

Children's Law Center of Indiana



EMANCIPATION OF MINORS¹

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Emancipation of minors in Indiana is addressed in the following two contexts: (1) emancipation as a disposition of Child in Need of Services (CHINS) and delinquency adjudication; and (2) emancipation which ends parental responsibility for child support payments. The authors were unable to locate Indiana statutes or case law which allow a minor to file his own petition for emancipation.

A. Emancipation as CHINS or Delinquency Disposition

IC 31-37-19-27 explains emancipation of a child as a disposition of a delinquency adjudication, and IC 31-34-20-6 explains emancipation of a child as a disposition of a CHINS adjudication. Both statutes are for all purposes identical. Under both statutes, the juvenile court may emancipate a child if four conditions are met. The court must find that the child: (1) wishes to be free from parental control and protection and no longer needs that control and protection; (2) has sufficient money for the child's own support; (3) understands the consequences of being free from parental control and protection; and (4) has an acceptable plan for independent living. IC 31-37-19-27(a)(1)-(4); IC 31-34-20-6(a)(1)-(4). The juvenile court may completely or partially emancipate a minor. IC 31-37-19-27(b); IC 31-34-20-6(b). Whether or not the juvenile court completely or partially

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emancipates the minor, the court shall specify the terms of the emancipation in both delinquency and CHINS proceedings. Id. The specific terms of the emancipation may include: (1) suspending the parent's or guardian's duty to support the child; (2) suspending the parent's or guardian's right to the control or custody of the child; (3) empowering the child to consent to marriage; (4) empowering the child to consent to military enlistment; (5) empowering the child to consent to services such as medical, psychological, psychiatric, educational, or social services; (6) empowering the child to contract; or (7) empowering the child to own property. IC 31-37-19-27(b)(1)-(7); IC 31-34-20-6(b)(1)-(7). An emancipated child remains subject to the compulsory school attendance requirements (IC 20-33-2) and to the juvenile court's continuing jurisdiction. IC 31-37-19-27(c); IC 31-34-20-6(c).

B. Emancipation Regarding Parental Child Support Obligations

The Court has stated that “[w]hat constitutes emancipation is a question of law, while whether an emancipation has occurred is a question of fact.” Dunson v. Dunson, 769 N.E.2d 1120, 1123 (Ind.2002) (quoting Quillen v. Quillen, 659 N.E.2d 566, 576 (Ind.Ct.App.1995), adopted in part by Quillen v. Quillen, 671 N.E.2d 98, 100 (Ind.1996)). Emancipation cannot be presumed, but must be established by competent evidence by the party seeking emancipation. Dunson, 769 N.E.2d at 1123. Unless certain conditions apply, children are not emancipated for child support purposes until they reach twenty-one (21) years of age. IC 31-16-6-6(a)(1). The child support order terminates, if the court finds that the child is emancipated and the child: (1) is at least eighteen (18) years of age; (2) has not attended a secondary school or postsecondary educational institution for the prior four (4) months and is not enrolled in a secondary school or postsecondary education institution; and (3) is or is capable of supporting himself or herself through employment. IC 31-16-6-6(a)(1). For purposes of determining if a child is emancipated, if the court finds that the child has joined the United States armed services, has married, or is not under the care or control of a parent or an individual or agency approved by the court, the court shall find that the child is emancipated and terminate the child support order. IC 31-16-6-6(b).

1. Emancipation by Joining the United States Armed Services

IC 31-16-6-6(b)(1) states that, if the court finds that a child has joined the United States armed services, the court shall determine that the child is emancipated. There are several cases that discuss emancipation when a child has joined the armed services.

In **Borders v. Noel**, 800 N.E.2d 586 (Ind. Ct. App. 2003), the eighteen-year-old child, who was in the physical custody of Father and receiving support from Mother, joined the United State Marine Corps (USMC) after graduating from high school. After five weeks of basic training, the child suffered a knee injury, and was discharged from service. The child moved back in with Father and began working full time. Subsequently, Mother filed her petition for emancipation. At the hearing, the child testified he had planned to enroll in college but had not done so because he had knee surgery. The trial court concluded that the child was emancipated by operation of law when he had enlisted in the USMC, and Mother's obligation to support also terminated on that day.

The Court noted that, although the child had joined the USMC in June, Mother had not filed her petition for emancipation until after he had been discharged. The Court affirmed the trial court's legal conclusion that the child was emancipated in June, but held that the trial court erred when it failed to examine whether Mother's support obligation had been revived. *Id.* at 591. The Court examined the record to see if the trial court's general judgment could be affirmed on another basis, and found that Mother met the requirements of IC 31-16-6-6(a)(3). This statute provides that the duty to support a child ceases when that child: (1) is at least eighteen years of age; (2) has not attended a secondary or postsecondary school for the prior four months and is not enrolled in a secondary or postsecondary school; and (3) is or is capable of supporting himself through employment. *Id.* Ultimately, the judgment was affirmed, but the case was remanded with instructions to the trial court to issue an amended order clarifying the date on which Mother's child support obligation terminated under subsection (a)(3). *Id.* at 592.

