



The Nelson A. Rockefeller Center at Dartmouth College

The Center for Public Policy and the Social Sciences

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CHILD EMANCIPATION IN NEW HAMPSHIRE

Investigation into the Creation of a Child Emancipation Statute in New Hampshire

Presented to the Committee on Children and Family Law

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EXECUTIVE SUMMARY

Child emancipation and the termination of parental rights represent large components of the juvenile legal system. Currently, there is no statute governing the granting of child emancipation in the state of New Hampshire and thus rulings in this area must be made solely on the basis of case law and situational considerations. In the process of potentially creating a New Hampshire child emancipation statute, certain factors must be considered. These include situations with pregnant minors, situations in which parents are seeking to avoid harm by a delinquent child, and direct or indirect financial costs of emancipated minors. Additionally, when constructing a child emancipation statute certain provisions and their implications must be considered. These provisions, summarized into major categories, include Marriage, Armed Services, Financial Independence, Education, Best Interest, Disability, Next Friend Filing, Maturity, and Residence. This report will focus on the effects of child emancipation statutes and their provisions with the potential creation of a New Hampshire statute in mind. It will draw upon peer states including Maine, Vermont, Rhode Island, Connecticut, and Montana for points of reference.

1. INTRODUCTION

1.1 What is Emancipation?

Emancipation of a minor entails freedom on the part of the parent from responsibility for care, control, and financial support of their dependent. On the part of the minor, emancipation entails access to certain legal rights and responsibilities otherwise afforded to those who have reached the state-mandated age of majority. Emancipation typically occurs when one reaches age 18, the age of majority in all but three states. Occasionally, individuals will remain in the physical care and under the legal control of their guardians past this age. This is usually the case in instances of mental incapacity¹ or status as a high school student after turning 18.²

Additionally, in some cases minors obtain the rights and responsibilities of legal adulthood before reaching the state age of majority. This is accomplished through petition in a state court for termination of parental rights. The Bill of Rights for Children, a body of research on the treatment of children by the law jointly compiled by scholars of law and psychiatry, presents a widely accepted theory of when emancipation may be granted. It says that minors should have the right to emancipation when “the child has left home due to abuse, neglect, serious family conflict, or other sufficient cause”³ and their “best interest would be served by the termination of parental authority.”⁴



While emancipated minors are granted many rights should they be declared independent from their guardians, they are not permitted all of the rights of adulthood including the right to drink, vote, and work irrespective of child labor laws⁵. A complete discussion of the rights granted and denied under early child emancipation will follow in section 3.3 *Legal Advantages*.

1.2 Types of Emancipation

There are essentially two types of emancipation, full and limited, though these terms are difficult to define as they appear in different contexts depending on the state. Full emancipation would mean that an emancipated minor had all rights of a person aged 18. Full emancipation is uncommon in the United States as certain rights, such as voting, are almost always excluded from privileges of emancipation. While full emancipation does not actually exist, some states have decided to explicitly use the term “limited” in statute while others have not. Among New Hampshire’s peer states, for example, there are no states with statutes that use the term “limited.” The majority of states have statutes detailing limited emancipation without using the term.

Limited emancipation can occur in many different forms. Limited emancipation occurs when a child is given some, but not all, of the privileges awarded to an adult of 18 years of age. For example, as mentioned above, emancipated minors may not be able to drink or vote. Other cases of limited emancipation could include when a child is declared emancipated but not allowed to sign a binding contract or when a child is emancipated only financially for the sole purpose of business endeavors, for example.⁶

1.3 Judicial History in New Hampshire

In 1981, the New Hampshire Supreme Court held that the involved minor became emancipated at the time he entered the Air Force Academy and that he would continue to be emancipated as long as he retained his status as an Air Force cadet, opening the possibility for emancipation through enlistment in the military (*Dingley v. Dingley* 1952).³

Three years later, the Court decided in *Bernier v. Bernier* (1984) that although the minor in question was only 17 at the time of the divorce of his parents, he was emancipated because he had been out of school for over two years, was employed on a full-time basis, and did not look to either of his parents for support.⁴ This decision laid the initial framework for the process by which emancipation in New Hampshire is typically granted despite the lack of legislation governing the process.



These requirements were narrowed in 1991 in *Concord Group Ins. Companies v. Sleeper*, when the state Supreme Court decided that the burden of proof is on the child to prove that emancipation is in his or her best interest. It also held that emancipation could not be accomplished by the child alone, the parents' intent governs whether the child is emancipated, except in the few cases involving marriage or military service.⁵ For nearly 40 years, these cases have informed decisions on individual cases of emancipation. As New Hampshire moves to create a statute governing the process, the implications of these decisions will likely be considered.

1.4 Legislative History in New Hampshire

In March 2018, New Hampshire Representative Rebecca McBeath (D) introduced HB1377 to establish criteria for emancipation and a procedure by which a minor who is at least 16 years of age may petition the court to be emancipated.⁶ Eventually, the legislation was altered to establish a committee to study the emancipation of minors within the state.⁷ The committee's findings, as well as the findings of this paper, will inform the creation of a statute governing emancipation.

2. BENEFITS OF EMANCIPATION

2.1 Cases in Which Emancipation is Relevant

In the past, emancipation and the statutes by which it is governed have been relevant in the following situations.

Intra-Family Torts⁷

This refers to situations within a family where “an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability.”⁸ There are some jurisdictions in which there is intra-family immunity for personal torts, however in most locations children can sue parents for intentional torts and acts of negligence.⁹ Emancipation is relevant in this case because there is some debate regarding the rights of emancipated youth to sue their parents and in cases where the minor is suing for harm or negligence, they will likely seek dissolution of their legal connection to the parents who allegedly caused injury.

Minor's Wages and Damages¹⁰

This refers to situations in which a minor is attempting to recover wages or seek damages for the loss of wages.¹¹ In some cases, such as that of *Rounds Brothers v McDaniel*, the



decision of whether a parent is entitled to seize a minor's earnings for the purchase of family goods hinges on the status of the minor as emancipated or unemancipated.¹²

Suits By and Against a Child¹³

This refers to the ability for emancipated minors to bring their own suits without the assistance of a 'next friend.'^{14 15}

Child Support¹⁶

This refers to the potential for continued child support obligations subsequent to emancipation. This has been seen in cases such as *Diamond v. Diamond* in which children escaping abusive and neglectful houses may be granted emancipation but still retain the right to parental support. States differ in how they approach child support with regard to their emancipation statutes. Some make no mention of child support,¹⁷ others explicitly say that child support must be terminated by the discretion of a judge,¹⁸ Michigan even requires the parent to continue being financially liable for an emancipated minor.¹⁹ More often though, the statutory requirement for financial independence in order to be granted emancipation negates the ability for minors to request continued parental support post-emancipation. Emancipation is relevant in this case because it ties into the larger debate of whether parental rights and obligations are reciprocal. In recent years, courts have begun detaching the two and occasionally, when parental rights are terminated due to fault of the parents, granting the emancipated minor continued financial support.²⁰

