

HOUSE BILL REPORT

ESHB 1157

As Amended by the Senate

Title: An act relating to the emancipation of minors.

Brief Description: Specifying a procedure for emancipation of minors.

Sponsors: By House Committee on Human Services (originally sponsored by Representatives Ludwig, Riley, Chappell, Johanson, Foreman, Appelwick, H. Myers, Scott, Jones, Leonard, Franklin, Springer and Karahalios.)

Brief History:

Reported by House Committee on:
Human Services, February 3, 1993, DPS;
Passed House, February 17, 1993, 81-16;
Amended by Senate.

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Leonard, Chair; Riley, Vice Chair; Cooke, Ranking Minority Member; Talcott, Assistant Ranking Minority Member; Brown; Karahalios; Lisk; Thibaudeau; and Wolfe.

Minority Report: Do not pass. Signed by 1 member: Representative Padden.

Staff: John Welsh (786-7133).

Background: Currently there is no statutory process providing for the emancipation of minors by the courts. Emancipation of a minor involves the relinquishment of parental rights, support obligations and control over a minor child who demonstrates maturity, with the assumption by the minor of the legal capacity of an adult for certain purposes.

The law accords to a person full adult status at 18 years of age, the so-called age of consent, but provides some important exceptions. The consumption of alcoholic beverages is expressly prohibited before the age of 21. However, a minor under the age of 18 may consent for a variety of specified purposes under the law. These include treatment of

a sexually transmitted disease/HIV testing at age 14; outpatient treatment for alcohol and drug abuse at age 14; outpatient mental health treatment at age 13; emergency medical treatment (where consent is presumed); among other exceptions.

A minor is deemed to be an adult if married to a person of full age, though parental consent to marry is required.

In addition, a minor may enter into contracts, but may disaffirm any contract within a reasonable time after attaining the age of majority if any money or property obtained under the contract is returned.

The capacity of a minor to consent has also evolved from common law principles developed over time by the courts. This includes the Emancipated Minor doctrine and the Mature Minor rule. The Emancipated Minor doctrine is a process used by the courts for emancipating a minor, generally at the request of a parent. The Mature Minor rule is a process for securing the informed consent for health treatment of a minor by a health provider in the absence of a parent, and where the health provider is satisfied that the minor is able to understand the nature and risks of the proposed treatment. In Washington, the courts treat the capacity of a minor to consent for health care as a question of fact to be determined from the circumstances of each case. The factors the courts have used are age, intelligence, maturity, training, experience, economic independence, general conduct, and freedom from parental control.

Minors are limited by law in the number of hours they may work in accordance with rules of the Department of Labor and Industries. The approval of the minor's parents and school is required for obtaining a work permit.

Summary of Bill: A minor who is at least 16 years of age, may petition the Superior Court for a declaration of emancipation that includes certain vital information and a declaration that the petitioner has the ability to manage financial, personal, social, educational and nonfinancial affairs.

A copy of the petition and notice of hearing is to be served on the parents or guardian at least 15 days prior to the hearing, which shall be held no later than 60 days from the filing of the petition. Notice must also be sent to the Department of Social and Health Services if the petitioner is subject to a dependency disposition order.

The judge may appoint a guardian ad litem to investigate the allegations in the petition, and appoint an attorney to represent the petitioner or the parents.

The judge shall grant the petition upon a finding by a preponderance of the evidence that the petitioner has the ability to manage his or her financial affairs, as well as personal, social, educational, and nonfinancial affairs.

The judge shall deny the petition if the parents or guardian or department oppose the petition and prove by a preponderance of the evidence that emancipation would be detrimental to the interests of the minor.

If granted, the petition shall terminate parental responsibilities and the emancipated minor shall have the legal capacity of an adult, including the right to sue and be sued, to retain earnings, to establish a separate residence, to enter into nonvoidable contracts, to act autonomously in business and property transactions, to work (subject to health and safety regulations protecting minors); and to consent for health care services.

However, a declaration of emancipation shall not affect adult criminal laws, except when a juvenile offender is referred for adult criminal prosecution or where the minor is a victim and age is an element of the offense and shall not alter specific age requirements established by law, such as use of alcoholic beverages, voting, and health and safety regulations protecting minors.

A declaration of emancipation obtained by fraud can be declared void by the court.

Emancipated minors are not subject to the limitation of hours worked under rules of the Department of Labor and Industries, nor the necessity of approval by parents or a school for obtaining work permits required of minors in certain occupations.

EFFECT OF SENATE AMENDMENT(S): The Senate amendment raises the burden of proof for a minor seeking emancipation from a "preponderance" of the evidence to "clear and convincing" evidence that the petitioner has the ability to manage his or her own affairs. If a parent or the department opposes the petition it is automatically denied, unless the court finds by clear and convincing evidence that the denial would be detrimental to the interests of the minor. The judge need not determine whether counsel should be appointed to represent the petitioner or the parents.

Fiscal Note: Available.

Effective Date: This act shall take effect January 1, 1994.

Testimony For: There is a need to establish a statutory process providing for the emancipation of a minor. There may be circumstances where a mature minor should be empowered with the same authority as an adult. The issue of sufficient maturity is one of fact best left to the courts.

Testimony Against: None.

Witnesses: Sandi Gray, Department of Social and Health Services; Robb Menaul, Washington State Hospital Association; Jane SooHoo and Margaret Casey, The Children's Alliance; and Representative Ludwig, Sponsor.

VOTE ON FINAL PASSAGE:

Yeas 81; Nays 16; Excused 1

Nays: Representatives Brumsickle, Casada, Chappell, Dyer, Forner, Fuhrman, Horn, Lisk, Morton, Padden, Schoesler, Silver, Stevens, Tate, Thomas, Vance

Excused: Representative Fisher G