



**House
Legislative
Analysis
Section**

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EMANCIPATION OF MINORS

House Bill 5253 (Substitute H-2)
House Bill 5254 (Substitute H-1)
First Analysis (5-11-88)

RECEIVED

Sponsor: Rep. Perry Bullard
Committee: Judiciary

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THE APPARENT PROBLEM:

Runaway shelters and others involved with the problems faced by youths report a distressing trend of apparently increasing numbers of "throwaways," children whose parents have banned them from the household. While in some of the cases parents have simply kicked kids out, in others parents have used emancipation laws in an effort to legally terminate parental obligations. Although practice varies from county to county, in many jurisdictions all that is necessary to emancipate a minor is to file a statement to that effect with the county clerk's office. Although the law says that emancipation "does not occur if the minor is in fact dependent upon his or her parents for support," there is strong anecdotal evidence that many if not most of the youths emancipated by their parents are unable to support themselves. They have difficulty obtaining jobs, housing, and medical care because they are neither recognized as adults nor under the legal authority of an adult who can vouch for them. Few have the financial and social skills necessary to make it on their own, and attending school is made more difficult by changing living arrangements. Legal action to enforce parental responsibilities is prevented by lack of resources. What is needed, say case workers, is a law that ensures that a minor would not be emancipated unless he or she was reasonably prepared to assume the burdens of adulthood.

THE CONTENT OF THE BILLS:

House Bill 5253 would amend the emancipation of minors act, Public Act 293 of 1968, to establish standards under which court-ordered emancipation of a minor (that is, someone under 18 years old) would occur. (Emancipation also occurs by "operation of law," such as when a minor marries or joins the armed forces; the bill would not affect emancipation by operation of law.) In addition, the bill would delete provisions for emancipation by action of a minor's parent(s).

Petition, hearing. Under the bill, a minor seeking emancipation would file a petition with the local probate court. The petition would contain certain identifying information and declarations that the minor was able to manage his or her own financial, personal, and social affairs. The petition would have to include an affidavit by a medical, social work, education, or law enforcement professional to the effect that the person knows the minor and believes that emancipation would be in the minor's best interests. The court would serve a copy of the petition and a summons on the minor's parents or guardian. The court could assign a court employee to investigate the matter, appoint legal counsel for the minor, and appoint legal counsel for the parents if they were indigent and opposed the petition. The emancipation hearing would be before a judge or referee; if the minor requested, the hearing would be before a judge.

Granting of emancipation; appeals. The court would issue an emancipation order if it was in the best interests of the minor and the minor established all of the following: that he or she was at least 16 years old and a Michigan resident; that he or she was able to manage his or her own financial and nonfinancial affairs, as evidenced by proof of employment and housing; that he or she understood the legal rights and responsibilities of an emancipated minor; and that the minor's parent or guardian did not object to the petition (or if a parent or guardian was objecting, that that person was not providing the minor with support). The minor would have the burden of proving by a preponderance of the evidence that emancipation should be ordered. An appeal of the grant or denial of emancipation would be to the court of appeals.

Voiding, rescission. An emancipation obtained by fraud would be voidable without affecting an obligation or right that arose during the period of emancipation. A minor emancipated by court order or the parent of an emancipated minor could petition the same court to rescind the order of emancipation. The order would have to be rescinded if the minor was indigent and without a means of support, if the minor and his or her parents or guardian agreed that the order should be rescinded, or if there was a resumption of family relations inconsistent with the emancipation order. Rescission would not alter rights, interests, or contractual obligations that arose during emancipation. A minor or his or her parent could appeal a grant or denial of rescission to the court of appeals.

Rights and responsibilities. An emancipated minor would be considered to have the rights and responsibilities of an adult, except for specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, and other matters pertaining to health and safety. The bill would list various rights that would attach to emancipation, including the rights to enter into enforceable and nonvoidable contracts (such as apartment leases), to act autonomously in all business relationships, to authorize his or her own health care, to register for school, to marry, to apply for Medicaid and other welfare assistance, and to make decisions in caring for his or her own child, if any.

Parental obligations. The parents of a minor emancipated by a court order would be jointly and severally obligated to support the minor. However, the parents would not be liable for any of the minor's debts incurred during the period of emancipation.

MCL 722.3 et al.

House Bill 5254 would amend the Michigan Vehicle Code to provide for an emancipated minor's driver's license to bear a designation of the individual's emancipated status.

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The bill also would exempt emancipated minors from a provision that requires parental approval for a minor to obtain a driver's license.

MCL 257.308 and 257.310

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the fiscal implications of House Bill 5253 would be minimal, but the exact amount is unknown. House Bill 5254 would have no fiscal impact. (5-11-88)

ARGUMENTS:

For:

Under existing law, it is far too easy for a parent to abandon a teenaged child by signing an emancipation document. The unwillingly emancipated teens are by no means always incorrigible delinquents: rather, a review of case histories reveals a large number of children who were cast out because of interpersonal problems with stepparents or other family members. House Bill 5253 would ensure that a minor could not be emancipated by the unilateral action of an irresponsible parent, and would impose uniform emancipation standards to be employed by courts across the state. Further, the bill would refine and articulate the adult rights and responsibilities that are to be accorded emancipated minors.

Against:

While House Bill 5253 may impede the emancipation of teenagers whose parents do not want them, it would do little to ease the plight of already-emancipated youths. The expression of rights contained in the bill would not be sufficient if other applicable laws do not acknowledge or allow those rights. Further, the difficulties teens face in supporting themselves are well-known, but the bill contains no clear expression of policy on whether an emancipated minor is to have a right to various entitlement programs such as general assistance. The bill says that an emancipated minor would have the right to apply for such programs, but also says that parents would have a continuing obligation to support a minor emancipated by court order.

Response: The list of rights and the expression of the parental obligation to support a child would offer the opportunity for case workers to raise issues with the probate court and to obtain judicial solutions to individual problems.

Against:

The bills would unduly interfere in private family matters. Parents would be unable to discipline impossibly unruly teenagers by throwing them out of the house. A strong-willed youngster could obtain emancipation over the objections of his or her parents.

Response: Parents have not only a moral obligation to care for their children, they have, under existing law, a legal obligation to support them. A parent should not be allowed to simply dump a child that has become a burden. In addition, although a minor could obtain emancipation if a parent objected, it would have to be shown that the objecting parent was not providing the minor with support. The criteria to be imposed by House Bill 5253 would ensure that a minor would not be emancipated unless he or she was prepared for it.

POSITIONS:

The Department of Social Services supports the bills.

(5-10-88)

The Michigan Association of Juvenile Court Administrators supports the bills. (5-10-88)

The Michigan Coalition for Juvenile Justice Reform supports the bills. (5-10-88)

The Michigan Council on Crime and Delinquency supports the bills. (5-10-88)

The Michigan Network of Runaway and Youth Services supports the bills. (5-10-88)

The Department of State supports House Bill 5254 (Substitute H-1). (5-10-88)

A representative of the League of Women Voters of Michigan testified in support of the bills. (4-26-88)

The Juvenile Law and Adoptions Committee of the Michigan Probate Judges Association has no position on the bills. (5-11-88)