Minor's Choice of Domicile²¹

This refers to the status of lawful residence. The domicile of an unemancipated minor is the residence of his or her parents. Thus, should the minor want to take up residence elsewhere or marry, they would need to attain emancipation. However, the mere act of living out of the parental home does not amount to a constructive emancipation. As seen in *Daniel v. Atlantic Coast Line Railroad Co*, this situation only amounts to emancipation if it is the manifest intention of the parent to release parental authority and control.²²

Minor's Power to Disaffirm Contracts²³

This refers to the ability of a minor to renounce a voidable contractual obligation, namely on the premise that they lacked the capacity to enter a legally binding contract.²⁴ This relates to emancipation as the legal separation of a youth from their parents may negate their ability to gain protection against their immaturity.²⁵ The minor will be seen as at the "age of discretion"²⁶ and could likely not claim inability to enter into a contractual agreement on the basis of age.



Enlistment in the Armed Forces²⁷

This refers to the entry by a minor into military service. During the period in which the minor is serving, ‘parental’ control over the minor transfers to the military.²⁸ This remains consistent with the need for parents and minors to purposively seek emancipation as parental consent is needed for minor enlistment.²⁹ Thus intentional emancipatory action is still taken.

Attaining Age of Majority³⁰

Should the minor be mentally and physically capable of living outside of the purview of the parents, legal emancipation is automatic at the age of majority.³¹

2.2 Cases in Which Minors are Pregnant

There are many situations related to pregnancy in which the emancipated or unemancipated status of the minor is relevant. Unemancipated minors do have some legal abilities to take actions that relate to their child. Forty states allow minors to place their child for adoption and thirty states allow minors to consent to medical care for their children.³² However, in states where medical consent is reserved for legal adults, minors may need to seek a full emancipation or a partial ‘medical emancipation’ granting them the rights to make decisions regarding their pregnancy.³³

Minors cannot be granted parental responsibility unless they are emancipated or get married, which ultimately also results in emancipation.³⁴ Unless the minor becomes emancipated, guardianship of the child must be assigned to a legal adult guardian until the age of majority is reached and the minor may file for reassignment of guardianship.

Emancipated status is also relevant when a minor is seeking to terminate a pregnancy. In 17 states one or both parents or guardians of the minor must give permission for an abortion to take place.³⁵ These states are Alabama, Arizona, Arkansas, Idaho, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, and Wisconsin. Moreover, in 14 states one or both of a minor’s parents or guardians must be notified before an abortion takes place.³⁶ These states are Colorado, Delaware, Florida, Georgia, Illinois, Iowa, Maryland, Minnesota, Montana, New Hampshire, Oklahoma, South Dakota, West Virginia, and Wyoming. Therefore, a minor might seek emancipation if the parent or guardian was impeding the ability of the minor to terminate a pregnancy.

Additionally, a minor and his or her dependent seeking accommodation in a shelter or looking to apply to certain benefit programs including TANF, SNAP, and Medicare would



encounter barriers if they were not emancipated. Most of these programs require applicants to be a legal adult and family shelters generally require at least one legal adult in each ‘family’ group living in the shelter. These factors might drive a minor with a dependent who is living separately from their parental home to seek emancipation.

2.3 Legal Advantages

The following legal rights of adulthood come with emancipation:³⁷

- The right to live apart from one’s parents
- The right to sign binding contracts
- The right to keep whatever money one earns
- The right to be a party to a lawsuit
- The right to buy or sell real estate or other property
- The right to write a will
- The right to inherit property
- The right to enroll in school
- The right to get married
- The right to medical consent

The following legal rights of adulthood do not come with emancipation:³⁸

- The right to not attend school
- The right to work irrespective of child labor laws
- The right to exemption from statutory rape laws
- The right to legally consume alcohol
- The right to vote in the United States

3. COMPLICATIONS WITH EMANCIPATION

3.1 Protection of Parents

When drafting an emancipation statute, consideration must be given to the potential effects of provisions on the parents from whom a minor is emancipated. Particularly, consideration of the direct and indirect obligations of parents and how those translate into liability when their dependent commits harm is necessary.

Direct obligations of parents to their minor dependents are to support, maintain, and educate children.³⁹ If a parent is in violation of these responsibilities, producing family conflict, legal action can be brought by a child, their next friend, or a third party.⁴⁰ Family conflict is explicitly listed as a reason for emancipation in Maine, North Carolina, and



Connecticut.⁴¹ In the Connecticut statute, it is explicitly stated that emancipation can be attained if it is in the best interest of **either or both** parties to separate the family unit and end family conflict.⁴²

Indirect obligations of parents emanate from the responsibility for custody and control and consist of the right to assert parental control over acts of their children. Because of this indirect obligation, parents can be held liable for the actions of their children under “contributing to delinquency” and “financial responsibility” statutes. This is demonstrated in cases such as *Deshotel v Casualty Reciprocal Exchange*⁴³ in which a father who was not living with the child at the time of harm was held liable and *Watkins v Cupit*⁴⁴ in which a father was held liable for the actions his son when the son was living and working in another state. Even in cases where there was demonstrated “knowledge of the need for control”⁴⁵ parents have been held liable. In *Albert v Ellis*,⁴⁶ a parent was sued for compensatory damages even though the minor was employed, married, and living outside of the parental home. In *Alber v Nolle*⁴⁷, the parent continually attempted to control and supervise their child’s behavior and was still held financially and legally responsible for their eventual crime.

Ultimately, policy makers must decide whether the statute provides for emancipation to be granted only when it is in the best interest of the child to do so or when it is in the best interest of either or both parties. The reason to select the latter would be to protect parents from legal liability for their child’s actions in cases where reasonable attempts have been made to control the minor and have failed.

3.2 The Costs of Emancipation

Exact calculation of the expenses related to emancipation and determination of whether there is a net financial cost or benefit of child emancipation statutes falls outside of the scope of this report. However, there are certain categories of costs associated with emancipation revealed by prior studies that may serve as points of further inquiry or consideration for lawmakers in construction of a child emancipation statute.

