



LEGAL SERVICES FOR CHILDREN

EMANCIPATION MANUAL

**QUESTIONS AND ANSWERS ABOUT EMANCIPATION FOR
TEENAGERS**

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ABOUT USING THIS MANUAL

- ⇒ This manual is designed to help you figure out if emancipation is the right choice for you. It does five things:
- Answers questions you may have about emancipation.
 - Walks you through the emancipation process, including all the legal papers you will have to file at a Court in order to be emancipated.
 - Gives you information on how emancipation cases are handled in some counties in the San Francisco Bay Area.
 - Gives sample emancipation papers for two teenagers.
 - Gives you blank copies of California emancipation forms.
- ⇒ Emancipation laws are different in every state, and in some states it is not possible to get emancipated. ***This guidebook is only for teens who live in California.*** If you live somewhere else, you need to look into emancipation in your own state – the laws, rules, and forms will be totally different.
- ⇒ If you are looking for blank emancipation forms you can find them at your local Courthouse or online at <http://www.Courts.ca.gov/forms.htm>.
- ⇒ Emancipation is a serious step that has negative as well as positive consequences. If you are considering emancipation, you should talk it over with an adult you trust, a counselor, or a lawyer. Feel free to call Legal Services for Children at (415) 863-3762. An intake worker can answer your questions about emancipation and help you figure out your options.

All information in this manual is current as of September 2017.

ACKNOWLEDGMENTS

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PREFACE

Legal Services for Children, Inc. (LSC) in San Francisco was created as a non-profit agency in 1975, the nation's first free and comprehensive law firm just for minors. Legal Services for Children represents qualifying youth in emancipation proceedings on a case-by-case basis. We also provide legal advice and review emancipation papers for those young people who we do not represent.

Emancipation may not be the best choice, however. Before you try to get emancipated, you should think about your other options such as family counseling and/or legal guardianship. Family counseling with the people you live with can make it easier to live together. Legal guardianship is often a much easier way for you to live apart from your parents. You can ask a Court to make an adult you trust -- like a relative or a family friend-- your legal guardian. You would live with your legal guardian, who would take care of you and have responsibility for you until you turn 18.

Even if legal guardianship is not an option for you, you may still be able to arrange an informal agreement with your parents that lets you live with someone else. The adult you're living with can fill out a simple form called a Caregiver's Authorization Affidavit. This form will allow them to enroll you in school and get you basic medical care. Call Legal Services for Children at (415) 863-3762 if you need a copy of this form, or visit our website.

Finally, if you can't live safely at home you can always explore the option of foster care. The foster care system removes children who are being abused or neglected from their caretakers, and places them in foster homes or group homes. Most teenagers only want to consider foster care as a last resort, but it's important to remember that you always have this option if you're stuck in a situation that's not safe for you.

LSC is pleased to share this manual with any person interested in obtaining emancipation. However, all readers are advised that this is a basic guide only and that they must do their own research and review to be sure that they are acting on currently applicable law and procedure.

I. INTRODUCTION: PROCEEDINGS AFFECTING CUSTODY

Although this manual discusses emancipation, it is important to be aware of other proceedings in which custody of minors is affected. Emancipation is a process that allows a minor to obtain his/her own legal custody before turning 18. Legal custody of a minor means the right and responsibility to make almost all decisions affecting the care and supervision of that minor. This includes the right to determine the minor's domicile, the right to provide consent for the minor's medical care, the right to guide the minor's educational and religious development, and the right to make any reasonable order to control the minor's conduct.==

A. LEGAL GUARDIANSHIP

Legal guardianship of the minor suspends the parents' right to custody of their child and places that custody with another adult. It does **not** permanently terminate parental rights. Technically, parents remain financially responsible for the minor. Guardianship of minors may be for their persons, their estates, or both. Guardianship of the person transfers legal custody of the minor. A guardianship of the estate of a minor is usually for the purpose of managing property and/or substantial assets that are in the minor's name. The Probate Court appoints the legal guardian. (Legal guardians can also be appointed by Juvenile Court, see section F.)

The Probate Court can appoint a guardian whenever such action is "necessary or convenient" (Probate Code §1514). If the parents do not consent, the Court must find (1) that custody with parent(s) would be detrimental to the minor (if a parent contests), and (2) that it would be in the best interests of the minor to live with the proposed guardian (Family Code §3040). In guardianship proceedings, unlike Juvenile Court dependency proceedings (Welfare and Institutions Code §300), the Court does not have to find the parents unfit.

For more information, see LSC's [Guardianship Manual](#) which can be found on the LSC website.

B. DISSOLUTION

Legal custody is initially vested **equally** in the minor's natural parents (Family Code §3010) whether they are married or not. Several ways exist to change legal custody. If the parents are or were married, custody is usually determined in a dissolution action. The Court can consider the

child's preference and the reasons for it, if the child is sufficiently mature. Any custody order can be modified based upon a change of circumstances.

The Family Court in San Francisco (and in most counties in California) seeks the assistance of Family Court Services (FCS) when there is a dispute over custody issues between parents. FCS is an office of the Court which employs professional counselors. These professionals first attempt to mediate a custody or visitation dispute between parents. If the child has legal counsel, their counsel's input will be included. If mediation fails, FCS will conduct an independent evaluation and provide a written report to the Court.

C. UNMARRIED PARENTS

If the parents have never been married to each other, the issue of child custody is usually adjudicated through a paternity action, pursuant to Family Code §7600 – §7750. Once the legal father of the child is established, the issue of custody is resolved as in a dissolution action, as described above.

D. DOMESTIC VIOLENCE PREVENTION ACT

In situations involving domestic violence, custody of minors can be temporarily determined under the Domestic Violence Prevention Act (Family Code §6200 et seq.). A temporary restraining order may award custody of a minor child to one parent, subject to visitation rights of the other upon determination of the Court. The abusive party may also be required to make child support payments during the period of custody. One parent may obtain temporary care and control of her/his minor child through a restraining order when the parties have not been married, or when no petition for separation, nullity of marriage, or dissolution of marriage has been filed.

