56-105

minors **under 14** cannot work, except they may deliver papers, work on a farm, or may work in entertainment (with a special permit)

minors **14 and 15** years old

* cannot do most jobs that involve working with machinery; many jobs involving equipment such as food slicers, ovens or freezers; work in a factory or warehouse; work in construction; work in door-to-door sales; or at other specifically-listed jobs that could be dangerous
* cannot work during school hours
* can work only between 7 a.m. and 7 p.m. during the school year and between 7 a.m. and 9 p.m. during the summer (July 1-Labor Day)
* when school is in session may only work 18 hours a week, including 3 hours on school days, 8 hours on Saturday, Sunday, and holidays, and only 6 days a week
* when school is not in session may only work 40 hours a week, 8 hours a day, 6 days a week

minors **under 18**

* cannot drive a vehicle or forklift; operate, repair or work around many power-driven machines; work 30 feet or more above ground or water; work in a job involving alcoholic beverages; work in excavation, roofing, or on railways; or in a number of other specifically-listed jobs
* can work only between 6 a.m. and 10 p.m. on nights before a scheduled school day, (or until 10:15 p.m. if the business stops serving customers at 10) and until 11:30 p.m. on nights not before a school day (up to 12 a.m. for restaurants and racetracks)
* can work only 48 hours a week, 9 hours a day, 6 days a week

After 8:00 p.m., an adult supervisor must be present at the work place with all minors (except at mall kiosks with if the mall has security).

For more information, please see [Summary of Massachusetts Laws Regulating Minors' Work Hours and Occupation Restrictions](http://www.mass.gov/lwd/labor-standards/dls/youth-employment/summary-of-massachusetts-laws-regulating.html) Dept. of Occupational Safety.

**Can a minor get welfare from the state?**

**Yes**, but generally only teen parents will get welfare, with a few exceptions.

Teen parents and pregnant teens may be able to get cash assistance under the TAFDC program, SNAP benefits (food stamps) and Medicaid. Recent changes in the law have made it more difficult for teens to receive public assistance. Teen parents or pregnant teens must now meet special “living arrangement” and “school attendance” rules to receive benefits. CMR 203.600.

To receive benefits, teens must reside with one of the following “responsible adults:”

* his or her parents
* an adult age 20 or older related to the teen parent by blood or adoption, a step-parent or step-sibling
* an adult age 20 or older related to the teen parent’s child by blood or adoption, a step-parent or step-sibling
* an approved foster parent
* a legal guardian who is not the other parent of the dependent child

If the teen claims, and the Department of Children and Families (DCF) 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, under the “school attendance” rules, to get benefits the teen must:

* have graduated from high school
* have a GED
* be attending a full-time GED program and participating in an approved training or employment-related activity for a total of 20 hours a week (childcare and transportation provided), or
* live in a special teen structured living program

Teens have the right to file their own application for themselves and their children, even if the teen lives with parents or other relatives. The teen will have to tell DTA what income and other money she has. Only people who are very poor will receive benefits.

The teen's parents do not have to file the application for the teen or accompany him or her to the DTA office, but they will have to tell DTA what income and other money they have. Their money is counted in deciding if a teen is financially eligible for TAFDC. If a teen lives with a parent who also receives TAFDC, the teen and her child are just added to the family’s grant, and the teen does not receive a separate grant.

Minors who are not parents or not pregnant may in certain rare circumstances be able to qualify for another type of cash assistance, EAEDC. A minor who lives with a caretaker who is not a relative—a godparent, friend or neighbor (so the minor can’t qualify for TAFDC)--may qualify for EAEDC. CMR 320.400. In addition, any person who is physically or mentally disabled can also apply for EAEDC benefits. CMR 320.200. The rules say anyone under age 65 can apply, so it seems even a minor could apply. The rules for getting this type of EAEDC are complicated, and anyone who wants to try should get legal advice.

For more information about government benefits, see “TAFDC Advocacy Guide” and “Basic EAEDC Rights” at MassLegalHelp.org.

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.

The [Children's Law Center of Massachusetts](http://www.clcm.org/)

has phone assistance hours:

Monday through Friday

9:00 AM - 5:00 PM

1-888-543-5298