These costs include but are not limited to lower levels of education, unplanned pregnancy, homelessness, underemployment, insurance coverage gaps, criminal justice system involvement, and social service system involvement.⁴⁸ The main takeaway from these expense types is the risk of improper allocation of emancipation. Should a minor be unprepared for self-sufficient life, they might see failures in education attainment, job success, and residence stability. Lawmakers might consider these forms of loss when selecting metrics for financial independence and maturity or when setting requirements for continuation of education in emancipation statutes. A more complete provision-by-



provision examination of potential costs and benefits are found in section 5. *Types of Statute Provisions.*

4. METHODOLOGY OF STATUTE PROVISIONS AND CASE STUDIES

Gradually, states across the country have begun to adopt legislative statutes governing child emancipation. In order to understand the impact an emancipation statute would have on New Hampshire and to find the optimal structure for a potential New Hampshire statute, we have conducted a state-by-state analysis of five identified peer-states. The selection rationale for these states is found in Appendix B. This analysis relies primarily on state bill texts and court statistics. Additionally, this report draws on a body of research regarding the impact of emancipation statutes on child welfare, judicial proceedings, and state economies.

In the next section, we will describe and analyze specific types of provisions that can be found in emancipation statutes. In the section that follows, we will summarize the environment surrounding emancipation in each peer state and consider why studying each state could be helpful to the development of an emancipation statute in New Hampshire.

5. TYPES OF STATUTE PROVISIONS

5.1 Marriage

In most states, marriage is a strong qualifying factor for emancipation. However, using marriage as a route to emancipation is often paradoxical because most states require parents or guardians to be present at a minor's marriage. For example, in California, minors can seek emancipation if they are married, but can only be married before the age of 18 with the consent of a parent or legal guardian.⁴⁹ The statutes of most other states regarding the relationship between marriage and emancipation follow a similar logic to that of the California statute.

However, in some states, the relationship between emancipation and marriage is more explicit. For example, in North Carolina, emancipated minors are still not allowed to marry before the age of 18 without a parent or guardian's consent.⁵⁰ Therefore, North Carolina holds that emancipation law does not trump existing marriage law about the requirement of a legal guardian for minors.

On the other side, the most explicit case of marriage being a route to emancipation is in Virginia. According to Va. Code § 16.1-333.1, the court may declare a minor seeking marriage is emancipated if "it is in the best interests of the minor petitioning for an order



of emancipation that such order be entered.” Thus, the if the minor can prove that the marriage is of his or her free will, both parties are mature enough to marry, and the marriage will not endanger the minor, then the minor can be granted emancipation as a necessary precursor to marriage.

5.2 Military Service

Individuals must be 17 years of age or older to enlist in the American military. However, the age of majority in many states is 18, which creates two issues. First, it calls into question whether minors can enroll in the military. Second, it creates the issue of whether or not minors can be emancipated once they enroll in the military.

In every state, if a child is emancipated, he or she can enlist in the military without a parent or legal guardian granting permission. States are unable to prevent emancipated minors from joining the military because of 10 USC § 505, which gives discretion on the enlistment of emancipated minors to the Army, Navy, Air Force, Marines and Coast Guard.⁵¹

The inverse relationship between emancipation and military enlistment is more complicated. Most states have laws governing whether military enlistment qualifies minors for emancipation. In states without such provisions, whether the child is emancipated usually depends on whether his or her parents continue to provide financial support after enlistment. If the parents continue to provide financial support, the child is less likely to be emancipated, but court decisions vary on a case-by-case basis.⁵²

5.3 Financial Independence

Financial independence is among the most common prerequisites for child emancipation. To prove that a child can live a safe and healthy life once emancipated from his or her parents, courts often require that emancipation candidates prove they have a viable source of income. Additionally, minors must usually prove that they have an alternative residence to their parents’ home where they can reside. Lastly, minors are usually required to prove that they will not rely on government aid or welfare and can subsist on their own income.⁵³

An important consideration regarding financial independence concerns the implications for the minor’s parents if he or she is emancipated.⁵⁴ Primarily, the question arises of whether parents of emancipated children should be required to pay child support. On one side, legal advocates argue that since the emancipated child has proven financial independence in a court of law, that child no longer needs his or her parents’ support and is therefore not entitled to child support. Additionally, this side argues that because the parents are no



longer legal guardians of the child, there is no legal requirement for child support. On the other side, legal advocates argue that parents must uphold their commitment to support their child even after emancipation.⁵⁵ Whether child support will still be delivered to emancipated children is usually determined on a case-by-case basis in courts.

Another factor to consider when discussing the financial independence of a minor is the maturity of the child. In most cases, the maturity of a minor is assessed by a judge. Since working is a sign of maturity, evidence of financial independence can help persuade a judge that the minor is mature enough to be emancipated. Thus, the financial independence of a minor also directly affects a judge's assessment of his or her maturity, another important consideration in the final decision on emancipation.

5.4 Education

Some states choose to include provisions requiring that minors seeking emancipation reach certain educational benchmarks. Most often, the educational requirement corresponds closely with graduation from high school. Some states choose to simply require graduation from high school (either the minor must have already received a high school diploma at the time of emancipation or they must be committed to earning one and on-track to do so). Others include certain caveats; for example, completion of a program equivalent to receiving a high school diploma or allowing for exemption from the educational requirement in certain circumstances.

An important consideration when looking at provisions mandating education for emancipated minors is the balance of schooling and employment. If an emancipated minor has not completed high school and is still required to be enrolled in school, it can be very difficult for him or her to reach financial stability, another status that is often mandatory for minors seeking emancipation. Maintaining a job and staying enrolled in school is extremely difficult, and as such employment is one of the leading reasons cited for dropping out of high school. This is an important consideration when deciding what can feasibly be expected of emancipated minors.

Montana statute (41-1-501 (2h)) states, "The petition for limited emancipation must be in writing and 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;" Vermont statute (12 V.S.A. § 7151 (b5)) states, "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: ... Holds 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."



5.5 Best Interest

The best interest component of emancipation statutes provides for emancipation in the case that it is the best thing for the minor, or in some cases, the best thing for the minor’s guardians. This component of emancipation statutes is frequently criticized as vague and open to varied interpretations by judges. The Child Welfare Information Gateway has identified “guiding principles” that should be followed in making best interest determinations. These principles are as follows:⁵⁶

- The importance for family integrity
- The health, safety, and/or protection of the child
- The importance of timely permanency decisions
- The assurance that a child removed from their home will be able to develop into a self-sufficient adult

Scholars have proposed that in lieu of ‘best interest’ statute provision, states use the language that emancipation should occur if the minor can be protected from the specific harm that is prompting emancipation.⁵⁷ This harm could range from domestic abuse to simply the restriction of the minor’s autonomy.

Alternatively, many states have outlined what ‘best interest’ entails in a separate statute or in sub-provisions. Each of the identified peer states and New Hampshire have detailed explanations of what to consider when determining best interest. For the purpose of clarity and concision, these provisions have been simplified and compiled into a chart. The complete wording of each of the statutes are found in Appendix A.

