

# PARENT AND CHILD – EMANCIPATION: THE EMANCIPATION OF MINOR CHILDREN: FREEDOM OF NORTH DAKOTA YOUTH

## ABSTRACT

Emancipation is the act of freeing a child from their parent's control thereby allowing the child to be independent and take on the full responsibilities of an adult. In North Dakota, a minor may be emancipated in one of two ways: (1) by reaching the age of majority (18 years-old), or (2) by obtaining parental consent to enter into a marriage before the age of majority. Currently, all fifty states and the District of Columbia have an established law setting forth circumstances in which minors are emancipated. Thirty-one states have an established court process allowing minors themselves to petition for emancipation before the age of majority. North Dakota is *not* one of them. North Dakota remains in the minority of states that does not have any established statutory scheme nor common law principles allowing a minor child to petition for emancipation from her parents before reaching the age of majority. With the growing trend of child autonomy, minors seek ways to start their adult lives early without interference from their parents. States that allow emancipation grant it in a variety of situations. These states permit it to avoid labor laws, make their own money, and enter into their own binding contracts. On the surface, these benefits may seem attractive to opportunistic teenagers and completely terrify concerned parents. But many of the benefits of emancipation assist more than those looking to move out of mom and dad's basement prematurely. Emancipation can help self-sufficient children escape abusive homes and severe neglect to begin providing for themselves in a healthy environment without the need of the state foster care system. The United States remains inconsistent when it comes to granting emancipation to minors; thus, this area of law has yielded drastic disparities as to when and how emancipation is granted. This note will discuss the advantages for enacting an emancipation statute in the State of North Dakota and examine why allowing minors to petition a court to be emancipated can benefit the children of our state.

- I. INTRODUCTION.....265
- II. EMANCIPATION DEFINED .....267
  - A. THE HISTORY OF EMANCIPATION LAW .....267
  - B. CURRENT EMANCIPATION LAW IN THE UNITED STATES.....268
    - 1. *Judicial Emancipation* ..... 269
    - 2. *Statutory Emancipation*..... 270
  - C. CURRENT STATUTORY EMANCIPATION PROCEDURES .....271
  - D. ADVANTAGES OF EMANCIPATION .....272
  - E. DISADVANTAGES OF EMANCIPATION .....274
- III. EMANCIPATION OF MINORS IN NORTH DAKOTA .....275
  - A. NORTH DAKOTA’S CURRENT LAW ON EMANCIPATION .....276
  - B. THE LEGISLATIVE HISTORY OF NORTH DAKOTA’S EMANCIPATION LAW .....277
  - C. ESTABLISHING AN EMANCIPATION PROCESS IN NORTH DAKOTA .....278
    - 1. *Protections Against Abuse* ..... 278
    - 2. *Conditions* ..... 279
    - 3. *Limited Emancipation & Continued Support*..... 280
    - 4. *Statutory Procedures*..... 281
- IV. FINAL CONSIDERATIONS FOR NORTH DAKOTA .....283
  - A. CONSIDERATION 1: FLEXIBILITY .....283
  - B. CONSIDERATION 2: OBJECTIVE ANALYSIS OF MATURITY & FINANCIAL STABILITY .....284
  - C. CONSIDERATION 3: BEST INTERESTS OF THE CHILD .....284
  - D. CONSIDERATION 4: DISTINGUISH FROM FOSTER CARE AND CHILD PROTECTIVE SERVICES .....285
  - E. CONSIDERATION 5: AMEND OR REPEAL TITLE 14, CHAPTER 10 .....285
- V. CONCLUSION .....286

## I. INTRODUCTION

Parents and their children do not always see eye to eye. Especially when children reach their teenage years, tensions between parents and children can run very high. For most families, this phase of life is endured, albeit resistantly, and passes without too much strife and without lasting repercussions on parent-child relationships.<sup>1</sup> But for other families, there may be an onslaught of more serious problems which time cannot resolve; ones which obstruct the best interests of a child or truncate parental control. No one knows this better than Macaulay Culkin.

Best known for his role as Kevin McCallister in the holiday movie, “Home Alone,” Macaulay Culkin became one of the most recognizable child stars in Hollywood in the 1990s.<sup>2</sup> His earnings amounted to nearly \$20 million before he was even a teenager.<sup>3</sup> Despite his immense career success, Culkin began experiencing issues in his home life, particularly with his parents.<sup>4</sup> While Culkin landed major role after major role, Culkin’s parents began leveraging his talent for their own selfish gain by filching his money away.<sup>5</sup> Culkin’s father would not only impede Culkin’s ability to access his own money, he would also physically and mentally abuse Culkin by constantly booking him with acting gigs to increase the family revenue.<sup>6</sup> Culkin’s parents were determined to squeeze out every bit of their son’s acting ability to achieve their financial dreams, even if it meant Culkin missing a substantial part of his childhood education and being pushed to his breaking point as an actor.<sup>7</sup> These familial issues eventually led to Culkin emancipating himself from his parents at the age of 16.<sup>8</sup>

Emancipation is a mechanism through which eligible minors are granted some or all of the rights and statuses adults hold and is used to free from the legal subjection of their parents.<sup>9</sup> Despite Culkin’s childhood being anything but ordinary, it illustrates the benefits of this legal mechanism. Culkin was provided a legal avenue out of an unhealthy environment. Unfortunately, most minor children are not financially self-sufficient like Culkin to cleanly

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1. Dana F. Castle, *Early Emancipation Statutes: Should They Protect Parents as Well as Children?*, 20 FAM. L. Q. 343, 345 (1986).

2. Ryan D’Agostino, *Macaulay Culkin Is Not Like You*, ESQUIRE (Feb. 11, 2020), <https://www.esquire.com/entertainment/movies/a30680749/macaulay-culkin-interview-life-now-after-home-alone-2020/>.

3. *Id.*

4. *Id.*

5. Edduin Carvajal, *Macaulay Culkin’s Emancipation from His Parents – A Look Back at the Family Drama*, AMO MAMA (Aug. 2, 2020), <https://news.amomama.com/221137-macaulay-culkins-emancipation-his-parent.html>.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Ortega v. Salt Lake Wet Wash Laundry*, 156 P.2d 885, 890 (Utah 1945).

break free from parental support. Even if children are self-sufficient enough to do so, they may have no opportunity to seek emancipation because their state lacks an established court process. Minor children in North Dakota encounter this precise obstacle.

In North Dakota, there are only two ways for a minor to be emancipated. The first occurs by operation of law when the minor reaches the age of 18.<sup>10</sup> The second occurs when the minor enters into a marriage with parental consent before the age of majority.<sup>11</sup> As for minor children in North Dakota who serve in the military, who reside in an abusive home, or who even are entirely self-sufficient, they unfortunately must remain submissive to parental control until they arrive at that magical age of 18. To most, this may seem completely normal. After all, most children are in need of parental support. It has been said that no creature comes into the world more helpless and incapable of protecting itself than a human infant.<sup>12</sup> In fact, the majority of young adults in the United States continue to live under the care and control of their parents long after attaining the age of majority.<sup>13</sup> This right of the parent to exercise custody and control over their minor child is so foundational in the United States that it has been established as a fundamental right of the parent.<sup>14</sup> Given the strong bonds between parents and their children, the concept of parental care and support has been no stranger to the law.<sup>15</sup> But just as the law imposes a certain bondage between parents and their minor children, it also permits release therefrom through the process of emancipation.<sup>16</sup> North Dakota lacks this process.

