1992

Minor Changes: Emancipating Children in Modern Times

Carol Sanger
Columbia Law School, csanger@law.columbia.edu

Eleanor Willemsen

Follow this and additional works at: https://scholarship.law.columbia.edu/faculty_scholarship
Part of the Juvenile Law Commons

Recommended Citation

This Article is brought to you for free and open access by the Faculty Publications at Scholarship Archive. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Scholarship Archive. For more information, please contact donnelly@law.columbia.edu.
MINOR CHANGES:  
EMANCIPATING CHILDREN IN MODERN TIMES

Carol Sanger*  
Eleanor Willemsen**

_Graze where you will, you shall not house with me._  
Capulet to Juliet¹

Parents and their teenage children don't always get along. At some time during adolescent development, parents may turn into embarrassments² and teenagers into domestic terrorists.³ For most families this is a phase. Adolescence is endured, the child accomplishes some degree of separation from parents, and the transition to adulthood advances.

* Professor of Law, Santa Clara University. B.A., Wellesley College, 1970; J.D., University of Michigan, 1976. I would like to thank Albert Alschuler, Ed Baker, David Chambers, Jan Costello, Iris Litt, Martha Minow, Tom Tyler, Michael Wald, and Jeremy Waldron for their comments on earlier drafts. I also thank Margaret Olson, Nancy Ota, and Robert Lohrbeer for their research assistance. The study also benefited from comments received from participants at presentations of this research at meetings of the American Orthopsychiatric Association, the University of Arizona Law School Faculty Workshop, and the Society for Research on the Development of the Child. Finally, special thanks are given to Valerie Houghton, J.D., M.M.C.C., who conducted the interviews with exceptional skill.

** Professor of Psychology, Santa Clara University. B.A. 1960, M.A. 1962, Ph.D. 1964, Stanford University. Principal responsibilities in this collaborative project were as follows: the design and statistical analysis of interview data were supervised by Eleanor Willemsen; the Article was written by Carol Sanger.

1. WILLIAM SHAKESPEARE, ROMEO AND JULIET act 3, sc. 8.
2. As the teenage narrator of Julian Barnes' METROLAND explains: “Every morning, at breakfast, I would gaze disbelievingly at my family. They were all still there—-that was the first surprise. Why hadn’t some of them run off in the night, wounded beyond endurance by the emptiness I divined in their lives?” JULIAN BARNES, METROLAND 39 (1980).
3. Alison Lurie presents a parental view of the morning scene:

_Standing by the toaster, Erica contemplates her children. . . .

. . . Jeffrey and Matilda were beautiful, healthy babies; charming toddlers; intelligent, lively, affectionate children. There are photograph albums . . . to prove it. Then last year, when Jeffrey turned fourteen and Matilda twelve, they had begun to change; to grow rude, coarse, selfish, insolent, nasty, brutish, and tall. It was as if she were keeping a boarding house in a bad dream, and the children she had loved were turning into awful lodgers—lodgers who paid no rent, whose leases could not be terminated.

In some families, however, the period is more like a siege than a phase. Conflict may last longer and be more strifeful, more intense. If the family is incapable or unwilling to resolve the tensions, an intractability may set in. In these cases, domestic tranquility seems attainable only when the child is not at home. In recent years, parents have employed various approaches to bring about their child's absence. Depending on family history, temperament, and resources, frustrated parents have removed frustrated teenagers by sending them to private schools and camps, hospitalizing them, relinquishing custody to the state, pushing them out as runaways, or by cutting the child loose, as recommended in the Tough Love programs.

This Article reports on the use of still another mechanism for removing children in conflict with their parents: statutory emancipation, the process by which minors attain legal adulthood before reaching the age of majority. Statutorily emancipated minors can sign binding contracts, own property, keep

4. In addition to private residential schools, parents are beginning to send their children to programs that advertise a more "camp-like" experience, often based on the Outward Bound model of rigorous outdoor activities. Whether these places are schools, camps, or quasi-hospitals offering therapy is not clear. Many, such as the Summit Quest and Challenger programs, use severe discipline as the organizing principle. Martha Matthews, Wilderness Programs Offer Promising Alternative for Some Youth; More Regulations Likely, YOUTH L. NEWS, Nov./Dec. 1991, at 12, 12 (describing state efforts to increase licensing standards for wilderness programs following the deaths of two girls in 1990).


6. Sandra Evans, Desperate Parents Cast Unruly Children into Hands of a Burdened Government, WASH. POST, Sept. 3, 1991, at A1 (describing relief for custody petitions filed in Virginia by parents who "can no longer cope"). Custody petitions account for 11.5% of children in foster care in Virginia and are filed most frequently for teenagers. Id.

7. See SENATE SUBCOMM. ON THE CONSTITUTION, HOMELESS YOUTH: THE SAGA OF "PUSHOUTS" AND "THROWAWAYS" IN AMERICA, 96th Cong., 2d Sess. 3 (1980).

8. The Tough Love programs advocate "unorthodox responses" to teenagers' "outrageous behavior":

Through a sequence of small action steps parents make their acting-out young person responsible for the consequences of his or her unacceptable behavior. TOUGHLove does not encourage parents to "throw their kid out of the house." Only after other alternatives are attempted is an acting-out youth faced with a structured choice to change his or her behavior or leave.

PHYLLIS YORK ET AL., TOUGHLove 18–19 (1982). The term "tough love" is now sometimes used to describe any stern parental action taken in the child's interest. See, e.g., David Gonzalez, Behind Girl's Chaining, Siren Call of the Streets, N.Y. TIMES, Sept. 20, 1991, at A1 (describing parents who chained crack-addicted daughter to keep her off the streets as using "tough love").
their earnings, and disobey their parents. Although under eighteen, they are "considered as being over the age of majority" in most of their dealings with parents and third parties. Thus, while emancipated minors can sign contracts and stay out late, their adult status also means that their parents are no longer responsible for the minors' support. To understand why minors choose to restructure their relationships with their parents and to redefine their status within society through the mechanism of emancipation, we undertook an empirical study on the use of emancipation in two northern California counties. The results of that study are reported here.

The study was prompted by an offhand remark. During a social conversation with one of the authors, a fifty-year-old woman volunteered that in order for her and her new husband to begin their marriage without the complicating presence of stepchildren, they "had to emancipate" her sixteen-year-old daughter. The phrase was striking. Emancipation, a subject rarely discussed even in family law classes, seemed an unusual lay topic. Moreover, in twentieth-century English, emancipate is not used as a transitive verb; the California legislature intended emancipation to be a legal status that minors request, not a legal imposition to be thrust upon them by someone else.

The remark suggested the possibility that emancipation was being used not to empower mature adolescents through official recognition of their actual independence, but as a means to alter parent-child relationships for parental advantage. Informal pilot courthouse interviews of minors seeking emancipation supported this hypothesis, immediately revealing several cases where the minor's petition for emancipation had come about through parental suggestion and effort. This initial, informal information suggested three central inquiries for a more systematic investigation:

1. To what extent is emancipation used for purposes other than legitimizing the de facto status of independent

---
10. Id. Emancipated minors are not treated as adults for the purposes of compulsory education, child labor laws, consent to marry, criminal liability, statutory rape, or parental vicarious liability under the vehicle code. Peter Bull, Representing Status Offenders and Their Parents, in 2 CALIFORNIA JUVENILE COURT PRACTICE: DEPENDENT MINORS, STATUS OFFENDERS 217, 252 (1981).
11. One purpose of the Emancipation of Minors Act was "to permit an emancipated minor to obtain a court declaration of his status." CAL. CIV. CODE § 61 (West 1982).
minors, purposes such as resolving intrafamilial disputes or dissolving parental liability or support obligations?

2. What is the relation between emancipation procedures and the extent and purpose of their use?

3. How well do emancipated minors negotiate their emancipated lives?

To explore these questions, we examined all emancipation petitions filed over a two-year period (ninety) and interviewed a smaller group of emancipated minors (eighteen) from two San Francisco Bay Area counties in which emancipation was routinely granted. The object was to find out from emancipated minors themselves how their decisions to seek emancipation had come about, how their lives had been affected, and something about their relationships with their families at the time of emancipation. Through the interviews, we sought to identify and correlate characteristics of the emancipation process with relevant characteristics of the minors and families who use it. Our findings reveal that while in some cases emancipation provided independent teenagers with legal authority appropriate to their life situations, in many others it was used by parents to end responsibility for more ordinary teenagers who lacked the experience, resources, or desire to live independently.

How did this use of emancipation come about? Early enthusiastic reviews welcomed the new legislation as a practical, easy means of promoting the interests of mature minors, not as a method of resolving intrafamilial disputing or conflict. California's emancipation statute arose in response to the needs of teenagers to be freed from the burdens of minority, not from the complications of modern family life.

The use of emancipation to do much of anything is something of a surprise. Emancipation is disdained in the leading domestic relations treatise as a "peculiar and, fortunately, unimportant corner of the law," and for most of its history,


13. See infra notes 57–63 and accompanying text.

this has been the case. Emancipation was granted now and then to solve some specific problem caused by a child's minority status, such as to circumvent intrafamilial tort immunity or to protect a child's wages from an overreaching parent.\footnote{See generally Sanford N. Katz et al., Emancipating Our Children—Coming of Legal Age in America, 7 FAM. L.Q. 211, 219–25 (1973).}

But legal relationships among family members as well as emancipation law have changed. Children can now sue their negligent parents,\footnote{See, e.g., CAL. CIV. CODE § 202 (West 1982) (“The parent has no control over the property of the child.”).} and children's earnings are now better protected.\footnote{See Judith S. Wallerstein & Joan Berlin Kelley, Surviving the Breakup 5–6 (1980); David Chambers, Stepparents, Biologic Parents, and the Law's Perceptions of “Family” After Divorce, in Divorce Reform at the Crossroads 102, 102–03 (Stephen D. Sugarman & Herma Hill Kay eds., 1990).} Indeed, parents are often more concerned about being sued by someone else on account of their child's behavior—driving, in most cases—than about being sued by the child. The structure of family life and family composition is also different. More households and their occupants experience parental divorce and remarriage.\footnote{Such statutes have been called “partial statutory emancipations” because for specific and limited purposes, such as consenting to certain kinds of medical care, the minor is treated as an adult. Katz et al., supra note 15, at 215. See infra note 398 for a list of other statutes that grant minors limited authority to act as adults and thus might be considered “partial emancipations.” This Article uses the term statutory emancipation to refer to the newer and more comprehensive removal of disabilities.} Teenagers have somewhat more autonomy, as over the last twenty years courts and legislatures have increased their decision-making authority in certain areas; consenting to birth control services is a familiar example.\footnote{\begin{block}{15}See generally Sanford N. Katz et al., Emancipating Our Children—Coming of Legal Age in America, 7 FAM. L.Q. 211, 219–25 (1973). Recently, the instrumental use of emancipation has been re-introduced to deal with the problem of homeless youth. Runaways (who are in fact homeless despite the fact they share legal residence with their parents) are ineligible both for foster care (because they have parents) and for shelters and services available to adults (because they lack legal capacity to consent to anything). As a result, homeless teenage youth often receive inadequate public services. See Rorie Sherman, Suit Claims Teens Left to Streets, NAT'L L.J., July 29, 1991, at 13 (describing lawsuit filed against New York City on behalf of runaways and destitute teenagers). Minnesota has invoked common-law emancipation as a means of dealing with this problem. In 1991, the legislature amended its law so that destitute adolescents could be classified as common-law emancipated minors and then be eligible for assistance benefits. \textit{Id.}\end{block}}
Emancipation has changed too. Its criteria are now more uniform, set by statute rather than determined judicially case by case, and its consequences are more comprehensive. Emancipation is also more accessible. The California emancipation statute, for example, provides a simple procedure by which fourteen-year-olds can for most purposes terminate their entire minority.

Statutory emancipation is an extraordinary grant of authority to minors in a legal system where even older children are permitted to decide very little for themselves. While adolescent minors have more legal authority than they used to have, for the most part they still must follow the direction of their parents with regard to the central features of teenage life—residence, association, and conduct. Within the family, an uncomplicated legal regime still applies, with occasional exceptions, to minors of all ages. Parents control and provide care for their children; children obey parental direction. In these respects, the legal status of adolescents differs little from that of all other children. Everyone under eighteen, now the common age of majority, is lumped together as minors or, adding insult to incapacity, “infants.” Their distinguishing legal characteristic is the inability to make decisions on their own behalves. Minors are “a group of individuals with few responsibilities, many restrictions, and a

---

20. Residence provides a straightforward example of the arrangement. Parents have traditionally been required to provide minor children with a place to live and children are required to live there. See, e.g., CAL. CIV. CODE § 213 (West 1982). Courts accept the proposition that “[f]amily life and parental guidance would cease if each child could choose her place of residence for herself.” In re L.A.G. (Hennepin County Dist. Ct. (Juv. Div.) Minn. Aug. 11, 1972) (concerning 15-year-old daughter who refused to accompany parents on a round-the-world yacht tour). Thus, with few exceptions, children live where their parents say they will. Children who refuse may be disciplined with the state’s help; running away from home has been a common basis for juvenile court intervention, usually upon parental request. See BEYOND CONTROL: STATUS OFFENDERS IN THE JUVENILE COURT (Lee E. Teitelbaum & Aidan R. Gough eds., 1977).

complex legal status that maintains a dependency on adults for privilege and access to resources."\(^2\)

Statutory emancipation unsettles this scheme. Unlike traditional judicial emancipations granted at the court's discretion for specific purposes such as protecting a minor's wages from parents or establishing a residence separate from parents,\(^2\) statutory emancipation achieves a more comprehensive promotion into adulthood.\(^2\)

What is going on? Did California and the sixteen other states with similar emancipation statutes\(^2\) decide to codify the common parental observation that "my daughter is fifteen going on twenty-seven?" To some extent the answer is yes. Apparently living apart from one's parents and managing one's financial affairs, the statutory prerequisites for emancipation, were satisfactory indicia to justify early promotion to

---


24. Such comprehensiveness is a central difference between statutory and common-law emancipation:

As a common law doctrine applied according to the circumstances of each case, emancipation is not coextensive with removal of the disabilities of minority defined by statute. Minors, through their own and their parents' actions, may be completely emancipated as regards reciprocal obligations of support and service, but if they are under age according to the relevant statute, they still will not be authorized to vote, drink, obtain a driver's license, or contract for goods or services without a cosigner.

---

INSTITUTE OF JUDICIAL ADMINISTRATION, AMERICAN BAR ASS'N, JUVENILE JUSTICE STANDARDS PROJECT 22 (1980).

adulthood. A minor who was physically and economically separate from parents had demonstrated a self-sufficiency that made traditional requirements of parental support and control not only unnecessary, but problematic in practical, everyday sorts of ways. Unemancipated teenagers, even when living independently, cannot consent, rent, or borrow, and still can be picked up by the police as runaways. Removing these impediments and risks from daily life was central to the legislative decision enabling teenagers to turn themselves into adults with an uncomplicated tap of a procedural wand. Such procedural simplicity made sense. Emancipation was supposed to ratify, not reorder, an existing state of affairs—the minor’s financial and physical independence from her parents.

But identifying legislators’ motivation for enacting the emancipation statute does not explain why minors themselves decide to use it. Certainly there is convenience in being able to work overtime without a work permit and satisfaction in staying out as late as one wants. Such advantages are accompanied, however, by other less convenient, less glamorous, and less immediately apparent consequences of majority, such as the inability to require parental financial assistance. Minors seeking emancipation may not grasp the complete meaning of adult legal status, but most understand and intend emancipation to be a big deal. They know that it results in a dramatic reordering of their civil and familial entitlements and obligations, though they describe the change less formally:

[Emancipation means that e]ven if I want to go back home and abide by the rules they don’t have to let me back in.

As that participant understood all too well, emancipation ends significant aspects of the legal relationship between

27. In re Nancy C., 105 Cal. Rptr. 113 (Ct. App. 1972) (upholding constitutionality of Sacramento’s curfew ordinance).
28. See infra notes 55–60 and accompanying text.
29. CAL. CIV. CODE § 63(d) (West 1982).
30. Interview with Courtney 12. Compare Robert Frost’s description of home as “the place where, when you have to go there, / They have to take you in.” ROBERT FROST, The Death of the Hired Man, in COLLECTED POEMS OF ROBERT FROST 53 (1930).
minors and their parents. In that regard, it is like other legal processes that reorder familial relationships such as termination of parental rights or the surrender of a child for adoption by a birth parent. But emancipation differs from those procedures in that termination and adoption are surrounded by procedural elaborations that require levels of deliberation by the participants—appropriate requirements in light of the significant restructuring of family that termination or adoption effect.

Emancipation, in contrast, is a procedural snap. Declarations of emancipation are obtained with stunning ease and speed; the ones we studied typically took less than a week from formal start to finish. When parents sign their child's petition, as they did in each of the ninety petitions examined, the parents consent to a declaration of emancipation without a hearing. The few hearings that were held were perfunctory, often taking only five or ten minutes. Thus, despite the statutory requirement that the judge determine that emancipation is not contrary to the minor's best interests, exchange between the judge and minor was minimal at best.

In this Article we pursue the idea that something more profound than the California location explains the laid-back judicial approach to the emancipation process. We suggest instead that courts and legislatures have assumed a unity of interests between the parents and teenage children who seek emancipation. Faced with a petitioning minor and consenting parents, a court's assumption that all is as agreeable as it appears may not seem unreasonable. Yet our data show that the emancipation petitions do not always accurately portray the status or desires of many of the petitioning minors, and they do not at all reveal the motivations or extent of participation by the minors' parents.

This study suggests that at times emancipation may facilitate an abdication by parents of caretaking responsibilities, an abandonment of sorts. Viewed this way, emancipation may raise much the same concern more classical abductions raised during the Middle Ages, that "close attention must be paid . . . to determine whether parents are forfeiting responsibility for a 'child' or simply forwarding a

31. CAL. CIV. CODE app. § 64 (West 1982).
32. See infra notes 185–200 and accompanying text.
young person to the ordinary next stage of life according to contemporary expectations.\textsuperscript{33}

Statutory emancipation, the near overnight legal transformation of minor to adult, tests current cultural notions about childhood's last official outpost—adolescence—and its place within American families and American law. The 1980s were a period in which trends to enrich and lengthen childhood were in tension with competing practices and preferences to shorten it.\textsuperscript{34} Childhood itself as a legal category was shortened, as states lowered the age of majority from twenty-one to eighteen.\textsuperscript{35} At the same time, traditional markers used to measure adulthood, such as completion of an education, the acquisition of skills, or participation in the labor force, are now often missing at age eighteen. What then does it take and what does it mean to be a grown-up in modern times?\textsuperscript{36}

To understand whether today's emancipated minors are being "forwarded" or abandoned, we begin in Part I by looking at the history and content of the California Emancipation of Minors Act: Why was it enacted? How does it work? Part II then describes the Act's actual use as understood through interviews with emancipated minors.\textsuperscript{37} We present our findings here both through numerical summaries—how many?

\begin{itemize}
\item \textsuperscript{33} John Boswell, The Kindness of Strangers 35 (1988).
\item \textsuperscript{34} See David Elkind, The Hurried Child 1–46 (rev. ed. 1988); Eda J. LeShan, The Conspiracy Against Childhood (1967); Neil Postman, The Disappearance of Childhood (1982). The difference between extending and compressing childhood is sometimes blurred. As an example, children are sometimes “held back” in school, not so much to allow them to be children longer, but to strengthen their academic or physical skills so that they will be mature and thus more competitive in future grades. See Carol Lawson, Studying Vivaldi and Art, In Diapers, N.Y. Times, Nov. 2, 1989, at C1 (reporting on the drive to improve the academic and athletic prowess of toddlers).
\item \textsuperscript{35} In 1971, the voting age was lowered from 21 to 18. U.S. Const. amend. XXVI. Subsequently, 45 states lowered the age of majority to 18. Clark, supra note 14, § 9.1, at 530.
\item \textsuperscript{36} The question is being asked on several fronts. See, e.g., Janet Ainsworth, Reimagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court, 69 N.C. L. Rev. 1083, 1101–04 (1991) (arguing within the context of criminal law that “the child-adult distinction is a false dichotomy that can no longer support disparate justice systems”).
\item \textsuperscript{37} We recognize that “case studies can be misleading for the same reasons they are revealing. There are no truly representative cases .... [S]ingling out one case and reporting specific factors about it may encourage unwarranted generalizations, when in fact its significance can be understood only in terms of its unique configuration of factors.” Michael S. Wald et al., Protecting Abused and Neglected Children 145 (1988). In the present project, we are not offering clinical case studies so much as presenting vignettes and narratives in order to connect real lives to the numbers.
\end{itemize}
how old? how soon?—and through the accounts of the minors themselves—how hard? what next? who cares? We include quotations from emancipated minors not so much to prove particular substantive points, but rather to convey the tone and quality of the experiences reported by those for whom the law was made.  

Part III then discusses the reasons why emancipation is sometimes granted to minors who are neither financially, nor physically, nor emotionally independent from their parents. Judicial implementation of the process is only one factor contributing to emancipation's unexpected and unintended consequences. Other factors include the procedural simplicity of the emancipation process, the use of legal processes by families in conflict, popular and official misconceptions

38. We studied emancipation from the primary perspective of emancipated minors in part because, as Wald and others have pointed out in their study of foster children, "the child is the best source of information concerning the subjective impact of separation and living in a new family." Id. at 29. Because emancipated minors have not only separated from their parents but initiated the separation (at least officially), they are the best source for recounting both the separation and its consequences.

39. The identification of emancipation as a mechanism for negotiating family conflicts reassigns the process from the humdrum regime of judicial rubber stamping to the more complex category of disputing. Many of the issues explored within sociolegal research on disputing—the identification of a "triggering event," the role of third parties (audience, intervenors, supporters), the personality types of the parties, the nature of the arena, the "rephrasing" of a problem from lay to legal, and the development of a "dispute trajectory"—also underlay the present study. See Jeffrey Fitzgerald & Richard Dickins, Disputing in Legal and Nonlegal Contexts: Some Questions for Sociologists of Law, 15 LAW & SOC. REV. 681 (1981) (summarizing central themes of sociolegal research on disputing). But the research reported here differs in an important way from earlier work on dispute development and resolution: emancipation is not designated within the legal system as a means of dispute resolution. Although the process is billed as nonadversarial, it is in fact used to resolve disputes between teenagers and the adults with whom they live. This suggests a new spin on the use of deliberately accessible legal processes, especially by intimates. At best, one might see emancipation as a peculiar illustration of the trend toward informal justice or "delegalization"; it was, after all, enacted to provide more formal procedure for minors than the discretionary system existing at common law. See Richard Abel, Informalism: A Tactical Equivalent to Law?, 19 CLEARINGHOUSE REV. 375 (1985). But the consequences of the process are like those observed in other less formal legal procedures such as divorce mediation: the powerful, here the parents, can dominate the process.

Even here the emancipation script has a curious twist. Criticism of informal justice has centered on the ways in which relaxed judicial processes have strengthened the hands of the party advantaged at the outset, such as landlords and divorcing husbands. Emancipation takes the unintended consequences of delegalization a step further by benefitting parties (parents) not intended to be much involved in the process at all, let alone participating with superior position. To the extent an adversary or opponent was identified by proponents of statutory emancipation,
about what emancipation does, and the failure to anticipate or predict the relationship between emancipation and other law reforms directed at teenagers. Each of these is considered more fully in Part III to explain why legislation enacted in the interests of children, like litigation brought on their behalf,\textsuperscript{40} does not always work or work as well as intended.\textsuperscript{41}

The predictable upshot of all this might be a call to repeal the California Emancipation of Minors Act or to drastically restrict its availability. But that is not our conclusion. Not all emancipated minors, not even all badly emancipated ones, are unhappy or unhinged on their own. If the statute is being used, even crudely, to remedy problems undiscerned or unattended to by policy makers, attention might be given to the problems emancipation has been co-opted to solve and to the availability of other, more fitting solutions. Moreover, we cannot know if emancipated minors who leave home for the partial or primary benefit of their parents are less well-off on their own than they would have been had they remained at home. We can, however, identify certain ways in which emancipation unacceptably compromises their interests and suggest remedies for these unnecessary compromises. This is the subject of this Article's final section, Part IV.

I. THE CALIFORNIA EMANCIPATION OF MINORS ACT

A. History

1. The Need for Reform—The California Emancipation of Minors Act was the result of dissatisfaction felt by several San Francisco public interest lawyers in the late 1970s over restrictions on minority from the state, not parents, were the problem they sought to correct. Yet because emancipation is as much about intrafamilial difficulties as about legal ones, the process uncannily reinforces the power of parents.

\textsuperscript{40} The complex interrelation of factors at work in test case litigation brought on behalf of children is examined in the case studies presented in IN THE INTEREST OF CHILDREN (Robert H. Mnookin ed., 1985).

\textsuperscript{41} See WALD ET AL., supra note 37, at 4–6. As Wald explains, policy formation occurs at two levels: first through the creation of substantive rules; and second, in the implementation of those rules through formal and informal procedures and practices. \textit{Id.} The present study focuses on unintended consequences during the second, or implementation, phase of legislation.
persistent and seemingly unnecessary problems faced by teenage clients on account of their minority. The problems were of two varieties. The first was the minors' inability to negotiate the basic contracts necessary to maintain their independent lives, such as contracts for rent, work, or sale. The second concern was the vulnerability of just being on the street, a precariousness brought about by the possibility of being picked up and detained by the police as a person in need of supervision under California's incorrigibility statute. Police in several Bay Area communities were then using the statute as a general loitering statute; round-ups of teenagers "hanging out" were not uncommon. As then Youth Law Center attorney Peter Bull explained, a central motivation in drafting an emancipation statute was "to get kids out from under 601. I thought people shouldn't be arrested just for being a kid standing on a corner."