Table 2. Best Interest Statute Provisions

	Maine	Vermont	Rhode Island	Connecticut	Montana	New Hampshire
The age or developmental needs of the child	YES	YES		YES	YES	YES
The relationship between the child and the parent(s)/ parent preferences	YES	YES	YES	YES	YES	YES
The preference of the child	YES		YES	YES		YES



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	Maine	Vermont	Rhode Island	Connecticut	Montana	New Hampshire
The child's living arrangements/school environment	YES	YES	YES	YES	YES	YES
Mental and physical health			YES	YES	YES	
Sexual assault or sexually violent offenses	YES	YES				YES
Domestic abuse	YES			YES	YES	YES
Incarceration	YES					YES
Parental sex (cannot give preference on the basis of sex)						YES
Parental Education Program				YES		
Failure to financially support					YES	
Continuity of care, well-being, or risk of harm	YES	YES			YES	

Sources: Maine Parental Rights and Responsibilities Statute,⁵⁸ Vermont Order of Emancipation Statute,⁵⁹ Rhode Island Child Custody Law,⁶⁰ Best interest of the Child Standard in Connecticut,⁶¹ Montana Best Interest of Child Statute,⁶² New Hampshire Determination of Parental Rights and Responsibilities⁶³



5.6 Disability

In certain child emancipation statutes, there are provisions that pertain to a parent or child's disability. When a child is mentally or physically incapacitated, the age of majority may be extended for them so that their guardians can continue to support them.⁶⁴ Conversely, statutes may provide for children who are in households with disabled or incapacitated parents to attain emancipation. Of the states highlighted in this report, Maine and Montana have provisions of this nature. Additionally, New Hampshire has a separate disability age of majority statute.

In Maine, the statute provides for emancipation in cases of a chronic substance abuse problem. The statute reads: "The fact that a parent has been unable to provide safe care of a child for a period of nine months due to substance abuse constitutes a chronic substance abuse problem."⁶⁵

In Montana the statute provides for emancipation when an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful and the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time. The statute also explains that in making the determinations, the court shall consider emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time.⁶⁶

In New Hampshire, the existing disability statute provides for emancipation when because of mental deficiency or mental illness, the parent is and will continue to be incapable of giving the child proper parental care and protection.⁶⁷

5.7 Next Friend

Some emancipation statutes will require a 'next friend' who is a legal adult to file on the behalf of the minor⁶⁸. This could potentially make attaining emancipation more challenging for the minor. In situations where the minor is estranged from their family, they may have difficulty finding a next friend to assist them in filing.

5.8 General Maturity, Readiness, or Soundness

Some states include provisions regarding the maturity, readiness, or mental/emotional soundness of minors seeking emancipation. This can be specified by requiring such things



as understanding expectations, seeming ready to assume responsibility for him or herself, or even a commitment to attend counseling if necessary.

When considering provisions involving maturity, it is important to appraise the potential for subjectivity when judges evaluate minors according to this standard. Specific conditions, such as a commitment to counseling if necessary, may be less influenced by subjectivity, but requiring that judges determine a minor's readiness or maturity may give judges too much power. If a statute involving maturity or readiness is implemented, it may be wise to consider adding wording that specifically defines maturity and readiness in the context of emancipation and requires judges only to evaluate a minor in the context of a rubric, not according to their own ideas of what it means to be mature.

Montana statute (41-1-501 (2g) and (2i) states, "The petition for limited emancipation must be in writing and must set forth: ... that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;" and "that, if it is considered necessary by the court, the youth will undergo periodic counseling with an appropriate advisor."

Maine statute (Title 15 §3506-A (4B)) states, "The court shall order emancipation of the juvenile if it determines that: ... The juvenile is sufficiently mature to assume responsibility for his own care and it is in his best interest to do so."

5.9 Residence

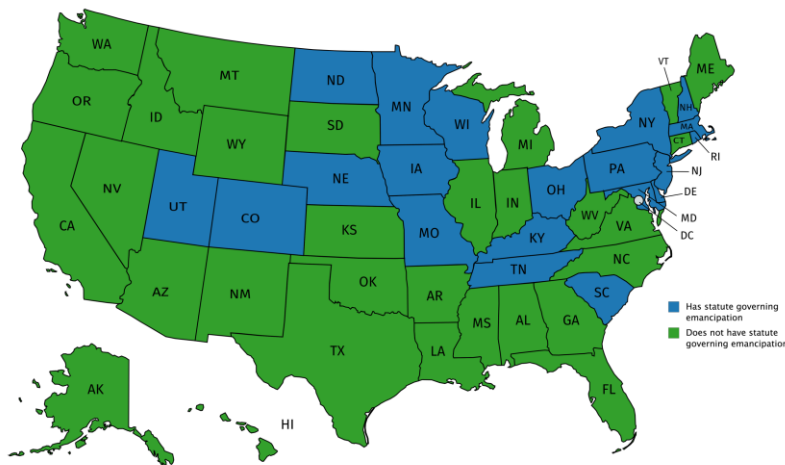
Some emancipation statutes include provisions requiring that minors live apart from their parents for a specified amount of time before being able to become emancipated. Often, this period of time must be months. This can be problematic for youth who are not yet financially independent or who are looking to emancipate themselves for reasons related to parental abuse. More broadly, this type of statute could pose a significant challenge for any minor whose parents do not agree with his or her pursuit of emancipation.

In considering this type of provision, it is important to consider how this requirement will assuredly be feasible. It may be necessary to include additional information about how minors seeking emancipation whose parents do not permit them to live apart from them can successfully cooperate with this provision. Vermont statute (12 V.S.A. § 7151 (b2)) states, "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: ... Has lived separate and apart from his or her parents, custodian, or legal guardian for three months or longer."



6. CASE STUDIES

Currently, 30 states have statutes governing the criteria and procedure for emancipation (Figure 1). As New Hampshire seeks to establish its own statute, it is necessary to consider, based on demographics and other factors, which states qualify as “peers” to New Hampshire and which existing statutes contain provisions that could be useful to the state. Below, five peer states are examined.





Emancipation law in Maine is basic and similar to many other states. First, children can be automatically emancipated by getting married. However, children under the age of 18 still require parental permission to get married, so this clause is a bit of a moot point. Second, once a child turns 16, he or she can petition for emancipation in the courts. Maine provides free lawyers to children filing for emancipation.