Under North Dakota's current statutory regime, the emancipation of minor children in North Dakota remains relatively untouched. Therefore, the main goal of this note will be to advocate for the enactment of an emancipation statute and describe the advantages to North Dakota and its youth. Particularly, Part II discusses how emancipation is defined and explains the exact implications of when emancipation is granted. This will lead into the history behind emancipation law, its current developments, and the emancipation processes throughout the United States. Part III describes North Dakota's

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10. N.D. CENT. CODE § 14-09-20 (2021).

11. *Id.*

12. *Brosius v. Barker*, 136 S.W. 18, 19 (Mo. Ct. App. 1911).

13. Richard Fry et al., *A Majority of Young Adults in the U.S. Live with Their Parents for the First Time Since the Great Depression*, PEW RSCH. CTR. (Sept. 4, 2020), <https://www.pewresearch.org/fact-tank/2020/09/04/a-majority-of-young-adults-in-the-u-s-live-with-their-parents-for-the-first-time-since-the-great-depression/> (stating 52 percent of young adults between the ages 18 to 29 continue to reside with their parents in 2020).

14. *See Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27 (1981); *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982).

15. *See generally* *Hobus v. Hobus*, 540 N.W.2d 158 (N.D. 1995).

16. P. H. Vartanian, Annotation, *What Amounts to Implied Emancipation of Minor Child*, 165 A.L.R. 723 (1946).

current footing on the issue of emancipation and the rights of minors and how that footing can be directed to further public policy and promote the best interests of children in North Dakota. Part IV proposes an emancipation law for the State of North Dakota and key considerations the North Dakota Legislature should contemplate in undertaking the enactment of an emancipation statute.

## II. EMANCIPATION DEFINED

“Emancipation” is the legal process that releases a minor from the legal subjection of his or her parents and grants the minor the status as a legal adult.<sup>17</sup> Black’s Law Dictionary defines emancipation as:

1. The act by which one who was under another’s power and control is freed.
2. A surrender and renunciation of the correlative rights and duties concerning the care, custody, and earnings of a child . . . . This act also frees the parent from all legal obligations of support.<sup>18</sup>

In most cases, emancipation is typically accomplished by operation of law when the minor achieves the age of majority.<sup>19</sup> However, “emancipation,” in its general sense under the law, is understood to refer to the release of a minor child from her parents *before* the child reaches the age of majority.<sup>20</sup> Such a grant of emancipation has the same effect as if the minor has reached the age of majority.<sup>21</sup> For example, just as an adult possesses the legal capacity to sign binding contracts, own property, keep their earnings, and disregard parental instruction, so does an emancipated minor.<sup>22</sup>

### A. THE HISTORY OF EMANCIPATION LAW

Despite rarely being litigated prior to the twentieth century, the emancipation of minors has been recognized in the United States since the 1890s.<sup>23</sup>

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17. *Wadoz v. United Nat’l Indem. Co.*, 80 N.W.2d 262, 265 (Wis. 1957).

18. *Emancipation*, BLACK’S LAW DICTIONARY (11th ed. 2019).

19. Vartanian, *supra* note 16; see 59 AM. JUR. 2D *Parent and Child* § 73 (2021); see also N.D. CENT. CODE § 14-09-20 (2021).

20. See N.D. CENT. CODE § 14-09-20.

21. Mayra A. Cataldo, Note, *Safe Haven: Granting Support to Victims of Child Abuse Who Have Been Judicially Emancipated*, 52 FAM. CT. REV. 592, 593 (2014).

22. Carol Sanger & Eleanor Willemsen, *Minor Changes: Emancipating Children in Modern Times*, 25 U. MICH. J. L. REFORM 239, 240-41 (1992).

23. William E. Dean, *Ireland v. Ireland: Judicial Emancipation of Minors in Idaho: Protecting the Best Interests of the Child or Conferring a Windfall Upon a Parent?*, 31 IDAHO L. REV. 205, 215 (1994); see generally *Porter v. Powell*, 44 N.W. 295, 296 (Iowa 1890) (“To emancipate is to release; to set free. It need not be evidenced by any formal or required act. It may be proven by direct proof or by circumstances.”); *Flynn v. Baisley*, 57 P. 908, 910 (Or. 1899) (“A writing is unnecessary to evidence the emancipation of an infant, it having been held that his liberation may be established by direct evidence or implied from circumstances.”).

Emancipation originated from common law principles and was initially used as a practical way to promote the interests of mature minors and necessarily avoiding being used to resolve interfamilial disputes.<sup>24</sup> That is, emancipation was not originally used as a method for parents to terminate undesired child support obligations or for children to escape an abusive home.<sup>25</sup> Rather, emancipation was traditionally sought by minors in order to obtain protect their wages from their parents.<sup>26</sup> But, in light of its common law roots, emancipation determinations were without authorization or direction of statute.<sup>27</sup> Considering most, if not all, of early emancipation law was judge made, this left much open to the court's discretion.<sup>28</sup> As such, courts began declaring emancipation in order to terminate the parent's child support obligations for financially independent children and even defiant children who ran away from home.<sup>29</sup> Other courts were not administering emancipation enough even when its declaration would have promoted the best interests of the children. This prompted the involvement of state legislatures to resolve disputes over wages earned by minors and grant minors more authority in the legal system.<sup>30</sup> The involvement of the two branches of government shaped what emancipation law has become today.

## B. CURRENT EMANCIPATION LAW IN THE UNITED STATES

Today, all fifty states have laws specifying when and under what circumstances minor children become emancipated from their parents for important legal purposes.<sup>31</sup> Many state laws arise out of developments in common law or by statute providing emancipation by operation of certain events, such as marriage, pregnancy, or military service.<sup>32</sup> Others set forth specific factors that courts look to when determining whether emancipation is

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24. Sanger & Willemsen, *supra* note 22, at 242; see INSTITUTE OF JUDICIAL ADMINISTRATION- AMERICAN BAR ASSOCIATION JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS, STANDARDS RELATING TO RIGHTS OF MINORS 21 (Ballinger Pub. Co. 1980) [hereinafter STANDARDS RELATING TO RIGHTS OF MINORS].

25. See, e.g., STANDARDS RELATING TO RIGHTS OF MINORS, *supra* note 24, at 21; Chadwick N. Gardner, *Don't Come Cryin' to Daddy! Emancipation of Minors: When is a Parent 'Free at Last' from the Obligation of Child Support?*, 33 U. LOUISVILLE J. FAM. L. 927, 928 (1995); Castle, *supra* note 1, at 360.

26. Gardner, *supra* note 25, at 928; John C. Polifka, *The Status of Emancipated Minors in Iowa: The Case for a Clearly Drafted Statute*, 44 DRAKE L. REV. 39, 40 (1995).

27. Castle, *supra* note 1, at 356.

28. See Gardner, *supra* note 25, at 928; see also Polifka, *supra* note 26, at 49.

29. Gardner, *supra* note 25, at 928.

30. See generally Sanger & Willemsen, *supra* note 22, at 253.

31. See, e.g., ALASKA STAT. § 09.55.590 (2020); HAW. REV. STAT. § 577-25 (2020); MINN. STAT. § 517.02 (2020); N.D. CENT. CODE § 50-25.2-01 (2021).