E. ADOPTION

An adoption is a complete substitution of one parent or set of parents for another (Family Code §8500-§9340). In an adoption, the natural parent(s) (and the parents' other relatives) lose all their rights and obligations regarding their children, including visitation and support. The new adoptive parent(s) are placed in the same legal position vis-à-vis the minor as a natural parent including custody, support, and inheritance rights. In a stepparent adoption, only one parent is substituted for another. If the parent to be substituted is living, an adoption requires that the natural parent's rights be terminated, either voluntarily (Family Code §8604 – §8605) or involuntarily (Family Code §8606).

An adoption is different from a guardianship in that guardianship temporarily suspends the parents' right to custody (not their right to visitation or obligation to support), while adoption permanently substitutes one parent, or set of parents, for another.

F. JUVENILE COURT

Custody may also be changed through the three Juvenile Court jurisdictional sections: Welfare and Institutions Code §300 (dependency), §601 (status offense), and §602 (delinquency). If the minor falls within the descriptions of §300, §601, or §602, the Juvenile Court may remove custody of the minor from the parent or other legal custodian by declaring the minor a dependent child (§300) or a "ward" (§601 or §602) of the Court. The Court may place that custody with relatives or friends of the minor with the addition of ongoing supervision by the Probation Department or Human Services Agency (HSA). The Court may also transfer placement to HSA or the Probation Department, which generally results in placement of the minor in a group or foster home. In some cases, the child will remain in the physical custody of the parents, under the supervision of the Human Services Agency (§300) or of the Probation Department (§601, §602).

The Juvenile Court can also appoint a legal guardian in both dependency and delinquency proceedings. **IMPORTANT NOTE:** If a guardianship was originally established in Juvenile Court any changes must be made in Juvenile Court. You cannot change a guardian by using the Probate Court guardianship process if the original guardianship was established in Juvenile Court.

In San Francisco Juvenile Court dependency or wardship actions, the Court maintains control over the minor through HSA or Juvenile Probation. HSA is represented by the City Attorney, and Juvenile Probation is represented by the District Attorney. The recommendations of HSA and Juvenile Probation carry substantial weight with the Court, and the Court has wide discretion in making dispositional orders.

G. CONSERVATORSHIP

Custody of a minor can also be placed with a conservator. A conservatorship allows the involuntary placement of a minor found to be gravely disabled in a treatment facility. The procedures for conserving a minor for mental health treatment may be found at Welfare & Institutions Code § 5350 et seq.

II. EMANCIPATION: AN OVERVIEW

A. WHAT IS EMANCIPATION?

Emancipation is a legal process that frees a child who is between the ages of 14 and 18 from the custody and control of their parents or guardian. In California, there are three ways to get emancipated. First, a minor can obtain a declaration of emancipation (a Court order) from a Judge. Second, a minor can get legally married with consent of your parents and permission from a Court. Third, a minor can join the United States military on active duty.

This guide focuses on the first option—getting a declaration of emancipation from a Judge.

B. HOW DO I GET EMANCIPATED?

There are three ways a child can become emancipated:

1. **If you get married.** Note that individuals under eighteen must get the written consent of their parents or guardian and a Court order if you get married before you turn eighteen.
1. **If you join the military.** Note that both your parents and the armed forces must give you permission to enlist if you are under eighteen.
2. **If you go to Court and have the Judge declare you emancipated** ("judicial declaration"). To get a Judge to emancipate you, you will need to file emancipation papers with a Court. These papers are called your "petition" for emancipation. No adult can file a petition to emancipate you—only you can file the petition.

C. HOW CAN I QUALIFY FOR EMANCIPATION?

To get emancipated, you will need to convince a Judge that you meet all of these requirements:

1. **You are at least fourteen years old.**
2. **You don't live with your parents or guardian, and they are either okay with this or are not actively trying to get you back.**

The law says you must "willingly live separate and apart from your parents or guardian with their consent or acquiescence." This means that you will have to offer proof to the Judge

that you have moved out of your parents' or guardian's home and moved in somewhere else, with the intent and the ability to live on your own. You will also have to prove that your parents or guardian have consented (said okay) to you moving out of their house, or that they aren't actively trying to get you to come back home. As a general rule, it is easier to become emancipated if your parents or guardian consent to the emancipation.

3. You manage your own finances.

You must earn your own income and make all the decisions about how that money is spent. This means you'll need to show the Court proof that you have a stable job that pays you enough money to cover all of your living expenses. You may also have to show the Court proof that you're paying for those expenses-- for example, receipts for rent, food, clothing, health care, or other necessary items.

There's no set amount of money that you have to earn in order to be emancipated, but you will have to show the Court that your monthly income is more than the total of all of your expenses. If your only source of income is welfare benefits (like CalWORKS or TANF), it may be hard to convince the Judge that you earn enough money to be emancipated.

Judges often want you to be in school before they grant emancipation, so it's better to be in school or in a GED program when you apply if that's at all possible for you. If you are not in school or a GED program, the Judge may decide to turn down your request to be emancipated. Although it is understandably difficult to hold down a job and go to school at the same time, the Judge will want proof that you've taken your education seriously and have a plan for your future.

4. Your source of income is legal.

This means that you can't earn your income from any kind of criminal activity. You definitely can't get emancipated if you earn money by committing crimes, like selling drugs or stealing things.

The law isn't clear on whether you qualify for emancipation if you work "under the table" and don't pay taxes on your income. It will be up to the Judge who hears your case to make a decision. If you work "under the table" but still want to get emancipated, be sure to give the Court evidence that your job is a stable source of income. For example, even though you

don't have pay stubs, you might be able to show proof of regular deposits to your bank account or a copy of your work schedule.

