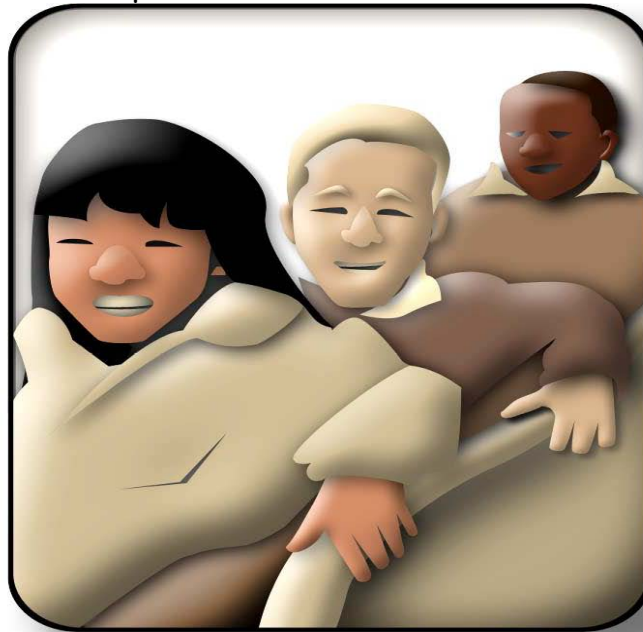


Emancipation Of A Minor

Updated: June, 2007



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Disclaimer — Please Read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

TABLE OF CONTENTS

- Disclaimer and Symbols you should look for
- Table of Contents
- Warning to all readers; Free sources of legal help
- Who these people are
- Other options you may have
- What these legal terms mean
- Summary of the law in this area
- Steps to Petitioning for Emancipation
- Q & A about filing a document in a court file
- Myths
- Tips

WARNING TO ALL READERS

Before you proceed with using this packet, you should ask yourself the following questions:

1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed below. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before your proceed on your own.

Free Sources of Legal Help

Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll free: (877) 342-7891

For additional information, you may visit their website at:

[Http://www.lollaf.org](http://www.lollaf.org)

Prairie State Legal Services

Serves most of northern and north-central Illinois outside of Cook County

815-965-2134

800-331-0617

Coordinated Advice and Referral Program for Legal Services

Serving Cook County 312-738-9200

Will County Legal Assistance

815-727-5123

WHO THESE PEOPLE ARE:

Judge:

The judge is the person who presides over the courtroom. In most cases, including divorce cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.

Circuit Clerk:

The Circuit Clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you talk to the Circuit Clerk's staff. In some courthouses, the Circuit Clerk also decides when cases are scheduled.

Sheriff:

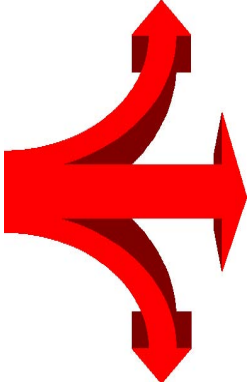
The Sheriff's main duty is to keep the peace and to enforce the law. His/ her role in the legal system, however, is usually to "serve" (give notice) to people of pending or upcoming court cases or hearings. The sheriff does this by giving the person a notice called a "summons". The sheriff also enforces the judge's orders.

Attorney:

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.

Mediator:

A mediator is someone who can meet with you and the person with which you currently have a dispute and help you both come to a resolution you can agree on. A mediator is not a judge and does not make decisions, but rather helps you make a decision. In some counties, mediation is required in certain types of cases, including custody.



Alternative Resources

Southern Illinois Center for Independent Living
100 North Glenview Carbondale, Illinois 62901 (618)457-3318
(618)529-2816—text telephone

Child Abuse Hotline 1-800-25-ABUSE
217-524-2606 (outside Illinois) or 800-358-5117 (TTY)

WHAT THESE LEGAL WORDS MEAN

Circuit: The judicial system in Illinois is divided into Circuits. Each circuit defines a particular geographic area in Illinois.

Emancipation: Generally, emancipation involves an entire surrender of the right to the care, custody, and earnings of such child as well as a renunciation of parental duties.

Complete Emancipation: The entire surrender of care, custody, and earnings of child, as well as renunciation of parental duties. Emancipation may be conditional or absolute, complete or partial.

Partial Emancipation: Only frees a child for part of the period of minority, or from only a part of the parent's rights, or for some purposes, and not for others.

Defendant or Respondent: The person who is being sued. They respond to the plaintiff or petitioner's charges.

Judgment: A decision or order of the court.

Jurisdiction: Whether the court in a particular state has the power to hear a case or to order someone to do something depends upon whether it has "jurisdiction". Jurisdiction can be either over a person or over a subject. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state.