32. See, e.g., HAW. REV. STAT. § 577-25; IND. CODE § 31-16-6-6 (2021); MICH. COMP. LAWS § 722.4 (2021); Lauren C. Barnett, *Having Their Cake and Eating it Too? Post-Emancipation Child Support as a Valid Judicial Option*, 80 U. CHI. L. REV. 1799, 1803 (2013).

proper.<sup>33</sup> Particularly, there are two distinct doctrines of emancipation that have specifically emerged in the United States. Those two doctrines are judicial emancipation and statutory emancipation.<sup>34</sup>

### 1. *Judicial Emancipation*

If a state does not have a specific statute or procedural rule, the court may act as the primary arbiter to resolve the issue and judicially emancipate the minor.<sup>35</sup> Judicial emancipation depends on the presence or absence of a parent and child relationship as a condition precedent to emancipation.<sup>36</sup> In other words, a judge can only make an emancipation determination if a particular occurrence has already happened which questions the parent-child relationship.<sup>37</sup> Judicial emancipation is therefore viewed as a legal theory available only to a parent as it is primarily concerned with the removal of rights and duties incident to the parent-child relationship resulting from the custodial parent relinquishing control over the child.<sup>38</sup> “The requirements for judicial emancipation are parental acquiescence and the ability of the child to function independently, or a recognized interruption in parental control such as the child’s marriage.”<sup>39</sup>

Judicial emancipation may be express, as by a voluntary agreement of parent and child, or implied from such acts and conduct as to import consent.<sup>40</sup> Generally, the party claiming parental rights or obligations have been terminated has the burden of proving emancipation.<sup>41</sup> The degree to which the child’s rights and duties are affected is dependent upon whether the scope of the judicial emancipation is conditional or absolute, complete or limited, temporary or permanent.<sup>42</sup> Limited emancipation, as opposed to complete emancipation, allows the child to obtain some responsibilities of an adult, but still continue to have certain disabilities of minority.<sup>43</sup> For example, the child may have the right to live independently of parent supervision but may still need parental consent to undergo certain medical procedures.<sup>44</sup>

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33. See, e.g., ALA. CODE § 26-13-5 (2021); ARIZ. REV. STAT. ANN. § 12-2451 (2021); CAL. FAM. CODE § 7120 (West 2021); N.C. GEN. STAT. § 7B-3504 (2020).

34. See generally Castle, *supra* note 1, at 356.

35. Gardner, *supra* note 25, at 930.

36. Castle, *supra* note 1, at 357.

37. *Id.*

38. Dean, *supra* note 23, at 215.

39. Castle, *supra* note 1, at 357 (footnotes omitted).

40. 5 CHESTER G. VERNIER, AMERICAN FAMILY LAWS § 282, at 240-41 (1938).

41. See *Spurgeon v. Mission State Bank*, 151 F.2d 702, 703-704 (8th Cir. 1945) (“The emancipation of a minor is never presumed. The party relying upon it must establish it.”).

42. See STANDARDS RELATING TO RIGHTS OF MINORS, *supra* note 24, at 22.

43. See *id.* at 22-23; see generally MONT. CODE ANN. § 41-1-503(2) (2020).

44. See *Porter v. Powell*, 44 N.W. 295, 296-97 (Iowa 1890) (holding a child may have the right to earn and retain own wages and still call on her parent to pay her medical expenses); P.J. Hunycutt

## 2. *Statutory Emancipation*

By contrast, statutory emancipation allows a minor, upon a proper showing to the court, to get some or all of the disabilities of minority removed and the legal rights incident to adult status conferred thereon.<sup>45</sup> As such, statutory emancipation “is generally viewed as being a legal mechanism available only to the minor.”<sup>46</sup> In order for a minor to take advantage of this mechanism, however, he or she must be able to demonstrate that he or she meets the requirements set forth in the statute.<sup>47</sup> Only thirty-one states have enacted statutes explicitly allowing minor children to petition a court for emancipation.<sup>48</sup> These statutes vary widely in purpose and approach. Some state statutes merely provide when emancipation occurs by operation of law, while others outline several guiding factors for courts to consider when deciding emancipation questions.<sup>49</sup> For states that provide for emancipation by operation of law, occurrences such as majority age, marriage, or military enlistment will emancipate the minor without the need for a judicial hearing.<sup>50</sup> Unless challenged, emancipation occurs in these cases without the interference of any court proceeding or without a showing of proof.<sup>51</sup>

On the other hand, for states that implement statutory factors in making emancipation determinations, the child must be able to demonstrate the abil-

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& Co. v. Thompson, 74 S.E. 628, 629-30 (N.C. 1912) (stating child is emancipated and may keep his own wages, but not emancipated as to the father’s obligation to provide necessities and care to the son if the son becomes ill and dies).

45. See Polifka, *supra* note 26, at 47.

46. Dean, *supra* note 23, at 215.

47. Dana M. Dohn & Amy Pimer, *Child Labor Laws and the Impossibility of Statutory Emancipation*, 33 HOFSTRA LAB. & EMP. L. J. 121, 122 (2015).

48. See ALA. CODE § 26-13-5 (2021); ARIZ. REV. STAT. ANN. §12-2451 (2021); ARK. CODE ANN. § 9-27-362 (2021); CAL. FAM. CODE § 7120 (West 2021); COLO. REV. STAT. § 19-1-103 (2021); CONN. GEN. STAT. § 46b-150 (2021); GA. CODE ANN. § 15-11-721 (2021); 750 ILL. COMP. STAT. 30/7 (2021); IND. CODE § 31-16-6-6 (2021); IOWA CODE § 232C.1 (2021); KAN. STAT. ANN. § 38-109 (2021); ME. STAT. tit. 15, § 3506-A (2020); MASS. GEN. LAWS ch. 231 § 85P (2020); MICH. COMP. LAWS § 722.4 (2020); MISS. CODE ANN. §§ 93-5-23, 93-11-65(8) (2021); MONT. CODE ANN. § 41-1-501 (2020); NEB. REV. STAT. § 43-4802 (2021); N.H. REV. STAT. ANN. § 21-B:2 (2020); NEV. REV. STAT. § 129.090 (2021); N.M. STAT. ANN. § 32A-21-4 (2021); N.C. GEN. STAT. § 7B-3501 (2020); OR. REV. STAT. § 419B.552 (2020); 15 R.I. GEN. LAWS § 15-12-1 (2020); S.D. CODIFIED LAWS §§ 25-5-24, 25-5-26 (2021); TEX. FAM. CODE ANN. § 31.001(a) (West 2019); UTAH CODE ANN. § 78A-6-803 (West 2020); VT. STAT. ANN. tit. 12, §§ 7151-7156 (2021); VA. CODE ANN. § 16.1-331 (2021); WASH. REV. CODE § 13.64.020 (2021); W. VA. CODE § 49-4-115 (2021); WYO. STAT. ANN. § 14-1-203 (2021).