5. Emancipation would be in your "best interests."

You must convince the Judge that emancipation will make a positive impact on your life. Even if you meet all the other requirements, a Judge can turn down your request to be emancipated if she feels it wouldn't be a good thing for you. When you go to Court, your parents, guardian, or anyone else who doesn't think you should be emancipated can try to convince the Judge that emancipation would be a bad thing for you.

D. WHAT CHANGES IF I BECOME EMANCIPATED?

Emancipation allows you to make many decisions about your life that usually would be made by your parent or guardian. In many-- but not all-- ways, emancipation makes you an adult in the eyes of the law. If you are emancipated, you can:

1. Live where you want.
2. Sign contracts.
3. Keep the money you earn.
4. Buy, sell, lease, or give away any interest you have in real or personal property.
5. Get a work permit without parental consent.
6. Enroll yourself in school.
7. Sue someone in your own name.
8. Make a valid Will.
9. Consent to your own medical, dental, and psychiatric care.
10. Stay out as late as you want. (Curfew laws do not apply to emancipated minors.)

When you are emancipated, you are released from the custody and control of your parents. If you have a legal guardian, that guardianship ends when you become emancipated. If you are a dependent (foster kid) or ward of the juvenile Court, your legal status changes when you are emancipated.

As an emancipated minor, you can get any type of medical, psychiatric, or dental care without informing or getting the permission of your parent or guardian. You can decide where you will live. You can apply for a work permit and enroll yourself in school or college. You can sign a

lease on an apartment and enter into other contracts. You can take part in lawsuits, get a bank loan or a credit card, and make a will. After you are emancipated, you should also be able to obtain financial assistance through the Temporary Assistance for Needy Families program ("TANF"). Keep in mind, though, that some Courts may deny your emancipation petition if your only source of income is TANF.

There are negative consequences to emancipation, too: when you are emancipated, you give up the right to financial support from your parents. Your parents or guardian lose the right to control your finances, but they also are no longer required to support you. If you cannot support yourself, your emancipation may be undone by the Courts and you will no longer be an emancipated minor. This is called "rescission" of emancipation.

Emancipation does not make you an adult in all ways. The laws that require you to attend school still apply. Even if you are emancipated, if you are charged with a crime your case will be in Juvenile Court. You still have to follow labor laws that do not allow you to perform certain dangerous types of work. You can't get your driver's license any earlier because you are emancipated. Finally, you can't legally consent (say yes) to sexual intercourse. This means that a person who has sex with an emancipated youth can still be prosecuted for statutory rape.

III. EMANCIPATION: INITIAL STAGES

The exact steps for becoming emancipated are different in every county. Before you start the emancipation process it is important for you to think if emancipation is really the best choice for you, and to familiarize yourself with the emancipation procedure.

A. IS EMANCIPTION RIGHT FOR ME?

For emancipation, you must be able to convince the Court that being independent of a parent or guardian would be the best option for you. As discussed above, you must prove that you are able to care for yourself, financially and emotionally, meaning that you can provide for all of your housing and living expenses and are able to meet your educational and miscellaneous responsibilities. This is a very high standard and it is very difficult to meet. It is important to understand why you are interested in emancipation. When considering emancipation ask yourself:

- Why do I want to be emancipated?
- Why is it in my best interest not to live at home?

- Where am I currently living? For how long? What is my current living arrangement like? (If you live with an adult, is a guardianship with that adult more beneficial for me?- When considering this option you should look at the **LSC Guardianship Manual** to weigh the benefits of the two)
- Who has custody of me?
- Would my parents or guardian agree to emancipation?
- What is the likelihood of me being emancipated?
- How well do I do making decisions for myself?
- Is my current employment stable?
- Do I have any other sources of income? Do I receive any state or federal benefits or other assistance?
- Is my source of income legal?
- Am I able to pay all of my living expenses?
- Do I have any proof of my ability to pay for my expenses--for example-- receipts for rent, food, clothing, health care, or other necessary items?
- Do I have any reservations about being financially, emotionally responsible for myself? If yes, what are they? If no, why don't I?
- Are there any adults that I might want to live with?
- Would filing for emancipation upset other family members? If so, how would that impact me?

B. FLOWCHART OF PAPER PROCEDURES

STEP 1: Writing the Petition

COMPLETE THE FOLLOWING FORMS:

1. Request to Waive Court Fees (FW-001)
2. Order On Court Fee Waiver (**NOT in Alameda Co.**) (FW-001)
3. Petition for Declaration of Minor (and necessary attachments) (MC-300)
4. Notice of Hearing of Hearing- Emancipation of Minor (MC-305)
5. Emancipation of Minor Income and Expense Declaration (MC-306)
6. Declaration of Emancipation of Minor After Hearing (MC-310)

You can download them from the forms section of the [Judicial Council's website](#):

STEP 2: Filing the Petition

FILE YOUR COURT FORMS AND SUPPORTING DOCUMENTS WITH THE CLERK

1. Make sure you have completely filed out and signed all forms from Step 1 and attach all supporting materials together
2. Call the Court clerk at the Superior Court (Civil Division) or if you are a dependent of the Court the Juvenile Court to determine the number of copies you need to bring when you file the petition
3. Take all copies to the appropriate clerk's office
4. The clerk will ask the Judge to sign the Order prescribing Notice on the back of the Petition.
5. The clerk will tell you when to come back to pick up your papers or mail them to you
6. Once the Judge signs your papers, the clerk will give you a hearing date (may not be required if your parents gave consent) and a case number. If you asked for a Fee Waiver, the clerk will let you know if you qualify. If you did not ask for a Fee Waiver, you have to pay the filing fee at this time.

THE PAPERS THAT ARE FILED: GIVE ORIGINAL AND ONE COPY TO THE CLERK AND KEEP A FILED ENDORSED COPY FOR YOUR OWN RECORDS AND FOR SERVICE OF NOTICE.