Existing emancipation law and procedures in the mid-1970s were utterly inadequate to remedy the problems of independent minors. No statutory guidelines or standards existed to determine if a minor was "emancipated," and the common law meaning of emancipation and its consequences was haphazard. As one California court explained, "The phrase 'emancipation of a minor', as applied to agreements of parent and child, appears to have been rather loosely used." One explanation for such "loose use" is that courts have traditionally used the

42. Telephone Interview with Peter Bull, Former Director, National Center for Youth Law and principal drafter of the Act (July 18, 1989); Telephone Interview with Peter Behr, former State Senator and sponsor of the Act in the California Legislature (August 2, 1989).
43. CAL. CIV. CODE § 601 (West 1982). In a letter urging former Governor Jerry Brown to sign the emancipation bill, a juvenile justice task force of social service providers explained that "[i]n our work, we have seen that mature adolescents living on their own have not been able to conduct the fundamental personal business necessary to survive. Even minors living away from home with parental consent, for example, have been held as runaways by police." Letter from Diane Takvorian, Chair of the Juvenile Justice Task Force, to Governor Edmund G. Brown, Jr. (Sept. 11, 1978) (on file with the University of Michigan Journal of Law Reform).
45. Interview with Peter Bull, supra note 42.
doctrine of emancipation not so much to bring about or verify a child's independence, as to work around other legal doctrines in which minority was an impediment. The Juvenile Justice Standards Project explained the effect of such manipulation:

A [judicial] conclusion regarding emancipation may be made in the course of determining a variety of very diverse legal issues: notice to parents that a minor is involved in criminal proceedings; the child’s or a third party’s liability for a contract; intrafamily tort immunity; the scope of parental support obligations; establishment of residence for purposes of federal diversity jurisdiction, voting, or state benefits such as welfare or state college admission. Because the courts are looking not to the meaning of the family’s actions in terms of continuing interdependence but to a desirable result on the merits of litigation, determinations of emancipation have been inconsistent and unpredictable.47

County of Alameda v. Kaiser48 demonstrates the problem well. The issue was whether the emancipation of a minor by agreement with his mother relieved her of liability for his support. Twenty-year-old Philip Kaiser (a minor in 1962) had received medical attention from the county hospital following a car accident. When the county sued Philip's mother for reimbursement, she argued that because at the time of the accident Philip “‘was living on his own, apart, permanently,’”49 she was not liable for the services provided to him. The trial court agreed that Philip, who lived with his aunt, had been “‘emancipated’, and thus must be treated as an adult.”50 The appellate court reversed, expressing doubts about the emancipation: “[T]he record does not show the amount of his earnings or whether [Philip] paid . . . for board or room.”51 The court also clarified that “‘emancipation’ by agreement [between parent and child] does not terminate the [child’s] right to support.”52 As a result, it concluded that “Philip must be deemed a minor.”53

47. INSTITUTE OF JUDICIAL ADMINISTRATION, AMERICAN BAR ASS’N, supra note 24, at 30.
48. 48 Cal. Rptr. 343 (Ct. App. 1965).
49. Id. at 344 (quoting Philip’s mother).
50. Id.
51. Id.
52. Id.
53. Id. at 345.
The reason for Philip's reclassification as a minor is not clear from the opinion. Was there insufficient proof that he was living independently (or whatever other unarticulated standard the court was using to determine Philip's status)? Or was Philip declared a minor because even if he were emancipated, his mother would be liable for his support so that his status meant nothing? Or was the court here annoyed that shortly after the mother had applied for county aid for her son's hospitalization, she "had withdrawn a large amount from a bank account not listed in her financial statement"? Thus, while the case clarified certain consequences—parents are not freed from support obligations by an "emancipation by agreement"—it added little to what constitutes an emancipation.

The proposed emancipation legislation sought to remedy the procedural as well as definitional limitations of common-law judicial emancipations. Because one limitation of minority is the inability to bring a legal action on one's own behalf, minors could not initiate emancipation proceedings. The legislation removed this procedural obstacle by allowing minors themselves to petition for emancipation.

2. Legislative History—The emancipation bill, SB 1473, was introduced by State Senator Peter Behr. Its sponsors, primarily a coalition of private social service agencies for children and families, stressed the need for a clearer and more available legal mechanism to uncomplicate the lives of

54. Id. at 344.
55. SB 1473, 1977-78 Reg. Sess., 1978 Cal. Stat. ch. 1059. Statutory emancipation had first been introduced in 1975 by Assemblyman Alan Sieroty as part of a massive bill, AB 1819, 1975-76 Reg. Sess. (1975), that sought to revise the entire juvenile court system by consolidating in the juvenile court jurisdiction over minors "who are truants, runaways, in need of placements outside the home, and who desire to be judicially declared emancipated." Id.
56. The Enrolled Bill Report from the Department of Health and Welfare explained that:

[t]he bill is sponsored by the California Coalition of Child, Youth, and Family Services . . . [which] represents 400 small agencies and individuals. . . . Many of the member agencies of the Coalition have independently expressed support. Further support has been expressed by the State Public Defender, the Youth Law Center (whose attorney, Peter Bull, drafted the bill), and the California State PTA.

independent, self-supporting minors.\textsuperscript{57} As Social Advocates for Youth, Inc. put it:

In this agency we see, from time to time, young people who are \textit{de facto} emancipated but who are impaired in their day to day functioning because their status is not recognized and clear. . . . They are teenagers who are trying to make a life for themselves despite the obstacles they confront as minors. This legislation would do a great deal to remove these obstacles and acknowledge that they are “on their own and making it.”\textsuperscript{58}

Senator Behr detailed the nature of the impairment, explaining that “minors who are technically emancipated often encounter difficulties in such matters as renting apartments under their own names or entering into business or retail-purchase contracts.”\textsuperscript{59} The inadequacies of the existing emancipation process to remedy such difficulties were understood. The legislature found point blank that “the case law of this state is unclear as to the definition and consequences of emancipation of minors.”\textsuperscript{60}

The supporting agencies made clear that emancipation would not benefit all teenagers, but rather the right kind of teenagers: “Within our experience, requests for emancipation come from the ‘good kids’ . . . . These minors are usually the brighter, more industrious self-reliant youngsters who have matured earlier than the arbitrary eighteen year designation which serves as the age of majority. Most of these young people have good relationships with their parents.”\textsuperscript{61}

\textsuperscript{57} An additional reason advanced in support of the legislation was the protection of private sector participants: “[SB 1473] was introduced in order to provide such minors with a means of obtaining a judicial declaration of their emancipation which can then be relied upon by the world at large in its dealings with the minor.” \textsc{Assembly Committee on the Judiciary, SB 1473 Bill Digest 2 (1978)} (hereinafter \textsc{Bill Digest}). The argument overstated the concern of business. Few business people or lenders are disadvantaged in their transactions with minors; in most cases they protect themselves from the possibility of contract avoidance by requiring adult co-signers.

\textsuperscript{58} Letter from Mark Pearlman, Executive Director, Social Advocates for Youth, Inc., to Senator Alfred Song, Chairman of the California Senate Judiciary Committee (March 16, 1978) (on file with the \textit{University of Michigan Journal of Law Reform}).

\textsuperscript{59} \textit{Bill Digest}, \textit{supra} note 57, at 2.

\textsuperscript{60} \textsc{Cal. Civ. Code} § 61 (West 1982).

\textsuperscript{61} Letter from Linda Gollober, President of Youth Advocates, Inc., to Governor Jerry Brown 1 (Sept. 4, 1978) (on file with the \textit{University of Michigan Journal of Law Reform}).
Emancipation might be used by some young people who did not have good relationships with their parents—indeed, might be useful because they did not—was acknowledged by a few of the agencies. But the general message was that even where the home situations were "inadequate," the teenagers were not: "[t]hese are teenagers . . . who have the emotional and financial capacity to live independently of parental and state assistance."

These statements were intended to provide several assurances. First, emancipation would not result in bunches of wild teenagers being loosed upon the community; these were the "good kids." Focusing on the good character of prospective emancipated minors likely was related to concurrent political activity in the area of status offenders. In 1977 and 1978, there was substantial opposition to the deinstitutionalization of status offenders. In addition, public attitudes in California in the mid-1970s reflected strong law and order preferences, which extended to those under juvenile court jurisdiction. For example, bills were introduced to try minors as adults, to require state prison sentences for some minors, and to reduce the role of probation officers. Public concern about bad teenagers being returned to their communities may have made it particularly important to separate emancipated minors from the rest of the pack.

62. "[Emancipation] can free a youth from inadequate or irresponsible parents." Letter from Terry Moriarty, Director, Youth Services, to Senator Alfred Song, Chairman of the California Senate Judiciary Committee (Feb. 27, 1978) (on file with the University of Michigan Journal of Law Reform).
63. Letter from Mark Pearlman to Senator Alfred Song, supra note 58, at 1.
64. Another attorney representing youths who live outside their parents' home noted that "[w]ithout exception, they have remained in school, some holding a part-time job, and have no contact with the criminal justice system. They exhibit to me an adult level of maturity and responsibility." Letter from Neil Gould, Staff Attorney, Solano County Legal Assistance, to the California Assembly Judiciary Committee (June 23, 1978) (on file with the University of Michigan Journal of Law Reform).
65. Status offenses are acts for which only minors can be detained.
67. Id. at 797-98 (explaining that dissatisfaction with the criminal justice system was sparked in part by several events in 1975: two attempts on Gerald Ford's life in California, the Patty Hearst trial, the San Quentin Six trial shoot-out, and the suspension of death row executions by the Supreme Court).
68. Id. at 798.
The second assurance was that there would not be too many emancipated minors, even of the good kind: "By all indications the number of young people who would make use of SB 1473 is small."76 One agency estimated that emancipation would be "an appropriate alternative for about 5% of the 600 youth we serve a year."77

A third point was that emancipation would not cost the state any money. Indeed, proponents suggested that emancipation might save money because as "current law provides no procedure for emancipation, many of these responsible young people are placed in extremely expensive foster care situations until they reach the age of eighteen."78 This last argument was surprisingly candid and to some extent undercut the "good kid" message. But mental health professionals knew that emancipation would be both useful to and used by families for whom separation between parents and children in conflict was likely.79 As one agency described, "[i]n the process of providing [counseling] services situations where an emancipation process would have been helpful to the resolution of a family crisis have occurred."80

The Department of Motor Vehicles (DMV), concerned with the integrity of California driver's licenses, raised a meager

69. ASSEMBLY COMMITTEE ON THE JUDICIARY, SB 1473 BILL ANALYSIS 2 (1978).
70. Letter from Terry Moriarty to Senator Alfred Song, supra note 62, at 1. Youth Advocates, Inc., reported that 4% to 5% of their 11,000 adolescent clients over eleven years "would have made use of an emancipation procedure if one existed." Letter from Linda Gollobor to Governor Jerry Brown, supra note 61, at 1.
71. Letter from Senator Peter Behr to Governor Jerry Brown 3 (Sept. 8, 1978) (on file with the University of Michigan Journal of Law Reform). "Support for this bill is strong from youth agencies throughout the state who see emancipation as a viable alternative to providing costly foster care for those responsible minors who, for a variety of reasons, can no longer remain with their parents." Id. at 2.
72. Letter from Richard Gordon, Coordinator, South County Youth & Family Services, to Senator Alfred Song (March 21, 1978) (on file with the University of Michigan Journal of Law Reform).
73. Id. Emancipation statutes in other states have been even more forthright in identifying and accepting family conflict as a reason to use emancipation. Until 1980, the Connecticut statute, for example, included the irretrievable breakdown of the parent-child relationship as grounds for emancipation. CONN. GEN. STAT. ANN. § 46b-150b historical note (West 1986). The statute now authorizes emancipation if "for good cause shown, it is in the best interest of either or both parties." Id. § 46b-150b(4). The minor may be living independently with or without parental consent. Id. § 46b-150b(3). The minor or the parent alone can file for emancipation. Id. § 46b-150. Similarly, in North Carolina the court may consider "the extent of family discord." N.C. GEN. STAT. § 7A-721(5) (1989). And in Maine a petition can be filed when a child "refuses to live in the home provided by his parents." ME. REV. STAT. ANN. tit. 15, § 3506-A(1) (West Supp. 1991).
opposition to the bill. To provide emancipated minors with a means of proving their new status, an early version of the bill had provided that the fact of emancipation would be recorded on a minor’s driver’s license. The DMV opposed “placing [any] additional information on the driver’s license that does not relate specifically to the driving privilege.” In deference to this objection, the bill was amended so that emancipated minors would receive a separate emancipation card, identical in appearance to a driver’s license, from the DMV.

The DMV also expressed concern with the expense of processing declarations of emancipation into its computer system, despite the Department of Finance assessment of costs to the DMV as “unknown although they should be minor.” Potential costs were also noted by the Department of Finance which expressed concern that the petitions could “increase[] workload for the superior courts.” The Department admitted, however, that this would occur only if emancipation were used so widely that additional judges were required. Although the Finance staff believed the number of petitions could be significantly more than the 200 a year predicted by Senator Behr’s office, it conceded that the costs to the superior courts, like those to the DMV, were “unknown.” Eventually, both the Department of Finance and the DMV recommended the bill, and in its final form “there [was] no known opposition to the bill.”

74. The Act would “provide an emancipated minor with documentation of that fact, which will aid the individual and other persons doing business with the individual in verifying the legality of transactions.” CALIFORNIA HIGHWAY PATROL, REPORT ON ENROLLED SB 1473, at 2 (1978).

75. Letter from Leonard M. Bleier, Legislative Liaison Officer, Cal. Dep’t of Motor Vehicles, to Senator Peter Behr 1 (Apr. 18, 1978) (on file with the University of Michigan Journal of Law Reform).

76. LEGISLATIVE ANALYST, ANALYSIS OF SENATE BILL NO. 1473 AS AMENDED IN ASSEMBLY (1978).

77. Letter from Leonard M. Bleier to Senator Peter Behr, supra note 75, at 1.


79. Id.

80. Id.

81. Id.

82. DEPARTMENT OF HEALTH AND WELFARE, REPORT ON ENROLLED SB 1473, at 1 (1978). There was one piece of postenactment opposition. The District Attorney of Sacramento County complained that the Emancipation Act had “gotten] through without anyone being aware of its existence or significance.” His main concern was that the Act violated the spirit of Proposition 13, California’s voters’ tax reform referendum, by encouraging welfare dependence by “permit[ting] a parent to place
passed, was signed by Governor Jerry Brown, and went into effect on January 1, 1979.83

B. Purpose and Procedure

1. Content—The Act establishes three categories of emancipated minors. The first two, married minors and minors on active duty in the armed forces,84 codify existing and traditional common law. The third category are minors emancipated under the Act’s new procedures.85 All three categories are premised on a social status inconsistent with parental control.

Whether the emancipation occurs by reason of marriage, enlistment, or petition, its consequences are the same.86 A Declaration of Emancipation entitles the minor to be treated as an adult for the following purposes: consenting to medical...
care; entering contracts; suing and being sued; ending parental support; controlling earnings; establishing a residence; dealing in real property; obtaining a work permit; ending parental vicarious liability; enrolling in school; owning stock; buying insurance; making a will or an estate plan; creating or revoking a trust; and authorizing other probate and estate-related activities. 87

Certain of these acts, such as suing (particularly one's parents) and taking control of earnings (particularly from one's parents), codified the kinds of protections typically sought in the earlier, single-purpose, judicial emancipations. Others, such as consenting to medical care, broadened certain rights already granted to unemancipated minors in other code sections. For example, while an unemancipated minor in California could consent to birth control services without parental permission, 88 her authority to make health care decisions was not coextensive with an adult's. She could not, for example, consent to an abortion without parental involvement. 89 Emancipation is thus one method, if a drastic one, to overcome limitations on a minor's medical decision-making authority.

By consolidating, codifying, and extending authority, emancipation removes a fairly comprehensive bundle of civil disabilities based on minority. Its purpose is to enable emancipated minors to function as adults in the central avenues of daily life without parental consent, notification, or participation. 90 To be sure, emancipated minors are not

87. CAL. CIV. CODE §§ 63, 63.1, 63.2 (West 1982 & Supp. 1992). As the California Law Revision Commission explained in recommending the additions, "[t]he existing rule precluding an emancipated minor from making a will is particularly undesirable . . . where a minor becomes emancipated as a result of a valid marriage." CALIFORNIA LAW REVISION COMMISSION, RECOMMENDATION RELATING TO EMANCIPATED MINORS 188 (1982). In such a case, the minor's spouse would take the estate only if a long list of immediate blood relatives had predeceased. Id.


89. Id.

90. The states differ in the degree to which emancipated minors are freed from such ties to parents. In Oregon, for example, emancipated minors are not given the power to obtain work permits and driver's licenses without parental consent, two areas closely related to the ability to support oneself. See OR. REV. STAT. § 109.555(1), (2) (1987). One commentator, alert to the familial tensions commonly underlying the emancipation decision, was concerned with the possibility that parents might withhold such consent. "[W]here the parent-child relationship is strained before emancipation, . . . it is unrealistic to expect that a child will be able to obtain consent to work from a parent, and without a work permit it is unlikely that an emancipated child will be able to remain self-sufficient for long." Karen M. Holt, Recent Developments,
completely adults. The Enrolled Bill Report emphasized that "[b]y limiting the list to these [eleven] purposes, several other provisions of law treating such persons as minors would continue."91 Emancipated minors who commit criminal acts, for example, remain within juvenile court jurisdiction, a limitation which surprised and disappointed several minors in the present study.92 Minority status is also officially retained for purposes of school attendance laws, laws restricting the purchase and possession of alcohol, and application of certain child labor laws.93 Nevertheless, taken in its entirety, statutory emancipation recognizes substantial autonomy in spheres both economic (ownership rights, contractual capacity) and familial (ending parental duties of support control).

2. Process—The minor begins the emancipation process by filing a "Petition for Declaration of Emancipation of Minor" with the superior court in the county where he or she resides.94 A filing fee (of between $100 and $140 in the Bay Area Counties) must accompany the petition unless the court waives the fee.95 On the Petition the minor verifies the four

---

Emancipation: New Legislation for Oregon's Children, 57 OR. L. REV. 573, 576 (1978). Our findings suggest this is an unlikely outcome. Rather than thwart the child's ability to live independently, parents seem willing to facilitate emancipation. See infra notes 160, 175–79 and accompanying text.

91. DEPARTMENT OF HEALTH AND WELFARE, REPORT ON ENROLLED SB 1473, at 3 (1978). But see Gore v. Stowe, 231 Cal. Rptr. 492 (Ct. App. 1986). Gore was emancipated at age 17. Two weeks later she was hit by a car. She did not bring an action until 15 months after the accident, three months after the statute of limitations had expired. Gore argued that she could still claim the disability of minority, tolling the statute of limitations until she was 18 years of age. The court disagreed: "[Emancipation] removes the disability of minority for the purposes stated in the Act, but it also burdens the emancipated minor with new disabilities, which he shares with other adults. These include being subject to the statute of limitations when filing a lawsuit." Id. at 494.

92. See infra notes 136, 146–48 and accompanying text. The only juvenile court jurisdiction removed by the Act other than that for status offenses is that based on abuse and neglect. See CAL. CIV. CODE § 63(c) (West Supp. 1992).

93. DEPARTMENT OF HEALTH AND WELFARE, REPORT ON ENROLLED SB 1473, at 3 (1978).

94. CAL. CIV. CODE § 64(a) (West 1982). Identifying the county of residence is sometimes manipulated by canny minors or their advisors. For example, a minor living in a county where declarations of emancipation are infrequently given, such as San Francisco County, may file and claim residence with his parents in a county where emancipations are more liberally granted. Indeed, attorneys aware of this study have called the first author to ask whether one or another county would be more advantageous for purposes of obtaining an emancipation.

95. Telephone Interview with Shannan Wilbur, Director, Legal Advocates for Children and Youth of Santa Clara County (March 20, 1992). In San Mateo County the filing fee is $118 and in Santa Clara County, $127. LEGAL SERVICES FOR CHILDREN, INC., EMANCIPATION MANUAL 66 app. C at 68 (1991) [hereinafter EMANCIPATION MANUAL].
statutory prerequisites: being at least fourteen,\(^96\) willingly living apart from one’s parents with their consent or acquiescence,\(^97\) managing one’s own financial affairs,\(^98\) and having an income not derived from criminal activities.\(^99\) Finally, the minor affirms on the petition that emancipation “would not be contrary to my best interests.”\(^100\)

Parental involvement is required only to the extent that parents must be given notice of the petition before it is heard.\(^101\) By signing a separate section of the petition, parents, however, may waive their right to further notice and consent to the emancipation without a hearing.\(^102\) Notice to parents also can be excused for a reason set out by the minor, most commonly that the parents’ address is unknown.\(^103\)

Once satisfied that notice to parents or guardians has been given, waived, or excused, the court may issue the declaration of emancipation if it finds that the minor has met the four statutory requirements and that “emancipation would not be contrary to the best interests of the minor.”\(^104\) The court may decide the statutory issues on the basis of the petition alone; no evidentiary hearing or probation department report


\(^97\) CAL. CIV. CODE § 64(a)(2) (West 1982). The term “acquiescence” was included in the legislation to cover cases where the minor had moved out and, while the parents had not exactly consented, they had made no effort to have the child return home. Interview with Peter Bull, supra note 42. A parent who refuses to let the teenager live outside the family home can, in effect, prevent an emancipation by thwarting one of its required conditions.

\(^98\) CAL. CIV. CODE § 64(a)(3) (West 1982).

\(^99\) Id. § 64(a)(4).

\(^100\) Id. app. § 64.

\(^101\) Id. § 64(b).

\(^102\) Id. app. § 64.

\(^103\) Id. § 64(b).

\(^104\) Id. § 64(c). If the court denies the petition, the minor can petition for a writ of mandate. Id. § 64(e). If the court approves a petition over the opposition of parents, the parents may petition for a writ of mandate. Id. § 64(f).
is required by the statute. After the judge signs the declaration, the newly emancipated minor applies to the DMV for a special identification card to use as proof of emancipation.

The California emancipation process relies on three assumptions. It assumes that emancipation is legitimizing, child-initiated, and nonadversarial.

a. Legitimizing—Emancipation was intended to conform a minor’s legal status to his actual independence. The statute states that the process was enacted so that “emancipated minors can obtain an official declaration of their status,” a status predicated on the minor’s “liv[ing] separate and apart” from parents and “managing his or her own financial affairs.” Thus legal emancipation was intended to recognize and validate, but not to create, physical and financial independence between minor and parents.

b. Child-initiated—In California only a minor—not parents or the state—can petition for emancipation. The restriction has procedural and substantive importance. First, the minor alone initiates the formal process. To facilitate this, the Legislature instructed that emancipation proceedings “be as simple and inexpensive as possible” and asked the Judicial Council “to prepare ... appropriate forms ... suitable for use by minors acting as their own counsel.”

105. Id. § 64(c). Compare this with the emancipation statute of Virginia, which provides that the court may require a social service investigation and report. VA. CODE ANN. § 16.1-332 (Michie 1988).

The failure to authorize social service reporting as a required part of the California process was deliberate. The attorneys who drafted the legislation disapproved of the San Francisco Probation Department’s treatment of minors with regard to other juvenile proceedings. They intended the emancipation process to work unimpeded by a hostile agency. Interview with Peter Bull, supra note 42.

106. CAL. CIV. CODE § 64(d) (West 1982); Bull, supra note 10, at 251. The DMV then registers the emancipation in its law enforcement computer network.

107. See supra notes 55–60 and accompanying text.


109. Id. § 64(a).

110. See id. § 64. Not all states follow this approach. In several states, legal emancipation can create or authorize the physical independence of a minor. In Indiana, for example, a child can be emancipated who “wishes to be free from parental control and protection.” IND. CODE ANN. § 31-6-4-16 (West 1979) (emphasis added). In such states the requirements for emancipation are future-oriented; the child must have “an acceptable plan for independent living,” rather than declare or prove such independence already exists. See id.

111. CAL. CIV. CODE § 64(a) (West 1982). In contrast, Connecticut authorizes either the minor or parent or guardian to petition for a determination of emancipation. CONN. GEN. STAT. ANN. § 46b-150 (West 1986).

112. CAL. CIV. CODE § 70 (West 1982).
The Judicial Council complied, and like the old Castro convertible couches, emancipation was made "so easy, even a child can do it." The Petition requires the minor to write his name, address, county, and the date he began living in the county. The rest of the form, except for the minor's signature, is completed by checking boxes.

The second aspect of the term "child-initiated" is that emancipation is for the benefit of the minor. The fact that it is the child who files, the child who is empowered by the statute, makes this not merely a procedural rule. It conveys something of substance: that emancipation is initiated by the child, for the child. The idea—at least in theory—is that in deciding to become emancipated, the minor's interests will be uppermost in his mind and his interests therefore will dominate the proceedings.

c. Nonadversarial—Emancipation is a nonadversarial process. It appears overtly uncontentious. The minor files a petition, not a complaint. No lawyers are required. If the petition is signed by both parents and the child, no hearing is required. While parents may oppose the proposed emancipation, they rarely do. In our study parents had signed, and thus consented to, each of ninety petitions filed over a two-year period. These numbers seem to support the notion that emancipation reflects a mutual, cooperative decision agreed to by parents and teenager.