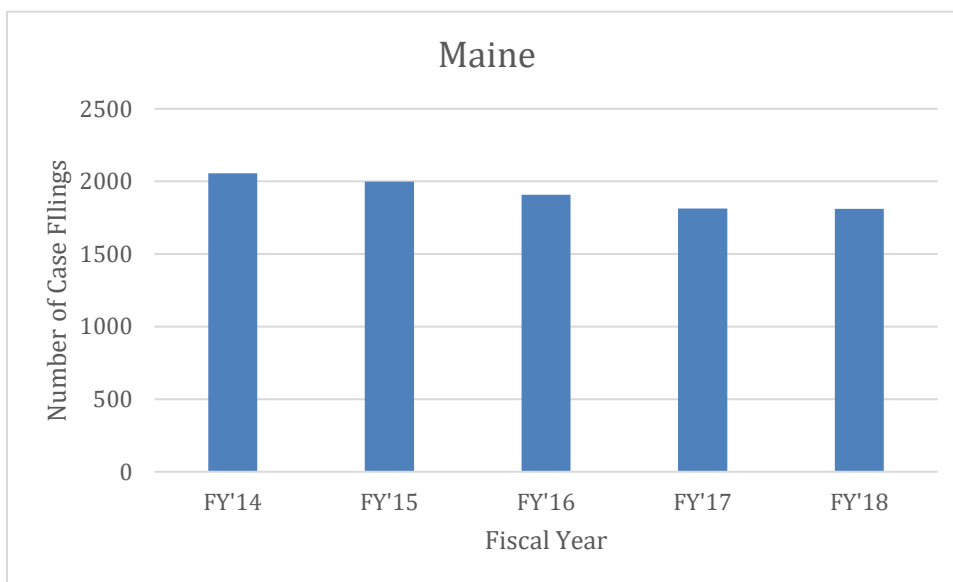


Figure 2. Maine State Court Case Filings⁶⁹

6.2 Vermont

New Hampshire's neighbor to the west has a much smaller overall population than New Hampshire, but its poverty rate for children living under 18 is comparable. According to many metrics, it seems as though the situation in Vermont may be more pressing than in New Hampshire; per capita rates of abuse and neglect referrals and teens living in Out of Home care are much higher in Vermont than in New Hampshire.

Culturally, Vermont is possibly the most similar to New Hampshire. A relatively rural New England lifestyle can be found in both states. For this reason, it is useful to consider how emancipation statute of Vermont (passed in 1995) can be applied to New Hampshire.

Vermont allows for emancipation in the case of marriage and enlistment in the armed services, as well in certain other situations. For a not married, non-military minor in



Vermont to be emancipated, he or she must be at least 16 years old, have lived apart from his or her parents for at least three months, be financially independent, and be pursuing a high school degree (or have one already). Vermont's statute also specifies that a minor seeking emancipation cannot be in the custody of the Commissioner for Children and Families or the Commissioner of Corrections.

Since 2014, Termination of Parental Rights case numbers in Vermont have had a slight upward trend, with a peak in FY'16 and a slight subsequent decrease in FY'17 and FY'18.

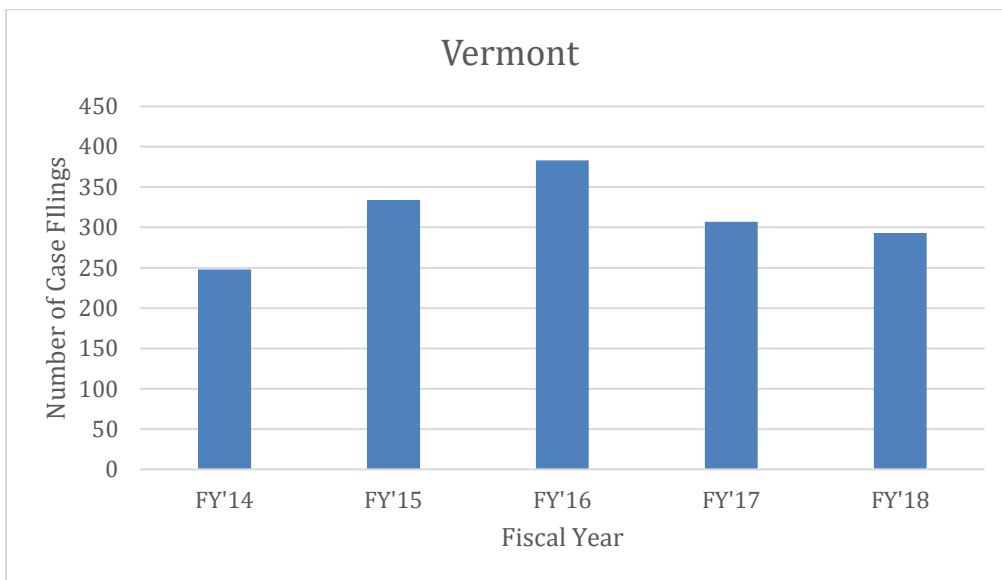


Figure 3. Vermont State Court Case Filings⁷⁰

6.3 Rhode Island

At 1,060,000 people, Rhode Island is another New England state with a similar size to New Hampshire. Additionally, with 20 percent of its population being under 18, Rhode Island has a comparable minor population to that of New Hampshire. However, compared to Maine, Rhode Island sees far fewer child emancipation court filings every year. Rather than 1,800, Rhode Island sees 250. If New Hampshire would prefer to see fewer cases of child emancipation filings, the court-based model in Rhode Island may be preferable to legislation. However, this difference may also be a result of different societal factors in Maine and Rhode Island.



Rhode Island does not have any child emancipation legislation in place, but instead relies on court precedent (*Jacobs v. United Elec. Rys. Co.* 125 A. 286 (1924)). This system is similar to the current one in New Hampshire.

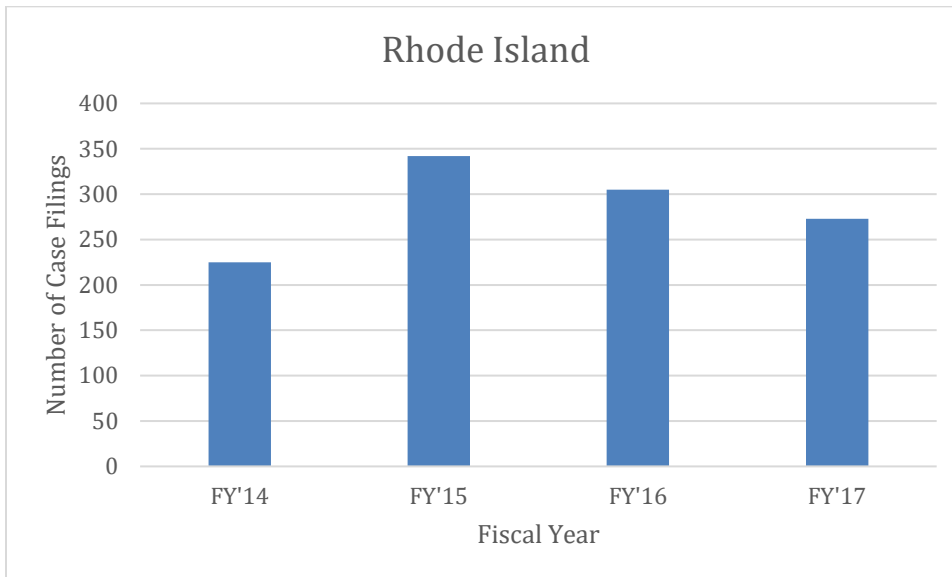


Figure 4. Rhode Island State Court Case Filings^{71,72,73,74}

6.4 Connecticut

At 3,590,886 people, Connecticut's population is substantially larger than New Hampshire's and it can afford more child emancipation resources. Although the states are both in New England and share somewhat similar cultures, this population disparity creates an important difference that should be remembered when considering the Connecticut emancipation system. Twenty-one percent of the Connecticut population is under the age of 18, which also means it has a slightly higher proportion of minor to adults than New Hampshire.