STEP 3: Getting a Hearing

SENDING OUT THE NOTICE OF HEARING AND THE PETITION:

1. **Serve** notice of the hearing. The law says you must notify certain people about the hearing, like your parents, guardian, social worker, and probation officer. If any of these people already signed the consent form, you do not have to serve them notice. If they did not sign the consent form, you must serve them notice of the hearing.

This means someone over 18 – not you – must mail copies of all your Court documents to your parents (and guardian, social worker, or probation officer if you have one). The person who mails (serves) the copies must fill out a Proof of Service form. Then, you must file the Proof of Service with the Court. The clerk will ask you for 2 copies of the Proof of Service. There is no Proof of Service form for emancipation. But, you can use [Judicial Council Proof of Service form FL-335](#) as an example. Click on the form number to download a copy.

STEP 4: Serving the Petition

1. Mail copies of ALL forms filed with the emancipation to one or both parent(s).
2. Fill out a proof of service by mail form and file it with the court.

THE NOTICE NEEDS TO BE MAILED AT LEAST 20 DAYS BEFORE THE HEARING TO PEOPLE IN CALIFORNIA, 25 DAYS IF IN USA BUT NOT WITHIN CALIFORNIA, AND 35 DAYS IF OUTSIDE THE USA.

STEP 5: Preparing for the hearing

STEP 6: The Emancipation hearing

AT THE GUARDIANSHIP HEARING:

Have these forms ready:
Declaration of Emancipation of Minor After Hearing (MC310)

You present the case. The Judge may ask you and/or your attorney some questions You should have already filed the Declaration of Emancipation of Minor After Hearing, But you can present a spare copy to the Judge.

Take the signed Order to the Clerk and file with the signed Letters of Guardianship. Ask for certified copies of letters from the clerk.

THINGS TO DO BEFORE THE HEARING DATE:

- File the Notice of Hearing (with the completed proof of service by mail and proof of personal service sections attached).
- File the Notice and Acknowledgment of Receipt (if you get them) or Proof of Personal Service to parents.
- File the Consent Waiver of Notice if the parent(s) have returned them.
- Keep any updated documentation (such as pay stubs) to present to the Judge if they ask.

IV. EMANCIPATION: WHERE TO GET EMANCIPATED

This section of the manual gives you information on how different San Francisco Bay Area counties handle emancipation cases. Remember that Courts change their rules and fees fairly often, so it is always a good idea to call first and get up-to-date information. Also note that many Courts will tell you there's a filing fee, but you can apply for a fee waiver if you cannot afford the filing fee.

A NOTE ON WHERE TO FILE

When filing any petition in any Court, it is important to know what **kind** of Court to file in, and what **county's** Court to file in. Usually, this is a simple question, but it can get more complicated.

What type of Court should I file in?

Generally, emancipations will be filed either in Family Court, or in Superior Court, which is where general civil (non-criminal) matters are heard. The list below details what type of Court a Petition for emancipation should be filed in for 10 counties in and around the Bay Area.

What county should I file in?

Under the California Family Code, section 7120(a), a minor may file an emancipation in the superior court in the county where the minor is currently living.

Where folks may run into problems is when there is an open family law case, such as a custody or dependency case, involving you, in a different county than the one you are living in. The Judge might be confused, and find that the Court in the county with the already open case is the one where the emancipation petition should have been filed.

Currently, there is no clear answer as to which of these two Courts would be the proper place to file a request for emancipation. If you're in this situation, we would suggest filing the emancipation in the county where you are living. If the Judge asks you about any other cases that may contain your name (such as a custody case with your parents), you may want to explain to that, under the Family Code, you are supposed to file in the county where you are living. If the Judge remains reluctant to hear the case, you could ask them to transfer the case to the other county, rather than forcing you to re-file the petition.

San Francisco County

Courthouse: San Francisco Superior Court
Telephone: (415) 551-3903
Website: <http://sfsuperiorCourt.org>
Address: 400 McAllister St., San Francisco, CA 94102
Where to file: Room 402
Fee: none

Will the Judge ever emancipate a minor without having a hearing? Yes, if parents/guardian consent to emancipation

Does the Court investigate an emancipation petition? If a dependent (foster child) asks for emancipation, the Court may order an investigation. The Court may also do a background check on the minor petitioning for emancipation.

Alameda County—Northern & Southern Division (cities of Alameda, Albany, Berkeley, Emeryville, Oakland, Piedmont, Castro Valley, Fremont, Hayward, Newark, San Leandro, Union City)

Courthouse: Hayward Hall of Justice
Telephone: (510) 891-6028
Telephone: (510) 690-2702
Website: <http://www.alameda.Courts.ca.gov>
Address: 24405 Amador Street, Hayward, CA 94544
Where to file: Family Law Division Room 104

Fee: \$395, but you can apply for a fee waiver if you can't afford this.

Will the Judge ever emancipate a minor without having a hearing? Sometimes.

Does the Court investigate an emancipation petition? Sometimes.

Alameda County—Eastern Division (cities of Dublin, Livermore, Pleasanton, Sunol)

Courthouse: Alameda Superior Court
Telephone: (925) 227-6700
Website: <http://www.alameda.Courts.ca.gov>
Address: 5672 Stoneridge Drive, Pleasanton, CA 94588
Where to file: Civil window, 1st Floor

Fee: \$395, but you can apply for a fee waiver if you can't afford this.

Will the Judge ever emancipate a minor without having a hearing? Sometimes.

Does the Court investigate an emancipation petition? Sometimes.

Contra Costa County

Courthouse: Contra Costa Superior Court
Telephone: (925) 957-5793

Website: <http://www.cc-Courts.org>

Address: 725 Court Street, Martinez, CA 94553

Where to file: Room 103, Civil Division

Fee: \$395, but you can apply for a fee waiver if you can't afford this.

Will the Judge ever emancipate a minor without having a hearing? Sometimes.

Does the Court investigate an emancipation petition? No.