So much for legislative intentions. The next section examines the extent to which these three intended characteristics of the emancipation process—legitimizing, child-initiated, and nonadversarial—are reflected in real life. The section examines the ways in which the emancipation process actually is implemented by courts and the ways it is experienced by minors.

II. THE STUDY

The immediate purpose of this study was to understand the operation of the statutory emancipation process in people's lives. Because only skeletal demographic information—
petitioner's age, address, and the parents' address—is available from the petitions themselves, and because no written decisions or memoranda accompany the court's declarations, information about why minors become emancipated seemed most sensibly obtained by talking to the minors themselves. This section first describes the study's design and methodology. Particular attention is given to problems encountered and tactical decisions made on such practical matters as choosing jurisdictions and locating members of a highly mobile class of subjects.

Part B presents our central findings. The data are organized around the trio of characteristics introduced earlier: emancipation as legitimizing, child-initiated, and nonadversarial. It suggests that in few cases do these characteristics accurately describe the process of emancipation as experienced by the minors interviewed. To be sure, in some cases emancipation was chosen by the kind of independent, capable teenagers originally envisioned by the drafters. In these cases, emancipation advanced the minors' interests by making the negotiation of independent life easier. But while some minors—four out of eighteen—were doing very well, other participants were not, their lives marked by a precarious dependence on welfare and nonparental adults for income, housing, and emotional support.

A. Methodology and Design

1. Selecting the Jurisdiction—Strategies for locating participants began in the courthouses of six counties in the San Francisco Bay Area. The authors made initial investigations in San Francisco, San Mateo, Santa Clara, Alameda, Santa Cruz, and Napa Counties. The investigations began with a "walk-through" of the different courthouses as we sought to replicate the steps a minor seeking emancipation would follow: Where are the forms? Who do you ask to find out? What do you do with completed forms? We also investigated the availability of emancipation files in each of the six counties. The information in this section is drawn from these early investigations.

To begin with, disparities in the availability of records uncovered during the initial archival phase revealed wide
differences in procedures among the counties, differences that resulted in significant variations in the numbers of emancipation petitions filed and the numbers granted. Comparisons of several Bay Area counties illustrate the connections between emancipation procedure and its availability. An initial problem, the confidentiality of emancipation records, relates both to practical access to files and to conceptual tension regarding the status of emancipated minors. Is an emancipated minor a child or an adult for purposes of privacy of records? In San Francisco County, emancipation petitions are considered confidential juvenile records, available only upon court order. In contrast, most other counties include emancipation records among all other publicly available civil pleadings.

The counties also differed in their implementation of the emancipation process. San Francisco County has consolidated most county services for children in one location, the Youth Guidance Center. The Center is physically separate and distant from City Hall where all other non-juvenile courts and court services are. Until the San Francisco procedures were recently changed, a minor seeking emancipation who could find her way to the Youth Guidance Center was referred by the clerk there to a social worker who interviewed, advised, and screened the minor for "suitability," something different from eligibility. The minor was informed that the court in San Francisco required a probation department report on her life situation and that petitions were rarely granted. Few minors continued the process after the interview with the social worker. The few petitions that were filed were assigned to the Family Law Division of the Superior Court.

115. A second technical problem was literally finding the emancipation petitions within the filing systems of the various courts. In Alameda County, for example, emancipation petitions are not distinguished by case caption or in any other way from other civil pleadings. Because finding emancipation petitions in Alameda would have required looking at every civil filing, we abandoned the county. In other counties, emancipations were designated by an "E" as part of a civil action number. This made locating emancipation petition file numbers somewhat easier; once the civil action numbers were identified the files could be pulled. In only two of the six Bay Area counties were the pleadings computerized. While this system would have made the archival work simpler, these counties were geographically distant, and would have made finding and traveling to the minors more expensive and time-consuming.

116. The process described here was in effect at the time our data were collected.

117. One source of referral to the Youth Guidance Center was Legal Services for Children, a public interest law firm representing children.
In Santa Clara County, by contrast, emancipation petitions are available from the regular office of the clerk of the court along with all other standard legal forms. At the time of this study, minors were not screened, interviewed, advised, or referred to any other agency or department; they simply were handed the forms. The petitions were assigned to the Law and Motion calendar, the division of the Superior Court which rules on all civil pre-trial motions. Petitions were calendared immediately and generally heard within a week of filing.

As a result of these differing procedures, five petitions for emancipation were filed in San Francisco County between 1981 and 1986; three were granted. The probation reports filed on the three successful minors made clear that they exceeded the minimum requirements of the statute. In Santa Clara County, on the other hand, thirty petitions for emancipation were filed in 1985 alone; all were granted.

The disparity in the number of emancipations granted in neighboring counties might indicate varying demands for emancipation from county to county. But over one-third of all calls received by Legal Services for Children in San Francisco are from teenagers from the Bay Area wanting to know how to become emancipated. This suggests an even greater demand for emancipation in San Francisco and the surrounding areas. The needs of counties also may explain the differences in volume and outcome. The San Francisco model, for example, worked as a disincentive to prevent the already attractive city from becoming an even greater lure to runaway children, who then may require public shelter and other services. Because emancipated minors cannot be returned to their parents, the city cannot seek parental reimbursement for their care in already crowded shelters.

---

118. Even this more open system requires some degree of savvy or persistence. Most of the courthouses we visited had signs above clerks' counters indicating which forms were available from which counter (Divorce, Real Estate, Name Change). None listed Emancipation.

119. The principal difference now is that the clerk requires the signatures of the parents to be notarized. EMANCIPATION MANUAL, supra note 95, at 68-69.

120. Emancipation proceedings have since been moved from Law and Motion to Probate in Santa Clara County. Interview with Judge Donald Clark, Law and Motion Division, in Santa Clara, Cal. (Mar. 20, 1992).

121. The petitions were obtained through a court order authorizing their release for research purposes.

122. Interview with Marta Vides, former Managing Attorney, Legal Services for Children, in San Francisco, Cal. (Mar. 16, 1988); Telephone Interview with Shannan Wilbur, supra note 95.

123. See CAL. CIV. CODE § 63(c) (West Supp. 1992).
Issues regarding the impact of comparative implementation practices are intriguing and must be considered for a more complete understanding of the emancipation process. We chose, however, in this phase of our investigation, to focus on counties in which access to the emancipation process was open; that is, where no additional requirements such as screening interviews or probation reports are added to those provided for in the statute. In these counties, the factors inspiring decisions to petition for emancipation had maximum opportunity to operate and thus could be more easily observed.\textsuperscript{124} We selected Santa Clara and San Mateo Counties, jurisdictions in which emancipation petitions were granted as a matter of course.

2. Locating Participants—After obtaining the ninety petitions, we began an extensive, systematic process to find the petitioners. We first sent a letter describing the study and requesting a confidential interview to each minor at his or her custodial parent's address as stated in the petition.\textsuperscript{125} A few days after the letters were mailed, the project interviewer, a savvy young woman who was a licensed marriage and family counselor and a third-year law student, telephoned each minor at the phone number listed on the petition. If the interviewer learned that the minor was no longer at that number, she next called either the number given to her by the person who answered the initial call or called the parents' home telephone number. If the minor was not available at the second telephoned location, the interviewer asked for another number at which the minor might be reached—a work phone, a friend's house, or a new number, and this process of telephoning continued until either she made contact or ran out of suggestions and still was unable to find the minor.

From the ninety petitions filed in a two-year period, we located eighteen minors. The relatively small number of

\textsuperscript{124} The counties also are similar in demographic factors. \textit{The Stanford Center for the Study of Families, Children, and Youth, The Stanford Studies of Homeless Families, Children, and Youth} 11, fig. 3 (1991) [hereinafter \textit{The Stanford Studies}].

\textsuperscript{125} Our decision to contact the child rather than the parent was based on pilot interviews where the hint of tension between adolescent and parents suggested that the minors might not participate if parents were identified as "on our side." The letter sent to each minor is attached as Appendix A. If the letter was returned or no response was received within 10 days, a similar letter was sent to the minor's parent(s), which described briefly our research interest and requested their child's new address. There were no responses to these second mailings.
minors located was disappointing but no surprise. 126 Fifteen letters sent to the parents' addresses were returned to us unopened, and a few had hostile comments written on the outside ("Wouldn't tell you where he is if I knew"). From the information available from the petitions, we know that the minors we could not find mirrored the same ratio of girls to boys and were of the same median age as the minors interviewed. We also know that the interview participants were the most locatable among the petitioners. It therefore may be reasonable to assume that those interviewed were better off because they at least had sufficient connection to the community to have a network of friends, family, or co-workers who knew their telephone numbers or addresses.

While the number of participants located was small, every minor contacted agreed to participate. The low ratio of minors interviewed to petitions filed may reflect the difficulty in locating these minors, but it does not reflect difficulty in obtaining cooperation. 127 Moreover, despite the small size of the sample, a number of steady themes emerged from the stories told.

3. The Interviews—During the initial telephone conversation with the minor the interviewer reviewed our general research interests and requested an appointment for an hour-long, taped interview. She explained that the tape would not be given to anyone other than research staff and that the minor would not be identified in any report of the research. 128 All eighteen minors contacted made and kept interview appointments.

The actual interviews were held in two kinds of locations, either the minor's room or apartment or, more frequently, a relatively quiet corner of a nearby fast-food restaurant—Denny's


127. When the searches reached dead ends it was never because someone refused to come to the phone but because the trail to the person had ended. If we had been able to offer a $25 stipend for participating in the interview, perhaps the response would have increased. We doubt this is the case, although we wish we had been able to pay the participants something for their time.

128. In this Article the minors have been assigned and are referred to by fictitious first names. Transcripts of the interviews are on file with the University of Michigan Journal of Law Reform.
in San Jose was the favorite. Prior to the formal interview, the interviewer again explained the procedure for audiotaping, for transcribing, and for maintaining confidentiality. These provisions were summarized in an informed consent form which all the participants signed. In addition to taping the discussions, the interviewer made notes of nonverbal behavior, such as crying or laughter.

Each interview lasted between one and two hours. The interviewer followed a semi-structured interview procedure, working from a specific set of questions arranged in a sequence. When the respondents' conversation moved spontaneously to a later topic or when the interviewer judged it advantageous for rapport, she varied the order of questions. She also gave encouraging responses and made small talk as needed to maintain a comfortable atmosphere with each participant.

Due to the nature of the experiences discussed, many participants became unsettled during the interviews. Three cried. In each such case, the interviewer spent considerable time with the tape recorder turned off in order to help the participant regain emotional control. In several instances, she referred participants to places where they could find free counseling services, health care, or support groups. At the end of each interview, the interviewer continued talking with the participant to restore a friendly but less intimate atmosphere. She reminded all participants of her phone number on their consent form and invited them to call if they had any questions or concerns. None of the participants contacted the interviewer after the interview.

The interview questions covered five general areas: (1) the minor's decision to seek emancipation (learning about and choosing emancipation); (2) the emancipation process itself (logistics and other details of becoming emancipated such as getting forms, paying the fee, getting to court, and seeing the judge); (3) the family climate before and at the time of emancipation, including the extent and management of conflict, communication patterns, and emotional and practical support for the minor; (4) the consequences of emancipation for the minor; and (5) the minor's evaluation of the legal process.129

129. The question guide is found at Appendix B. The interview transcripts were coded by Eleanor Willemsen and her research assistant Lane Scott. Dr. Willemsen is a psychology professor with training and extensive experience in interview-based
B. Findings

1. Description of Participants and Their Families—Eighteen minors, eleven girls and seven boys, were interviewed. This ratio mirrored the ratio of girls to boys in the larger group of ninety. The minors' ages at the time of filing for emancipation ranged from fifteen to seventeen, although most were close to their seventeenth birthdays. With the exception of one Pakistani immigrant, the participants were white. The socioeconomic status of the participants' parents ranged from very poor (one was a single, nonworking mother) to affluent (dual professional couples). Eight fathers (whether custodial or not) had work requiring a college degree and ten had work of a blue-collar or shopkeeping nature. The parents of twelve participants were

research. Mr. Scott was a senior honors student in psychology trained by Dr. Willemsen. A coding booklet permitted the coders to summarize the data in the interviews with respect to a number of variables ranging from factual information (e.g., age, parents' marital status, people living in the family home) to presence-absence categories to five-point ratings representing coder inferences. The two coders first coded each transcript separately and then met to discuss it. Agreement between the two was excellent (varying between 15 and 18 agreements for cases) for both factual matters and for variables involving small numbers of categories. For the latter variables, disagreements were used as the basis for revising the rating scales and recoding. Eventually each participant was assigned a category or score for each coded variable which represented either the consensus of the two coders after conference (categorical variables) or the average of the two coders' ratings after the second round of coding (quantitative variables). Summary statistics are based on these final consensus scores. The six broad categories for coded variables mirrored the six general question area categories.

130. In addition to the 18 minors interviewed, we include information concerning the highly publicized emancipation of Tiffany, a "pop music mini-star" created by agents who decided that the "millions of young and pre-teen girls who stalk the nation's shopping malls had no role model younger than Madonna, now 29." Dennis McDougal, Tiffany: The $5-Million Star of Stage and Court, L.A. TIMES, June 12, 1988 (Calendar) at 6, 7. While Tiffany's case appeared more glamorous and dramatic because it was formally opposed by her mother, the issues of parental control and authority underlying her emancipation were not unlike those of the more ordinary minors we studied. Emancipation may be of particular use to professional children who are more likely to have independent incomes. For example, at age 15, actress Juliette Lewis "went to court to be designated in legal terms, an emancipated minor so she could get her own apartment in Hollywood and devote herself to full time acting." Sara Rimer, The Lonely Lolita of 'Cape Fear,' N.Y. TIMES, Nov. 24, 1991, § 2, at 13.

131. This was also the most common age of the petitioners we were unable to find.

132. The racial demography of Santa Clara and San Mateo Counties is 70% non-Hispanic White; 20% Hispanic; 4% African-American; and 6% other. THE STANFORD STUDIES, supra note 124, at 11, fig. 3.
divorced and one participant had a widowed mother. Five participants had at least one remarried parent. All of the participants with divorced but not remarried parents had at least one parent with what the minor referred to as a boyfriend or girlfriend. Two girls were adopted. At least one-third of the participants had lived away from home—in foster care, with friends, in juvenile hall, in a park—at least once prior to the departure associated with emancipation. Of these, four had lived away from home two or more times before emancipation.

Fourteen of the eighteen had dropped out of high school as a consequence of becoming emancipated; one of these later received a high school equivalency certificate. Five had jobs at the time of the interview; the rest were unemployed. The minors had a variety of living arrangements, with spouses, friends, in-laws, and relatives, including parents. One woman was receiving welfare. One of the participants told us of his arrest record. Two girls reported sexual abuse, one by a stepfather, the other by a cousin. Three of the eleven girls were either pregnant or had had a child prior to their emancipations.

2. The Decision to Become Emancipated—As discussed earlier, the emancipation process is intended to be child-initiated in both letter and spirit. Granting this authority to teenagers is not just a technicality. Like other legal procedures that give rights to one party and not to another, designating the minor as petitioner evinces a confidence in his independent judgment. It assumes that the minor wants to be emancipated, that he has calculated emancipation to be advantageous to him.

The interview data challenge the operation of this principle by revealing an unexpected level of adult participation in almost all aspects of the decision-making process. While a majority of the minors (thirteen out of eighteen) stated that the decision to become emancipated was theirs, the data presented in this section suggest that their responses are qualified by later statements concerning how they found out about emancipation, why they did it, and how they went about it.

133. One minor reported that she had been kicked out of the house because "my stepfather and I got into an argument. So I ended up living in a park for three days and a friend of mine offered me, if I'd be willing to share a motel room and I said yeah. That way I could shower." Interview with Jane 1.

134. This was the only emancipated minor of the 90 files studied whose petition was rescinded. The grounds for the rescission were her receipt of public assistance.
a. Initial Information about Emancipation—Two-thirds of the participants reported that they learned about emancipation from adults. The adults included parents and step-parents, boyfriends, teachers, counselors, social workers, probation officers, and police. One participant learned about emancipation from a movie; another knew about it “just from general knowledge, reading the paper, things like that.”

Police or corrections personnel were the source of emancipation information in several instances. One officer recommended emancipation to a minor who was already under arrest and eager to avoid further dealings with the juvenile court. Another participant called the police to report that her mother’s boyfriend had hit her; the responding officer suggested that:

I might consider becoming emancipated, and I said, “Well, what’s that?” And he explained that I would be able to live my own life; my mother wouldn’t, you know, wouldn’t be in charge. And I don’t know, it seemed like a good idea.

Other adults “in the system,” such as school or group home counselors, sometimes initiated the idea of emancipation. For example, one participant whose residence with a friend made her ineligible for school attendance in her school district explained that:

One of my counselors at school suggested [emancipation]. Said that it needed to be done in order to stay in school.

135. Interview with Brian 1.
136. The officer’s information was wrong; emancipation does not promote a minor out of the juvenile justice system. See supra note 10. We focus here not on the accuracy of what participants were told about emancipation, but rather on who provided the information.
137. Interview with Judy 1. The girl did not press charges against her mother’s boyfriend because “I decided that I better not because I did have a little brother and the officer said that he would probably be put in a foster home temporarily. But I did file a report in case it ever happened again.” Id. at 5.
138. Interview with Ann 1. Unfortunately, “by the time it [emancipation] was finally able to be done, I had dropped out by then.” Id.
Several others learned about emancipation from counselors while living at the Bill Wilson Youth Center, a residential center in San Jose.\textsuperscript{139}

But parents were the primary source of emancipation information. We learned this not only from the interviews, but also from Legal Services for Children.\textsuperscript{140} Legal Services for Children estimated that nearly half the calls they receive for information about emancipation come from parents wanting to know how to go about emancipating their teenagers.\textsuperscript{141}

\textit{b. Reasons for Becoming Emancipated—}The concept of a child-initiated process is not necessarily contradicted by the fact that most of the participants initially learned about emancipation from adults. Along with television and peers, adults are a major source of information for teenagers. Many of the adults introduced the idea of emancipation as a possible solution to a variety of problems faced by the minors such as school residency requirements, stopping domestic violence, moving out of a tense family situation, or getting a scholarship. But not all motivations for becoming emancipated were child-centered. In addition to removing obstacles imposed by the state on account of minority, minors' reasons for seeking emancipation fell into two other categories: freedom from parental control and meeting a range of parental objectives.

\begin{enumerate}
\item[(1)] \textit{Removing Legal Obstacles—}The removal of the legal disabilities caused by minority was the category minors mentioned most frequently. This was exactly the kind of problem the California legislature sought to cure in passing the Emancipation of Minors Act in the first place: minors acting as adults should not be limited by a legal status they have outgrown.\textsuperscript{142} Two of the participants, both male, fit this prototype exactly. The first, who worked as a strutter operator, was absolutely clear why he became emancipated:

At the job they were going to go to twelve hour shifts and nobody under seventeen can work twelve hour shifts by

\end{enumerate}

\begin{footnotes}
\item[139.] Many status offenders are placed at the Bill Wilson Center. The overlap in populations between status offenders and emancipated minors is developed further infra notes 347–53 and accompanying text.
\item[140.] Telephone Interview with Chris Wu, Director, Legal Services for Children (March 27, 1992).
\item[141.] \textit{Id.}
\item[142.] \textit{See supra} notes 57–61 and accompanying text.
\end{footnotes}
law, so I got emancipated to work those hours. . . . That was the only reason I got emancipated. 143

The second young man, aged seventeen, was in a business partnership with a forty-two-year-old man. His reasons for becoming emancipated were also clear-cut:

No one really recommended [emancipation], it was me, I needed to legally make a contract or any kind of business, I needed to be eighteen. And I was going into business at seventeen and that isn't really legal. My signature wasn't binding, [the decision] was more of a technicality of business. . . .

. . . Going into business, getting my driver's license, and all these things that took binding signature and the fact that at the time I lived quite a ways from my parents, like an hour, it's far, especially on a business day, and I had a hard time catching them. And a lot of times it is inconvenient to go and get a form from somewhere, drive across town and get it signed and get back. 144

In addition to removing restrictions on working and contracting, emancipation also removes time and place restrictions on a minor's whereabouts. Being stopped by the police for a curfew violation was the triggering event for one participant, who was then living alone in an apartment with his parents' permission. He recalled,

I guess [the police officer] tried to say I was a runaway or something. . . . [I]t was late at night, it was far after curfew. I go, you can call my parents but they aren't going to be too happy about it. 145

In many cases, the kinds of legal disabilities the participants sought to remove were not in fact cured by emancipation. Two disappointments prevailed. The first was emancipation's failure to remove the minor from juvenile court jurisdiction. While an emancipated minor is not subject to the juvenile

143. Interview with Tim 1.
144. Interview with Brendan 1, 12.
145. Interview with Brian 18.
court for status offenses, juvenile court jurisdiction is retained for criminal offenses.\textsuperscript{146} Many of the participants were quite annoyed by this exception:

[L]ike I told you before, the main thing I was trying to protect myself by getting emancipated, in case I get arrested I don’t want . . . to have to go back and put up with this juvenile bullshit anymore.\textsuperscript{147}

* * * *

Well, in my opinion being an emancipated minor meant instead of going to juvie, you would go to jail.\textsuperscript{148}

Perceived disadvantages of “juvie” or juvenile hall included the inability to be released on bail and the unfairness of being treated as a juvenile for purposes of incarceration, but not for liability for medical expenses incurred while incarcerated.

The second common misunderstanding concerned the ability to get a driver’s license without a parent’s signature. The purpose of the parental signature is to make parents liable for the negligent driving of their children. The Emancipation Act provides that emancipated minors shall be treated as adults “for the purpose of ending all vicarious liability” of their parents.\textsuperscript{149} There is, however, an important exception: “[N]othing in this section shall affect any liability of a parent . . . imposed by the Vehicle Code, or any vicarious liability which arises from an agency relationship.”\textsuperscript{150} The Vehicle Code states that whoever signs the minor’s license application shares liability for the minor’s negligence in driving.\textsuperscript{151} Thus, an emancipated minor can obtain a license without an additional adult signature so long as she files proof of her ability to respond in damages, in most cases proof of insurance.\textsuperscript{152} The result of all this is that minors can obtain

\textsuperscript{146} As in most other states, minors in California may be tried as adults depending on the severity of the crime committed, but not by virtue of their emancipation. See \textit{CAL. WELF. \& INST. CODE} § 707 (West 1984 & Supp. 1992).

\textsuperscript{147} Interview with Jake 16–17.

\textsuperscript{148} Interview with Vicki 3.

\textsuperscript{149} \textit{CAL. CIV. CODE} § 63(h) (West Supp. 1992).

\textsuperscript{150} \textit{Id.}

\textsuperscript{151} \textit{CAL. VEH. CODE} § 17707 (West 1971).

\textsuperscript{152} \textit{CAL. VEH. CODE} §§ 16430–16436 (West Supp. 1992) (stating that proof of ability to respond in damages can be given by certificates of insurance, by bond, by deposit of money, and by proof of self-insurance).
driver's licenses "on their own" only if they can afford their own insurance. This was not understood by and not likely for most of the teenagers in our sample.\textsuperscript{153}

A final misunderstanding about emancipation was that two participants thought they would be able to tend bar after emancipation. This also was in error.\textsuperscript{154}

(2) Freedom from Parental Control—Nearly all the minors saw emancipation as a road to independence from parental control:

Emancipation to me meant freedom, freedom from authority, freedom to do what you want, support yourself. After I had been emancipated that is when I started learning all the little, you know, all the pros and cons of it.\textsuperscript{155}

* * *

I: [Why did you want to be emancipated?]
J: ... I didn’t get along with my parents too well and I was more independent than they wanted me to be. I basically wanted more freedom. And we didn’t get along too well together.\textsuperscript{156}

Minors wanted "freedom" from parental rules on such issues as staying out late, taking drugs, wearing make-up,\textsuperscript{157} smoking, and driving. As the following exchange suggests,

\textsuperscript{153} There are two other ways the Vehicle Code holds parents of emancipated minors vicariously liable. First, a parent who has signed for an unemancipated child remains liable after the emancipation. See CAL. CIV. CODE § 63(h) (West Supp. 1992); CAL. VEH. CODE §§ 17707–17708 (West 1971); see also Easterly v. Cook, 35 P.2d 164, 167 (Cal. Ct. App. 1934). Second, liability remains under an agency theory when the minor is driving on the parents' behalf. See CAL. VEH. CODE § 17708 (West 1971). The court found agency—and liability—in a case where the minor drove her parents' car while shopping for clothes for a sister. See Johnson v. Peterson, 113 Cal. Rptr. 445, 447 (1974).

\textsuperscript{154} See CAL. BUS. & PROF. CODE § 25667 (West 1985) (limiting even persons between 18 and 21 to serving alcoholic drinks to customers only when "such person is not acting in the capacity of a bartender and the service occurs in an area primarily designed and used for the sale and service of food").

\textsuperscript{155} Interview with Courtney 2.

\textsuperscript{156} Interview with Jane 1.