Mature Minor (as used for this packet): A minor who has demonstrated the ability and capacity to manage his own affairs and to live wholly or partially independent of his parents or guardians. 750 Ill. Comp. Stat. Ann. 30/3-2 (West 1999).

Minor (as used for this packet): Persons **over** the age of 16 and under 18 years old. 750 Ill. Comp. Stat. Ann. 30/3-2 (West 1999).

Motion: A written or oral request to the judge after a lawsuit has been started (see petition).

Order: A written direction by the court or judge that determines some point or directs a person to act or refrain from acting in a certain way.

Petition: A written request to the court. A petition usually starts a lawsuit and contains the facts that one person alleges has happened along with the relief that they are requesting from the court.

Plaintiff or Petitioner: The person who starts the lawsuit.

Pro-se: A person who is not represented by an attorney.

Serve or Service: The process where a person is officially notified of a pending lawsuit.

Statute: The law that the state legislature or federal government enacted on a particular subject.

IMPORTANT POINTS

Someone other than the minor must petition the Court for emancipation. 750 ILCS 30/4 sets out that “...upon a filing of a petition on behalf of the minor by his next friend, parent or guardian...” In addition, a minor may become emancipated by other means than this Act, either in statute or case law. 750 ILCS 30/2.

One of the main requirements of emancipation under this Act:

Emancipation, either complete or partial, can be ordered under this Act only if both the minor and the parent(s) or guardian agrees. 750 ILCS 30/9.

What emancipation under this Act means:

If emancipated completely under this Act, a minor then has the right to enter into valid legal contracts as well as any other legal rights and responsibilities as the court may order. If the court enters judgment for only partial emancipation, the minor has only the rights and responsibilities specified in the court order. 750 ILCS 30/2 and 30/9.

How the court will determine whether to emancipate a minor or not:

At the hearing, the court must conclude that “the minor is a mature minor who is of sound mind and has the capacity and maturity to manage his own affairs **including his finances**” (emphasis added). The court must also determine that it is in the best interest of the minor and his family to emancipate the minor. 750 ILCS 30/9.

Can the court reverse its decision to emancipate a minor?

A court will retain jurisdiction over the emancipated minor until the minor reaches age 18. Therefore, it is possible that the court may alter or terminate its previous emancipation orders; however such action will not affect any previous rights or duties. 750 ILCS 30/6.



STEP ONE: PREPARE THE NECESSARY FORMS TO START THE PROCESS

In the supplemental packet, you will find two forms: the Petition for Emancipation of a Minor and an Application to Sue as a Poor Person.

The Petition is the formal request to the court for emancipation filed **by the parent(s), guardian, or next friend of the minor**. The person petitioning the court for a minor's emancipation is called the petitioner. The petition is important because this is how the court knows what the petitioner wants to do.

The application is the request for the court to waive the fees that are required for a person to petition for emancipation. The amount of these fees varies by counties, and waivers are typically given only to persons of low income. Denial of a fee waiver will not impact the petition except that a fee will have to be paid to the circuit clerk's office.

STEP TWO: FILE YOUR DOCUMENTS

Select the county in which to file the emancipation petitioner. Most of the time, the petition will be filed where the minor lives. If the petitioner is requesting that the filing fee be waived, then they should check with the circuit clerk's office whether the application to sue as a poor person needs to be filed with the petition for emancipation, or whether the judge will consider the application to sue by itself. File the application (either with or without the petition, depending on what the clerk said) and then wait for the judge's ruling. The ruling may take several days. Then after finding out the judge's decision, the petition will need to be filed, if it wasn't required earlier.

STEP THREE: NOTIFY THE PARENTS OR GUARDIANS.

The petitioner will need to serve a copy of the Petition on the parents or guardian of the minor. If the parents or guardian will agree to waive being served and agree to the terms of the emancipation as requested in the Petition, they can sign the Entry of Appearance, Waiver, and Consent form included in the supplement to this packet. Please note that the parents or guardians must have seen a copy of the Petition filed, as well as a copy of the proposed order. The parent or guardian's signature must be notarized on the Entry of Appearance form. Once you file this form with the Circuit Clerk, you can move to Step 4. If the parent(s)/guardian will not sign this form, they will need to be served notice.

Step Four: Request/Get a hearing date:

Once the parent(s)/guardian have been served, the petitioner will need to wait 30 days to see if they file a response to the Petition. If the parents or guardians have failed to file a response after 30 days have passed, the petitioner should request a hearing date.

If the parents/guardians have signed an Entry of Appearance, Waiver, and Consent form waiving service, you do not need to wait 30 days before requesting your hearing.

If the parent(s)/guardian has filed a response and it appears from the response that he/she has an attorney, or if an attorney contacts you at any time before or during the hearing, you should seek legal assistance immediately, as it is not a good idea for you to proceed against a person who is represented by an attorney on your own.