Other: In Contra Costa, the Court will mail your petition and fee waiver back to you, once everything is filed. The Court will not pay for the mailing, so be sure to bring a self-addressed stamped envelope when you file.

Marin County

Courthouse: Marin Superior Court

Telephone: (415) 444-7040

Website: <http://www.marinCourt.org>

Address: 3501 Civic Center Drive, San Rafael, CA 94913

Where to file: Room 113

Fee: \$0, but if they tell you \$395, you can apply for a fee waiver.

Will the Judge ever emancipate a minor without having a hearing? Sometimes.

Does the Court investigate an emancipation petition? Sometimes.

Napa County

Courthouse: Napa Superior Court

Telephone: (707) 299-1130 Clerk's office or (707) 299-1137 Family Law Facilitator

Website: <http://www.napa.Courts.ca.gov>

Address: 825 Brown Street, Napa, CA 94559

Where to file: Civil clerk's office, 1st Floor

Fee: \$395, but you can apply for a fee waiver.

Will the Judge ever emancipate a minor without having a hearing? Sometimes.

Does the Court investigate an emancipation petition? No.

Sacramento County

Courthouse: Sacramento Superior Court

Telephone: (916) 875-3400

Website: <http://www.sacCourt.ca.gov>

Address: 3341 Power Inn Road, Sacramento, CA 95826

Where to file: Ask the information booth; it'll be the family law department.

Fee: \$395, but you can apply for a fee waiver.

Will the Judge ever emancipate a minor without having a hearing? Sometimes.

Does the Court investigate an emancipation petition? No.

San Mateo County

Courthouse: San Mateo Superior Court

Telephone: (650) 312-5395

Website: <http://www.sanmateoCourt.org>

Address: 222 Paul Scannell Drive, San Mateo, CA 94402

Where to file: Clerk's office

Fee: \$395, but you can apply for a fee waiver.

Will the Judge ever emancipate a minor without having a hearing? Sometimes.

Does the Court investigate an emancipation petition? Sometimes.

Santa Clara County

Courthouse: Santa Clara Superior Court

Telephone: (408) 882-2654

Website: <http://www.sccsuperiorCourt.org>

Address: 191 N. First Street, San Jose, CA 95113

Where to file: Probate Department, 1st Floor, Room 107

Fee: \$395, but you can apply for a fee waiver.

Will the Judge ever emancipate a minor without having a hearing? No.

Does the Court investigate an emancipation petition? Yes.

Other: It is heavily advised for you to get a lawyer. Call Legal Advocates for Children and Youth (LACY) at (408) 280-2416 for help.

Solano County

Courthouse: Solano Superior Court

Telephone: (707) 207-7340 Fairfield; (707) 561-7840 Vallejo

Website: <http://www.solanoCourts.com>

Address: 600 Union Avenue, Fairfield, CA 94533

321 Tuolumne Street, Vallejo, CA 94590

Where to file: Family Law Division

Fee: \$395, but you can apply for a fee waiver.

Will the Judge ever emancipate a minor without having a hearing? No.

Does the Court investigate an emancipation petition? No.

Other: You can get an Emancipation of Minor forms packet for \$10 at the Court (or just use the forms at the end of this guide).

Sonoma County

Courthouse: Sonoma Superior Court

Telephone: (707) 521-6630

Website: <http://sonoma.Courts.ca.gov>

Address: 3055 Cleveland Ave., Santa Rosa, CA 95403

Where to file: Family Law Department

Fee: \$395, but you can apply for a fee waiver.

Will the Judge ever emancipate a minor without having a hearing? Sometimes.

Does the Court investigate an emancipation petition? Sometimes.

NOTE: IF YOU LIVE IN A COUNTY OTHER THAN ONE OF THE COUNTIES LISTED ABOVE, CALL THE SUPERIOR COURT, CIVIL DIVISION IN YOUR COUNTY FOR INFORMATION ON WHERE AND HOW TO FILE FOR EMANCIPATION. THE CIVIL DIVISION MAY TRANSFER YOU TO ANOTHER DIVISION TO HANDLE YOUR QUESTIONS.

V. EMANCIPATION: PREPARING THE FORMS

If you decided emancipation is the right option for you and gathered documentation to prove that you qualify for emancipation, the next step is to prepare the forms. This section of the manual will walk you through some of the necessary steps for filing an emancipation petition. The Court materials will also provide explanations for you to follow. The system is set up so that you can apply for emancipation without having an attorney. The emancipation forms and procedures are fairly simple, but if you are having a hard time, you can call Legal Service for Children at (415) 863-3762 to ask for help.

A. GATHERING THE FORMS

While the exact steps for becoming emancipated are different in every county there are standard forms you can use in California. You may either type the forms or print (hand write) carefully. Copies of all the forms needed are available in the San Francisco Superior Court Clerk's office and online at www.Courtinfo.ca.gov/cgi-bin/forms.cgi. Samples of these forms are located in the appendix. There are 3 forms you will always need to complete to apply for emancipation:

1. Petition for Declaration of Emancipation of Minor, Order Prescribing Notice, Declaration of Emancipation, and Order Denying Petition (**MC-300**)
2. Emancipation of Minor—Income and Expense Declaration (**MC – 306**)

3. Emancipation of Minor— Notice of Hearing (MC – 305)

If you can't afford to pay the Court fees and costs (Note: San Francisco County does not charge), fill out these waiver forms, too:

1. Request to Waive Court Fees (FW-001)
2. Order on Court Fee Waiver (FW-003)

Other forms

Some Courts, such as Contra Costa Superior Court, ask minors to file a form to apply for an identification card from the Department of Motor Vehicles (DMV), with their initial application for emancipation:

1. Emancipated Minor's Application to California Department of Motor Vehicle (Form MC-315)

Always be sure to check on the county Court's website to see what forms to file for an emancipation in your county of residence.