\textsuperscript{157} See Interview with Andre 4 ("People would always tell me don’t do drugs you know, don’t do drugs any more don’t pierce your ears anymore or don’t wear make-up, or cut your hair, stop dying it.").
minors sometimes described their own (objectively worrisome) behavior in ways that presented parental objection as unreasonable:

I: How many times did you run away . . . ?
J: It's not just running away, just leaving the situation for the moment, for the night.
I: So it was just for the night?
J: Yeah. But it always recurred.\textsuperscript{158}

(3) Meeting Parental Objectives—Emancipation seemed like a good idea to many of the minors because it met the needs of the adults suggesting it. For example, the adult boyfriend of one minor had urged her emancipation:

I: [Why did your boyfriend want you to get emancipated?]
C: For him, so he doesn't have to worry about me taking him. If I were to get upset with him one day and press statutory rape charges and I had the power to do that. Also known as jail bait.\textsuperscript{159}

In most cases parents, not boyfriends, were the significant adult players urging the emancipation. Emancipation served parental interests or needs in several ways. These needs were sometimes stated by parents explicitly and sometimes gleaned by the minors.\textsuperscript{160} In one case, emancipation resolved the issue of custody between the minor's two natural parents. After explaining that he chose emancipation because he was "getting tired of bringing in those work permits" and to get "a little more freedom at home,"\textsuperscript{161} the participant added that:

[T]here was another reason. An immediate reason for me to get emancipated. What was happening was my father, he lives in Texas, was for some reason he gave my mom the impression that he was going to try to win me in court and get custody of me. I had forgotten about that and it's

\textsuperscript{158} Interview with Jane 2–3; see also infra note 168.
\textsuperscript{159} Interview with Courtney 7. This may be another misconception; the rape statute provides no defense of emancipation. See supra note 10.
\textsuperscript{160} In five of the six cases in which there were significant adult players, parents urged emancipation.
\textsuperscript{161} Interview with Steve 1–2.
important. But... my mom came up with the idea [of emancipation], I mean I had thought about it for a while but she brought it up at that time because she thought that I might want to get emancipated and also my father wouldn’t be able to take custody of me and take me back to Texas, where he lived.\textsuperscript{162}

Conflict between adults over custody of the minor was also a factor in the publicized Tiffany emancipation. Tiffany’s mother’s opposition to the emancipation derived in substantial part from her disagreement with Tiffany’s manager over who should have custody and control over Tiffany’s career, contracts, and profits.\textsuperscript{163}

A more common concern was relief from the financial obligations of parenting. The discontinuation of child support payments following divorce is a clear example:

I: What was your dad’s goal...?
P: Just not to pay the money that he was supposed to be paying.

I: Did he ever pay it?
P: No. The only reason that he was paying it was because the county found out that he wasn’t, so they got a hold of him.

I: How long after the county caught up with him did he suggest the emancipation idea?
P: Two months... He was calling me and really bugging me about it so that’s kind of why too, I said fine, I’ll do it.\textsuperscript{164}

\textsuperscript{162} Id. at 2–3. Most of the participants listed several reasons for getting emancipated. See also infra note 173 and accompanying text.

\textsuperscript{163} McDougal, supra note 130, at 6. Tiffany’s mother explained her opposition somewhat differently, claiming that Tiffany had not done her homework in a year, could not spell words like “rehearsal,” could not calculate math percentages, threw her vitamins in the trash, and did no comparison shopping. Id. at 6, 8.

\textsuperscript{164} Interview with Phyllis 7–8. In 1991 a 17-year-old minor appeared at Legal Advocates for Children and Youth, a public interest firm representing minors in San Jose, California, asking what his “emancipation” meant. His parents had stipulated in their divorce decree that their son was emancipated so that neither of them would be liable for his support. The judge had signed the order submitted by the parents, including the emancipation stipulation; the parents then delivered it to their son. Telephone Interview with Shannan Wilbur, supra note 95.
Another minor, who was herself a mother, explained that "my dad didn’t want to get stuck with the [baby’s] bills, so I got emancipated."\(^{165}\)

The fear of liability by parents, stepparents, and parental partners for minors’ automobile accidents was mentioned as a reason to cut a child loose. As one young man explained:

[My stepfather and father recommended emancipation] for their safety reason that if I was to get in the car and hit somebody or something like that, . . . his restaurant and my step-dad’s business wouldn’t be liable for it.

. . . .

. . . I thought that I would be helping them by, you know, by them not being liable for me.\(^{166}\)

In another case, antagonism between the parent’s boyfriend and her teenaged daughter took the shape of cars and driving:

[My mom’s boyfriend] was basically glad to have me out of the house, and . . . he was saying that he was worried about my mother because I was driving my car. He was thinking that I would get in an accident and that she would get sued because I wasn’t emancipated yet. . . .

. . . .

. . . He was just trying to make up stuff that would make my mother angry towards me I guess.\(^{167}\)

Tension between the teenager and his parent’s new spouse or partner was often a factor contributing to the emancipation decision. Recall that twelve of the minors lived with parents who had remarried or had partners identified by the minors as a parent’s “boyfriend” or “girlfriend.” Triangular conflicts and loyalties were mentioned frequently. One girl described “[t]he pressure from my mom, ‘you’re making me decide between my husband and you and I don’t like that.’”\(^{168}\) Another girl,

\(^{165}\) Interview with Vicki 1.

\(^{166}\) Interview with Andre 3, 13.

\(^{167}\) Interview with Judy 9.

\(^{168}\) Interview with Jane 1. Another boy explained that “I wasn’t getting along with my stepdad, my mom was really strict about the house, like don’t wear earrings in the house, don’t wear make-up, there was just a lot of conflict . . . .” Interview with Andre 9. Andre must have been hard on everyone: “[M]y curfew was ridiculous, I had just turned 16 and my curfew was like 12 o’clock, come on!” Id. at 7.
who had been arguing with her mother's boyfriend, remembered that "[when] my mom came back from work, . . . she was on his side, which surprised me."  

Of course, the fact that a parent or stepparent is benefited by an emancipation does not necessarily undermine characterization of the emancipation decision as child-initiated. Getting out of a tension-ridden household may benefit both the departing teenager and the remaining parent. Similarly, parents may benefit financially from emancipation, whether or not they desired or encouraged their child to file a petition. For example, several minors sought emancipation in order to reduce the financial obligations of their parents in cases where there appeared to be no overt pressure from the parents to do so. One boy expressed a kind of independence morality:

My parents weren't ever responsible for me. They really weren't and it would be unfair for them to have to, you know, to be legally responsible for me because they aren't and they haven't been for a long time.

Another emancipated minor, receiving public assistance from the county for herself and her baby, was aware of parental reimbursement statutes. She explained that her mother had a new business and a new boyfriend:

I didn't want her to be stuck with paying for me when I wasn't even living with her . . . . I kind of wanted to help my mom out in a way.

As the previous discussion shows, minors' reasons for emancipation can be sorted into discrete categories. But our attempts to isolate and organize their reasons may be too orderly and may obscure what in many cases was a jumble of reasons. Most of the minors gave multiple reasons. Laura's case is an example. It combines parents, cars, liability, and

169. Interview with Judy 2.
171. Interview with Brian 4.
172. Interview with Phyllis 16.
bravado. Laura had learned about emancipation at age fifteen from a TV movie and became emancipated two years later at seventeen:

I: ... So what happened in between the time of the movie and the time [of your emancipation]? Did it just keep coming up or did you just put it away?
L: No, I had finally left home for the last time. I had run away a couple times before that and I stayed with a friend of mine. And I wanted my car back but [my parents] wanted me to have it to where they weren't responsible for it if I left it at anyone's house. So they [called a lawyer] and said they'd pay for [an emancipation].

....
I: Who recommended the [emancipation, your parents or the lawyer]?
L: My parents.
I: Okay, and was it having to do with the car, or were there some other reasons?
L: Basically the car.

....
I: ... I'm not clear on what exactly it was you'd been wanting for a long time.
L: To be emancipated, living out on my own, away from my parents.
I: What was your expectation about what emancipation would do for you ...?
L: Well, there wouldn't be police after me if I had the car. Because I know they had put out an APB or a warrant or something like that for the car.173

c. Decision Making Within the Family—Like Laura, nearly every minor articulated both free-standing, kid-centered reasons for emancipation, as well as reasons reflecting the interests of the parents.174 As mentioned above, the parents do not necessarily undermine the characterization of emancipation as child-initiated. But the minors' descriptions

173. Interview with Laura 1-2, 5-6.
174. One girl explained that, in addition to more freedom and a driver's license, she wanted "to look for my real parents because I was adopted and my mom didn't want me to do that. She didn't want to help me but I needed to be 18." Interview with Jane 1.
of how the emancipation decisions were made add to the impression of strong parental influence.

Thirteen of the eighteen participants reported that, within their own families, the decision to file the emancipation petition was theirs and not their parents'. Yet as the following exchanges suggest, parental influence seems to have played a greater role than many of the participants were aware of or willing to admit. The following excerpts are representative of many of the interviews.

I: OK, so did your stepmom suggest [emancipation] to you?

V: She went down and did it.

I: She went with you?

V: No, she just went down and got the papers and had me sign them and had my mom sign them. That's it.

... How much did [your parents] influence you [to seek emancipation]?

V: I made my own decision.175

I: So it sounds like the decision to get emancipated involved your mom, and your [already emancipated older] brother?

... How much did each of them influence you?

S: Not really that much. They just informed me more except my mom, ... she influenced me pretty much. I would have gotten emancipated if I could of anyways.176

Another participant was clearer about what he called being "persuaded into it".177

I: So was it your dad or stepdad that suggested [emancipation]?

A: I believe it was my dad who came up with the idea. I think it was as much for their own personal reasons as well as my own but they made it sound that it was for mine.

---

175. Interview with Vicki 1, 4.
176. Interview with Steve 5–6. Several of the minors explained that while getting emancipated may have benefited someone else, they would have done it anyway.
177. Interview with Andre 1.
They both came to me at the same time and said okay we are going to go see a lawyer about this emancipation so that you will be on your own and we won’t be able to tell you what to do.\textsuperscript{178}

Pride, or perhaps being “dared,” also seemed to play a part. As one girl explained:

[My mother] basically said that I’d be running back to her after a few months because I wouldn’t make it. . . . That’s probably what made me want to be [emancipated] even more.\textsuperscript{179}

Such challenges came not just from parents:

I: . . . [W]hy did [your attorney and probation officer] recommend [emancipation]?
C: Because I was such a little pain in the butt, if you don’t like [juvenile court supervision], then go get emancipated, was how it came to me. And that’s when I started thinking, well, I’ll do just that.\textsuperscript{180}

3. The Emancipation Process—This section presents findings on how the minors experienced the emancipation process. The interviewer asked the participants about the logistics of emancipation: the details of getting the necessary papers, obtaining signatures, receiving a ruling, and filing their declaration. This discussion casts light on both the legitimizing and child-initiated aspects of emancipation.

a. Getting the Process Started—Eight of the subjects negotiated the entire process of emancipation themselves. More often than not, however, adults—usually parents or the

\textsuperscript{178} Id. at 1, 3. Another girl explained that her father “has a lot of influence on me. . . . [E]ven if I didn’t want to do [it] I probably would have done it.” Interview with Phyllis 7. Earlier she had explained in somewhat lukewarm fashion that “I thought that [emancipation] would be [a] good idea for myself because I really don’t keep in contact with my parents that much and if I needed to sign something I would want to do it myself.” Id. at 2. Compare this explanation with her earlier description of the clear economic motives of her father. \textit{See supra} note 164 and accompanying text. She also reported that in the end, “[the emancipation] was useless to me because things I wanted to do, I couldn’t. I’m not really happy with it at all.” Interview with Phyllis 2.

\textsuperscript{179} Interview with Judy 3.

\textsuperscript{180} Interview with Courtney 2.
boyfriends of girl petitioners—initiated the process by obtaining the necessary forms, providing the fee or transportation, and in some cases by hiring an attorney to facilitate the process.\textsuperscript{181} In one case a high school counselor got the forms and accompanied the minor to the hearing.\textsuperscript{182}

Although the Act contemplates no attorney participation,\textsuperscript{183} seven of the participants were represented by counsel. With the exceptions of one minor who found her attorney's name in the telephone directory and another who went to a local law school clinic, parents had contacted and retained the attorneys. The quality of representation as described (though not as characterized) by their minor clients appears to have been inadequate and unprofessional. The attorneys performed two formal tasks, filling out the petition and attending the hearings. Not surprisingly, these were performed adequately; the forms were designed for use by fourteen-year-olds and the hearings consisted essentially of affirming that everything on the petitions was true. What the lawyers did not do was inform their clients about the meaning or consequences of emancipation. As one minor explained, "I just kind of let him do whatever he was going to do and signed whatever I had to sign, and that was that."\textsuperscript{184}

\textit{b. The Hearings—}The impressions of the legal process most frequently reported were fear, speed, and confusion. Several participants described the process in much the same way:

I thought I would have to see the judge, I was scared. And I walked in and sat down and then the lady asked what I wanted and I gave her the paper work and she took it back to the judge and she came back and said, "Here you go." It was only like ten minutes and I went to get it filed and it was over with.\textsuperscript{185}

* * *

\textsuperscript{181} For example, one girl's boyfriend helped her with the emancipation procedure: "I: How did you know where to go? J: My boyfriend made a bunch of calls. He's good at phone calls; he likes that." Interview with Judy 1.
\textsuperscript{182} Interview with Peggy 2.
\textsuperscript{183} See CAL. CIV. CODE § 70 (West 1982).
\textsuperscript{184} Interview with Laura 3.
\textsuperscript{185} Interview with Barbara 4.
When I went in, I didn’t even know what was going on. They just called me in, and I could hear the judge and all of a sudden he said, “Okay!” and banged the javelin [sic], and I guess I was emancipated. And this lawyer walks up, and said, “Do you know what was going on?” and I said, “No.” So he told me [where I was supposed to go and file the emancipation papers].

* * *

It was a little bit rushed for me. I would have liked to look into it a little bit more. . . . I thought what they should have done down there [in court] was to clarify exactly what it meant to be emancipated. It seemed like they were just kind of assuming, whatever, sign the papers.

. . . .

. . . I didn’t know any of the legalities of it.

Half of the minors had no hearings at all:

I never saw the judge or anything so I never actually saw any court proceedings. Mostly I just signed the papers.

Instead of a judge, court personnel—often referred to generically as “the lady”—appear in several accounts:

All I did was fill out that form, my mom signed it, went up to the judge, and there was no one up there . . . the lady just took it back there and came out with it signed, and stamped it . . . .

Those who did see a judge reported only brief interactions in which little about themselves was discussed. As one participant, the very model of a modern emancipated minor, reported with pride:

I gave the judge a business card and told him that I was already in business and that I already had a [business].
license and I wasn’t even eighteen. He signed the papers, didn’t ask any questions.190

The hearings, which lasted between five and ten minutes, consisted mostly of the judge asking if everything on the petition was true. While the participants answered this question affirmatively in court, the following exchange suggests something less than complete candor.

I: Was everything on your form correct?

J: Yeah, most of it was but I mean what it sounded like was not the same thing that it was.191

Indeed, “the way things were” as opposed to “how they sounded” sometimes went to the heart of the requirements for emancipation. For example, few participants were living away from home prior to emancipation except in the most technical sense. Several moved out in order to comply with the letter of the law:

I: How was it you moved out of the house?

C: Because I talked to the lawyer . . . . and he said yeah, you have to prove that you are completely independent. And he asked if I was living, you know, at home . . . . [So I asked] one of my mom’s friends . . . . would you consider me, would you take me in . . . . It was really it was lucky. It just worked out at the right time . . . . [Y]ou know because I would not have been able to move out and . . . rent a room or something like that. I wouldn’t be able to afford it. And because, I don’t know, I would be too scared. Because I am only sixteen . . . . 192

190. Interview with Brendan 2.
191. Interview with Jake 21.
192. Interview with Colleen 9.

Pop singer Tiffany’s departure from the family home also occurred only the day before she filed for emancipation:

The teen-age millionaire with the red hair and blemish-free face left her mother’s Norwalk apartment March 8. She was on her way to [her manager’s] North Hollywood recording studio to lay down some tracks for the sequel to her debut MCA album, “Tiffany.”

But Tiffany never came home that night. Instead, she had her attorneys file a court motion under Section 61 of the California Civil Code, calling for her emancipation from her mother.

McDougal, supra note 130, at 7.
Representations on the petitions concerning the minor's management of financial affairs, another requirement intended to substantiate actual independence, were also misleading. One young man informed the judge he was supporting himself, but explained later in his interview that the source of support was the $150 sent to him monthly by his father. After the hearing the father paid the son $50 "for being good in the court." In this case, the minor was well aware that his answers were untrue:

I: What was that whole process like? You know, going to the court house with your dad?
A: It wasn't really a problem. We just went, my dad paid some fee and we went . . . in to see a judge and he asked me a few questions and I lied a little bit, I remember that I lied a little bit because he asked me if I was still in school, which, I dropped out of school as soon as I left the house.

Occasionally the judges questioned the minors or their attorneys about the minors' school or work prospects. In a few cases, the judges seemed alert to potential or apparent discrepancies between declarations on the petition and other facts. For example, after one petitioner requested a waiver of the $150 filing fee, the judge appropriately questioned the boy further about his asserted self-supporting status. Only after the petitioner was able to detail a work history did the judge grant the emancipation. Another judge wanted to know how long the minor had been supporting herself:

I had to prove to him, I had to show him the papers, check out my work and papers signed by the lady I live with saying that I have been living with them and paying rent, and that was all he wanted to know really.

193. Interview with Andre 4. The only statutory requirement regarding income is that it not be derived from crime. CAL. CIV. CODE § 64(a)(4) (West 1982 & Supp. 1992). However, income based on voluntary parental payments puts the minor at tremendous risk should parents decide to stop paying.
194. Interview with Andre 4.
195. Id.
196. Interview with Brian 3-4.
197. Id.
198. Interview with Peggy 3.
In another case, the minor's attorney reported that the judge had signed the declaration only after the attorney had assured him that he wasn't letting some "drug pusher out in the streets." 

Judicial suspicions were also raised in connection with the voluntariness of the petition. But as the following excerpt reveals, the hearing provided an inadequate forum for candor:

I: [I]t sounds like the judge was asking you about that. Wondering if it really was your decision? Would you have felt comfortable saying, my dad was kind of bugging me to do this for two months?

P: No, I wouldn't of, I wouldn't have said anything because my dad was there with me.

4. Quality of Pre-Emancipation Home Life—Not all families of emancipated minors were entrenched in conflict as this description makes clear:

We all get along great. My family is really close. . . . I love my brothers and sisters, I adore my mother. I love my Dad a lot, I really respect him. I mean we get along really well our whole family does.

For most of the participants, however, conflict played a significant role in family relationships. The central conflict in fourteen of the eighteen families was the appropriate degree of parental control over the adolescent. The complaints may sound familiar:

[Like on weekends I wanted to stay out with friends and watch a movie and [my mother] didn't want me to do that . . . . because she would have to wait up self-consciously in her sleep to be awake to make sure I got home all right. But she still knew where I was and everytime I came home I always knocked on the door to say I was home.

---

199. Interview with Laura 4.
200. Interview with Phyllis 8.
201. Interview with Colleen 9. This participant had been erroneously advised by her high school guidance counselor that emancipation would qualify her for college loans without consideration of parental income. In this case, conflict arose because the daughter wanted to become emancipated against the wishes of her loving parents. In two other cases, minors from homes in which no tensions or hostilities were described had to cajole parents into signing the petitions.
202. Interview with Jane 2.
Another participant described his pre-emancipation days:

[S]econd semester of my junior year school was sliding, I wasn’t getting along with my family, everything was going downhill, I wasn’t worried about stuff, I was getting into the punk scene, I was going out and partying and stuff . . . I wasn’t around much, when I was it was hostile.\(^{203}\)

Conflicts sometimes included physical violence:

A: I was threatened a lot by my stepdad.
I: What do you mean threatened . . . ?
A: Physically . . . as [in] I’ll beat the shit out of you.\(^{204}\)

5. Impact of Emancipation—Two constraints complicate evaluation of the impact of emancipation. The first concerns differences between the minors’ subjective evaluations of emancipation’s impact\(^{205}\) and objective measures of well-being such as income, job stability, or levels of education. The second concerns time. The reported impact of emancipation may differ when taken over the short- versus the long-term. How, for example, does one balance the immediate benefit of leaving home for a teenager struck by her stepparent against the future, unknown consequences of her departure? The approach here is not to quantify these variables but simply to recognize and account for them. We attempt to do this in several ways. The first is to present both subjective and objective measures of emancipation’s impact. A second is to identify causation as best we can. For example, while dropping out of school may have occurred for reasons independent of emancipation, where an emancipated minor reports that he dropped out in order to support himself, we accept the explanation.

The participants were asked about their postemancipation lives in such areas as their friendships, sources of income, and resources for getting help.\(^{206}\) Their lives appeared to vary

\(^{203}\) Interview with Alex 7.
\(^{204}\) Interview with Andre 10.
\(^{205}\) See J. Merrill Carlsmith et al., Methods of Research in Social Psychology 74 (1976) (noting the difficulties in relying upon subjective reports in social research).
\(^{206}\) See Appendix B.
greatly with regard to the quality of economic and psychological stability. At the top end was Brendan, prudent and successful. He explained that:

[A]ctually, I didn't expect [my life] to get as good as it has gotten. . . . I'm just trying to take it easy and not bite off more than I can chew. Just me and my [business] partner liv[ing] together and trying to keep the bill[s] in check, I could probably [have] a girlfriend living with me . . . but I have tried to keep myself from biting off more than I can chew because business can go up and down. But I never expected it to get this good and I'm just pleased . . . .

Like Brendan, half the participants reported feeling more mature than their age peers. But only a third experienced the anticipated lessening of legal hassles with jobs, school, and life. The overall level of coping with the demands of independent living was minimally adequate. An important factor in how well the participants were doing was whether or not a beneficent other was available to provide support. For example, a friend's mother provided a stable babysitting job; a kindly employer provided a place to live; and a sympathetic grandmother lent money for rent.

The principal direct impact of emancipation was an increase in economic stress. Of the eighteen participants, twelve reported greater economic stress than they had experienced before becoming emancipated, and six were continuing (either on their own or with help from family or the government) about the same as before. Only five reported having a current job. A few participants were in fairly stable situations, such as working for a relative, or running their own businesses. Others were working in jobs such as sandwich-making

207. Using five point scales (zero to four), the coders rated the participants' success in establishing stable adult lives in three areas: getting money to support themselves, establishing a stable pattern of daily life, and finding supportive relationships.

208. Interview with Brendan 9.

209. One participant explained that: "My grandmother has helped me out a lot, she's been there if I needed to borrow some money. . . . And when I borrow money from her it's not like for drugs, it's usually for rent. Because that is one of my biggest problems that I have . . . ." Interview with Andre at 5. Not all grandmothers were reported as kindly. One objected to her emancipated granddaughter's leaving her own baby with a babysitter and called child protective services to have the baby put in foster care. The minor was able to get her child back. Interview with Vicki 9-10.

210. Some who reported working were not: "I: [Alt your job that you have now, what are you doing? S: Construction, labor, I'm not working because they don't have any houses right now.]. Interview with Steve 18.
But most of the participants were not working, and several had changed jobs frequently following their emancipations.

In ten of the eighteen cases, and more characteristically of girls than of boys, the minors depended either on non-parental adults or public welfare assistance. Several minors were living in temporary situations or had temporary sources of income outside their own control. The precariousness of both housing and income was related to the participants' dependence on others. One participant told of several moves with her boyfriend and baby:

I: [S]ince the time you were emancipated, how many times have you moved?
V: Six.
I: Have you changed jobs; are you working outside?
V: No, I'm not working.

...  
I: [D]o you have any income?
V: Yeah, ... [w]elfare and social security.

...  
I: [D]oes your boyfriend contribute [money]?
V: Um.

Another significant consequence of emancipation was a high rate of school dropout. Of the eighteen emancipated minors, four had graduated from regular high school after their emancipations. Another received his Graduate Equivalency Degree (GED). Many of the participants expressed great dissatisfaction with their high school experiences before emancipation. Nonetheless, a main reason given for dropping out was money:

[A]t first I didn’t have to quit school but then I had to get a job. We needed the work, me and my brother. ... [M]y dad wouldn’t pay any kind of child support ...

211. Dependence on others did not always indicate instability; one very successful emancipated boy lived with his business partner, an older man. Interview with Brendan 9.

212. Interview with Vicki 14–16. Emancipated minors are not entitled to any welfare benefits they would not receive were they unemancipated. CAL. CIV. CODE § 67 (West 1982). However, several of the girls were receiving Aid to Families with Dependant Children on behalf of their own children and one was receiving welfare herself.