Emancipation law in Connecticut includes provisions about marriage and the armed forces. First, marriage qualifies a minor for emancipation. Second, service in the armed forces qualifies a minor for emancipation. Third, financial independence and residence separate from parents qualifies a minor for emancipation. Lastly, a child can be emancipated if the court finds that it is in his or her best interests, his or her legal guardian's best interests, or his or her own child's best interests.



6.5 Montana

The text of the proposed New Hampshire legislation was inspired by emancipation legislation in Montana. Thus, while its location, culture, and population density vary considerably from New Hampshire, we have included it as a peer state and have evaluated potential impacts of the provisions of its emancipation legislation on a population similar to that of New Hampshire.

Interestingly, despite the differences mentioned above, Montana and New Hampshire have similarities key to a discussion about emancipation. As seen in the table below, the two states have very similar populations, minor populations, referral numbers for abuse and neglect, and numbers of teenagers not enrolled in school or working. These similarities to New Hampshire make Montana an interesting case study. The state passed its emancipation law in 2017, making it a recent example that New Hampshire may want to follow. The only statute governing emancipation in Montana (MCA Title 41, Ch. 1, Part 5. (2017)) allows a path to limited emancipation for minors over age 16. The statute requires that a minor seeking limited emancipation desires emancipation, is financially self-sufficient, understands the legal implications of emancipations, completes high school, and undergoes counseling (if necessary). Montana’s statute also included a broad “best interest” statute that mandates that emancipation be in the interest of both the minor and the public. After the passage of its emancipation statute in 2017, Montana saw a decrease in Juvenile cases in FY 2018.

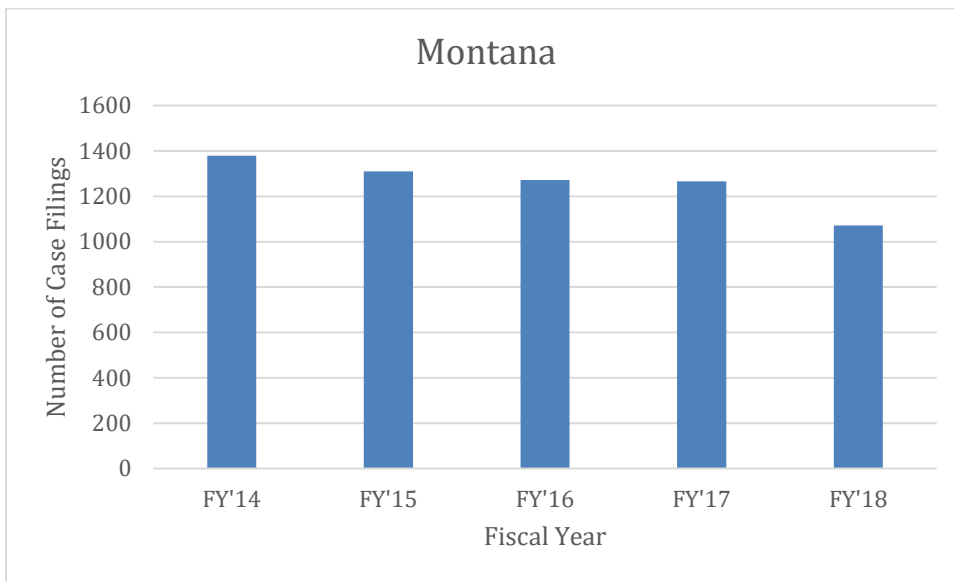


Figure 5. Montana State Court Filings⁷⁵⁻⁷⁶⁻⁷⁷⁻⁷⁸⁻⁷⁹



6.6 New Hampshire

In New Hampshire, as stated, there is presently no statute governing child emancipation. Most individual emancipation decisions are currently made based on precedent set by state court cases. Recently, Termination of Parental rights cases have spiked in New Hampshire, with over 700 in FY '17 compared to roughly 400 in the three years previous. This is substantially higher than both peer states for which this data is available (Vermont and Rhode Island). After passing a statute governing emancipation, however, it is possible that New Hampshire will see a decrease in Termination of Parental rights cases and/or other juvenile cases, as was seen in Montana after it passed an emancipation statute in 2017.

Considering both qualitative and quantitative metrics, Vermont seems like possibly the most similar peer state to New Hampshire. The two have similar cultures and while Vermont has a smaller population, the fractions of the states' populations under 18 and the child poverty rates are very similar. For this reason, as the New Hampshire legislature seeks to draft a statute governing the process for emancipation in the state, it may want to look specifically at Vermont's legislation. The proposed use of Montana's statute as a model may also be useful, as it was passed more recently, but in terms of applicability, Vermont's law may be the most helpful.

Beyond Vermont and Montana, however, it is important to consider the provisions that have already been adopted by New Hampshire's peers. In our case studies, we have laid out possible considerations regarding sections of statutes passed by other states. As New Hampshire legislators come to a decision about a statute for the state, they may find it helpful to include these considerations in their discussions.

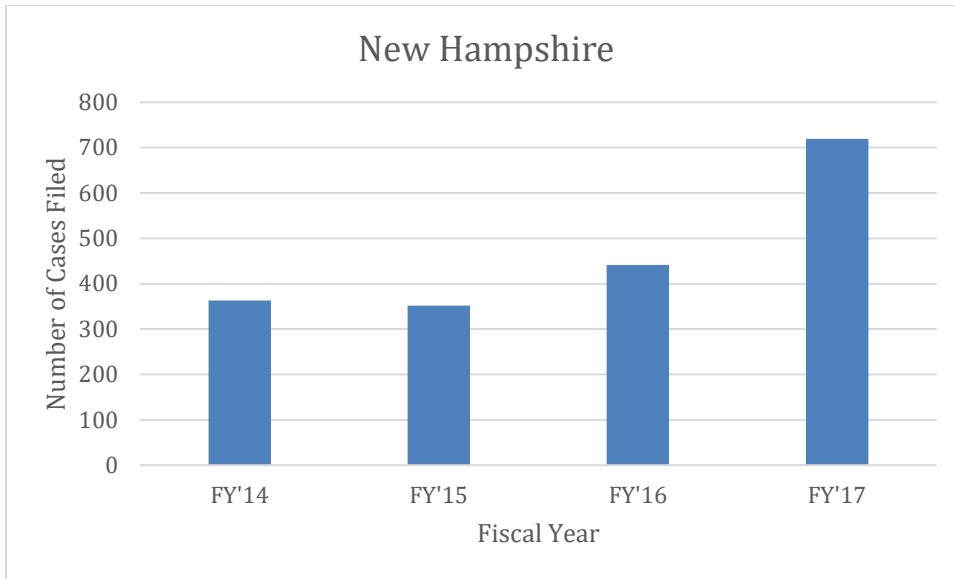


Figure 6. New Hampshire State Court Filings ⁸⁰

7. CONCLUSION

This report presents a variety of perspectives on child emancipation for members of the Committee on Children and Family Law. The many types of statute provisions are analyzed and six case studies of child emancipation in peer states are presented. The research provided here will allow committee members and the representatives in the larger legislature in New Hampshire to make informed decisions as they contemplate the next steps for the state in codifying child emancipation statutes.