B. PETITION FOR DECLARATION OF EMANCIPATION OF MINOR (with supporting declaration)

On the Petition, you give the Judge information about you and the adults who may be legally responsible for you: parents, guardian, social worker, and probation officer. If these adults agree to the emancipation, you mark that on this form as well. Remember to enter the date and city at the bottom of the first page, and don't forget to sign the Petition. You should only check the box saying you are a "dependent child" if you are currently a part of the foster care system.

You also should write a declaration. A declaration is an essay explaining to the Judge why you need to be emancipated, what your living situation is, and how you are going to support yourself and any children you have. Attach the declaration to the Petition. Sample declarations are provided in the appendix.

Because many Courts do a background check on emancipation petitioners, it may be a good idea to disclose any juvenile criminal arrests, charges, convictions, or adjudications, and/or any history with Child Protective Services (CPS) or foster care involvement. It will be important to explain to the Court, up front, what happened, how you've grown or changed from those experiences, and why emancipation is still in your best interest.

After the declaration, you should include your exhibits, which are your written items that prove you qualify for emancipation. Your exhibits can include copies of any of the following: bank statements, school transcripts or report cards, paychecks, letters from your landlord and boss, and letters from other people who support your emancipation. See the sample declarations for Maria Minor and Christopher Kidd.

C. INCOME AND EXPENSE DECLARATION

To show the Court that you are able to support yourself financially, you must fill out the Income and Expense Declaration. This tells the Court how you are supporting yourself and whether you are in school or working. If you are working, renting a place to live, receiving benefits, or expecting to receive benefits, you should try to document this and the amounts of money involved in letters that you can attach (see samples for Christopher Kidd).

D. NOTICE OF HEARING

If **you know where your parents/guardian are AND they consent** to the emancipation, they should sign the Notice of Hearing form on the bottom half of the page, under the heading "Consent and Waiver of Notice." File that paper with the petition (see the sample for Maria Minor).

If **you know where your parent(s)/guardian(s) are, BUT they refuse to sign the consent form**, you must get a hearing date from the clerk and give notice to your parent(s)/guardian(s) of the hearing (see below). If your parent(s) or guardian(s) will not consent to the emancipation, you may want to include in your declaration an explanation of how your parents have acquiesced or agreed to you living separate and apart from them (see the sample for Maria Minor).

If **you do not know where a parent/guardian lives**, you must try to find him or her. Generally, you need to ask people who might know where he or she is, call information in the place you last knew of him or her living, and follow up on any leads you have about where he or she is. If you can't find him or her, you can ask the Judge to go ahead without notifying that person of the emancipation proceeding (called "waiving notice").

To ask for permission to waive notice, on the Petition where you enter information about the parent/guardian, check the box marked “Notice should not be required,” and briefly explain why. You must also file an attachment called the “Declaration of Due Diligence.” This is a statement that tells the Judge when you last saw the parent/guardian and what you did to try and find the person (see the sample for Christopher Kidd).

NOTE: IF YOU DO NOT FILL IN THE FORMS COMPLETELY, THE JUDGE WILL NOT SIGN THE EMANCIPATION ORDER.

E. ARRANGE TO PAY THE FILING FEE, OR SEEK A WAIVER.

If you cannot afford to pay, you can ask the Judge not to charge you: this is called a fee waiver. To apply for a waiver, you file an Application for Waiver of Court Fees and Costs and an Order on Application of Court Fees and Costs. Samples of these are attached in the appendix for Christopher Kidd. In San Francisco County, there is no fee for filing an emancipation petition. Most other counties charge a filing fee, and the clerk will be able to tell you if there is one or not. If seeking a fee waiver, the petitioner should complete a Request to Waive Court Fees (FW-001) and an Order on Court Fee Waiver (Superior Court) (FW-003) and submit them at the time of the initial filing in place of a check.

In San Francisco, this application is filed along with the other papers at the County Clerk's office. However, after filing all of your papers you need to take a copy of the fee waiver application and order up to the probate office in room 202. In San Francisco, when approved, orders waiving Court fees and costs are mailed to the attorney of record.

Alameda County will not accept the Judicial Council form Order on Application for Waiver of Court Fees and Costs (FW-003), but rather generates fee orders electronically. In Alameda, the status for applications for fee waiver can be checked at <http://apps.alameda.Courts.ca.gov/domainweb/html/index.html>. If you need a copy of the order, for example to allow for personal service of parents by law enforcement, you will need to retrieve the order from the clerk's office.

Having a signed fee waiver order can be particularly important if you need to use the sheriff for service of process since they will provide this service for free if you have a fee waiver order. No papers can be filed without either a Request to Waive Court Fees (FW-001) and Order on Court Fee Waiver (FW-003) or a check. This procedure varies by county, so check the local Clerk's office.

Requesting a fee waiver doesn't mean that the Judge will find you unable to support yourself financially. California Court rules say that whether or not you can pay the filing fee is not evidence of your financial responsibility. However, getting a fee waiver may make it harder to convince the Judge that you are financially stable.

VI. EMANCIPATION: FILING THE FORMS

If you want to become emancipated, you must file an emancipation petition with the clerk of the Superior Court (Civil Division), or, if you are a dependent of the Court, in the Juvenile Court. An emancipation petition can be filed either in the county where you live now, or in the county where your legal residence is (usually the county where you used to live with your parent or guardian).

A. FILE THE FORMS WITH THE APPROPRIATE COURT

Different Courts have different rules about where and how to file, how many copies of your petition you need to bring, and whether there's a fee, so you should call the clerk's office to resolve any questions about how to file the petition (there are phone numbers for Bay Area Courts in this guide). If you can't find answers to your questions, or have problems filing, call Legal Services for Children at (415) 863-3762 and ask to speak with the intake worker of the day.

After you have filled out all of the required sections of the forms, obtained the signature of your parent(s)/guardian(s) (if possible), and written the attachments, bring them with sufficient copies to the Superior Court (Civil Division) clerk's office or if you are a dependent of the Court, in the Juvenile Court. Call the clerk's office to find out how many copies (usually 3) to bring and exactly where to go. Make sure you have an extra copy of the papers for yourself. Tell the Court clerk that you want to file a petition for emancipation, and give him or her your papers. The clerk will keep at least one copy of your petition.