213. Interview with Steve 18.
Several regretted not having finished high school:

See, I regret not having my education now. I don’t have my driver’s education. I don’t have my school education and it is still kicking me in the butt.\textsuperscript{214}

Homelessness may be another serious problem for newly emancipated teenagers. The interviews revealed that many of the subjects were living ("bunking") with friends or a series of friends. The proximity of homelessness for those who are dependent on friends or relatives for a place to live is apparent from studies of other homeless populations.\textsuperscript{215} Another factor that suggests homelessness as a consequence of emancipation is that despite vigorous, systematic searches, we were unable to find a large number of the minors who were emancipated.\textsuperscript{216} Within a year of their emancipations, they had become untraceable, no longer available at or through their own or their parents’ addresses. While this fact alone might not warrant a conclusion of homelessness, independent evidence from the state of Michigan lends support to the inference. Reports from social workers in the state’s runaway shelters revealed that a large number of teenagers using the shelters had been emancipated by their parents under Michigan’s former statute.\textsuperscript{217} The discovery led to the overhaul of the Michigan emancipation statute, which now requires proof of housing.\textsuperscript{218}

Despite these various difficulties, nine of the eighteen reported that, as a result of emancipation, they felt more mature and independent, more able to take care of themselves

\textsuperscript{214} Interview with Courtney 19.
\textsuperscript{215} The condition of homelessness may apply beyond those people literally sleeping on the streets. Alternative definitions have suggested that having no address and living in a series of temporary places more accurately describes what it means to be homeless. See MARJORIE HOPE & JAMES YOUNG, THE FACES OF HOMELESSNESS (1986) (suggesting a definition which includes an intent to stay of less than 45 days); Leanne G. Rivlin, A New Look at the Homeless, 16 SOC. POLY 3 (1986) (considering fewer than 30 days of secure sleeping as constituting homelessness). See generally JONATHAN KOZOL, RACHEL AND HER CHILDREN 10–11 (1988) (discussing the difficulty of counting the homeless population because of the practice of “doubling up” with other people and families).
\textsuperscript{216} See supra notes 125–27 and accompanying text.
\textsuperscript{217} See HOUSE LEGISLATIVE ANALYSIS SECTION, EMANCIPATION OF MINORS HB 5253 & 5254, at 1 (1988).
\textsuperscript{218} See MICH. COMP. LAWS ANN. § 722.4c(2)(e) (West Supp. 1991).
than their old friends. One participant proudly explained that he had started his own business in electrical repairs:

I didn’t graduate from high school and I basically dropped out and went to work. . . . I got my G.E.D. last year. . . . [I have just been] working and getting a trade . . . of my own, it has been really fun. . . . And I’m really good at what I do.219

Still, many interviews reveal a disillusionment with life in the adult world. Despite the assessment of themselves as better able to handle problems than their unemancipated peers, several reported that if they could do it over, they would not again choose emancipation.220

The minors repeatedly gave two reasons for their second thoughts. The first was disappointment that particular benefits anticipated and desired were not in fact available. For some, this was because they had misunderstood the legal consequences of emancipation in regard to working, driving, and juvenile court:

Some stuff like [not being able to tend bar even though emancipated] kind of makes you feel that you wasted your money.221

* * *

[W]hat emancipation means is that you have the legal right to live on your own, bottom line! [I]t doesn’t mean that you are going to go ahead and get your license.222

* * *

[I]f I get sent to court, it’s still pretty much see, I’m a minor, see still a minor, still have no rights as far as they are concerned. . . . [T]hey can charge me with an adult

220. One participant explained: "If it was all up to me I think I would have had it better if I hadn’t gotten emancipated because I had it good at my dad’s house." Interview with Vicki 16.
221. Interview with Courtney 20.
222. Id. at 18.
crime, right, . . . how com[e] they can't give me the same privileges as an adult?\textsuperscript{223}

For others the disappointment, perhaps something closer to annoyance or disgust, resulted not from their own misapprehensions, but because the adults with whom they had to deal—employers, the DMV, the telephone company, county welfare offices, schools, and attorneys—had no clue what emancipation was or signified. As one exasperated but resigned young woman explained:

[L]ike when I went to the DMV, they were insistent that someone sign my paper to get my name changed after I got married saying, yes, you were a minor before you got married and you are an adult now. No, I was an adult before I got married and I am an adult now. I was emancipated before, so I am able to sign my own papers. And they were insistent that someone would sign for me, so finally my husband did. They wouldn't accept that I could sign my own papers.\textsuperscript{224}

Another participant who wanted to work overtime took his emancipation papers to his employer:

The way I [understand it], . . . if I get emancipated, you know, I'm legally eighteen. . . . My employers said well you know it doesn't matter.

. . . .

[T]hey say you've got to bring in a work permit because I was sixteen. And I would say well I'm an emancipated minor and they would say it doesn't matter, you're under eighteen.\textsuperscript{225}

\textsuperscript{223} Interview with Jake 13–14. This sense of unfairness was repeated by another participant who was taken to juvenile hall for committing a robbery after his emancipation: "[M]y emancipation was exempt. But if I get hurt in Hillcrest [the county juvenile detention center], if anything happens to me there, I'm responsible, not my parents and I'm responsible for my own medical bills up there also." Interview with Steve 15.

\textsuperscript{224} Interview with Peggy 24.

\textsuperscript{225} Interview with Steve 6–7. Another participant wanted her name in the telephone directory but found out that "they wouldn't allow me to unless I was of age 18. And I don't know if it was just the service person, if it was just naive, them being naive, or if they weren't allowed to." Interview with Ann 3.
The second reason emancipation dimmed in retrospect was the simple recognition that life was harder on one’s own. One boy put it this way:

[L]ike I said, I wouldn’t have done it [again] because I struggled to extreme.\(^\text{226}\)

At the end of her interview, one subject, one of the more “together” participants—no arrests, no prior out-of-home placements, and a loving relationship with parents who did not want her to move out—explained:

I’ve really learned, I mean I really was scared of the fact that what if I can’t make it financially, I might not be able to do it in college. Because it’s hard enough now but college, I’m only in high school. . . . And what’s going to happen if, you know, I’m already trying to support myself now and I’m just like looking ahead to the future. It’s like, you know, I have to do this for the rest of my life, do you know what I’m saying?\(^\text{227}\)

Comparisons between unemancipated and adult lives revealed an ambivalence about the personal benefits of maturity and the economic benefits of nonemancipated life. Unemancipated peers were often described with a combination of jealousy and longing:

The way I see students my age, I feel they are very naive about, I mean they are still in that environment where they have all their friends at school and everything is peachy keen. They don’t have their bills and everything else.\(^\text{228}\)

This participant seemed to miss not only the lives her friends were living but also the friends themselves:

Once I was emancipated, I really didn’t have the same friends I had in school. They were still in school and I

\(^{226}\) Interview with Andre 11. Andre was living no place; he said he had “changed locations” twenty to thirty times since his emancipation, changed jobs five to eight times, and had many romantic partners.  
\(^{227}\) Interview with Colleen 14.  
\(^{228}\) Interview with Ann 10.
was working full time and trying to go to school through this adult education so I really didn’t have the time to see them.\textsuperscript{229}

Dropping out of school thus implicates losing not only long-term economic status, but enduring more immediate and intimate losses as well.

Finally, one participant poignantly expressed a fatigue and a longing for a form of childhood:

\begin{quote}
I: Is there anything else you want to tell me about how the emancipation process worked for you?
S: Uh, I don’t know. The best thing about it for me really was before I was emancipated.
I: Why?
S: The last few nights before I got emancipated [I was] just thinking about being eighteen.
I: Was that exciting?
S: Yeah, then it was. I don’t really want to turn eighteen. I’d rather not have it.
I: What’s it?
S: Adult responsibility. See, what I missed out on was being able to be a teenager without having to work, having my mom living at home, like a family instead of having everything all broken up and you know. This whole family has been kind of shattered and shit for a while.\textsuperscript{230}
\end{quote}

\textsuperscript{229} Id. at 12. Another participant compared himself to his unemancipated peers this way:

I would say [I am] a lot more mature, social wise than what [people my same age] are because most of my friends still go to school, they are in college and they don’t pay rent. If I didn’t have to pay rent I would be in college right now. I would have finished my high school already, I would probably have a car by now. . . . [I]f I knew what I know now, I wouldn’t have moved out because I know that my parents could not force me out of the house until I was 18.

Interview with Andre 12.

\textsuperscript{230} Interview with Steve 20.
6. **Summary**—The following statements summarize the accounts of the minors interviewed:

1. Their decisions to become emancipated are influenced by adults and by perceptions about the concerns of adults in a majority of cases.
2. Adults—parents, police, boyfriends, counselors—frequently initiate the idea of emancipation.
3. The process of becoming emancipated is quick, simple, and involves no significant investigation of the minors’ living circumstances or best interests.
4. Significant conflict between minors and their parents prior to emancipation is common.
5. Life after emancipation is often precarious and lonely, and the decision to become emancipated is regarded with ambivalence.

In reporting these conclusions, we recognize that the number of minors interviewed is small in comparison to the number of minors in the sample from which the participants were drawn. The minors we were unable to locate, those who did not respond to the letters or telephone calls, may be doing well; this is a possibility we cannot definitively rule out. It is reasonable to think, however, that the participants in our subsample are in some ways the better-off among the group. We know, for example, that they are still in touch with their parents, at least to the extent of picking up mail and messages. This is in some ways disheartening, for it suggests that their reports of home life before emancipation and life in general afterward are perhaps the best or happiest accounts.

Studying the uses and consequences of a legal process that enables minors to “take off” reveals the difficulties of tracking children or others without steady home bases.\(^{231}\) We recognize this initial effort as exactly that—a preliminary investigation. Yet even as a starting point, the study offers certain observations about the actual use of the emancipation process. Returning to the themes of legitimization, child-initiation, and nonadversarialness, we found first that more often than not

\(^{231}\) A practitioner’s version of this problem has emerged for lawyers representing homeless youth who are unable to find a named plaintiff because the populations in the shelters change so frequently. See Sherman, *supra* note 15, at 13.
emancipation did not legitimize the minor's actual status. While some participants were living apart from their parents at the time the petition was filed, many more still were living at home, moving out at the last minute just to satisfy the legal requirement. Second, though the minor is necessarily the petitioner, to describe emancipation as child-initiated oversimplifies the interaction between teenager and parent. Minors' decisions to become emancipated frequently were influenced by adults and by concerns for the needs of adults. Finally, the characterization of emancipation as nonadversarial is true primarily in form. Although treated within the judicial system as a nonadversarial procedure, emancipation often was used to resolve parent-teenager conflict through the somewhat drastic measure of ending the relationship altogether.

III. DISCUSSION

How is it that a statute intended to empower minors sometimes is used to dislodge them from their positions, however unsatisfactory, within home and family? At least five factors contribute to emancipation's susceptibility to the uses described. These include the substantive and procedural advantages of the process, particularly to families in conflict; uncritical judicial assumptions about family relationships; the uneven application of the statute county to county; and informal misconceptions about the official consequences of emancipation. Finally, the political context in which emancipation was enacted, specifically the proximity to the deinstitutionalization of status offenses, requires attention. This section looks at each of these factors, alone, in various combinations, and in comparison with other legal procedures used by families to negotiate domestic conflict.

A. The Advantages of Emancipation

The interviews show that minors and their parents acting in some sort of concert sometimes choose emancipation as a means of dealing with a living situation each regards as impossible. The choice is not surprising in view of emancipation's clear substantive benefits and procedural simplicity.

First, and perhaps foremost, emancipation provides parents with two financial benefits otherwise unavailable until the child reaches majority. It ends the parents' support obligation and limits their legal liability for their child's conduct.\(^{233}\) That is, emancipation relieves parents not just of the child's presence but of the expenses of raising her altogether. No other form of out-of-home placement provides equivalent financial relief.\(^{234}\) Placements in a boarding school or mental hospital are costly and so are available only to the affluent or well-insured,\(^{235}\) and parents whose children live in state residential facilities remain liable to the state for the costs of that care.\(^{236}\) Even running away, a common and


\(^{234}\) One state recently removed this parent-friendly financial consequence of emancipation. The recently revised Michigan statute does not provide that emancipation relieves parents of the costs of supporting their emancipated child. Indeed, "[t]he parents of a minor emancipated by court order are jointly and severally obligated to support the minor. However, the parents of a minor emancipated by court order are not liable for any debts incurred by the minor during the period of emancipation." \textit{MICH. COMP. LAWS ANN.} § 722.4e(2) (West Supp. 1991). This aspect of the Michigan statute creates a muddle, for the statute also provides that an emancipated minor has the rights of an adult for the purpose of applying "for other welfare assistance, including general assistance . . . ." \textit{Id.} § 722.4e(1)(l). The muddle was perhaps intentional; when the apparent conflict of holding parents financially liable for support but also authorizing general assistance was raised in a legislative analysis of the bill, the response offered was that "[t]he list of rights and the expression of the parental obligation to support a child would offer the opportunity for case workers to raise issues with the probate court and to obtain judicial solutions to individual problems." \textit{HOUSE LEGISLATIVE ANALYSIS SECTION, supra} note 217, at 3.

The relationship between the two sections might also be viewed as a parental reimbursement provision. If an emancipated child applies for and receives general assistance, the parent then will be responsible to the state for the amount of support. The Act also provides that an emancipation may be rescinded if "the minor is indigent and has no means of support." \textit{MICH. COMP. LAWS ANN.} § 722.4d(3)(a) (West Supp. 1991).


\(^{236}\) \textit{See} County of San Mateo v. Dell J., 762 P.2d 1202, 1213–14 (Cal. 1988) (finding that county may seek reimbursement from the parents of a minor child declared a ward of the court under California's delinquency statute for the reasonable
informal form of out-of-home placement, does not relieve parents of the duty to support. If the running away is either temporary or reasonable, not an act of total defiance, parents remain responsible for their runaway's support, including the costs of care provided by a state shelter. Indeed, not even termination of parental rights in consequence of a dependency hearing necessarily ends the parental support obligation. Only emancipation, like some legal wonder-bromide, brings about something close to absolute relief.

A second benefit to parents is the removal of parental vicarious liability. That emancipation does not fully or in every instance absolve the vicarious liability of parents may matter less than the perception that it does. Minimizing liability by emancipating one's child may be a version of what economists have labeled the "microeconomic model of household choice." That model suggests that a household may choose to invest in dispute prevention activities, such as

costs expended for the support and maintenance of the minor while placed outside the family home; CAL. WELF. & INST. CODE § 903 (West Supp. 1992); see also Terry Demchak, Parents Must Reimburse Group Homes, Says California High Court, YOUTH L. NEWS, Nov./Dec. 1988, at 12 (discussing the case).

237. See CAL. CIV. CODE § 208 (West 1982) (noting that parents are not required to reimburse others for care provided to children who "unjustly abandon" their homes). To some extent then, parental financial responsibility for runaways therefore hinges on whether the child ran away wrongfully (an "unjust abandonment" and so no liability) or whether the child ran away in response to parental misconduct (continued support obligation). But the line between runaways and pushouts is often too thin to make sense. In many cases, running away is a preemptive strike against getting kicked out. See Richard H. Cornfield, Emancipation by Eviction: The Problem of the Domestic Pushout, 1 FAM. L. RPTR. 4021 (BNA 1975). Emancipation takes the risk out of the characterization of the child's departure by its absolute termination of the support obligation.

238. See In re Marriage of O'Connell, 146 Cal. Rptr. 26, 31 (1978) (finding that CAL. CIV. CODE § 232 order does not terminate court's power to issue a support order).

239. Parental concern over liability for their children's potential car accidents was mentioned repeatedly by participants as a problem emancipation would solve. See supra note 166 and accompanying text.

240. The general abolition of parental liability is followed by a fatal "provided-that" clause: emancipated minors are considered as being over the age of majority "[f]or the purpose of ending all vicarious liability of the minor's parents or guardian for the minor's torts; provided, that nothing in this section shall affect any liability of a parent, guardian, spouse, or employer imposed by the Vehicle Code, or any vicarious liability which arises from an agency relationship." CAL. CIV. CODE § 63(h) (West Supp. 1992) (emphasis added). The legislature intended "to leave intact the preexisting Vehicle Code provisions and case law on which minors, parents, victims, and insurers have come to rely." Bull, supra note 10, at 252.

repairing hazardous broken steps, after it assesses the probability of injury, the probability of a lawsuit, the time required to make repairs, the opportunity costs of household time, and risk preference. Of course, in most cases "household" means "parental," and here the household has identified teenagers, not steps, as the likely source of liability.

Heightened parental concern over vicarious liability may be a consequence of a statutory trend in the late 1980s increasing the number of ways and the number of areas in which parents became accountable for their children's behavior. In addition to traditional rules of liability imposed on parents for their children's negligence, states are now holding parents responsible for their children's gang activities, for school nonattendance, for curfew violations, and for their children's unsupported children. The liabilities imposed include criminal sanctions, reduced welfare benefits,

242. Id. at 625.
244. See Seth Mydans, Mother Is Charged Because a Son Is California Street Gang Suspect, N.Y. TIMES, May 4, 1989, at A18 ("Using a new state law intended to hold parents responsible for the criminal acts of their children, the police here [Los Angeles] have arrested the mother of a 17-year-old suspect in a rape case on the ground that she condoned his membership in a street gang."); California's Street Terrorism Enforcement and Prevention Act, CAL. PENAL CODE §§ 186.20–.27 (West Supp. 1992).
245. See Judge Restores a Truancy Program Tied to Welfare, N.Y. TIMES, Nov. 7, 1990, at A10 (reinstating Wisconsin program reducing families' benefits from Aid to Families with Dependent Children if teenage children are truant).
246. See Ronald Smothers, Atlanta Sets a Curfew for Youths, Prompting Concern on Race Bias, N.Y. TIMES, Nov. 21, 1990, at A1 (reporting that parents whose children breach 11 p.m. curfew are to be charged with a misdemeanor).
and financial responsibility.\textsuperscript{250} Indeed, some have explicitly urged the use of emancipation statutes to secure parental protection from minors’ torts in cases where “a child’s abusive behavior causes serious family conflict and she/he refuses to conform to parental expectations.”\textsuperscript{251}

A third advantage of emancipation over other forms of out-of-home placement is its unintrusiveness. Minors and parents decide on emancipation, and in most counties they need not persuade a judge, probation officer, or social worker about the wisdom of the decision.\textsuperscript{252} Indeed, other than signing a form, the parents themselves need not participate at all. In contrast, parental nonparticipation is not always an option for minors under juvenile court jurisdiction. In California, the juvenile court judge may order parents into counseling with the minor,\textsuperscript{253} a form of mandatory togetherness not desired by all families.\textsuperscript{254} This differs from emancipation, where the

\begin{flushright}
251. Dana F. Castle, Early Emancipation Statutes: Should They Protect Parents as Well as Children?, 20 FAM. L.Q. 343, 361 (1986). The argument is that “[t]he rights of parents, as those rights relate not to protection of the parent-child relationship but from that relationship, have been ignored.” Id. at 372. Authorizing parents to petition for emancipation would cure the predicament of “the parent who uses an eviction tactic [and thereby] places himself in a tenuous legal position.” Id. at 367. Connecticut’s emancipation statute approaches this outcome. It provides that parents, as well as minors, may petition for emancipation and that emancipation may be granted if the court finds that “it is in the best interest of either or both parties.” CONN. GEN. STAT. ANN. § 46b-150b(4) (West 1986).
252. See supra notes 115–25, 185–200 and accompanying text.
253. CAL. WELF. & INST. CODE § 727(c) (West Supp. 1992) (“When counseling or other treatment services are ordered for the minor, the parent, guardian, or foster parent shall be ordered to participate in those services, unless participation by the parent, guardian, or foster parent is deemed by the court to be inappropriate or potentially detrimental to the child.”).
\end{flushright}
court can grant or deny the petition, but cannot condition its
decision by requiring family members to talk to one another.

The process is unintrusive in another way—it restricts the
involvement of third parties. No lawyers or helping profes-
sionals of any kind are required. In sociolegal terms, there is
no “audience.”255 One consequence of limiting a dispute to
just the parties involved is that “the power to transform a
dispute in desired ways may be limited by the lack of a
relevant public or audience.”256 Earlier research has sugg-
ested that to avoid an expanding audience, “middle-class
individuals are less likely than others to bring law into their
strictly personal affairs, i.e., their dealings with relatives,
friends, neighbors, and acquaintances.”257 Emancipation
seems a new application of this phenomenon.

A fourth advantage of emancipation is that the process is
relatively stigma-free, for both parents and child. Unlike
delinquents, status offenders, runaways, or mental patients,
the emancipated minor is neither bad, disobedient, nor crazy;
he is mature. Thus, in contrast to institutionalization258 or

---

Individual or family resistance to therapy is demonstrated by “being late for or not
showing up for appointments; refusing to say anything during the session; making
statements to the effect that they will not do anything in therapy; and showing
confusion over why they have been referred.” Alan Belcher & Connie S. Salts, The
Family Therapist and the Juvenile Court Referral, 12 Fam. Therapy 273, 277 (1985).

Studies of family mediation suggest that children can also thwart progress in
family sessions. Both parents and children are “more likely to be angry and less
likely to cooperate in joint sessions,” and children in particular are “much more likely
to be withdrawn, silent, or not interested in joint sessions . . . .” Sally Engle Merry
& Ann Marie Rocheleau, Mediation in Families: A Study of the Children’s
Hearing Project 86 (1985) (observing that private mediation sessions are necessary
to overcome the power differential between parent and child and are “crucial in
involving the child in the process”).

255. Lynn Mather & Barbara Yngvesson, Language, Audience and the Transformation of

256. Id.

257. M.P. Baumgartner, Law and Middle Class: Evidence from a Suburban Town,
9 Law & Hum. Behav. 3, 4 (1985) (emphasis added); see also Jeffrey Fitzgerald &
Richard Dickins, Disputing in Legal and Nonlegal Contexts: Some Questions for
Sociologists of Law, 15 Law & Soc. Rev. 681, 695 (1981) (suggesting that in many
primary group relationships the parties go to great extremes to avoid “washing dirty
linen” in public).

258. In partial explanation of the skyrocketing admission rates of adolescents to
mental facilities, Weithorn notes that the “medicalization” of the problem fits into
the current cultural ethic approving the provision “[of] solicitous care and treatment
[for] troublesome children and other dependent persons who may manifest problems
. . . .” Institutionalization is socially acceptable under this ethic. Weithorn, supra
note 5, at 823. She suggests that “[t]he ‘illness’ designation makes parents the
objects of sympathy and compassion, rather than the objects of blame as allegedly
inadequate parents.” Id. at 821. We question first whether there is such a prevailing
a parent-initiated petition that confesses inability to handle a child who is "beyond control," emancipation does not officially implicate the child-rearing abilities of the parents.\textsuperscript{259} Emancipation may avoid, or at least provide a pretext for avoiding, the more public and pejorative aspects of labeling.

A fifth benefit is that unlike other sanctioned out-of-home placements, statutory emancipation is almost always permanent.\textsuperscript{260} With foster care or institutionalization, for example, parents must anticipate the child’s return and the eventual possibility of continued conflict.\textsuperscript{261} Informal placements tend to be temporary as well. Most runaways return\textsuperscript{262} and when teenagers are taken in by friends or relatives, the arrangement is often agreed to only to ease a temporary crisis. When the spare room is needed, when the school calls to verify the student’s residence, when the kid stays out too late once too often, he may be sent home.\textsuperscript{263} Emancipation removes the legal requirement that home still be available.

cultural ethic and second, whether institutionalizing one’s child really transforms the negative views of relatives and neighbors into compassionate ones. Indeed, the Supreme Court has characterized the mental hospital admissions process as "embarrassing" and has used this characterization to support its position that a parental decision to institutionalize a child should have been impeded by the attention procedural due process would generate. Parham v. J.R., 442 U.S. 584, 605 (1979). Nevertheless, parents who institutionalize a child are surely regarded as less at fault than parents whose child is jailed.

\textsuperscript{259} Court-ordered family therapy threatens to label as well as to intrude. Indeed, many parents resist participation in therapy precisely because "requiring their presence implies that their child’s behavior is both their responsibility and their fault, and they do not wish to accept either responsibility or blame." Thomas F. Johnson, \textit{Therapeutic Interventions in Delinquency, in Helping Families with Special Problems} 103, 115 (Martin R. Textor ed., 1983).

\textsuperscript{260} While the statute provides grounds and procedures for setting aside an emancipation, of the 90 petitions that were examined, only one was revoked. \textit{See supra} note 134.

\textsuperscript{261} Institutionalized minors are returned home when they are cured; however, their “cure” sometimes coincides with the depletion of their insurance coverage. \textit{See Peter Kerr, U.S. Study of Mental Care Finds Widespread Abuses, N.Y. TIMES, Apr. 29, 1992, at C1.}

\textsuperscript{262} \textit{SENATE SUBCOMM. ON THE CONSTITUTION, supra} note 7, at 80 (1980) (estimating that around twenty to thirty percent of runaways do not return home).

\textsuperscript{263} Statutory emancipation may be more permanent than emancipation created by marriage or military service, for return to single or civilian life may reinstate the legal dependencies of minority. \textit{See supra} note 86. There is some older evidence suggesting that many married young couples never leave home in the first place: persons who married young were twice as likely as others to continue to reside with their relatives after marriage and four times as likely to receive parental financial assistance. Rachel M. Inselberg, \textit{Marital Problems and Satisfaction in High School Marriages, 24 MARRIAGE & FAM. LIVING} 74, 75-76 (1962).
A final benefit is that, at least in some California counties, emancipation is easily available. In the two counties studied, each of the ninety petitions filed over a two-year period was granted. To be sure, approval of emancipation petitions may not be automatic in every county.\textsuperscript{264} Why policies vary county to county is a subject for future study. The point here is simply that emancipation's ready availability in some counties enhances its attractiveness.

In sum, emancipation now may operate as the out-of-home placement of least procedural resistance and greatest substantive practical advantage. It differs from the traditional forms of out-of-home placement such as foster care or institutionalization in that only minors may officially invoke it.\textsuperscript{265} But that difference is offset by a larger similarity: whatever its form, the placement of a child outside the family often reflects conflict or dysfunction within the family.\textsuperscript{266}

Emancipation thus fits into established patterns of interaction between law and intrafamily conflict. As courts and legislatures have curtailed the availability of juvenile court jurisdiction and dispositions (such as juvenile detention facilities or reform schools), parents have moved down an "intervention hierarchy" to less restrictive mechanisms that still bring about some form of out-of-home placement. This hierarchy began in the late 1960s with the extension of adult due process standards to juvenile delinquency proceedings.\textsuperscript{267}

As procedural safeguards in criminal proceedings made

\textsuperscript{264} See supra notes 115-17 and accompanying text (describing the practice in San Francisco County). In the five northern California Bay Area counties canvassed for this study, two (Santa Clara and San Mateo) had "open" procedures where every petition was granted; one (San Francisco) permitted essentially no emancipations; and the remaining three (Marin, Sonoma, and Santa Cruz) granted some petitions and denied others. Since the study was completed, San Francisco has changed its procedures and now grants nearly all petitions filed. Why petitions may be granted as a matter of course is discussed infra notes 315-27 and accompanying text.