49. See CAL. FAM. CODE § 7120; see also KAN. STAT. ANN. § 38-109.

50. See CAL. FAM. CODE § 7120; MICH. COMP. LAWS § 722.4; N.M. STAT. ANN. § 32A-21-4.

51. Gardner, *supra* note 25, at 931.



ity to financially support him or herself, or the court will engage in an analysis of whether emancipation will be in the best interests of the child.<sup>52</sup> However, most states typically converge both methods of determining emancipation into its statutory framework.<sup>53</sup>

### C. CURRENT STATUTORY EMANCIPATION PROCEDURES

Generally, a minor child seeking statutory emancipation must petition the state's respective court for a declaration of emancipation.<sup>54</sup> Upon successfully petitioning the court, the minor must demonstrate they are sufficiently economically independent to achieve adult status and can adequately support themselves or obtain support from another.<sup>55</sup> In addition to the economic independence, some states require a showing that the emancipation be in the best interests of the child.<sup>56</sup> Other states will weigh factors such as financial self-sufficiency, age, military enlistment employment, marital status, cohabitation, or a child's willingness to live separately from his or her parents as a whole to determine whether emancipation is appropriate.<sup>57</sup>

In most states, minors must achieve a certain age before even having the authority to file an emancipation petition, usually 14 to 17, coupled with some showing of sufficient maturity.<sup>58</sup> Evidence to show maturity will typically include evidence of a valid marriage, such as a marriage license/certificate;<sup>59</sup> proof of active military service;<sup>60</sup> an affidavit by an individual attesting that emancipation is in the child's best interests;<sup>61</sup> or evidence showing some degree of parental independence.<sup>62</sup> Parents will be notified when their child petitions for emancipation and will have the opportunity to oppose it.<sup>63</sup>

While there is some showing of economic self-sufficiency required in certain cases of emancipation, some enacted statutes throughout the United

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52. See, e.g., CAL. FAM. CODE § 7120; CONN. GEN. STAT. § 46b-150b; WASH. REV. CODE § 13.64.060; see also Gardner, *supra* note 25, at 931.

53. See generally MICH. COMP. LAWS § 722.4.

54. See N.M. STAT. ANN. § 32A-21-3.

55. *Id.*

56. See, e.g., MICH. COMP. LAWS § 722.4c(2); TEX. FAM. CODE ANN. §31.005 (West 2019); ALA. CODE §26-13-1 (2021).

57. See CONN. GEN. STAT. ANN. § 46b-150b; VA. CODE ANN. § 16.1-333 (2021).

58. See ARIZ. REV. STAT. ANN. §12-2451 (2021); CAL. FAM. CODE § 7120(b)(1) (West 2021); CONN. GEN. STAT. ANN. § 46b-150; GA. CODE ANN. § 15-11-721 (2021); 750 ILL. COMP. STAT. 30/7 (2021).

59. See CAL. FAM. CODE § 7002(a) (West 2021); GA. CODE ANN. § 15-11-721; IOWA CODE § 232C.1 (2021); N.C. GEN. STAT. § 7B-3504 (2020).

60. See GA. CODE ANN. § 15-11-721; MICH. COMP. LAWS § 722.4; N.M. STAT. ANN. § 32A-21-4 (2021).

61. See GA. CODE ANN. § 15-11-721; MICH. COMP. LAWS § 722.4a(2).

62. See MISS. CODE ANN. §§ 93-5-23, 93-11-65(8) (2021); MICH. COMP. LAWS § 722.4a(1)(e).

63. See MICH. COMP. LAWS § 722.4b.

States were created with the purpose of providing minors an opportunity to leave abusive households and establish a better a life.<sup>64</sup> In these states, courts have relied heavily on whether emancipation is in the best interests of the child.<sup>65</sup>

#### D. ADVANTAGES OF EMANCIPATION

Emancipation can be an unusual legal mechanism which is generally reserved for extraordinary circumstances. Even so, emancipation can be very beneficial for a child. But perhaps more discrete are the benefits that may be conferred on other parties affected by the emancipation process.

First and foremost, emancipation effectively eliminates the disabilities of minority and the minor becomes an adult by operation of law or through final adjudication by a court.<sup>66</sup> Emancipation provides its most pronounced advantages to that of the child. Emancipation removes these disabilities of minority. Therefore, emancipated minors can apply for work permits, enter into contracts, bring lawsuits, retain their own earnings, register for school, make wills, consent to medical care, and otherwise act autonomously without the intervention of parental consent or control.<sup>67</sup> On its face, emancipation instantly brings about immense advantages from the vantage point of the child. The child obtains the full responsibilities of an adult.

The most notable advantage of emancipation is that it can be used as a method to assist children in escaping abusive homes and releasing them from the control of abusive parents.<sup>68</sup> For children who have been the product of torment and neglect their entire childhood, freedom in their decision-making responsibility is especially important for the child's physical and mental health. In a study of emancipated minors in California, many minors indicated that they had been subject to some sort of significant or substantial abuse with one or both parents prior to emancipation.<sup>69</sup> Thus, the advantages of emancipation grant children freedom from abusive parental subjection and even assist with providing for homeless and abused children who desperately need independence.

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64. See T. Christopher Wharton, *Desert: How Utah's Emancipation Statute is Saving Polygamist Runaways and Queer Homeless Youths*, 10 J. L. FAM. STUD. 213, 214 (2007).

65. See CAL. FAM. CODE § 7120 (West 2021).

66. Castle, *supra* note 1, at 356.

67. See MICH. COMP. LAWS § 722.4e.

68. Cataldo, *supra* note 21, at 593.

69. Sanger & Willemsen, *supra* note 22, at 254-55.

Alternatively, emancipation can often be advantageous to parents of emancipated minors. In fact, “much of the interest in the emancipation process comes from the parents.”<sup>70</sup> Once emancipation is granted, parental care and control stops, which means underlying monetary support obligations, cease.<sup>71</sup> Emancipation may better serve both parent and child where a parent may not meaningfully be able to provide for a child, or where the child may be completely financially independent of that parent. In this way, emancipation can limit the burden on the parent of fulfilling child support obligations, while simultaneously granting the child the freedom to retain his or her own wages or apply for a work permit to begin making his or her own wages. Emancipation can also be advantageous to parents in an emotional sense as well.

Parents whose lives have been disrupted by a child’s unacceptable conduct are described as typically feeling “helpless, victimized, betrayed, guilty, frightened, and disappointed in themselves as parents.” . . . Parents deserve the protection which early emancipation statutes could give them just as these statutes provide for children in need. Parents may be entitled not only to our sympathy but also to legal recourse when they have exhausted all other avenues in attempting to deal with an uncontrollable child.<sup>72</sup>

Notwithstanding the possibility of judgment being passed on parents who willing relinquish parent control, this does not necessarily make emancipation inherently bad.<sup>73</sup> “Getting out of a tension-ridden household may benefit both the departing teenager and the remaining parent.”<sup>74</sup>

States themselves may also benefit from emancipation. For instance, states have strong interests in the health and safety of their youth. By providing an avenue for homeless children to obtain necessary medical care without the need of parental consent, disadvantaged and homeless youth can be protected. Continually, states like California have enacted statutes to ease the strain on the state social services.<sup>75</sup> The California Department of Social Services would often encounter mature minors living on their own, so instead of placing them in the foster care system, the state created an alternative route through emancipation to assist self-sufficient minors.<sup>76</sup>

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70. S. Elise Kert, *Should Emancipation be for Adolescents or for Parents?*, 16 J. CONTEMP. LEGAL ISSUES 307, 308 (2007).