B. OBTAIN A HEARING DATE (IF NECESSARY)

After you take your papers to the clerk for filing, the petition goes to the Judge for review. The clerk will tell you when to come back to pick up your papers or arrange to have them mailed to you. The clerk will ask the Judge to sign the Order prescribing Notice on the back of the Petition. After the Judge signs your papers, the clerk will give you a hearing date and a case number. If you asked for a Fee Waiver, the clerk will also let you know if you qualify. If you did not ask for a Fee Waiver, you have to pay the filing fee. Some Judges hold hearings on all petitions for emancipation. Other Judges only have hearings when the parent(s) do not consent to the emancipation or when it is not clear to the Judge that you meet all of the requirements for emancipation. In those cases, the clerk will schedule a hearing date. If there is to be a hearing, the Judge will decide who must be officially notified that you filed a Petition for Emancipation so they can appear at the Court hearing on your Petition and state their opinions as to whether or not you should be emancipated.

NOTE: It can take a long time to obtain a hearing date after a petition is filed. This is because very few young people actually qualify for emancipation, and therefore Courts often want to be cautious about granting these petitions. Therefore, some Courts will do background checks on petitioners or investigations, which can take a long time. You should expect to wait between 1-3 months for a hearing date, after filing for emancipation. You should feel free to call the clerk's office in the county where you filed for emancipation, to check on the status of your case, if you feel like it is taking a long time to receive a hearing date.

C. GIVE NOTICE (ONLY IF A HEARING DATE IS SCHEDULED)

If a hearing date is scheduled, the Judge or clerk may tell you that you need to give notice to your parent(s), guardian(s), or other people of the time and place of the hearing. If any of these people already signed the consent form, you do not have to serve them notice. If they did not sign the consent form, you must serve them notice of the hearing. Giving notice is very important, because Judges are very strict about making sure that parents receive proper notice before granting an emancipation.

To give notice, fill out the top half of the Notice of Hearing form with the date, time and location of the hearing (see appendix sample of Maria Minor). Make a copy of your emancipation petition, the attachments, the declaration, and the notice form for each person to whom you are giving notice. A responsible adult must mail the copies as soon as possible after the hearing date is set. **Don't Wait!** After the adult (someone 18 or older) has mailed the copies, he or she must complete a Proof of Service form (see sample of Christopher Kidd, signed by Arnold Adult). Before the date of the hearing, take that form and a copy of the papers that you sent with them back to

the Courthouse and file it with the clerk. This shows the Judge that you sent all the information out to give everyone notice.

D. FILL OUT THE DECLARATION OF EMANCIPATION OF MINOR AFTER HEARING

Only If there is going to be a hearing, will you need to file the Declaration of Emancipation of Minor After Hearing. This document must be filed with the clerk *before* the date of the hearing. A good time to do this is when you file the Proof of Service form.

This will be the form the Judge signs at the hearing if he or she decides you should be emancipated. Fill in the top part of the form, the date, time and location of the hearing, the name of the Judge (the clerk can tell you who the Judge will be), and the box marked “petitioner” under 1c (that’s you). The Judge will fill out the rest.

VII. EMANCIPATION: THE HEARING

Emancipation hearings can be very different, depending on what county you live in, what Judge you are assigned, and what the facts are like in your case. Each Judge handles emancipation cases differently, so it important to go to your hearing prepared and ready to answer any questions the Judge throws your way.

A. QUESTIONS AND ANSWERS ABOUT THE HEARING

1. What happens at the hearing?

Every Judge handles emancipation hearings differently. There is no standard set of questions that the Judge will ask. Some Judges ask very detailed questions about the petition and declaration. Some Judges ask questions about whether the minor has considered other options – such as foster care or guardianship – in that case you could explain to the Judge why these options wouldn’t work for you and why emancipation would be best. Some Judges don’t ask any questions at all.

When there is no objection by the parent, the Judge may just grant the petition. If the parent comes and does object to the emancipation, they may make objections, usually without giving any testimony, and then the Judge will make a ruling (either granting or denying the petition).

2. Who has to appear at the hearing?

The minor petitioning for the emancipation should definitely plan to attend the hearing if one is granted. Oftentimes, however, a staff attorney for the Judge will give notice to the minor, or minor's counsel, that the Judge has already granted the petition and no hearing will be held. The minor's parents may attend the hearing to object to the petition, but they are not required to attend.

3. Does the minor need to bring anything to the hearing?

No. The minor does not need to bring their petition or supporting documents to the Court hearing, as they should have already been filed beforehand. The minor will not even receive a Court hearing date without submitting their petition and supporting documents at an earlier date. By the time the hearing is held, the Judge will have already read the papers and will know, or have a good idea, what their ruling will be.

4. Does the Judge prepare the final order (determination of case) or must the minor provide one?

The minor, or minor's legal counsel, must complete and submit their final order to the Judge. This is a form that can be found on the judicial council forms website.

IMPORTANT NOTE: Each county handles emancipation cases differently. These answers are reflective of the Santa Clara, San Francisco, Alameda, and Contra Costa county procedures.

B. TIPS FOR YOUR DAY IN COURT

The following tips come from the California Judicial Council website. The following guidelines should always be followed in Court:

- Dress neatly and respectfully, as if you were going to a job interview.
- Take all the papers that have been filed or served and any other documents that you will need to show to the Judge.
- Take blank paper and a pen.
- Be on time. Allow extra time for traffic or other possible delays. (If you are delayed or unable to attend the hearing due to a car breakdown, sudden illness, or other emergency, contact the clerk for the Court department where your hearing will take place on or before your hearing time.)
- Turn off your cell phone or pager when you enter the Courtroom.
- When your case is called, walk to the table or podium in front of the Judge and stand facing the Judge.