\textsuperscript{265} Most out-of-home placements for adolescents are initiated either by the state (juvenile delinquency, neglect, and foster care) or by parents (voluntary placements with the juvenile court, in foster care, in private or public institutions, in boarding schools, or with relatives).

\textsuperscript{266} See, e.g., Jan C. Costello & Nancy L. Worthington, Incarcerating Status Offenders: Attempts to Circumvent the Juvenile Justice and Delinquency Prevention Act, 16 HARV. C.R.-C.L. L. REV. 41, 45 (1981) (noting that most cases involving juvenile status offense jurisdiction have an element of family conflict); Weithorn, supra note 5, at 798-808 (arguing that rising rates of adolescent mental hospitalization are due in part to coping problems within families).

\textsuperscript{267} See In re Gault, 387 U.S. 1 (1967) (holding that juvenile proceedings that could result in incarceration must meet certain due process requirements).
juvenile detention less available, parents turned increasingly to incorrigibility statutes as a means of invoking state authority to help control their teenagers. The 1974 Juvenile Justice and Delinquency Prevention Act then conditioned the states' receipt of certain federal funds on the deinstitutionalization of incorrigibles or status offenders. Gradual state compliance with the federal standards removed detention as a dispositional alternative in many cases. Status offenders then tended to remain with their families or in local community-based programs, when such programs were available.

Some parents then proceeded along the continuum to the procedurally uncomplicated institutionalization of minors in state mental facilities. By the mid-1970s, states began reporting huge jumps in the numbers of juveniles diverted into the mental health care system following the prohibitions on detention in secure facilities. Recent studies indicate that currently the most popular out-of-home placements may be private schools and hospitals, which still are immune from due process restrictions. While access to them is frequently


270. The "carrot" of federal funds for states in compliance with deinstitutionalization may not have been very powerful. In assessing the process of reform in California, David Steinhart concludes that the eventual passage of deinstitutionalization legislation was accomplished more as a result of competing interests within the state than by the promise of federal money. Steinhart, supra note 66, at 821-22. In addition, see Richard Johnson & Timothy Mack, Deinstitutionalization in Utah: A Study of Contrasts and Contradictions, in NEITHER ANGELS NOR THIEVES, supra note 66, at 419, 420 (explaining that Utah did not comply with the federal law until 1978 because until then incoming federal funds were not worth the costs of compliance).


273. Costello & Worthington, supra note 266, at 61.

274. See Weithorn, supra note 5, at 808-13 (discussing the lack of procedural barriers to the institutionalization of minors). There have been unsuccessful attempts to secure procedural protections for juvenile placements even in private institutions. See, e.g., Michael McGuire, Questioning Minors' Rights in Institutions, PENINSULA TIMES TRIB., Mar. 6, 1988, at A1 (describing a habeas corpus petition against private psychiatric institution in Santa Clara County by a teenage girl admitted by her parents).
limited to the children of either wealthy or insured parents, private institutions appear to be serving a population of adolescents who resemble earlier juvenile delinquents, status offenders, and voluntarily institutionalized teenage patients. Sometimes it is as difficult to characterize the nature of the admitting institution as it is to characterize the problem of the patient/pupil/prisoner.

The argument is not that all children of identical characteristics have been reassigned, or “transinstitutionalized” as Lois Weithorn puts it, from one category to another as procedures surrounding each have tightened. There still are adolescents who commit crimes, or will not obey their parents in drastic measure, or who might benefit from residential mental-health care. There is, however, little disagreement that each of these placements is frequently chosen not because of its therapeutic potential, but because it does the essential job: it gets the adolescent out of the home.

Against this backdrop, the use of emancipation suddenly makes sense. The process combines the best of several worlds. It is authorized by the state, yet has almost none of the usual procedural or practical disadvantages present with incorrigibility, foster care, or institutionalization. Compared with

275. See Weithorn, supra note 5, at 814–20 (discussing economic incentives for institutionalization caused by a combination of insurance policies favoring inpatient services and a rise of for-profit hospitals); Ira Schwartz, Hospitalization of Adolescents for Psychiatric and Substance Abuse Treatment: Legal and Ethical Issues, 10 J. ADOLESCENT HEALTH CARE 1 (1989) (discussing marketing campaigns by private institutions to increase admission rates). A 1992 Defense Department study of 500 psychiatric patients admitted under a federal insurance program for military families found that in 64% of the cases—most of which were teenagers and children—the patients “never should have been admitted, were kept longer than necessary, or had medical records for which their hospitals could not justify treatment.” Kerr, supra note 261, at C1.

276. See Weithorn, supra note 5, at 792. “Although some proportion of juveniles in [juvenile psychiatric units] are psychotic or seriously emotionally disturbed, many more appear to be troublemakers, children reacting to disturbed or inadequate family situations, or adolescents experiencing nonpathological turmoil, rebellion, or identity crisis.” Id.

For comparisons of runaways and other troubled children, see Loving P. Jones, A Typology of Adolescent Runaways, 5 CHILD & ADOLESCENT SOC. WORK J. 16 (1988); Robert Johnson & Madeline M. Carter, Flight of the Young: Why Children Run Away from Their Homes, 15 ADOLESCENCE 483 (1980).

277. For example, the private Provo Canyon School in Utah was described by a federal district court as “not a school in the traditional, ordinary, or classic sense. It does offer classes . . . . [but] Provo Canyon School is also a correctional and detention facility [and it] is also a mental health facility . . . .” Milonas v. Williams, 691 F.2d 931, 935 (10th Cir. 1982).

278. See Weithorn, supra note 5, at 805.
other forms of out-of-home placements, emancipation is quick, cheap, private, available, respectable, and final.

But the very features that make emancipation appealing and efficient for parents may provoke hard consequences for adolescents. The whole point of emancipation is to transform independent teenagers into adults ahead of schedule. This is sometimes problematic because the timing is off: this adulthood is not part of the usual normative transition. Leaving home in America, like other rites of passage such as graduating from high school, going to college, getting one's first real job, and getting married, most often occurs between eighteen and twenty-two years of age. From a developmental perspective, leaving home usually is associated with such markers as a consolidation of ego identity, increased responsibility, and a more mature relationship with parents. Feelings of insecurity and even abandonment that result from the transition into adulthood are offset by the freedom of the new status, the new address. Emancipation, in contrast, is an "off-life" event, occurring outside the scheduled time that leaving home usually occupies. Because it constitutes a premature leave-taking, its impact on the adolescent may differ then from that of other standard departures like graduation from high school.

In the present study, for example, many of the minors experienced their promotion into adulthood as abrupt and confusing, due in part to the speed and efficiency of the emancipation procedure. Although chronologically premature, emancipation is nonetheless a form of leave-taking or rite of passage, but nothing in the hearing commemorates the event. In none of the accounts, for example, did a minor report being congratulated on his or her emancipation. Instead, they were surprised, slightly stunned, and unsure of what to do next, where to file the declaration. This lack of ceremony ignores the symbolic and emotional significance that emancipation might have for the participants. Emancipations may be like divorces in this respect: while "routine" from an institutional

---

279. For adolescents still in the process of identity formation, normative events, such as menstruation or getting taller, are experienced more easily when they occur on time; that is, they happen to them when they happen to their friends. Maryse H. Tobin-Richards et al., The Psychological Impact of Pubertal Change: Sex Difference in Perceptions of Self During Early Adolescence, in GIRLS AT PUBERTY: BIOLOGICAL PSYCHOLOGICAL AND SOCIAL PERSPECTIVES 127, 131–33 (Jeanne Brooks-Gunn & Anne C. Petersen eds., 1983); Donald Weatherly, Self-Perceived Rate of Physical Maturation and Personality in Late Adolescence, 35 CHILD DEV. 1197, 1206–09 (1964). In this respect, adolescents may not be so different from the rest of us.
perspective, they often are not routine from the viewpoint of those whose careers and lives are profoundly influenced by the results.\footnote{280}

B. Emancipation's Use by Families

The focus here shifts from the characteristics of the process to the characteristics and circumstances of the people who use it. This next section looks at why emancipation may be particularly attractive to conflict-laden families.

1. Parents and Teenagers—Adolescence, the transition from childhood to adulthood, has been described as "a period of widened possibilities and of experimentation with alternatives, before the individual narrows the range of what is possible by making those commitments which will define adulthood."\footnote{281} In consequence of both the experimentation and the possibilities, some conflict between parents and their teenage children occurs in most American families.\footnote{282} Much of it is low-level, culturally expected, and understood as an inherent part of the process of individuation.

Individuation and the accompanying identity crises are normative processes. They usually occur during the quite unalarming, noncrisis, sounding period of the "moratorium,"\footnote{283} or what Frank Zimring calls the "learner's permit"

\footnote{280. Lee E. Teitelbaum & Laura DuPaix, Alternative Dispute Resolution and Divorce: Natural Experimentation in Family Law, 40 Rutgers L. Rev. 1093, 1116 (1989).}
\footnote{281. Katherine Dalsimer, Female Adolescence 5 (1986).}
\footnote{283. Erik H. Erickson, Identity and the Life Cycle 119–20 (1980). While the "moratorium" vocabulary is twentieth-century, the concept is older. As an example, in a study of children's lives in eighteenth-century America, Ross Beales concludes that:}

[In colonial New England, childhood was not succeeded by "miniature adulthood" but by "youth," a lengthy transitional period preceding adult status. During this "chusing time," when the young were expected . . . to "put away Childish things," the youth remained dependent on his elders for his education, for his choice of and training in a calling, and for the material means, usually land, which would support a family. While this dependence carried with it a measure of parental control, it also provided a moratorium, a freedom from adult responsibilities, during which the elements of a youthful "culture" might emerge.]
stage of life. \footnote{284} During the moratorium, adolescents experiment with different roles and beliefs without having to commit irrevocably to any. \footnote{285} Thus, adolescence has been described in terms of "pervasive ambivalence," as teenage views, opinions, and preferences are sometimes fiercely held and then abandoned. \footnote{286} But, normative or not, life with teenagers is not always simple or satisfying. Individuation is played out against real parents, with real disagreements about dress, curfews, car keys, music volume, and foreign policy. \footnote{287} A body of popular advice literature now exists to guide parents through the period. \footnote{288}

Two circumstances prevalent within the families of the minors interviewed reveal the conflict experienced as

---


\footnote{286} KENNETH KENISTON, *Youth and Dissent* 8 (1971).

\footnote{287} Adolescent opinions and dissatisfaction result in part from a new capacity for thinking, a shift in emphasis in thought from the real to the possible that occurs during what Piaget has identified to be the period of "formal operations." \textsc{Barbel Inhelder & Jean Piaget}, *The Growth of Logical Thinking* 334–50 (1958). This new ability has consequences for the adolescent's view of self and family. Because adolescents are better able than younger children to imagine other kinds of adult behavior and other ways they themselves could be, unhappiness with their lives and families is sometimes heightened by the clarity with which they can envision different ways of living: "[this] new awareness of the discrepancy between the actual and the possible also helps to make the adolescent a rebel. He is always comparing the possible with the actual and discovering that the actual is flagrantly wanting." \textsc{David Elkind}, *Cognitive Development in Adolescence*, in *Understanding Adolescence* 128, 152 (James F. Adams ed., 1968).

As the narrator of the novel *Metroland* explains:

"They say that adolescence is a dynamic period, the mind and body thrusting forward to new discoveries all the time. I don't remember it like that."

"Things never changed for you. That was one of the first rules. You talked about what things would be like when they did change: you imagined marriage, and sex eight times a night, and bringing up your children in a way which combined flexibility, tolerance, creativeness and large quantities of money; you thought of having a bank account and going to strip clubs and owning cuff-links. . . . But any real threat of change induced apprehension and discontent."

\textsc{Barnes, supra} note 2, at 52, 62.

\footnote{288} See, e.g., \textsc{Michael De Sisto}, *Decoding Your Teenager* (1991); \textsc{Larry Dumont}, *Solving Adolescence* (1991); \textsc{Adele Faber & Elaine Mazlish}, *How to Talk So Kids Will Listen and Listen So Kids Will Talk* (1980); \textsc{Haim Ginott}, *Between Parent and Teenager* (1969); \textsc{Caryl Rivers et al.}, *Beyond Sugar and Spice* (1979).
especially severe and sustained. First, parents and children had been fighting for years. The kind of conflict frequently described was not only over typical annoyances such as TV programming, hairstyle, or the occasional late night out. In six separate cases, tension centered around an arrest, running away, or pregnancy. Seven of the minors had lived outside their homes at least once prior to the emancipation—with relatives, in a group home, or after running away. Emancipation as a means to effect a separation did not appear to be a "first-use" tactic, but something closer to a last resort.

The second common circumstance was the presence of a stepparent or other nonparental adult within the family. A developing literature suggests that adolescence is a time when "the child is particularly vulnerable to the effects of family reorganization and changes in family functioning due to divorce and remarriage."289 Explanations relate in some degree to adolescent development. For example, "[t]he need for [adolescent] autonomy comes at a time when the adult members of the new stepfamily may ask for or imply that demonstrations of commitment to the new unit are essential."290 Yet this is the very time when the beginnings of separation from parents are expected and necessary. Another explanation is that adolescents, "who are themselves 'coming of age' sexually[...], may be embarrassed or confused by the demonstrations of affection and sexuality between their parent and stepparent."291 The experience of one emancipated minor provided a particularly tense and complex example, combining sexuality, competition, and family roles: both daughter and stepmother were pregnant at the same time; the stepmother ordered the girl to leave the house each day and come back only at night when the father returned.292

2. Cultural Context and Consequences—In addition to the psychological dynamics, cultural expectations about growing up and moving out may affect the emancipation decision. Parents can present emancipation to their children as a good, grown-up, almost patriotic thing to do, relying in

290. Id. Parents themselves may be in a transitional developmental stage, either because of divorce or remarriage or just because they are growing older. See Harry Prosen et al., The Life Cycle of the Family: Parental Midlife Crisis and Adolescent Rebellion, in ADOLESCENT PSYCHIATRY 170 (Sherman C. Feinstein et al. eds., 1981).
291. Pasley & Healow, supra note 289, at 265.
292. Interview with Vicki 12.
their presentations (even if subconsciously) upon well-rooted cultural resources. Leaving home, especially when couched in terms of responsibility, self-sufficiency, and independence, is not just what pop-star Tiffany's mother's lawyer described as "every [teenager's] fantasy: [t]ell[ing] your parents to go to hell and becom[ing] an independent grown-up overnight." Self-reliance within American culture differs from bravado. In their study of individualism and morality in contemporary life, Robert Bellah and his coauthors observed that "[w]hile it sometimes appears to be a pitched battle only the heroic or rebellious wage against the parental order, more often the drive to get out in the world on your own is part of the self-conception Americans teach their children." Social science data record a trend beginning in the 1960s in parental value preferences away from obedience and conformity in their children and toward autonomy and self-direction.

But if self-reliance is what Americans are so much about, what is the harm in emancipation's slightly premature leave-taking? Even the harder, sadder cases described here might be characterized simply as exemplars of the school of hard (but in the long run worthwhile) knocks. We cannot know now what the lives of these emancipated minors will be like. We do know, however, that there is a paradox in two competing cultural values: leaving home and sustaining close family relationships. As the *Habits of the Heart* authors conclude, "The idea we have of ourselves as individuals on our own, who earn everything we get, accept no handouts or gifts, and free ourselves from our families of origin turns out, ironically enough, to be one of the things that holds us together." A participant in the study explained his parents' approval of his emancipation in exactly such terms:

[M]y parents were really agreeable to [my emancipation] because they both headed out in life at the soonest

---

293. McDougal, *supra* note 130, at 8.
294. *Robert N. Bellah et al., Habits of the Heart* 57 (1985). For many they talked to, "the family seemed to reinforce the importance of self-reliance as the cardinal virtue of individuals." *Id.* at 62.
296. *See* *BELLAH ET AL.*, *supra* note 294, at 62.
297. *Id.* The authors continue: "Like other core elements of our culture, the ideal of a self-reliant individual leaving home is nurtured within our families, passed from parent to child through ties that bind us together in solitude as well as love." *Id.*
possible point for them and they say that is the only way that you can get anything done so there was no bad feeling about my moving.298

But while "accepting no handouts," "heading out," and "freeing oneself" may be unifying cultural mottos, they are best achieved—sociologists and psychologists are here in agreement—when linked to familial cohesiveness: "Self-reliant and independent notions of the self show up prominently in precisely those families whose offspring report the greatest felt continuity between their parents and themselves."299 Some of the minors interviewed, like the young man just quoted, reported such continuity with their parents,300 and over time others may renew or develop such relationships.301 But many felt cut off from their parents—abandoned rather than self-reliant.302

The shaky quality of independent life for the participants may not seem particularly startling. The end of any intimate relationship, even one desired or planned by both parties, may result in intense feelings of loss.303 But emancipation differs from romantic break-ups in several respects: parents and adolescents do not each enter the relationship voluntarily; the

298. Interview with Brendan 4.
299. BELLAH ET AL., supra note 294, at 57.
300. Each participant was asked, "If you were laid off or seriously hurt in an accident, who could you count on for help?" See Appendix B.
301. John Boswell has observed that while societies commonly establish chronological limits for parental authority, "few seem to imagine that the parent-child relationship actually terminates: 'Is there an age at which one ceases to be a son?' (Seneca the Elder, Controversiae 3.3)." BOSWELL, supra note 33, at 27 n.54. The modern version is perhaps less eloquent. See William Leventon, 28, Living at Home, and Not Neurotic, N.Y. TIMES, Oct. 10, 1988, at A19.

A participant in the present study put it this way: "Some people use [emancipation] to get away from their parents . . . [but] I don't really see that ever happening." Interview with Brendan 11. The authors of Habits of the Heart agree: "Though the issues of separation, individuation, and leaving home come to a head in late adolescence, they are recurrent themes in the lives of Americans, and few of us ever leave them entirely behind." BELLAH ET AL., supra note 294, at 57.

302. In his history of the abandonment of children in Western Europe, Boswell defines the term "abandonment" to mean "the voluntary relinquishing of control over children by their natal parents or guardians, whether by leaving them somewhere, selling them, or legally consigning authority to some other person or institution." BOSWELL, supra note 33, at 24. Under this definition, modern emancipation is not an abandonment; the very process transforms "child" to adult. Modern emancipation might more accurately be regarded as a voluntary relinquishment of control over children to the children themselves.

303. See WALLERSTEIN & KELLEY, supra note 18, at 193 (describing the sense of loss some divorced individuals feel long after the divorce).
relationship is almost always one of asymmetrical dependence; and parents and child are at different stages of emotional development in ways that are quite different from whatever emotional imbalances may exist in relationships between adults. In this regard, emancipation differs not only from divorce, which governs the separation between married adults, but from other official forms of parent-child separations such as adoption or termination of parental rights. In those two cases, either the parent gives up the child voluntarily or the state seeks to end the relationship because the parent is considered unfit. But in both adoption and termination cases, multiple checks have been placed around the processes of separation. In adoption, the mother's consent is inspected for signs of coercion and is protected by cooling-off periods—mechanisms designed to underscore to her the importance of the decision to give up a child. In abuse or neglect cases, the state must make "reasonable efforts" to help parents overcome the family's problems. Only if such efforts, often expensive and long-term, do not work can the state proceed with termination proceedings.

These safeguards reflect the importance of family ties within the legal system. Their disruption, whether voluntary, unilateral, or forced, is taken seriously. There are, however, exceptions to this, all premised on parents acting in the interests of their children and in ways that do not sever the parent-child relationship legally. For example, parents may lodge their children with other family members without state approval. Similarly, decisions by divorcing parents about the custody and residency of their children are approved by courts as matter of course. Even where the child's new

307. See id. § 2.11[7][a].
308. See, e.g., CAL. CIV. CODE § 232(7) (West Supp. 1992) ("The court shall make a determination that reasonable services have been provided or offered to the parents . . . to overcome the problems which led to the deprivation or continued loss of custody and that despite the availability of these services, return of the child to the parents would be detrimental to the child.").
placement is not with a family member but in an institution, the Supreme Court has made clear that "our precedents permit the parents to retain a substantial, if not the dominant, role in the decision . . ."311

Where then does emancipation fit—conceptually and practically—in the scheme of parent-child separations? It is like adoption and parental termination in that it ends the primary legal obligations between parent and child, though in each of those instances responsibility for the child is reposed in some other adult or in the state.312 In contrast, emancipation releases the minor from parental control but substitutes no other guardian. This is all the more curious in that, unlike adoption or termination, the requirements for emancipation are minimal on the face of the statute and in some counties are close to nonexistent in practice. The following section discusses why this may be so.

C. The Disadvantages of Emancipation

1. Judicial Rubber Stamping—Emancipation is supposed to legitimize the status of a minor who is already living as an independent adult. If emancipation changes nothing more than a legal designation, limited judicial oversight of the process may be reasonable and appropriate. The emancipation process is not totally perfunctory when compared, for example, with California’s summary dissolution which authorizes divorce solely "on the papers" with no hearing at all.313

312. By “adoption,” I have been referring to the surrender of the child by her natural mother to adopting parents. There is, however, a second way in which the adoption process comes into play in thinking about separations between parents and children. Adoptive parents sometimes “return” adopted children through the process of abrogation or “set-asides.” In California, set-asides are permitted within five years of the adoption if the child has a defect unknown to the parents at the time of the adoption that has since revealed itself. CAL. CIV. CODE § 228.10 (West Supp. 1992); see also Adoption of K.C., 278 Cal. Rptr. 907, 915–17 (1991) (finding that adopted child has no fundamental liberty interest in her family relationship). This second permissible surrender of the child is premised on a notion that the care of some children exceeds what parents thought they were undertaking and so may have something in common with emancipation. See generally Elizabeth N. Carroll, Abrogation of Adoption by Adoptive Parents, 19 FAM. L.Q. 155 (1985).
Emancipation of Minors Act at least requires the judge to find that the affirmations on the petition are true and that emancipation is not contrary to the minor's best interests. 314

Yet the minors' descriptions of their hearings indicate that judges make that finding needlessly, relying primarily on the declarations on the petition. One explanation for this is the nonadversarial nature of the proceeding. As with routine judicial approvals of parental custody agreements, courts are hard pressed to justify investigating further when there is no dispute before them. 315 The emancipation hearings seem to resemble at least some judicial hearings on teenage abortion petitions—not "a careful individualized assessment, but . . . instead a rubber-stamp, administrative operation." 316 As Robert Mnookin has pointed out, "the rubber-stamp nature of authorization is perhaps not so surprising. After all, the proceedings before the judge are not contested, and the judge has no independent source of information." 317 Still, there are reasons to think emancipation might be granted less freely than abortion. Unlike abortion, there is no constitutional right involved in a minor's claim for adulthood. Moreover, the consequence of denying an emancipation is simply a postponement of the status—there is no irremediable harm, no opportunity lost forever. 318

316. Robert H. Mnookin, Bellotti v. Baird: A Hard Case, in IN THE INTEREST OF CHILDREN 149, 263 (Robert H. Mnookin ed., 1985). In addition, see the statistics of abortion hearings in Minnesota as reported in Hodgson v. Minnesota, 110 S. Ct. 2926, 2940 (1990) (noting that of 3,573 judicial bypass petitions filed, all but 15 were granted). But see Isabel Wilkerson, Michigan Judges' Views of Abortion Are Berated, N.Y. TIMES, May 3, 1991, at A19 (reporting that although statute authorizes judge only to decide if minor is mature enough to make the abortion decision, several judges announced that they will not comply: "If I had to sign a paper for an abortion, even once is too much").
317. Mnookin, supra note 316, at 263 (noting that each of the 1300 teenage petitions filed in Massachusetts between April 1981 and February 1983 was granted; all but five by the trial court). Of course, the fact that many teenage abortion petitions are granted does not mean that teenagers should be required to petition for the procedure. See AMERICAN CIVIL LIBERTIES UNION REPRODUCTIVE FREEDOM PROJECT, SHATTERING THE DREAMS OF YOUNG WOMEN: THE TRAGIC CONSEQUENCES OF PARENTAL INVOLVEMENT LAWS (1991) (opposing parental involvement laws).
318. Permanence of harm has measured into judicial determinations regarding teenage abortion, see Bellotti v. Baird 443 U.S. 622, 642 (1979) ("A minor not permitted to marry before the age of majority is required simply to postpone the decision. . . . A pregnant adolescent, however, cannot preserve for long the possibility of aborting . . . "); teenage marriage, Moe v. Dinkins, 533 F. Supp. 623, 630 (S.D.N.Y.
these considerations could be expected to remove pressure from granting emancipation petitions, that is not the case. Petitions in the counties studied are granted as a matter of course.

All the emancipation petitions studied were accompanied by parental signatures, thus presenting an overtly unified familial position. Once the parents had signed, emancipation was guaranteed.319 This suggests that judges may rely on the parental signatures as much as on the minor’s stock declarations. Judges may regard the parental signature as a meaningful and satisfactory assurance that emancipation is not contrary to the interests of the child.320 This hypothesis was confirmed by an interview with a Santa Clara Superior Court judge.321

California judges also may be using the parental signature as a proxy for an independent, best-interest determination.322 If so, they follow a well-established tradition of judicial deference to parental decisions about where their children live and who will have control over them.