71. See N.D. CENT. CODE § 14-09-08.3 (2021).

72. Kert, *supra* note 70, at 309.

73. *Id.*

74. *Id.*

75. Polifka, *supra* note 26, at 47.

76. *Id.*

It is arguable, however, that the foster care system already addresses the need for children residing in abusive or neglectful homes. But just as California observed in enacting its emancipation statute, not all minors need to reside with a parent or guardian.<sup>77</sup> Thus, if a minor can live alone, it eliminates the need for the involvement of the state foster care system.

As for the system of law itself, emancipation statutes may be more advantageous to address state policies than common law, or judicial emancipation, principles.<sup>78</sup> The reason being is that emancipation statutes can accurately address a jurisdiction's purpose in its emancipation process by clearly defining emancipation, its consequences, and orderly setting forth the all the necessary procedures from start to finish.<sup>79</sup>

North Dakota's current law does not account for these advantages with its current law, leaving minors who are in abusive environments latched to their parent's control until they reach the age of 18. The absence of an emancipation law sometimes straps North Dakota parents to unnecessary support obligations and creates increased expenses for the state. North Dakota is missing the systematic statutory framework to effectively address key state issues. Therefore, North Dakota should afford minor children who are stuck in those exceptional circumstances an opportunity for a way out. Without emancipation, some minors still manage to find a way to leave their parent's residence. However, given that these children are still legally bonded to their parents, they may have difficulties finding places to live, controlling their own finances, obtaining medical care, receiving medical insurance, obtaining school report card, and applying for a driver's license.<sup>80</sup> An emancipation statute would overcome some substantial obstacles that minors, parents, and the state all currently encounter.

#### E. DISADVANTAGES OF EMANCIPATION

Despite its advantages, certain disadvantages may arise with emancipation. One of the reasons courts do not grant emancipation is because “[m]inors may not grasp the complete meaning of adult legal status . . . .”<sup>81</sup> A lack of understanding of the responsibilities of adulthood may create issues with making payments and fulfilling other obligations.<sup>82</sup> Although emancipated minors may often apply for loans, financial institutions may forswear loaning

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77. *Id.*

78. *Id.*

79. *Id.*

80. Cataldo, *supra* note 21, at 593.

81. Sanger & Willemsen, *supra* note 22, at 261.

82. Dana M. Dohn, *Child Labor Laws and the Impossibility of Statutory Emancipation*, 33 HOFSTRA LABOR & EMP. L.J. 121, 135 (2015).

money to them due to concerns about a minor's ability to repay.<sup>83</sup> In turn, financial struggles and poverty rates of emancipated children can be a concern.<sup>84</sup> "Without financial stability, emancipated minors may become vulnerable to homelessness."<sup>85</sup>

Moreover, employers may be reluctant, or even altogether unwilling, to employ emancipated minors due to their unfamiliarity with this esoteric area of law.<sup>86</sup> Even if there are employers willing to hire emancipated minors, these minors may be restricted from obtaining sufficient employment due to federal or state labor laws that place protections on the age of employment or hours a minor may work.<sup>87</sup> Although some states may allow for work permits to overcome labor law restrictions, there is no guarantee that a state will do so for a minor.<sup>88</sup> Thus, labor laws may further burden an emancipated minor's ability to make sufficient income to provide for himself or herself.

In addition to the financial concerns, emancipated minors face many social challenges. A study conducted in San Diego, California involving recently emancipated minors showed that these minors described life after emancipation as uncertain, lonely, ambivalent, and filled with insecurity.<sup>89</sup> This study tenably revealed that these social challenges may correlate with the emancipated minor's ability to complete their education as 14 out the 18 minors in the study dropped out of high school before graduating.<sup>90</sup>

While these disadvantages may pose a challenge to any legislature in enacting an effective emancipation statute, states have realized that the benefits of emancipation greatly outweigh the detriments. Parents, children, and the even state itself all benefit from an effective emancipation statute. Thus, North Dakota can likewise share in these benefits by addressing these disadvantages through a carefully drafted, and well-reasoned, statute.

### III. EMANCIPATION OF MINORS IN NORTH DAKOTA

The modernization of child autonomy is growing, for better or for worse. However, North Dakota remains in the backdrop in the ever-increasing modernization of emancipation law that is occurring in the United States. North Dakota's current statutory regime is missing a crucial piece that may be filled through the enactment of an emancipation statute. Each decade, more states enact laws in this area. It is time North Dakota joins the majority of states

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83. Cataldo, *supra* note 21, at 595.

84. *See id.*

85. *Id.*

86. *Id.*

87. *Id.* at 138.

88. *Id.* at 145-46

89. Sanger & Willemsen, *supra* note 22, at 297.

90. *Id.* at 271.

and enacts its own law that frees the needy North Dakota youth from parental control.

#### A. NORTH DAKOTA'S CURRENT LAW ON EMANCIPATION

North Dakota remains one of the few states with relatively no law in the area of emancipation of minors. To reiterate, there are two ways emancipation is accomplished in North Dakota which release the child from the disabilities of minority.<sup>91</sup> The first and most common way is for the minor to attain the age of 18.<sup>92</sup> The second way is through marriage, consented to by the minor's parents, when the minor is between the ages of 16 to 18 years old.<sup>93</sup> In light of the narrow circumstances authorizing emancipation in North Dakota, any application of the relevant statutes is scarce. In fact, both ways in which a minor is emancipated in North Dakota occurs by operation of law; therefore, courts rarely get involved in resolving emancipation issues unless there is a collateral issue to be decided.<sup>94</sup>

Aside from stating when emancipation occurs, North Dakota is one of the rare states that has neither a statutory emancipation scheme, nor a history of common law on emancipation.<sup>95</sup> Sources have speculated that this may be because Title 14, Chapter 10 of North Dakota's Century Code implicitly fills this gap by providing minors the rights and protections of adults despite their lack of majority.<sup>96</sup> Thus, the disabilities of minority perhaps do not burden minors in North Dakota as they do in other states.

For instance, minors in North Dakota who are of a sound mind may be held civilly liable for their wrongdoing,<sup>97</sup> and may contract for and receive examination, care or treatment for life threatening situations, sexually transmitted disease, alcoholism, or drug abuse without parental consent.<sup>98</sup> Most uniquely, minors in North Dakota have the power enter into contracts in the same manner as an adult, subject to a few exceptions.<sup>99</sup> One exception is that a minor "may not make a contract relating to real property or any interest

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91. N.D. CENT. CODE § 14-09-20 (2021).

92. *Id.*

93. *Id.* § 14-03-02.

94. *See* *Herman v. Magnuson*, 277 N.W.2d 445, 458 (N.D. 1979) (discussing issue of minority status of child when the ownership of a family vehicle driven in traffic collision was in question); *Moran v. Williston Coop. Credit Union*, 420 N.W.2d 353, 354 (N.D. 1988) (discussing the effectiveness of contracts entered into by minors); *Hewson v. Hewson*, No. 91C-130, 1995 WL 17815389 (N.D. Dist. July 11, 1995) (ordering child support payments end upon emancipation of minor child).

95. Bethany Stasiak, *Statutory and Judicial Emancipation of Minors in the United States*, BOSTON COOP, [http://www.bostoncoop.net/lcd/emancipation/emancipation\\_deliverable.pdf](http://www.bostoncoop.net/lcd/emancipation/emancipation_deliverable.pdf) (last visited Mar. 27, 2021).

96. *Id.*

97. N.D. CENT. CODE § 14-10-03 (2021).

98. *Id.* §§ 14-10-17, 14-10-17.1.