In **Lawson v. Lawson**, 695 N.E.2d 154 (Ind. Ct. App. 1998), the Court affirmed the trial court's order denying Father's Petition for Emancipation. *Id.* at 155. At issue in this case was whether a dependent child becomes emancipated upon joining the Indiana Army National Guard subject to a delayed entry/enlistment program. *Id.* At age seventeen and one-half and while he was in his junior year of high school, the child enlisted in the

Indiana Army National Guard. One of the conditions of his enlistment was that he was required to satisfactorily complete high school or his enlistment would be terminated. After completing basic training after his junior year, the child returned to live with Mother for his senior year. Father stopped paying child support the summer after the child's junior year. Subsequently, Mother filed a Citation Motion for Nonpayment of Support and Motion for Increase in Support, and Father filed a Petition for Emancipation. The trial court determined that "if the National Guard were to be called into service for duty by the armed forces of the United States, the child would not be eligible to serve because he has not yet completed his senior year of high school." Thus, the trial court found that the program under which the child was serving with the National Guard is not included within the meaning of the "United States armed services" in IC 31-16-6-6(b)." The trial court held that the child was not emancipated, and Father was ordered to continue paying support. The Court noted that the trial court's judgment would not be set aside unless it was clearly erroneous. Id. Corbridge v. Corbridge, 102 N.E.2d 764, 768 (Ind. 1952) was found not to apply to this case, because here, the federal government was not responsible for the child's support, maintenance, medical care, and education. Id. at 156. Mother was still responsible for the child's support, maintenance, medical care, and education. There was sufficient evidence in the record to support the finding of the trial court that the child was not emancipated by his provisional enlistment in the National Guard. Id.

2. Emancipation by Marriage

IC 31-16-6-6(b)(2) states that, if the court finds that the child has married, the court shall determine that the child is emancipated. There are several cases that discuss emancipation when a child has married.

In Green v. Green, 447 N.E.2d 605 (Ind. Ct. App. 1983), *trans. denied*, Mother had custody of the child, and Father was ordered to pay support. When Mother filed a motion to modify child support, the trial court found that the oldest child had been emancipated due to her marriage. The Court affirmed the trial court's finding even though the child lived with her mother throughout the marriage. Id. at 607-608. Marriage is an emancipating event and relieves a supporting parent of the duty to support. Id. at 609. Mother tried to rebut this ruling with evidence that although the child was married, the

child still relied on Mother for support, but the trial court refused to admit the testimony. The Court noted the applicable statute and its provisions for emancipation, and stated that

[t]he salient feature of these situations is the child creates a new relationship between itself and its parent, relieving the parent from the responsibilities of support. Marriage of a minor child creates a similar relationship. Once married, a dependent spouse no longer looks to its parent for support but relies instead upon the other spouse for support... This duty continues until the marital state is dissolved.

Id. Finally, the Court noted that “it is implicit that the minors become responsible for their own support when they marry.” Id. at 610. The **Green** case was decided a year before the legislature amended IC 31-16-6-6 by adding subsection (b) including emancipation as the result of the child’s marriage.

In **Connell v. Welty**, 725 N.E.2d 502 (Ind. Ct. App. 2000), Mother had custody of two children, and Father was ordered to pay support. One child married at age nineteen, approximately a year after Father stopped paying child support. Mother filed an action to enforce child support, and the trial court ruled in favor of Mother. By statute, the child was emancipated on the day which she married and not the age of eighteen when she dropped out of high school. Id. at 505.

3. Emancipation When Child is not Under Parental or Other Approved Care

IC 31-16-6-6(b)(3)(A) and (B) state that, if the court finds that a child is not under the care or control of either parent or an individual or agency approved by the court, the court shall determine that the child is emancipated. There are several cases that relate to emancipation when the court finds the child is not under the care or control of an individual stated in this statute.

Emancipation occurs when a child places himself beyond the control, custody, and care of either parent. **Young v. Young**, 654 N.E.2d 880 (Ind. Ct. App. 1995). In **Young**, the question was whether the child was in fact supporting herself without the assistance of either parent. Id. at 884. The trial court found that the child was living on her own and paying all her college and living expenses; this finding supported the trial court’s conclusion that the child was emancipated. Id. In **Robles v. Robles**, 855 N.E.2d 1049 (Ind. Ct. App. 2004), an eighteen-year-old child had a baby and moved in with the baby’s paternal grandparents. The baby's grandparents provided the child with free room, board,

and daycare; the child also received money from the baby's father; and the child initiated the move out of Mother's house. The Court found that the trial court properly determined the child to be emancipated. Id. at 1055. But see **Butrum v. Roman**, 803 N.E.2d 1139 (Ind. Ct. App. 2004) (Although eighteen-year-old child had put herself outside of parents' control by moving in with boyfriend, Father failed to prove that child was self-supporting or capable of self-support, so trial court's denial of Father's petition to emancipate child was affirmed).