1981); and certain teenage political preferences, Polovchak v. Meese, 774 F.2d 731, 737 n.16 (7th Cir. 1985) (“It is this factor—the finality of the decision and its grave and potentially irreversible consequences [teenager returned to the former Ukraine against his will]—that makes this case analogous to the Supreme Court decisions in which a minor’s right to obtain an abortion over the objections of her parents was affirmed.”).

319. Because all 90 of the petitions studied were filed with parental signatures, we cannot predict whether they would have been granted without parental signature, solely on the child’s request. Curiously, the recently-revised Santa Clara Superior Court emancipation procedure has a well-developed protocol for processing petitions contested by a parent. Interview with Judge Donald Clark, supra note 120. Such cases are to be referred to the Family Conciliation Service. Id. But there have been and are likely to be few such cases, in part because, as this study reveals, parents tend to promote, not contest, their teen’s emancipation.

320. The actual signing by the parent may have great significance for the minor as well as the judge. For example, one participant explained:

Then I finally got [my mother] to sign the paper which basically she was admitting that I was grown up and that I could handle my own life. So I don’t know, just the fact that she agreed to do it is what made me emancipated . . . . And the paper was important legally but it wasn’t to me. It was the fact that she had signed it.

Interview with Judy 1.

321. Interview with Judge Donald Clark, supra note 120.

322. See CAL. CIV. CODE app. § 64 (West 1982) (allowing parents to give up the right to notice and give their consent to a declaration of emancipation without a hearing).
Evidence on emancipations from Michigan shows the extent to which parental affirmation of a child's status controls and the dangers inherent in deferring to such affirmations. Until 1989, Michigan's emancipation statute provided for emancipations requested solely by parents. A survey of the fifteen largest counties in Michigan revealed that no verification of the emancipation petition beyond proof of identity was required by court clerks administering the process. The Michigan Network of Runaway and Youth Services described the pre-1989 process:

Currently it is possible in many areas for the parent of a teenager to walk into a county clerk's office, sign a small piece of paper, and walk out with no further parental obligations to that teenager. No judge or referee considers the implications of the action. No interview of the youth in question occurs. Sometimes, the youth in question does not even know what has happened.

The practice of rubber stamping emancipation petitions is similar to the automatic judicial approval of custody agreements. Treating the two cases alike may not, however, make good sense. Deference to parental agreement about custody in divorce seems appropriate; there is little reason to believe a judge is better able than the two parents to predict

326. See Sharp, supra note 310, at 1279, 1281 (objecting to the practice in some courts of hearing evidence in custody modification cases that existed at the time of the initial order where that order was not litigated but was instead based on a private consensual agreement). Sharp explains the logic behind rubber stamping: "most parents genuinely love their children, and it is reasonable to assume that the children's welfare is a vital consideration in the parents' decision to resolve their dispute by agreement." Id. at 1280. While many factors in addition to their child's welfare go into parental custody agreements, parents likely are more able to make better decisions about the custody of their children than are judges.

The practice of rubber stamping parental custody agreements continues even when the applicable state statute explicitly requires judicial scrutiny of cases where there has been neglect, abuse, or domestic violence. See Jane W. Ellis, Plans, Protections, and Professional Intervention: Innovations in Divorce Custody Reform and the Role of Legal Professionals 24 U. MICH. J.L. REF. 65, 165-67 (1990) (studying the implementation of Washington legislation requiring parents to complete detailed "parenting plans" in all custody cases).
a satisfactory placement. In addition, custody case loads are greatly reduced through consensual arrangements and the court retains jurisdiction throughout the child's minority should modification be necessary.

But such justifications for the automatic approval of custody agreements do not apply as readily to emancipation. First, the relatively small number of emancipations does not threaten judicial efficiency. The existence of conflict between parent and child further distinguishes emancipation from parental agreements regarding custody. As long as no conflict between parent and child is acknowledged, the court can accept a parental waiver of the hearing as benign, in good faith, and unconnected to potential conflicts of interest between them. Yet our data indicate that family conflict often underlies emancipation. As Anne Mahoney has suggested in the context of status offenders, the "cycle of alienation" between parents and their misbehaving teenagers may be similar to the alienation between spouses in a dissolving marriage, "except that there is no relief through divorce for parents and children."

But emancipation is quite similar to a divorce. In both cases the parties agree to dissolve their legal responsibilities to one another, usually because they find living with one another in sufficient harmony impossible. Like divorce, emancipation legally severs an intimate relationship whose content is supplied, or at least whose gaps are filled, by state rules. Judicial approval is necessary to give effect to the severance in both cases.

Of course, emancipation differs from divorce in several important ways. First, while divorce ends the legal relationship between the spouses (they are no longer married), it does

327. See Mnookin & Kornhauser, supra note 315, at 955.
328. Courts have failed to acknowledge disharmony between parents and children even in situations where the potential for conflict between the two sets of interests seems absolutely clear. One example is the institutionalization of minors by parents, Parham v. J.R., 442 U.S. 584, 606–13 (1979). In that case, the Supreme Court approved procedures that did not consider underlying familial tensions. Id.
330. The speed of the hearings is another similarity. The emancipation hearings lasted about five minutes. The average for uncontested divorce hearings is reported at four minutes. Ralph C. Cavanagh & Deborah L. Rhode, Project, The Unauthorized Practice of Law and Pro Se Divorce: An Empirical Analysis, 86 YALE L.J. 104, 129 (1976). The similarities in the speed of the hearings support the view that judges consider emancipations to be uncontested.
not necessarily end all their obligations to one another. Aspects of dependence during the marriage sometimes justify continued financial support between the former spouses. Emancipation also ends essential parental obligations to children.\textsuperscript{331} However, emancipation makes the minor's new status completely controlling and takes little or no account of the previous dependent relationship. Second, unlike spouses, the legal duties between parents and children are not supposed to be equally beneficial to both. Benefits go mostly to the children who are presumed to lack the capacity to renounce either the relationship or its benefits. Third, because the state values the marital relationship, small steps are taken even within the divorce process to promote continuation of the marriage. For example, the divorce petition itself offers the parties the opportunity for counseling services, and there is a six-month waiting period before a divorce can become final.\textsuperscript{332} Finally, in divorce there is at least the presumption of equality between the parties, with efforts sometimes made to promote equality through procedural reforms where its absence is noticed.\textsuperscript{333}

Emancipation, on the other hand, requires no waiting period and offers no counseling. It is perhaps closest to a summary divorce, where the court proceeds on the basis of pleadings alone.\textsuperscript{334} But even parties to a summary divorce must be offered a brochure explaining to them, in nontechnical language, the "requirements, nature and effect" of the proceedings.\textsuperscript{335} Thus, even the short, speedy version of divorce recognizes the importance to the parties of the impending changes in their status and obligations and requires that notice of them be clearly given.

\textsuperscript{331} For an exception to this general rule, see MICH. COMP. LAWS ANN. § 722.4(2)(d) (West Supp. 1991) (leaving the responsibility of medical care costs on the minor or the minor's parent when emancipation by operation of law occurs pursuant to the minor's consent to routine medical treatment while in the custody of a law enforcement agency).

\textsuperscript{332} CAL. CIV. CODE § 4514(a) (West 1983 & Supp. 1992) (providing a waiting period of at least six months); id. § 4556 (providing conciliation services where available).


\textsuperscript{334} Summary divorce is available only to parties who have no children from the relationship, own no real property, have been married for less than five years, and have assets under $25,000. CAL. CIV. CODE § 4550(c)–(g) (West Supp. 1992).

\textsuperscript{335} CAL. CIV. CODE § 4556 (West 1983).
Divorce and parent-initiated status offense petitions are two situations in which conflict among related persons are played out—recognized, tolerated, and supervised—within the legal system. The law of wills provides a third. Parental refusal to devise property to a child often reflects some earlier disagreement or dispute between them. Disinheritance may not be common, but it is permitted. The law accommodates the transfer of personal conflict to a public forum, insisting on formulaic recitations by the testator acknowledging that the failure to leave something to a child is unusual, a disruption in the natural paths of parental affection.

Like dividing an estate or splitting up a marriage, emancipation also represents a form of family conflict seeking resolution within the legal system. The difference is that unlike divorce or disinheritance, emancipation law fails to incorporate the possibility of conflict into the procedure used to resolve it. As a result, the system is less attentive to misuse, coercion, or inappropriateness. Parental waiver of notice of the emancipation hearing permits judges to accept uncritically as a neutral, if not an harmonious, familial decision what is in fact often a complex family situation. The case of Parham v. J.R., upholding parental authorization to institutionalize children with a minimum of procedural safeguards, offers support for this approach. The case is

336. As is sometimes the case with divorce, the existence and extent of conflict in emancipation is obscured by the procedure itself. As Erlanger, Chambliss, and Melli suggest with regard to informally settled divorce cases, the informality and flexibility of the process itself may downplay the contentiousness of many divorces, even those settled "consensually." Howard S. Erlanger et al., Participation and Flexibility in Informal Processes: Cautions from the Divorce Context, 21 LAW & SOC'Y REV. 585, 596-97 (1987).

337. See, e.g., In re Estate of Carson, 239 P. 364, 368 (1925) (upholding a mother's disinheriting her estranged daughter and noting that the will "is a fair illustration of the ordinary display of the operation of natural resentment by a parent of real or fancied wrongs"); see also Deborah A. Batts, I Didn't Ask to Be Born: The American Law of Disinheritance and a Proposal for Change to a System of Protected Inheritance, 41 HASTINGS L.J. 1197 (1990) (cataloguing causes of disinheritance); Nathan Roth, The Psychiatry of Writing a Will, 41 AM. J. PSYCHOTHERAPY 245, 247 (1987) ("The opportunity in a will for the expression of hatred and vengefulness is too appealing for some people to forego.").

338. In California, disinheritance may be accomplished by stating, "I have... intentionally and with full knowledge, omitted to provide for my heirs who may be living at the time of my death." CAL FORMS: LEGAL AND BUSINESS § 41:411 (1985).


340. Id. at 607-08.
The present study suggests that when the process does not sufficiently examine emancipation requests, parents may well be able to conceal motives, interest, and participation. Identifying a conflict between parent and child is not an attribution of fault or malice to one side or the other. It is instead a way to force consideration of alternatives for families who are at wit's end.

Indeed, one California court faced with a family in conflict recommended emancipation as a means of sanctioning a teenager’s departure from his parent’s home. In *In re James T.*, the court found insufficient evidence of severe abuse or neglect to justify the removal of sixteen-year-old James from his mother, despite both James’s own preference to remain with his adult sister and the court psychologist’s recommendation that he not be returned to his mother. Aware that the result was not even close to James’s best interest, the court then commented:

Although removal of 16-year-old James from Mother was erroneous as a matter of law, he has now lived with his sister and brother-in-law for nearly a year and one-half and his graduation from high school is imminent. Perhaps Mother, sensitive to James’s present needs, will realize removal from his present home prior to his graduation would be detrimental. *Moreover, due to his age and maturity, she may be amenable to his emancipation ([Cal.] Civ. Code §§ 60 et seq.)*.

---

341. *Id.* at 602–03. The Court has recognized that where a father has been abusive toward either the mother or his children, the assumption that parents make decisions in the interests of their child may not hold. Hodgson v. Minnesota, 110 S. Ct. 2926, 2945 (1990) (holding that a pregnant minor seeking abortion is not required to provide notice to both parents).

342. 442 U.S. at 611. The possibility of a conflict of interest between parent and child may be particularly acute when the parent is seeking to remove the child from her home or to end parental support. *See Alice Bussiere, Importance of Dependency Counsel Affirmed in State, Federal Cases, YOUTH L. NEWS, July/Aug. 1990, at 11–13 n.7.*


344. *Id.* at 131.

345. *Id.* at 132 (emphasis added).
The court further suggested that if the mother were not amenable, then James "may be able to achieve his objectives by establishing a guardianship where, even if Mother objects, the less rigorous" (and clearly obtainable) "detrimental to the minor" standard would apply.\(^4\)

In recognizing the realities of fact (a home too hard for a kid to live in) and of law (jurisdiction established under one code section and not another), the court in *James T.* invoked two other legal mechanisms, emancipation and guardianship, to bring about a reasonable result. Emancipation would have worked in James's case, although it would not have applied, for despite having supplemented his mother's income with odd jobs, James was *not* managing his own financial affairs. Like many of the minors interviewed here, James's emancipation would have removed him from a hostile family environment, though in this case it was James and not his mother who wanted the separation. Unlike many of the minors interviewed, emancipation would not have resulted in James's homelessness or dropping out of school; he lived with his sister. James's facts are better—a good student, a job record, a secure place to live. But the shortcoming of emancipation is not that it sometimes facilitates badly needed separations from parents. It is rather that the cost of separating in many cases has substantial risks, such as the likelihood of dropping out of school or becoming homeless.

2. *The Use of Emancipation and the Deinstitutionalization of Status Offenses*—This Article has focused on why emancipation is used by a group of minors described earlier as "unexpected users." They are "unexpected" because in many cases they fail to match any version of an independent, self-sufficient teenager living apart from parents. Another approach is to ask why it is not used more frequently by the kind of minor for whom it was intended. This requires looking at concurrent reforms on behalf of children in the late 1970s.

Recall that emancipation was drafted by lawyers representing kids living by themselves in San Francisco. Many were living independently with parental acquiescence, rather than consent.\(^4\) A common complaint was that the police were rounding them up as vagrants and placing them in secure detention, often on Friday nights so that the minors were

\(^{346}\) *Id.*  
\(^{347}\) See supra notes 42–45 and accompanying text.
sometimes detained until Monday morning.³⁴⁸ The enactment of emancipation had been urged in part to prevent the practice of detaining minors whose parents consented, even tacitly, to their child's living arrangements.

During the late summer of 1978, at the same time that the emancipation bill was processing through the legislature in Sacramento, a different bill with a quite different purpose was also making its way. The bill, AB 958, sought to restore the secure detention for status offenders that deinstitutionalization legislation in 1976 had removed.³⁴⁹ The deinstitutionalization of juvenile offenders had never been popular. As David Steinhart explains, deinstitutionalization reforms in California had resulted not from commitment to principle or to the federal financial incentives but to "the tenacity of a few reform-oriented policymakers, to some legislative horse-trading, and to the fatigue and confusion that traditionally surround the last two or three days of each legislative session."³⁵⁰ When the fatigue and confusion faded, efforts toward reinstitutionalizing offenders began. This backlash took the form of AB 958 which permitted twelve hours of secure detention for most status offenders (reduced from the proposed original of forty-eight). Despite AB 958, the overall threat of incarceration had been greatly reduced.³⁵¹ A central problem emancipation attempted to cure—lock-ups by police of kids on the street—was cured or at least tempered³⁵² through deinstitutionalization. This may explain in part why emancipation has been used less often by the kind of teenager the legislation was meant to benefit.³⁵³

3. The Unevenness of County Practices: The Indeterminacy of Implementation—Disparate county emancipation

³⁴⁸ Steinhart, supra note 66, at 784.
³⁴⁹ See CAL. WELF. & INST. CODE § 207(c)-(f) historical note (West 1984) (codifying AB 958).
³⁵⁰ Steinhart, supra note 66, at 799.
³⁵¹ See id. at 811-12.
³⁵² Costello and Worthington describe a variety of mechanisms used to circumvent restrictions on incarcerating status offenders. COSTELLO & WORTHINGTON, supra note 266, at 58–80. These techniques include bootstrapping a status offender into a juvenile delinquent through the court's contempt power, the use of secure mental facilities and "semi-secure" detention facilities, and alleging juvenile delinquency on status offender facts. Id.
³⁵³ There are two factors which need to be considered in this interpretation. First, few of our 18 were living independently; maybe the ones we couldn't find were self-sufficient, though this seems unlikely for the reasons described above. Second, the difference in county procedures may influence who uses the statute.
practices\textsuperscript{354} give rise to several implementation issues: the significance of administrative decisions implementing legislation; the role of lower level court employees in determining access to process;\textsuperscript{355} the consequences of having no uniform procedural guidelines;\textsuperscript{356} and the particularized interests of localities in shaping legal procedures and outcomes.\textsuperscript{357} Family law offers many examples where varying local procedures and practices result in different substantive outcomes.\textsuperscript{358}

\footnotesize

\textsuperscript{354} See supra notes 115–24 and accompanying text (describing disparities in emancipation availability in Bay Area counties).

\textsuperscript{355} Practices under Michigan's former emancipation statute provide another example. In some counties, emancipation may be accomplished by procedures that are shockingly informal. For example, in many cases, parents can emancipate their minor children simply by filing papers with the county clerk. Memorandum from Representative Perry Bullard to the Michigan House of Representatives (Dec. 8, 1987) (on file with the University of Michigan Journal of Law Reform).

Participation by court personnel does not always work against the interests of minors. For example, the procedure for a judicial bypass hearing in teenage abortion cases has been described as “operating reasonably smoothly.” Mnookin, supra note 316, at 229. But, as Mnookin points out, “[t]his is no accident, but instead is the product of the efforts of a number of people to ensure that the implementation of the statute did not cause unnecessary harm for the young women involved.” Id.

\textsuperscript{356} Nancy Thoennes et al., The Impact of Child Support Guidelines on Award Adequacy, Award Variability, and Case Processing Efficiency, 25 Fam. L.Q. 325 (1991) (explaining that the effect of statewide uniform child support guidelines is limited because “judges within [any] particular jurisdiction have been operating on the basis of commonly understood yardsticks for determining child support levels”).

\textsuperscript{357} In their study of outcomes of dispositions in dependency hearings in North Carolina, Robert Kelly and Sarah Ramsey found that “in sparsely populated counties that experienced growth in per capita indigency caseloads and expenditures in their court system, the likelihood of immediate custody orders was reduced. . . . In other words, policy factors were more important than the type of problem in determining custody disposition.” Sarah H. Ramsey, Representation of the Child in Protection Proceedings: The Determination of Decision-Making Capacity, 17 Fam. L.Q. 287, 301 (1983).

\textsuperscript{358} Two such examples are emergency shelter care procedures and practices for abused and neglected children. A 1985 study of statewide emergency shelter care (the place a child first goes upon entering the foster care system) reported tremendous differences in county practices on such matters as the number and type of staff people who assess a child on intake, the types of shelters used, the percentage of children placed with parents or relatives within three days, and the mean length of stays in shelter care. The Children's Research Institute of California, Emergency Shelter Care in California, figs. 9, 10, 12, 13, 15, & 21 (1989). Shelter care was excluded from the foster care review statute because it was intended to be a very short-term response to a family crisis. As a result, there is little uniformity among counties on the range of decisions that determine under what conditions and for how long children will live in emergency shelters. Id. at iv.

While detailed consideration of the causes of county variances in the context of emancipation practices awaits future research, this study offers some early observations and many questions. For example, San Francisco, long a mecca for runaways, has no interest in attracting additional kids, which might explain its formerly stringent implementation of the emancipation statute. But at what level was that decision made? Who determines which division of the superior court hears emancipation cases? Who decides that probation reports, unmentioned in the statute itself, are a good idea?

The answers matter; for when correlations between practices and outcomes are understood, practices can be changed. If probation reports are inappropriately burdening the process, the statute might be revised to prohibit county embellishment of statewide procedures and to encourage uniformity. Of course, local constraints of budgets, of personnel, of politics on the implementation of any statute are powerful. This is not altogether bad; we would disfavor the uniform implementation of emancipation along the former San Francisco model.

Perhaps the best that can be hoped for in any attempt to improve the lives of children through legislation is that the drafters accurately identify the nature of the problem being solved. The use of emancipation discovered in our study reveals desperation among parents and children who need to separate from one another. If that is the identified problem, emancipation may be a solution. It should not, however, be applied in ways that do put minors at increased risk. The next section considers how that might be done.

359. See supra notes 115-22 and accompanying text. Some limited evidence suggests that youth tend not to move more than 50 miles from their legal residences (presumably their parents’); “[t]hus, contrary to some media depictions, at least those youth who seek services tend not to go to large metropolitan areas.” UNITED STATES GENERAL ACCOUNTING OFFICE, HOMELESSNESS: HOMELESS AND RUNAWAY YOUTH RECEIVING SERVICES AT FEDERALLY FUNDED SHELTERS 19 (H.R.D.-90-45 Dec. 19, 1989). Nevertheless, San Francisco may well want to reduce even the number of local teenagers seeking shelter.

360. The stringent implementation in effect at the time of this study was reversed by 1991 so that San Francisco now follows the Santa Clara and San Mateo model. The precipitating event for the change seems to have been the assignment of a different judge to the emancipation calendar. Telephone Interview with Chris Wu, supra note 140.
IV. ALTERATIONS AND ALTERNATIVES

The discovery that many minors who were emancipated had not managed their own financial affairs or lived independently raises several questions. First, should anything be done to change California's emancipation process? Legislation misdirected from the start and misapplied thereafter might reasonably be trashed or tightened to reduce the likelihood of continued misuse. But are the consequences of emancipation so bad, so predictable, or so avoidable as to justify significant revision or abandonment of the Act? Emancipated life may be hard, but would the consequences of remaining at home or running away be worse? With those questions in mind, the first part of this section evaluates possible revisions of the statute. It concludes that the basic structure of the statute should be retained. Indeed, if certain of its current deficiencies were remedied, some prospective form of emancipation might reasonably become more available.

The second part of this section responds to a different, perhaps harder question raised by the findings. The issue here is not redrafting the emancipation statute but rather rethinking the problems revealed by its actual use: the absence of options for parents and teenagers in serious conflict with one another. This section focuses on alternatives that might either prevent the need for conflict-driven emancipations or that might reduce the precariousness of emancipated life.

A. Better Statutes?

If the absence of preemancipation self-sufficiency helps explain the postemancipation difficulties, should the substantive or procedural requirements for emancipation simply be adjusted? A modified emancipation statute might, for example, require more stringent proof of physical and financial independence, or probation reports, or a higher burden of proof.

Yet the real difficulty with the emancipation process, one could argue, seems not to be drafting defects regarding stringencies of proof, but the untrustworthiness of adolescent consent. Under this view, the emancipation process is flawed by its inappropriate vesting of legal authority in a class of
persons—children—who are incapable of exercising authority freely because they lack the maturity, the skills, and the ability to make autonomous decisions. Under this view the emancipation process only reveals what the law already knew generally: children are simply too susceptible to persuasion by their parents and other adults to make important decisions. They are as the Supreme Court has characterized them: vulnerable, inexperienced, and unable to make critical decisions in a mature way.\textsuperscript{361}

Does the fact that many of the minors were influenced, even heavily, by their parents during the emancipation process subvert the integrity of their decisions? One way to think about this is to consider emancipation as a waiver or the "intentional relinquishment of a known right."\textsuperscript{362} The right minors relinquish is the statutory entitlement to financial support by their parents until the age of majority.\textsuperscript{363} Parents of emancipated minors are relieved of that obligation because their child has, in effect, "waived" the right to support by choosing to become emancipated.\textsuperscript{364} The standard requirements for a valid waiver are that it be made voluntarily, knowingly, and intelligently.\textsuperscript{365} The first aspect addresses coercion, the second comprehension, and the third some level of competence.\textsuperscript{366}


\textsuperscript{362} The classic definition of waiver is taken from criminal procedure. See Johnson v. Zerbst, 304 U.S. 458, 464 (1938). Most waivers are defined along those same lines, although different rules determine a waiver's validity depending on the source of the right waived. For example, two standards (with differing degrees of strictness regarding whether the right was "known" or not) are applied to waivers of constitutional rights; civil law waivers are generally controlled by principles of contract law, and waivers of statutory rights may be subject to different limitations. See generally Edward L. Rubin, Toward a General Theory of Waiver, 28 UCLA L. Rev. 478 (1981).

\textsuperscript{363} CAL. CIV. CODE § 196 (West 1982).

\textsuperscript{364} Waivers remove a benefit or protection that is otherwise required. For example, minors in California are entitled to a hearing before being institutionalized in a mental hospital. In re Roger S., 569 P.2d 1286, 1295–97 (Cal. 1977). They can, however, waive the hearing. Id. at 1296. As one study of the hearings points out, "[t]he use of waivers allows minors who would not qualify for [hospital] admission under Roger S. [commitment hearing standards] to acquiesce to their parents' desire to hospitalize them." Dillon et al., supra note 232, at 444.

\textsuperscript{365} See Zerbst, 304 U.S. at 464.

\textsuperscript{366} Thus, the purpose of the right being waived succumbs to a different inquiry—was the waiver valid? In the context of commitment hearings, this has
In a constitutional setting, the courts determine whether these criteria are met by taking into account the "totality of the circumstances." For minors, relevant circumstances include "the juvenile's age, experience, education, background, and intelligence, and . . . whether he has the capacity to understand the warnings given him, the nature of his [constitutional] rights, and the consequences of waiving those rights." Although children have no constitutional right to parental financial support (or even to parents), the totality of the circumstances test still is useful here. The same kinds of factors—age, education, experience—are pertinent with adjustments appropriate to the particular context of emancipation. For example, does the would-be emancipated minor understand the nature of her existing familial obligations (obedience) and entitlements (support) within the family and the ways in which emancipation would alter these?

With that general standard in mind, we turn to the voluntariness of the minor's emancipation decision. Was the kind of parental influence revealed in this study such a manipulation of teenage will that the emancipation decision should be characterized as involuntary? Was the parental involvement coercive or simply the kind of participation in their children's major decisions that legislatures and courts endorse and sometimes require? In the context of teenage abortion, for example, parental influence is meant to enhance, not disqualify, the minor's decision.

meant that certain "legal procedures were intended by Roger S. to screen the decision to institutionalize. When waivers are used, however, the only screening that occurs is the minor's competence to volunteer." Dillon et al., supra note 232, at 444.