99. *Id.* § 14-10-10.

therein or relating to any personal property not in that person's immediate possession or control."<sup>100</sup> North Dakota appears to be in the minority with the rights it affords to the minor children in its jurisdiction under Title 14, Chapter 10. While this may grant minors more authority and freedom to be autonomous even within the disabilities of minority, it ignores current issues surrounding the purpose of emancipation and restricts minors' ability to be truly free from their parents. Minors in North Dakota are still subject to a certain degree of parental control notwithstanding the provisions in Title 14, Chapter 10.<sup>101</sup>

Another reason for the scarcity of emancipation law in North Dakota is that North Dakota's Department of Health of Human Services adequately protects minors through the state Child Protection Services, Social Services, and the foster care system.<sup>102</sup> Because these services actively work to protect abused and neglected children by providing temporary placements for children, it can be argued that this obviates the need for an emancipation process.<sup>103</sup> While these state services do provide a helpful avenue for children in need, mature children already residing out of the home who can provide for themselves do not need state intervention.<sup>104</sup> Likewise, an emancipation statute would alleviate the burden on the state to front foster care costs and other administrative expenses associated with child placements.<sup>105</sup>

#### B. THE LEGISLATIVE HISTORY OF NORTH DAKOTA'S EMANCIPATION LAW

The statutes codified in Title 14, Chapter 10 were originally drafted in 1877 before North Dakota was even a state in the union, but rather, made-up part of the Dakota Territory.<sup>106</sup> Notably, these original drafts, which developed into the current statutes, have not been amended since 1973.<sup>107</sup> The original purpose of these statutes primarily dealt with the protection of minors' wages and to further aid minors' freedom to act as adults in certain circumstances as seen in other states' laws at that time.<sup>108</sup> As time went on,

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100. *Id.* § 14-10-09.

101. *See generally* Hoff v. Berg, 1999 ND 115, ¶ 4, 595 N.W.2d 285 ("Ordinarily, parents with lawful custody of their minor children have the right to determine with whom their children shall associate.") (citation omitted).

102. *See generally* *Children and Family Services*, N.D. DEP'T OF HUMAN SERVS., <http://www.nd.gov/dhs/services/childfamily/> (last visited May 14, 2021).

103. Cataldo, *supra* note 21, at 601; *see Foster Care Services*, N.D. DEP'T OF HEALTH & HUMAN SERVS., <https://www.nd.gov/dhs/services/childfamily/fostercare/> (last visited Apr. 30, 2021).

104. *See* Cataldo, *supra* note 21, at 601.

105. *See id.*

106. 1877 Terr. of Dakota Sess. Laws 208.

107. 1973 N.D. Laws 313-14.

108. *Id.*

very few alterations were made to these North Dakota statutes after their enactment. Therefore, the ancient solutions addressed in the laws do not solve the modern issues of today.

Considering that Title 14, Chapter 10 has not been amended since 1973, North Dakota's law does not address current issues relating to the rights of minors. At the time of its last amendment in the early 1970s, statutory emancipation was likely not a popular approach to address child autonomy since only about eight states provided for it in their statutory regimes.<sup>109</sup> As such, it is possible North Dakota took the position that Title 14, Chapter 10 was a sufficient alternative to emancipation because statutory emancipation was not as widely accepted as it is today. Now the majority of states have a statutory emancipation process.<sup>110</sup> Additionally, many states now recognize that granting emancipation not only frees minors from parental control but may help disadvantaged minors seek legal autonomy and break away from abusive homes.<sup>111</sup> Moreover, the child's best interests have been granted more weight in assessing whether a child should or should not remain bonded to parental control.<sup>112</sup> North Dakota lacks these current developments in its current statutes under Title 14, Chapter 10 as it only addresses half the issue that emancipation seeks to resolve.

### C. ESTABLISHING AN EMANCIPATION PROCESS IN NORTH DAKOTA

North Dakota's current statutory regime governing the rights of minors would likely need substantial restructuring to allow for the insertion of an emancipation statute. The impact of doing so, however, would likely yield some impressive benefits. Even though Title 14, Chapter 10 grants minors a number of rights, these rights are not nearly as liberating as most emancipation laws throughout the United States. Certain state statutes provide some exceptional guidance into where North Dakota may look in drafting its own statute.

#### 1. *Protections Against Abuse*

Emancipated minors in Utah have the authority to rent an apartment, enter into an employment contract, and obtain *any* healthcare services that may have previously required parental consent.<sup>113</sup> In addition, Utah affords emancipated minors the power to manage their own finances, the right to control their own earnings and property, and the ability to borrow money for school

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109. Castle, *supra* note 1, at 358.

110. See cases cited *supra* note 44.

111. Wharton, *supra* note 64, at 214.

112. Cataldo, *supra* note 21, at 594.

113. UTAH CODE ANN. § 78A-6-805 (2021) (formerly cited at § 78-3a-1005).



or necessary expenses without parental entanglement.<sup>114</sup> Utah enacted its current emancipation laws in 2006 in order to curb the homeless and poverty rates of runaway minors.<sup>115</sup> The 2006 Utah statute sought to address the problem of abused and homeless children by helping broaden access to health care, education, and shelter to these disadvantaged youths.<sup>116</sup> In total, thirteen states have enacted emancipation laws to account for disadvantaged children or children in abusive homes.<sup>117</sup>

Advocates from other states have explicitly pointed to Utah's statute and the policy reasons for its enactment as an example to urge their state legislature in enacting an emancipation statute.<sup>118</sup> Utah's statute stands as a quintessential example of how an effectively drafted emancipation statute can help reduce abuse. And, just as other states have taken note of these policy reasons for enacting an emancipation statute, so too should North Dakota.

## 2. *Conditions*

States such as Montana and Vermont have similar statutes to that of Utah but add a number of unique mandatory or permissive conditions as prerequisites to emancipation.<sup>119</sup> Considering the strong correlation between being emancipated and dropping out of high school, Montana and Vermont counter this dilemma by requiring a minor petitioning for emancipation to satisfy a mandatory education component. This requires a showing of proof of good academic standing or, at minimum, the diligent pursuit of a high school diploma.<sup>120</sup>

Among other conditions, Vermont counteracts the inevitable overlap of the foster care system and emancipation by imposing a condition that the child seeking emancipation “[i]s not under a legal guardianship or in the custody of the Commissioner for Children and Families.”<sup>121</sup> Montana, on the other hand, also accounts for the social challenges many minors face following emancipation by establishing a permissive counseling of a minor if the court deems it necessary.<sup>122</sup>

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114. *Id.*

115. Wharton, *supra* note 64, at 217.

116. *Id.*

117. *Id.* at 215.

118. *See* Cataldo, *supra* note 21, at 596-97; Barnett, *supra* note 32, at 1820.

119. MONT. CODE ANN. § 41-1-501(2)(h) (2021) (stating the emancipation petition by minor must set forth “that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education . . . .”); VT. STAT. ANN. tit. 12 § 7151(b)(5) (2021) (stating a minor at the time of an emancipation order must hold “a high school diploma or its equivalent or is earning passing grades in an educational program approved by the court and directed toward the earning of a high school diploma or its equivalent.”).

120. *See* MONT. CODE ANN. § 41-1-501(2)(h); VT. STAT. ANN. tit. 12 § 7151(b)(5).