APPENDIX A: BEST INTEREST STATUTES

Below is the complete best interest statute for each of the peer states and New Hampshire. Some of the provisions listed below are not relevant to child emancipation, as they pertain to custody battles or entrance into foster care. The irrelevant provisions are italicized.

In Maine, the court must consider:⁸¹

- The age of the child
- The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare
- The preference of the child, if old enough to express a meaningful preference
- The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity
- The stability of any proposed living arrangements for the child
- The motivation of the parties involved and their capacities to give the child love, affection, and guidance
- The child's adjustment to the child's present home, school, and community
- *The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access*
- *The capacity of each parent to cooperate or to learn to cooperate in child care*
- *Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods*
- *The effect on the child if one parent has sole authority over the child's upbringing*
- The existence of domestic abuse between the parents, in the past or currently, and how that abuse affects
- The child emotionally
- The safety of the child
- The other factors listed in this subsection which must be considered in light of the presence of past or current domestic abuse
- The existence of any history of child abuse by a parent
- All other factors having a reasonable bearing on the physical and psychological well-being of the child
- A parent's prior willful misuse of the protection from abuse process in chapter 101 in order to gain tactical advantage in a proceeding involving the determination of parental rights and responsibilities of a minor child.
- *If the child is under one year of age, whether the child is being breast-fed*
- The existence of a parent's conviction for a sex offense or a sexually violent offense as those terms are defined in Title 34-A, section 11203
- If there is a person residing with a parent, whether that person:



- Has been convicted of a crime under Title 17-A, chapter 11 or 12 or a comparable crime in another jurisdiction
- Has been adjudicated of a juvenile offense that, if the person had been an adult at the time of the offense, would have been a violation of Title 17-A, chapter 11 or 12
- Has been adjudicated in a proceeding, in which the person was a party, under Title 22, chapter 1071 as having committed a sexual offense
- Whether allocation of some or all parental rights and responsibilities would best support the child's safety and well-being.

In Vermont, the court must consider:⁸²

- Emancipation will not create a risk of harm to the minor
- The likelihood the minor will be able to assume adult responsibilities
- The minor's adjustment to living separate and apart from his or her parents, guardians, or custodian
- The opinion and recommendations of the minor's parents, guardian, or custodian

In Rhode Island, the court must consider:⁸³

- The wishes of the child's parent or parents regarding the child's custody
- The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference
- The interaction and interrelationship of the child with the child's parent or parents, the child's siblings, and any other person who may significantly affect the child's best interest.
- The child's adjustment to the child's home, school, and community.
- The mental and physical health of all individuals involved.
- The stability of the child's home environment.
- The moral fitness of the child's parents
- *The willingness and ability of each parent to facilitate a close and continuous parent-child relationship between the child and the other parent*

In Connecticut, the court must consider:⁸⁴

- The temperament and developmental needs of the child
- The capacity and the disposition of the parents to understand and meet the needs of the child
- Any relevant and material information obtained from the child, including the informed preference of the child
- *The wishes of the child's parents as to custody*
- The past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child



- *The willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders*
- *Any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute*
- The ability of each parent to be actively involved in the life of the child
- The child's adjustment to his or her home, school and community environments
- The length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household
- The stability of the child's existing or proposed residences, or both
- The mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child
- The child's cultural background
- The effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child
- Whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and
- Whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers, but shall articulate the basis for its decision

In Montana, the court must consider:⁸⁵

- The wishes of the child's parent or parents
- The wishes of the child
- The interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest
- The child's adjustment to home, school, and community
- The mental and physical health of all individuals involved
- Physical abuse or threat of physical abuse by one parent against the other parent or the child
- Chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent
- Continuity and stability of care



- Developmental needs of the child
- Whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which is considered to be not in the child's best interests
- Whether a parent has knowingly failed to financially support a child that the parent is able to support, which is considered to be not in the child's best interests
- *Whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests.*
- Adverse effects on the child resulting from continuous and vexatious parenting plan amendment actions
- When determining the best interest of the child of a parent in military service, the court shall consider all relevant parenting factors provided in subsection (1) and may not determine the best interest of the child based only upon the parent's military service
- *A de facto parenting arrangement, in the absence of a prior parenting decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219*

In New Hampshire, as dictated by a separate best interest statute, the court must consider:⁸⁶

- The relationship of the child with each parent and the ability of each parent to provide the child with nurture, love, affection, and guidance
- The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment
- The child's developmental needs and the ability of each parent to meet them, both in the present and in the future
- The quality of the child's adjustment to the child's school and community and the potential effect of any change
- *The ability and disposition of each parent to foster a positive relationship and frequent and continuing physical, written, and telephonic contact with the other parent, including whether contact is likely to result in harm to the child or to a parent.*
- *The support of each parent for the child's contact with the other parent as shown by allowing and promoting such contact, including whether contact is likely to result in harm to the child or to a parent.*
- The relationship of the child with any other person who may significantly affect the child.



- *The ability of the parents to communicate, cooperate with each other, and make joint decisions concerning the children, including whether contact is likely to result in harm to the child or to a parent.*
- Any evidence of abuse, as defined in RSA 173-B:1, I or RSA 169-C:3, II, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.
- If a parent is incarcerated, the reason for and the length of the incarceration, and any unique issues that arise as a result of incarceration.
- Any other additional factors the court deems relevant.
- If the court finds by clear and convincing evidence that a minor child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature minor child as to the determination of parental rights and responsibilities. Under these circumstances, the court shall also give due consideration to other factors which may have affected the minor child's preference, including whether the minor child's preference was based on undesirable or improper influences.
- In determining parental rights and responsibilities under this section, including residential responsibility, the court shall not apply a preference for one parent over the other because of the sex of the child, the sex of a parent, or the financial resources of a parent.
- If the court finds that a parent has been convicted of sexual assault or there has been a finding by a court of competent jurisdiction of sexual abuse against such parent's minor child or minor stepchild, the court may prohibit contact between such parent and the victim of the abuse and any sibling or step-sibling of the victim. The court shall make orders that best protect the victim of the abuse and the siblings and step-siblings of such victim.
- *If a parent makes a good faith allegation based on a reasonable belief supported by facts that the parent's child is a victim of physical abuse or neglect or sexual abuse perpetrated by the other parent and if the parent making the allegation acts lawfully and in good faith in accordance with such belief to protect the child or seek treatment for the child, the parent making the allegation shall not be deprived of parenting time, or contact with the child based on reasonable actions taken in accordance with that belief.*