- Be prepared to state your name and your relationship to the case.
- Speak clearly and loudly enough that the Judge can hear you. Speak only when it is your turn.
- When you speak to the Judge, act respectfully and call him or her “your honor.” NEVER interrupt the Judge.
- Summarize your point of view. Explain why the Judge should approve (or not approve) each request you have made.
- If you get nervous in Court, look at your list. This will help you to speak to the Judge.
- If you are asking for Court orders, make sure that the Judge makes an order on EACH item you have asked for.
- Do not depend on the Judge to remember everything you have asked for. If something has been overlooked, tell the Judge.
- Answer all of the Judge’s questions and stop talking immediately if the Judge interrupts you.
- If you do not understand something, say that you do not understand. Someone will try to explain it for you.
- Do not leave the Courtroom unsure of what the Judge ordered. Make sure you understand the Court order and also what you need to do when the hearing is over. You may have to prepare an order for the Judge to sign. You may have to wait around for the Judge to sign an order. Just ask if you are not sure.

VIII. EMANCIPATION: AFTER THE HEARING

The Judge may either grant or deny your emancipation petition. If your petition is granted and you decide that you no longer want to be emancipated, you have options as well.

A. WHAT HAPPENS ONCE I HAVE BEEN EMANCIPATED?

If the Judge decides that it's in your best interest to be emancipated, she will declare you emancipated by signing your Petition (if there is no hearing) or your Declaration of Emancipation After Hearing (if there is a hearing). After the Judge signs the papers, you usually have to take them back to the clerk’s office and file them to make them official.

The clerk will file the original form and give you copies to keep as legal proof that you have been emancipated. Make sure that you get "certified copies" (official copies with a special stamp). Unless you have a Fee Waiver, you have to pay for the certified copies. The certified copies of your emancipation papers are very important. You may need to show them to employers, landlords, school officials, doctors, and other people who would normally ask for your parent's permission for you to do something.

Once you have been emancipated, you may apply to the Department of Motor Vehicles for an identification card that shows that you are emancipated. To apply for an identification card, you should first fill out the form called "Emancipated Minor's Application to California Department of Motor Vehicle" (Form MC-315) and file it at the Court. A copy of this form is included in the blank forms at the back of this guide. Note that the form asks you to attach a certified (officially stamped) copy of your Declaration of Emancipation.

After you file this form, you will need to go to the DMV and request an identification card that says you are an emancipated minor. Be sure to bring the form and your certified Declaration of Emancipation with you. It is usually best to make an appointment at the DMV before you go.

If your parent or guardian came to the hearing and argued that you should not be emancipated, but you were anyway, they have the right to petition for a "Writ of Mandate," which requires the Judge to reconsider the decision to emancipate you.

B. WHAT HAPPENS IF MY EMANCIPATION PETITION IS DENIED?

If the Judge says no to your emancipation petition, you have two choices. You may immediately seek a Writ of Mandate, which requires the Judge to reconsider the decision. This usually requires the help of a lawyer. You may also wait until the problems that led the Judge to deny the petition are resolved -- for example, until you get a better Job or find more stable housing. At that point, you can petition for emancipation all over again by repeating the same process.

NOTE: You can also consider other alternatives to emancipation, such as legal guardianship, family counseling, or foster care.

C. WHAT SHOULD I DO IF EMANCIPATION IS NOT WORKING OUT FOR ME?

You have to be able to support yourself financially once you've been emancipated. If emancipation isn't working out for you because you don't have enough money to support yourself, you may ask the Court to "rescind" (undo or take back) the emancipation. If you aren't able to support yourself, the District Attorney (prosecutor) in your county may file a petition to rescind your emancipation. If you are depending on welfare benefits as your only way to support yourself, the Court can declare you "indigent" (unable to support yourself) and take your emancipation away.

The standard the Judge uses in deciding whether to rescind emancipation is whether undoing the emancipation would "not be contrary to your best interest"-- that is, whether it would be good for you to take the emancipation away . If your emancipation is rescinded, the parent, guardian, or other person who had legal custody of you before the **emancipation took place has legal custody and control over you again.**

VIII. APPENDIX: ADDITIONAL INFORMATION AND FORMS

A. Sample Emancipation Forms for Two Teenagers

You can use these forms as a guide in filling out your own emancipation papers. There are two sets of forms, one for "Maria Minor" and one for "Christopher Kidd." Christopher and Maria are two imaginary teenagers that we made up in order to show you examples of emancipation papers. **Remember that you should fill out your forms based on your own circumstances. Put your own facts or reasons for wanting to get emancipated.**

In Maria's case, her mother supports the emancipation and has signed the consent form. Maria doesn't know where her dad is, so she has written a declaration that talks about what she has done to try to track him down. Since Maria is in San Francisco, where the Court doesn't charge a fee to file for emancipation, Maria hasn't filled out a fee waiver form.

Because Christopher lives in Alameda County, Christopher has filled out a fee waiver form and fee waiver order for the Judge to sign. Christopher's grandmother has a legal guardianship over him. Neither his father nor his grandmother would sign the consent form, so Christopher is expecting that the Judge will definitely hold and emancipation hearing. This means that Christopher will have to give notice to both his grandmother and father. He will also need to file Proof of Personal Service or Proof of Service by Mail forms for each adult he has to serve. Those documents are included here as well.

If you have further questions about filling in your own emancipation forms, you can call Legal Services for Children at (415) 863-3762.

B. Blank Copies of CA Emancipation Forms

The last section of this guide is a set of blank forms for you to use. Remember, depending on your own situation and the rules of the county you live in, **you may not need to use all of these forms**. Be sure to read this manual carefully and to call the clerk's office at your local Court to make sure you've done exactly what you need to do!

Remember that you can always call Legal Services for Children at (415) 863-3762 if you have any questions about emancipation, or if you're still wondering if emancipation is the right choice for you.