121. VT. STAT. ANN. tit. 12 § 7151(b)(6).

122. MONT. CODE ANN. § 41-1-501(2)(i).

In sum, many state statutes impose conditions on a minor's ability to petition the court for emancipation. But Montana and Vermont capture the essence of what these conditions should look like in application. Montana and Vermont effectively address important state policy considerations that emancipation precipitates through the imposition of educational and therapeutic conditions and conditions limiting the conflict with state foster care systems. These noteworthy conditions illustrate the creativity that may be implemented to effectively carry out an emancipation statute's purposes.

### 3. *Limited Emancipation & Continued Support*

New Mexico has a particularly noteworthy emancipation statute. The statute allows for both the total release of children who are economically self-sufficient from parental control, and for the limited or partial release from parental control for children who are not economically self-sufficient.<sup>123</sup> In circumstances where limited or partial release is appropriate, the child may come from an abusive home where it is in the best interests for the child to be removed and emancipated for all other purposes except financial support.<sup>124</sup> The flexibility of New Mexico's limited emancipation option allows courts to ensure the child will be cared for financially by continuing the parent's child support obligations while simultaneously protecting the child from an unsafe home by allowing the child to live independently. This caveat also takes the burden off the state social services agency to find foster home placements or adoptive parents for a child who is sufficiently mature or nearing the age of majority but not yet economically capable of caring for himself or herself.<sup>125</sup>

Other states address the conflict of the overlap between child protection services and limited emancipation granting limited emancipation only for a specific duration or allowing the court the ability to modify or revoke the limited emancipation upon a showing that the best interests of the minor are no longer being served by it.<sup>126</sup> This may also be a viable option to assist minors in escaping abusive environments without the concern that the minor may later become a ward of the state due to his or her financial dependence.

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123. N.M. STAT. ANN. § 32A-21-5 (2021); *Diamond v. Diamond*, 283 P.3d 260, 267 (N.M. 2012) (interpreting section 32A-21-5 to expressly authorize partial emancipation in New Mexico based on the statutory language "one or more . . . purposes" indicating a minor may be emancipated for some of the purposes enumerated in section 32A-21-5 but not others).

124. N.M. STAT. ANN. § 32A-21-5.

125. *Id.*

126. LA. CIV. CODE ANN. art. 371 (2020); MONT. CODE ANN. § 41-1-503 (2021); N.H. REV. STAT. ANN. §§ 461-B:4, B:9 (2021).

Interestingly, Michigan is the only state in the union which explicitly requires parents to continue to financially support the minor after emancipation.<sup>127</sup> It provides, “[t]he parents of a minor emancipated by court order are jointly and severally obligated to support the minor. However, the parents of a minor emancipated by court order are not liable for any debts incurred by the minor during the period of emancipation.”<sup>128</sup> While the Michigan approach does draw a level of fairness into its statute by shielding the parents from liabilities incurred by the minor *after* emancipation, the lack of flexibility in Michigan’s approach is likely why it has not gained much traction around the nation. It essentially eliminates the need for case-by-case analysis into the best interests of the particular minor petitioning for emancipation, which is a very important consideration in many jurisdictions.<sup>129</sup>

At any rate, a limited emancipation option promotes the best interests of the child by emphasizing the importance of analyzing emancipation on a case-by-case basis. Limited emancipation also eases the financial strain on the state’s resources by continuing child support obligations to protect emancipated minors from impoverishment and becoming wards of the state. Limited emancipation is quickly becoming a popular component of emancipation statutes in the United States.<sup>130</sup> This mechanism could benefit North Dakota’s youth.

#### 4. *Statutory Procedures*

Two more states have developed an exceptional framework in their emancipation statutes. First, California’s emancipation statute strikes a meaningful balance of child autonomy while weighing the best interests of the child when making its emancipation determinations.<sup>131</sup> California not only provides for emancipation by operation of law but allows minors to petition the court.<sup>132</sup> To file a petition, the court requires that:

- (1) The minor is at least 14 years of age.
- (2) The minor willingly lives separate and apart from the minor’s parents or guardian with the consent or acquiescence of the minor’s parents or guardian.

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127. *See* MICH. COMP. LAWS § 722.4e(2) (2021).

128. *Id.*

129. *See, e.g.*, CAL. FAM. CODE § 7122 (West 2021); NEV. REV. STAT. § 129.120 (2021); N.M. STAT. ANN. § 32A-21-4 (2021).

130. *See, e.g.*, 750 ILL. COMP. STAT. 30/5 (2021); IND. CODE § 31-16-6-6 (2021); MISS. CODE ANN. § 93-19-9 (2021); N.M. STAT. ANN. § 32A-21-5.

131. CAL. FAM. CODE §§ 7000-7143 (West 2021).

132. *Id.* § 7002.

(3) The minor is managing their own financial affairs. As evidence of this, the minor shall complete and attach a declaration of income and expenses as provided in Judicial Council form FL-150.

(4) The source of the minor's income is not derived from any activity declared to be a crime by the laws of this state or the laws of the United States.<sup>133</sup>

If the minor's petition complies with section 7120 of California's Family Code, and the court determines that emancipating the minor would be in his or her best interests, the court will grant the petition and emancipate the minor from his or her parents.<sup>134</sup>

Michigan's statutory emancipation process is strikingly similar to California's, except Michigan goes a step farther in a few respects. Like California, Michigan allows for both emancipation by operation of law and emancipation through petitioning the court.<sup>135</sup> The petition is where Michigan differs from California. A Michigan minor must include a declaration indicating that they have demonstrated the ability to manage their financial affairs, and a declaration indicating that they have the ability to manage their personal and social affairs.<sup>136</sup> Additionally, the petition requires the minor to include an affidavit by certain individuals set forth under the statute "declaring that the individual has personal knowledge of the minor's circumstances and believes that under those circumstances emancipation is in the best interests of the minor[.]"<sup>137</sup> The individual must be a physician, nurse, member of the clergy, psychologist, family therapist, certified social worker, social worker, social work technician, school administrator, school counselor, teacher, law enforcement officer, or duly regulated child care provider.<sup>138</sup> This, as with Montana's statute, incorporates more assurance of the child's emotional well-being before a court may grant emancipation.

California and Michigan lay out specific and well-drafted approaches that could serve as useful guidance for North Dakota. Procedures like the ones incorporated into California and Michigan's emancipation statute set forth the court's role in carrying out the purposes of the statute, but also grant the court reasonable flexibility in its ultimate emancipation determinations. A similar framework can be replicated by the North Dakota Legislature to guide courts and assist minors in seeking emancipation.

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133. *Id.* § 7120(b).

134. *Id.* § 7122.

135. MICH. COMP. LAWS § 722.4 (2021).

136. *Id.* § 722.4a.

137. *Id.* § 722.4a(2).

138. *Id.*

While no statute is perfect, North Dakota may use the above state statutes as a helpful reference to begin the start of the new age of protecting minor children and their rights more effectively. Combining Utah's protections against abused and homeless minors, Montana's and Vermont's conditions to further the state's public policies, New Mexico's flexible limited emancipation methodology with California and Michigan's superlative statutory framework, North Dakota could quickly develop an effective statute to guide North Dakota courts and practitioners. More importantly, a statute incorporating the qualities of the statutes described above will serve the best interests of North Dakota youth by providing minors with the ability to petition for emancipation.