APPENDIX B: PEER STATE SELECTION

Table 3 is the preliminary assessment of the status of emancipation in selected peer states for New Hampshire plus Montana. Additionally, Table 4 uses seven different metrics to compare New Hampshire and other states as well as to create a peer group of states. The states in the peer group were selected for its geographical proximity, physical size, culture and demographic factors that were similar to New Hampshire. While comparing states, we found that the state of Massachusetts would be an outlier despite its geographical proximity and New England culture. Table 5 uses the same seven metrics from Table 4 and compares New Hampshire and Montana. Both tables calculated the peer state average for each metric, and it can be found that most metrics are closely aligned.

Table 3. Analysis of Identified Peer States and Montana

State	Existing Statute on Emancipation	Minimum Age to Petition for Emancipation	Exception for Marriage	Exception for Armed Forces
Maine	X	16	X	X
Vermont	X	16	X	X
Rhode Island	-----	-----	-----	-----
Connecticut	X	16	X	X
Montana	X	16	-----	-----

Source: Statutory and Judicial Emancipation of Minors in the United States⁸⁷

Table 4: Comparing New Hampshire to Similar States

State	Population	Population Under 18	Poverty Rate for Children Under 18	Referrals for Abuse and Neglect*	Living in Out of Home Care*	Teens Not in School or working*	Child Marriage Rate**
Maine	1,329,328	255,859	17.40%	1,238.8	140.8	300.9	-----
Vermont	626,042	120,160	13.30%	2,990.8	212.7	159.7	6
Massachusetts	6,974,422	1,387,194	14.80%	1,153.2	147.4	215.0	7
Rhode Island	1,056,298	211,875	19.40%	1,234.9	172.8	378.6	-----
Connecticut	3,590,886	763,325	14.50%	1,094.8	108.8	278.4	17



New Hampshire	1,330,608	263,331	10.70%	1,095.2	75.4	225.4	6
Peer State Average	2,715,395	547,683	15.88%	1,542.5	156.5	266.5	10
Difference Between NH and Peer Group Avg.	1,384,787	284,352	5.18%	447.3	81.1	41.1	4
Peer State Avg. without MA	1,650,639	337,805	16.15%	1,639.8	127.0	223.5	11.5
Difference Between NH and Peer Group Avg. without MA	320,031	74,474	5.45%	544.6	51.6	-1.9	5.5

Source: Child Welfare League of America⁸⁸

Table 5: Comparing New Hampshire to Montana

State	Population	Population Under 18	Poverty Rate for Children Under 18	Referrals for Abuse and Neglect*	Living in Out of Home Care*	Teens*** Not in School or working*	Child Marriage Rate**
Montana	1,032,949	226,227	19.40%	1,598.4	271.7	290.4	10
New Hampshire	1,330,608	263,331	10.70%	1,095.2	75.4	225.4	6
Difference between MT and NH	-297,659	-37,104	8.70%	503.2	196.3	65	4

* Per 100,000 people

**Per 10,000 people married, as of 2010

***Aged 16-19

Source: Child Welfare League of America⁸⁹



APPENDIX C: PRELIMINARY STATE RESEARCH

Table 6 is preliminary research on all of the 50 states and six factors were calculated for the research.

Table 6: Preliminary Analysis of the All States

State	Age of Majority	Existing Statute on Emancipation	Minimum Age to Petition for Emancipation	Exception for Marriage	Exception for Armed Services
Alabama	19	X	-----	-----	-----
Alaska	18	X	16	-----	-----
Arizona	18	X	16	-----	-----
Arkansas	18	X	16	-----	-----
California	18	X	14	X	X
Colorado	18	-----	-----	-----	-----
Connecticut	18	X	-----	X	X
Delaware	18	-----	16	-----	-----
Florida	18	X	16	X	-----
Georgia	18	X	16	X	X
Hawaii	18	X	-----	X	-----
Idaho	18	X	-----	X	-----
Illinois	18	X	16	X	X
Indiana	19	X	-----	X	X
Iowa	18	-----	16	X	X
Kansas	18	X	16	X	X
Kentucky	18	-----	-----	X	X
Louisiana	18	X	15 with authentic act by parent; 16 with marriage or judicial consent	X	X
Maine	18	X	16	X	X
Maryland	18	-----	-----	X	X
Massachusetts	18	-----	-----	X	X
Michigan	18	X	16	X	X
Minnesota	18	-----	-----	X	X
Mississippi	21	X	-----	X	X
Missouri	18	-----	-----	-----	-----
Montana	18	X	16	-----	-----



The Nelson A. Rockefeller Center at Dartmouth College

The Center for Public Policy and the Social Sciences

State	Age of Majority	Existing Statute on Emancipation	Minimum Age to Petition for Emancipation	Exception for Marriage	Exception for Armed Services
Nebraska	19	-----	-----	X	-----
Nevada	18	X	16	X	-----
New Hampshire	18	-----	-----	-----	-----
New Jersey	18	-----	-----	-----	-----
New Mexico	18	X	16	X	X
New York (NY)	18	-----	-----	-----	-----
North Carolina	18	X	16	X	-----
North Dakota	18	-----	-----	-----	-----
Ohio	18	-----	-----	-----	-----
Oklahoma	18	X	-----	-----	-----
Oregon	18	X	16	-----	-----
Pennsylvania	18	-----	-----	-----	-----
Rhode Island	18	-----	16	-----	-----
South Carolina	18	-----	-----	X	-----
South Dakota	18	X	16	X	X
Tennessee	18	-----	-----	X	-----
Texas	18	X	17 (16 if self-supporting and living on own)	X	X
Utah	18	-----	16	-----	X
Vermont	18	X	16	X	X
Virginia	18	X	16	X	X
Washington	18	X	16 (14 with a guardian or through a person 18+)	X	-----
West Virginia	18	X	16	X	-----
Wisconsin	18	-----	-----	-----	-----
Wyoming	18	X	17	X	X

Source: Statutory and Judicial Emancipation of Minors in the United States⁹⁰



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- ¹⁸ See, for example, Ark Code Ann §9-27-362(e)(10); Ky Rev Stat Ann § 403.213.(3). Nev Rev Stat Ann § 129.130.4 states parental support obligation will be terminated, but the judge has the option to elect for its continuation.
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