Depending upon the county in which you filed your petition, you will need to contact either the Circuit Clerk or the secretary of the judge who usually handle the emancipation cases to request a hearing date. You can either do this by phone, or by mail. When contacting the clerk or the judge's secretary, be sure to ask for the default or "pro se" date. Illinois requires you to send notice to your parents/guardian 21 days prior to the hearing. Complete and send the notice form to your parents/ guardians and file the Certificate of Mailing of Notice to certify when you mailed it. These forms can be found in the packet supplement.

Step Five: Prepare for the hearing:

You will need to prepare the Order for Emancipation. The Order sets forth the terms of the emancipation. Prepare the testimony using the reasons set forth in the petition. You, or another person, will need to testify about all the facts you have alleged in the Petition and what you want the court to do. If you ask the court to do something that was not in your Petition, you may have to either amend your Petition or you may not get it.

When you are testifying about the reasons for emancipation, you will need to prove that the minor is a mature minor who has demonstrated the ability and capacity to manage his/her own affairs and that the minor has lived wholly or partially independent of his/her parents or guardians.

Step Six: Attend the hearing:

While there is no way to know exactly what will happen at your hearing, here are some things you should do:

- Bring with you copies of all the documents you filed with the Circuit Clerk and any other papers relating to the emancipation.
- Arrive at least 30 minutes before your hearing. Whatever you do, don't be late. Check the docket or ask the clerk exactly what room you will be in. Tell the Clerk or the Judge's secretary that you are ready to proceed when called and wait for your case number and name to be called.
 - When the Judge enters the courtroom, stand until you are told to be seated. When your case is called, approach the bench. Always refer to the Judge as "your honor."
- Before you begin, the judge may then ask you preliminary questions about your case. Be prepared to answer whether your parents/guardian were served, and if so, when.
- To testify, you will need to call a witness. At this time, the Judge will put the person under oath. If you call yourself as a witness, you can present your testimony using the petition as your guide.

- After the testimony is given, present the Order for Emancipation to the Judge for his/her signature. If the judge wants corrections made, don't panic, you can ask for permission to submit a corrected version by mail.

Step Seven: Wrap it up

After the judge has signed the Order for Emancipation, you will need to file your Order with the Clerk and send a file-stamped copy of the Order to the parents/guardians.

To certify (prove) that you have done this, you will need to file a Certificate of Mailing of Order with the Clerk. As with all documents you file, be sure to keep file stamped copies of these documents for yourself. Remember to hold on to your Order as it is your proof of emancipation. If you lose your Order, don't worry, as with any document you file, you can always get another copy from the Circuit Clerk. You may, however, have to pay for the copies. The Certificate of Mailing forms can be found in the supplement to this packet.

Q&A about filing a document in a court file



Q: What is a court file?

A: The file is the way that the courthouse keeps track of a lawsuit.

The file includes all of the documents that were filed, notices of hearings, notes by the judge and clerk, and letters to and from the judge and clerk.

Q: When do you need to file a document in a court file?

A: Generally, you will file a document when you want to: have evidence that a task was completed; record an event or a statement; or give notice to someone about something.

Q: What does it mean to file a document in a court file?

A: Generally, filing a document means giving the Circuit Clerk a copy of a document so that he/she can place it in the court file you want it to go in. When the Clerk files the document, he/she will stamp it with a stamp that says the date (and sometimes the time) the document was filed.

Q: Does filing a document make it legal?

A: No. The Clerk will not check to make sure that your document is in compliance with the law. Most of the time you can file anything you want as long as you are willing to pay for the filing costs. It does not mean, however, that what you have filed is correct.

Q: Why is filing so important?

A: Most of the time, filing is the primary way to show that you have met the deadline for something — either to initiate a lawsuit or to notify someone of a lawsuit or a hearing. Filing is also the way that you notify the court of your answer (response) to lawsuit started against you.



Please note that failure to file something on time can cause you to lose your right to proceed with your claim or you may be forced to start over.

Myths



Myth 1) Once a child is legally emancipated, there is no further supervision by the court.

Wrong! The court retains continuing jurisdiction over the proceedings until the emancipated minor reaches the age of 18, and may modify or terminate its previous modification orders. However, any subsequent modification or termination of a previous order shall be effective only prospectively and shall not affect any rights, duties, obligations, or causes of action existing prior to the modification or termination of any order under this Act. 750 ILCS 30/6.

Myth 2) If a child runs away from home, he or she becomes emancipated.

Not necessarily. According to Kathleen Hempelman, author of *Teen Legal Rights: A Guide for the 90's*, if a parent allows a runaway child to live independently for a long period of time, and the child becomes financially stable on his or her own, a court *could* decide that emancipation has been implied.



Get Help!

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, then filing emancipation may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if filing emancipation proves to be too difficult a task for you, talk to an attorney.