#### IV. FINAL CONSIDERATIONS FOR NORTH DAKOTA

There are many considerations North Dakota should take into account before enacting an emancipation statute. Many can be found through careful analysis of other jurisdictions' emancipation procedures and policies. If North Dakota considers enacting an emancipation statute, it should not only draw guidance from other jurisdictions, and implement portions thereof, but it should establish well-reasoned and concise guidelines to avoid potential pitfalls.

##### A. CONSIDERATION 1: FLEXIBILITY

"Flexibility in the judicial process is undeniably of value, even if to obtain it we must also have less predictability."<sup>139</sup> There are a myriad of legal issues which may bring a minor within the purview of any given emancipation statute. A statute should avoid attempting to narrowly define each instance that could lead to emancipation. Rather, a statute should seek to maintain a flexible standard to guide courts but also allow them to use discretion when necessary. However, while judicial flexibility is an important consideration, emancipation determinations ultimately should be determined within the confines of the statutory framework. But to avoid creating a strict "rubber stamp" formula requiring emancipation in only limited circumstances, the statute should seek to balance these two interests. This can best be accomplished in North Dakota by defining emancipation and its consequences broadly. This may also be accomplished by setting forth specific statutory factors the court can take into consideration in making its emancipation determination, such as maturity, financial stability, and the best interests of the

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139. STANDARDS RELATING TO RIGHTS OF MINORS, *supra* note 24, at 30.

child, among others. This will grant the court autonomy to determine emancipation on a case-by-case basis but also provide the court with the necessary framework by which to follow.

### B. CONSIDERATION 2: OBJECTIVE ANALYSIS OF MATURITY & FINANCIAL STABILITY

Many jurisdictions have taken the initiative to require the child demonstrate maturity and financial stability.<sup>140</sup> One state statute goes as far to require an affidavit to be submitted by a professional who knows the minor personally, to attest to the minor's maturity and/or the minor's ability to provide for his or herself.<sup>141</sup> It would be useful for North Dakota to utilize similar requirements if it enacts an emancipation statute. An objective outlook on emancipation will further guide the court in making emancipation determinations. For example, a statute requiring the petitioning minor to submit a financial statement to the court could assist a court in objectively determining the true nature of the minor's financial situation without the need for speculation.<sup>142</sup> Further, the attestation by a professional with personal knowledge may aid the court in determining whether the minor possesses sufficient maturity to be emancipated or if emancipation will be in the best interests of the child. This could be accomplished through the appointment of guardian ad litem or perhaps through an assessment by a counselor or psychologist where the child attends school.

Another way to determine maturity would be requiring the minor to file proof of employment and health care coverage with their petition for emancipation, or, alternatively, specify how the minor will obtain employment and health care. Imposing requirements such as these could help North Dakota courts make well-informed and consistent emancipation determinations. Likewise, the imposition a showing of maturity and financial stability will also help avoid an abuse the emancipation process by opportunistic minors who do not meet the statutory requirements.

### C. CONSIDERATION 3: BEST INTERESTS OF THE CHILD

As discussed, the best interests of the child is a key consideration in many jurisdictions' emancipation determinations. North Dakota currently has an extensive statutory factors and instructive case law governing the best interests of the child for purposes of child custody.<sup>143</sup> Section 14-09-06.2(1),

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140. *See, e.g.*, ARIZ. REV. STAT. ANN. §12-2451(b) (2021); CAL. FAM. CODE § 7120(b) (West 2021); MICH. COMP. LAWS § 722.4a(1) (2021); VT. STAT. ANN. tit. 12 § 7151(b) (2021).

141. *See* MICH. COMP. LAWS § 722.4a(2).

142. *See* Polifka, *supra* note 26, at 48.

143. N.D. CENT. CODE § 14-09-06.2(1) (2021); *see generally* Rebenitsch v. Rebenitsch, 2018 ND 48, ¶¶ 5-13, 907 N.W.2d 41.

which sets forth the best interest factors, could be cross referenced and effectively used as a component of an emancipation statute for North Dakota to hit the ground running with its emancipation orders. This could avoid courts overanalyzing new legislation or reaching inconsistent conclusions to new, but similar, areas of the law. Therefore, the incorporation of the best interest factors in section 14-09-06.2(1) would allow for North Dakota courts to have a sense of familiarity from the outset with a newly enacted emancipation statute. Courts would be guided by preexisting, and well-established, best interest factors and its interpretative case law to guide its emancipation decisions.

#### D. CONSIDERATION 4: DISTINGUISH FROM FOSTER CARE AND CHILD PROTECTIVE SERVICES

In light of the overlap between emancipation law and a state's social services, child protective services, and the foster care system, it is important that North Dakota clearly defines when emancipation is appropriate. For example, it may be advisable to specifically state that, "In order to become an emancipated minor by court order under this chapter, a minor at the time of the order must be a person who: . . . *Is not under a legal guardianship or in the custody of [Social Services.]*"<sup>144</sup> Utilizing exceptions to emancipation such as this will help delineate when a child may need to go into foster care rather than be emancipated, and vice versa. This will clearly draw a line for courts to follow to be able to accurately determine when emancipation would be appropriate.

#### E. CONSIDERATION 5: AMEND OR REPEAL TITLE 14, CHAPTER 10

To avoid further overlap with current minor's rights in Title 14, Chapter 10 of North Dakota's Century Code, North Dakota should consider either amending Chapter 14-10 or repealing the provisions therein before enacting an emancipation statute. The rights conferred on minors in Title 14, Chapter 10 grants minors several freedoms and protections under the law, but not to the extent an emancipation statute would. Consequently, the provisions of Title 14, Chapter 10 may conflict with a subsequently enacted emancipation statute as both would address common issues. Thus, it would be advisable that North Dakota amend or repeal certain sections of Title 14, Chapter 10 to properly integrate an emancipation statute into North Dakota's statutory regime.

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144. VT. STAT. ANN. tit. 12 § 7151(b)(6) (2021) (emphasis added).

## V. CONCLUSION

North Dakota is missing a piece in its statutory framework: one that benefits children, parents, and the state alike, that can provide freedom to abused children, and that allows children the autonomy needed to make important decisions without parental control. The missing piece is emancipation.

The uses and consequences of emancipation . . . are not simply problems about legal process; rather, they reflect a familiar problem to which neither law nor society has offered clear or helpful answers: what to do when parents and teenagers need to separate. Incompatibility and irretrievable breakdown are not concepts limited only to the marital relationship. Emancipation fills the gap with unintended brilliance. It provides an efficient solution to the problem of serious conflict between teenagers and the adults with whom they live.<sup>145</sup>

North Dakota is in the slim minority of states that does not allow minors to petition for emancipation. Enacting an emancipation statute using the guidance provided by other states' laws and the key considerations set forth above will fill the gap and broaden North Dakota's protections for its youth and aid disadvantaged children from disabilities of minority. Minor children in North Dakota do not currently have protections like the emancipated minors in other states. As such, certain North Dakota children and parents may be suffering at the hands of the slow progression of North Dakota's laws in this area. States like Michigan, California and Utah all have helpful laws that can guide the North Dakota Legislature to draft a law that frees the North Dakota youth. Doing so would modernize North Dakota's statutory regime with respect to the rights of minors. Emancipation is the start of a new beginning for North Dakota youth.

*Michael C. Studer\**

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145. Sanger & Willemsen, *supra* note 22, at 348.

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