368. Id.


But it is not unconstitutional for a parent to terminate the parent-child relationship. See Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1238-39 (2d Cir. 1979) (rejecting Thirteenth and Fourteenth Amendment claims by adult adopted children that they have a right to know the identity of their natural parents); Carol Gloor, Comment, Breaking the Seal: Constitutional and Statutory Approaches to Adult Adoptees' Right to Identity, 75 NW. U.L. REV. 316 (1980); Deborah D. Poulin, Note, The Open Adoption Records Movement: Constitutional Cases and Legislative Compromise, 26 J. Fam. L. 395 (1987-88).

370. See H.L. v. Matheson, 450 U.S. 398, 409-10 (1981) ("[Parental notification] plainly serves the important considerations of family integrity and protecting adolescents which we identified in Bellotti II.").

Adolescent consultation with adults, professionals as well as parents, is generally recognized as something to be encouraged. For example, the California Supreme Court ruled that consensual sexual activities between minors under 14 was excluded
One reason parental participation may seem so substantial is that their actual participation greatly exceeds the modest involvement required by the statute. Parents must receive notification of their child's request for emancipation and this makes sense. Parents should be informed if their children are about to set up shop as adults in some other location, in part because parental obligations are affected. Formal notice aside, the Act also contemplates some parental awareness of the minor's situation through the minor's affirmation that he is living apart from parents with their "consent or acquiescence." The living apart requirement seems to assume some prior agreement or discussion between parent and child or at least that the parents have noticed that their child has left.

But the problem with the parental role in emancipation is not compliance with notification requirements, but rather the magnitude of parental participation behind the scenes. The concern is that parents and not minors are calling the shots. Parental influence results precisely because their participation is not overt; as the interviews suggest, it is almost subliminal, a background presence denied by many minors. As a California court noted in reversing the lower court's decision that an agreement between a boy and his mother emancipated the boy: "The limitations upon the minor's right to make binding contracts with strangers emphasize the illogic of a rule that he may bind himself by a contractual release of his parent, the person most likely to have a strong influence upon him."

Yet although the amount of parental influence and the risk of coercion is greater than that anticipated by the drafters from the state's Child Abuse Reporting Law in part because its inclusion would deter sexually active minors from seeking health care and contraceptive advice and services from responsible adults. Planned Parenthood Affiliates v. Van de Kamp, 226 Cal. Rptr. 361, 371-73 (Ct. App. 1986); see Tom A. Croxton et al., Counseling Minors Without Parental Consent, 67 CHILD WELFARE 3 (1988) (reviewing benefits to adolescents—and practical lack of risk to professionals—of counseling minors without parental notification).

374. The "totality of circumstances" approach triggers consideration of not just "who?" but "where?" in assessing the voluntariness of the decision. The very location of the emancipation decision—home—may tilt toward involuntariness. The place a decision is made and the decider's relation to the place are of great importance. For example, the consent of patients in nursing homes to Directives to Physicians [Do Not Resuscitate Orders] is given extra scrutiny because the nursing home is regarded as inherently coercive, a closed environment where patients are essentially dependent.
of the Act, the minors interviewed were not simply ciphers. In most cases, they gave multiple reasons for seeking emancipation, reasons that reflected their own interests as well as their parents'. In many cases living apart from one another seemed a common goal of parent and teen. As has been observed in the context of status offenders, "perhaps one of the most healthy and sensible things some adolescents can do is to leave parents whose lives and relationships are confused, who are out of touch with reality, or who attempt to use the youths to meet their own emotional needs." In much the same way and for much the same reasons, it is hard to say that the minors interviewed here, though influenced by their parents, made the emancipation decisions involuntarily.

375. According to one of the Act's principal authors, Peter Bull, the drafters had simply never imagined parental manipulation as a factor in implementation. Interview with Peter Bull, supra note 42.

376. Minors, like other people, may choose an alternative that favors another (here a parent) over themselves because they want to please or benefit that person. Such a choice may not be in a minor's best interest but still may be a rational choice made as freely as any other decision. The choice to benefit another does not mean the decision has necessarily been made involuntarily. In some instances, however, like children's preferences in custody disputes, the legal system may not permit the choice because of perceived potential psychological detriment to a child forced to choose. See Tari Eitzen, A Child's Right to Independent Legal Representation in a Custody Dispute: A Unique Legal Situation, A Necessarily Broad Standard, The Child's Constitutional Rights, The Role of the Attorney Whose Client Is the Child, 19 FAM. L.Q. 53, 70–72 (1985). Under this view, making a child's preference dispositive can be "the cruelest and most inappropriate of solutions. The child may respond out of fear [of parents] or he may respond to what he perceives as his parents' needs and not his own." Id. at 56.


Another potential category of perhaps unwise but not unreasonable decisions are decisions by unmarried teenage girls to become or remain pregnant. Taken in the context of lives where attention and success are hard to come by, teenage pregnancy may result from "the teens' contradictory pursuit of romance, security, status, freedom, and responsibility within the confines of their immediate surroundings." Regina Austin, Sapphire Bound!, 1989 WIS. L. REV. 539, 560 (challenging the view that black teenage pregnancies are necessarily irresponsible acts).

378. A frequent problem in making a determination about a minor's capacity is that if the decision maker agrees with the minor's decision, she is more likely to find...
Studies on decision-making abilities in the area of medical treatment of adolescents provide some basis for understanding competence, the second element of a good waiver. Those studies suggest that adolescents age fourteen and over appear to make decisions in a manner and with results similar to adults: “In general, minors aged 14...[demonstrated] a level of competency equivalent to that of adults, according to four standards of competency (evidence of choice, reasonable outcome, rational reasons, and understanding).” Fourteen is recognized as an appropriate age for the minor’s opinion to be given at least some weight in other areas, such as custody and institutionalization and so seems appropriate here, though we note that no fourteen-year-olds were found in our study.

The real problem with many emancipation decisions was not with voluntariness or competence, but rather with the requirement that the waiver be made knowingly. Interview after interview revealed that many minors simply did not understand what they were getting into. As one court

the minor had the maturity or capacity to make it. See Ramsey, supra note 357, at 317 (discussing the risk of lawyers finding minor client has capacity when minor’s and lawyer’s views on child’s best interest coincide).

Gary Melton goes further and suggests a normative standard regarding the minor’s decision is often at work in capacity determinations. He argues that courts tend to find the necessary capacity in cases where the minor has done what society would want him to have done, for example, confessed to criminal conduct. Gary B. Melton, The Clashing of Symbols: Prelude to Child and Family Policy, 42 AM. PSYCHOLOGIST 345 (1987).


380. Weithorn & Campbell, supra note 379, at 1595. To be sure, teenage decisions result not only from cognitive development, but are formed by other social and emotional factors as well: “The primary cognitive changes of adolescence may not be changes in capacities as they are traditionally measured by, for example, Piagetian or IQ measures, but rather, something closer to ‘savvy.’” Catherine C. Lewis, How Adolescents Approach Decisions: Changes over Grades Seven to Twelve and Policy Implications, 52 CHILD DEV. 538, 539 (1981). Lewis examined such features of decision making as “imagining risks and future consequences, recognizing the need for independent professional opinions in certain situations, and recognizing the potential vested interests of professionals in providing certain information.” Id. at 543. See also Beverly Balos & Ira Schwartz, Psychiatric and Chemical Dependency Treatment of Minors: The Myth of Voluntary Treatment and the Capacity to Consent, 92 DICK. L. REV. 631, 644 (1988) (suggesting from a review of studies that minors 15 and above have not only satisfactory cognitive abilities to comprehend treatment information but have “the ability[ies] to use that information in a practical manner”).


382. See supra note 365 and accompanying text.
unsympathetically observed, "With emancipation comes a metamorphosis. It transforms a minor, however inexperienced, into an adult, however unsophisticated."\(^{383}\)

The problem is not that minors lack the capacity to understand their statutory rights or the consequences of waiving them, but that no one told them about any rights or consequences. Emancipation, unlike many less vital activities such as smoking a cigarette, buying on credit, or walking through a metal detector, comes with no mandatory warnings alerting consumers to the likelihood of risk, loss, or harm. Indeed, under a waiver analogy, a waiver of parental support should be ineffective unless the minor was fully informed of the existence of the right, its meaning, and the effect of the waiver.\(^{384}\)

Securing such information before becoming emancipated is crucial. Requiring notice to minors of the meaning and consequences of emancipation enhances the likelihood that the decision will be made knowingly without rejecting the autonomy of minors to make the decision in the first place. Notice should specify the nature of a minor’s legal status within the family before emancipation and what it will be afterward.

---

384. See Hittle v. Santa Barbara County Employees Retirement Ass’n, 703 P.2d 73, 82 (Cal. 1985) (setting out standard of waiver for statutory right).

On the other hand, emancipation as a waiver of the parental support obligation may be invalid regardless of the quality of the notice. Not every statutory right can be waived, and the benefits of a law enacted for the protection of the public generally, as opposed to the benefit of individual citizens, cannot be waived at all. CAL. CIV. CODE § 3513 (West 1970). For example, because provisions regulating the work hours of women and children were enacted for a public purpose, they could not be waived by individuals. See Brooklyn Sav. Bank v. O’Neil, 324 U.S. 697, 713 (1945) (finding that it is against public policy to work for less than—to waive—the minimum wage).

Is the parental support obligation for minor children enacted for a public purpose? California courts have held repeatedly in the context of divorce that one parent cannot bargain away support owed by the other parent to the child. Hunter v. Hunter, 339 P.2d 247, 249 (Cal. Ct. App. 1959) (“A child’s right to support cannot be barred by a property settlement agreement between the parents.”). And while child support benefits individual children, it also has a public purpose: “one reason for imposing [the parental obligation of child support] is to prevent the child from becoming a public charge.” County of Alameda v. Kaiser, 48 Cal. Rptr. 343, 345 (Ct. App. 1966) (holding mother liable for the cost of county care provided to her unemancipated son); see In re Marriage of Shore, 139 Cal. Rptr. 349, 352 (Ct. App. 1977) (“The enforcement of child support rights involves not only a matter of private or local concern, but poses an important question for the federal and state governments as well.”). Thus, even if satisfactory notice were provided in a sensible way, teenage waivers of support might be invalid on the grounds that the parental support obligation benefits the public by keeping the costs of raising children within the private sphere.
Along these lines, the Michigan emancipation statute now requires each petitioning minor to establish that "the minor understands his or her rights and responsibilities under this act as an emancipated minor." Indiana requires the court to find that the child "understands the consequences of being free from parental control and protection." And the Oregon statute provides that "the Court shall advise the minor of the civil and criminal rights and the civil and criminal liabilities of an emancipated minor. This advice shall be recited in the decree of emancipation."

Minors also should be informed about the emancipation procedure—its speed, costs, the nature of the hearing. The notice further should specify what emancipation does not do, as misconceptions about juvenile court jurisdiction and vicarious tort liability contributed to the decisions made by several of those interviewed. For example, the Indiana statute makes clear that emancipated minors are still subject to compulsory school attendance, and Oregon specifies that emancipation has no effect on age requirements for purchasing alcohol or getting married.

Notice does more than just perfect a waiver. By standardizing information about the process, notice may equalize the power between parent and teenager. Many parents misunderstood, misrepresented, or minimized the effects of emancipation in discussing it with their children. The flow of bad information was sometimes two-directional, such as the parents who signed their daughter's petition only at her insistence that emancipation would make her eligible for financial aid for college. Where both parent and teenager have the same and accurate information, the decisions may be less often based on false hopes or threats, whether conveyed innocently or intentionally by one or the other party.

Notice also may serve to slow down or prepare the family for the emotional and practical consequences of emancipation. For example, while it is probably unrealistic to think that a minor will buy her own health insurance once she understands

388. See supra notes 146–54 and accompanying text.
391. See supra notes 161–67 and accompanying text.
392. While equal knowledge of the law may not rule out other inequalities in private ordering, it may serve to even the field somewhat.
that she is no longer covered on a parent's policy, knowing that mom's or dad's coverage ends may give some pause to the emancipation life decision. Knowing that he may be emancipated within a week may alert a minor to the abruptness of the change and prompt a more cautious pace. Braking adolescent enthusiasm and confidence is sometimes useful. A manual on emancipation available at Legal Services for Children in San Francisco emphasizes that judges "will look closely at a minor's finances" and will be concerned with "whether the minor really will have enough income . . . to afford adequate food, clothing, and housing."  

Teenagers would benefit particularly from knowing that there are some alternatives to emancipation. A good example of such information is the bright (turquoise and purple) Legal Services for Children brochure called *Choices: When You Can't Live at Home*. The title alone is useful; it takes seriously the teenager's perception of family life and characterizes it as a problem for which solutions exist. The brochure describes the five options available in San Francisco County (guardianship, emancipation, voluntary foster home, ward of the court, and emergency shelter), explains what each is, how one gets it, the likelihood of getting it, and what numbers to call. Each alternative has limitations, but, in any given

---

393. EMANCIPATION MANUAL, supra note 95, at 6.

394. LEGAL SERVICES FOR CHILDREN, INC., CHOICES: WHEN YOU CAN'T LIVE AT HOME (1988) [hereinafter CHOICES]. The brochure is available in both English and Spanish.

395. Id. at 2. In addition to alerting teenagers to the existence of alternatives, the brochure conveys other messages. For example, it states in capital letters at the bottom of the page: "PLEASE CONTACT AN ATTORNEY BEFORE MAKING A DECISION ABOUT ANY OF THE ABOVE CHOICES—EVERYBODY'S SITUATION IS SPECIAL." Id. The message seems right in two regards. First, it is the absence of feeling special that plagues many of the teenagers for whom living away from home seems imperative. A different booklet, "So You Want To Drop Out of School . . .: A Handbook for Students Who Are Thinking of Leaving School" has a similar tone. Each section starts out in bold face with the message that "Your School Cares," "Your Parents Care," even "The Military Cares" whether the student drops out or not. NATIONAL DROPOUT PREVENTION CENTER, So You WANT TO DROP OUT OF SCHOOL . . . YOU OUGHT TO KNOW THE FACTS! 1-4 (n.d.).

Second, minors often do not understand legal consequences of running away, filing for emancipation, or staying at home in a state of determined disobedience. While the brochure engages in some overkill by insisting that an attorney always must be consulted, some knowledgeable adult aware of the needs, desires, and intentions of teenagers to live away from home should discuss the choices and their consequences. It is, of course, essential that whoever does this counseling knows his stuff; several of the private attorneys used by the minors in the study knew little about emancipation and less about alternatives. In addition, the lawyer must recognize the minor, not the parents, as the client.
case, any one may be more suitable than emancipation. For example, if the need to get out of the house is triggered by physical assault, a short-term solution such as an emergency shelter may provide a better answer than the permanent reordering of the parent-child relationship.

The call for detailed, clear notice is made with some skepticism. In other areas of law, we know that notice sometimes makes legal process seem fairer with or without changing the outcome. Thus, the recommendation here is made from a perspective that combines two kinds of realism. The first is an awareness that notice may not change outcomes or prevent misuse. The second is that it may. If the inventive use of emancipation harms children because they are sometimes unaware of what emancipation does, improved notice may help some minors and is unlikely to harm any.

Other statutory modifications are also plausible. The first is simply to raise the age of emancipation eligibility from fourteen to sixteen. The revision is not prompted by uncovering legions of fourteen-year-olds emancipating themselves—most of the petitioning minors were near their seventeenth birthdays and none were fourteen. Nevertheless, granting authority to choose emancipation at fourteen is somewhat out of sync with other California age-graded statutes. The greatest number of activities (including

396. Dillon et al., supra note 232, at 373.
398. A review of California's age-graded statutes reveals that minors may voice a preference regarding parental custody at 10, CAL. CIV. CODE § 234 (West 1982); sell newspapers in the street at 11, see CAL. LAB. CODE § 1298 (West 1989); consent to medical treatment for communicable or infectious diseases, CAL. CIV. CODE § 34.7 (West 1982), including AIDS, at 12, see CAL. HEALTH & SAFETY CODE § 199.27(a)(1) (West 1990); ride unsecured in the back of trucks at 13, see CAL. VEH. CODE § 23116 (West 1985); be held responsible for criminal acts crimes at 14, CAL. PENAL CODE § 26 (West 1988); drive at 14, CAL. VEH. CODE § 12513 (West 1987); and donate blood at 15, CAL. CIV. CODE § 25.5(b) (West 1982). At age 16, minors can insure themselves, CAL. INS. CODE § 10112 (West 1972 & Supp. 1982), and possess "safe and sane" fireworks, see CAL. HEALTH & SAFETY CODE § 12689(b) (West 1991). With parental consent, at age 17 minors may enter military service, 10 U.S.C. § 505(a) (1988); and use a stun gun, CAL. PENAL CODE § 12651(d) (West Supp. 1992), or teargas, id. § 12403.8.

After investigating why particular California statutes are keyed to particular ages, the director of a legal resource center reported that:

Although I had initially believed that age designations in statutes would follow societal age thresholds of passage and maturity—12 or 13, 16, 18, and 21 years
the most dangerous—those involving weapons and military service) are permitted at age sixteen or seventeen and then only with parental permission. To the extent that the statutes present a pattern, sixteen seems the age for increased decision making. Authorizing emancipation which terminates the most important aspects of minority altogether at age fourteen (without parental permission) seems to fall far outside the scheme.

A second revision might be the appointment of counsel for the minor, as other states have done. In California, the court may appoint legal counsel to represent the interests of the child in cases “where there is in issue the custody of . . . a minor child.” This would seem to describe emancipation: the petitioner is a minor (at least until the hearing is over) and the very point of the process is to free the minor from adult custody.

But appointment or retention of legal counsel does not necessarily ensure greater protection for the minor. The standard problem for lawyers representing minors, whether in custody cases, delinquency actions, neglect proceedings, or civil commitments is what model of representation should be used: advocating the child’s wishes; determining the child’s

of age—our search of law review articles, case law, legislative committee reports and discussions with legislative staff revealed no such logical pattern or rationale . . . .

Letter from Shane Kramer, Director, Victim’s of Crime Resource Center, to Margaret Hanson, authors’ research assistant (Dec. 12, 1988) (on file with the University of Michigan Journal of Law Reform). Many of the age determinations appear less related to consensus that adolescent judgment is essentially trustworthy at 14 or 16 than to other more practical and political concerns. For example, the ages for which blood donation were established “were selected solely for the purpose of increasing the number of available blood donors in the hope that donations of blood would increase.” Id. The justification for the age requirements set for electroconvulsive therapy “was a ‘political compromise’ necessary at the time the bill was enacted.” Id. at 2. Sometimes fairness, rather than politics or necessity, contributes to a particular age determination. Lowering of the age of majority from 21 to 18 resulted in great part because “society felt it was unfair to have [boys] serve and die [in Vietnam] and yet not have the rights and privileges of adults.” Michael P. Rosenthal, The Minimum Drinking Age for Young People: An Observation, 92 DICK. L. REV. 649, 653 (1988).

399. The Maine and Texas emancipation statutes authorize counsel for the child. ME. REV. STAT. ANN. § 3506-A(1) (West Supp. 1991); TEX. FAM. CODE ANN. § 31.04 (West 1986). Virginia provides that the court may appoint counsel for the minor’s parents. VA. CODE ANN. § 16.1-332 (Michie 1950). Michigan provides for appointment for the minor and for his parents, if they are indigent and oppose the emancipation. MICH. COMP. LAWS ANN. § 722.4b(b), (c) (West Supp. 1991).

400. CAL. CIV. CODE § 4606(a) (West 1982).
best interests and advocating those; or presenting options to the court as a neutral fact finder.\textsuperscript{401} It would seem reasonable for an emancipation lawyer to follow the model advancing the client’s wishes;\textsuperscript{402} the very point of emancipation is to confirm the client’s status as an adult.\textsuperscript{403} Of course, if the lawyer finds that the declarations on the petition are not true or that the client does not want to be emancipated (after the lawyer has explained what it means), her duties alter. However, an attorney’s obligation to the minor client is not altered because she has been retained by the parents: “Although the minor’s parents usually finance the attorney’s services, the lawyer’s professional judgment on behalf of a client cannot be directed by someone who is paying for the services.”\textsuperscript{404} The chief obligation of a would-be emancipated minor’s attorney is to provide information about emancipation and its alternatives.\textsuperscript{405}

The importance of continued schooling suggests other possible revisions. Fourteen of the eighteen minors we interviewed had dropped out of high school. Many of the participants had other characteristics associated with dropping

\begin{itemize}
\item \textsuperscript{401} Kim J. Landsman & Martha L. Minow, Note, \textit{Lawyering for the Child: Principles of Representation in Custody and Visitation Disputes Arising from Divorce}, 87 YALE L.J. 1126, 1146-47 (1978) (reporting that even where attorneys representing children in custody cases claim one or the other role, they frequently fall into the behavior of a disclaimed alternative). See Robyn-Marie Lyon, Note, \textit{Speaking for a Child: The Role of Independent Counsel for Minors}, 75 CAL. L. REV. 681, 693-705 (1987) (arguing that an attorney should advocate the position desired by her client if the court decides that the child possesses sufficient maturity).
\item \textsuperscript{402} The professional guidelines that “the authority to make decisions is exclusively that of the client” is modified by the supplementary rule that “[t]he responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client.” \textsc{Model Code of Professional Responsibility} EC 7-7, 7-11 (1982) (emphasis added).
\item \textsuperscript{403} Ethical consideration 7-7 clarifies that the nature of a particular proceeding can also vary the responsibility of the lawyer. \textit{Id.} at 7-11. Thus, it is argued that where the risk to a minor client is particularly great, the attorney may properly position his own judgment above the child’s. Ramsey, \textit{supra} note 357, at 292-95. Emancipation would seem a procedure where the consequence to minors (the loss of childhood) is potentially great, even if it is desired.
\item \textsuperscript{405} As Jan Costello has pointed out in the context of other juvenile placements, “[i]t cannot be overemphasized how often such investigation of resources and obtaining of information concerning the client’s needs will be the primary services the attorney can perform.” Jan C. Costello, \textit{Ethical Issues in Representing Juvenile Clients: A Review of the IJA-ABA Standards on Representing Private Parties}, 10 N.M.L. REV. 255, 271 (1980).
\end{itemize}
out of high school, such as high family conflict, poor grades and dislike of school, and in the case of the girls, pregnancy. While emancipation may not have been the only reason participants dropped out of school, the need to earn money after emancipation frequently was mentioned.

Because the failure to graduate from high school is a steady indicator of later poverty, greater investigation by the court regarding the minor's school status seems justified. This is all the more reasonable in light of the recent revision of the California Education Code making high school attendance mandatory until age eighteen.

Inquiry into the minor's plans for school as well as his current educational status might enable the court to make its "not contrary to the best interests" determination more accurately than they now do. In Montana, for example, emancipation may be granted only if the court finds that "the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education." School status is just one area in which further information might heighten judicial awareness of the possible consequences of emancipation. For example, the data suggest that a minor's conclusory recitations about self-sufficiency (as reflected on the petition) do not necessarily reflect his true situation.


408. Twenty-three percent of girl dropouts gave pregnancy as one reason for their decision to drop out. Id.

409. Other factors play into the decision to drop out. In a study of nearly 400 dropouts in Los Angeles, subjects gave five types of reasons for dropping out: "boredom with school; school activities and classes were considered a waste of time; failure in accumulating necessary school credits; poor grades; and numerous home and family responsibilities." Romeria Tidwell, Dropouts Speak Out: Qualitative Data on Early School Departures, 23 ADOLESCENCE 939, 952 (1988).

410. See Beck & Muia, supra note 406, at 69. Other reported consequences of dropping out in addition to unemployment are low-status jobs, less advancement, greater likelihood of receiving public assistance, and likelihood of early marriage and divorce. See id. at 69–70.

411. CAL. EDUC. CODE § 48200 (West Supp. 1992). The revision to age 18 may well reflect the concern that even a high school education does not guarantee competence in basic market place skills. See NABEEL ALSALAM & NEVZER STACEY, EMPLOYER TRAINING OF WORK-BOUND YOUTH: AN HISTORICAL REVIEW AND NEW RESULTS 2354 (1989).


413. See supra notes 191–93 and accompanying text.
Other states use more direct techniques to ensure that the independence on which emancipation is premised is really in place. For example, Michigan requires declarations from the minor indicating that he or she has "demonstrated the ability to manage his or her financial affairs" and "personal and social affairs." This is something quite different from California's checked boxes. In Michigan, managing financial affairs includes "proof of employment or other means of support" and managing personal and social affairs includes proof of housing. In addition, the petition must be supported by an affidavit from one of thirteen listed professionals (including a doctor, nurse, social worker, school counselor, law enforcement officer) declaring their personal knowledge of the minor's circumstances as well as their belief that under those circumstances emancipation is in the minor's best interests.

Detailing the types of information the court should consider is a good idea. Lists of specific factors like those found in custody "best interest" statutes are designed to alert judges to circumstances the legislature has identified as pertinent to decision making in this context. Such instruction seems particularly useful in the emancipation context. In the counties studied, emancipation was assigned to the general Civil Law and Motion Division of the Superior Court. Judges commonly rotate in and out of the division and are not necessarily familiar either with emancipation (as a legal or social process) or with teenagers (as legal or social beings). Legislative guidance on the meaning of "not contrary to the interests of the minor" in the form of a list of relevant factors might cause judges to consider requests for emancipation more contextually. Even the notice provision recommended above for minors and their families would help situate emancipation for a bench uninformed or unfamiliar with the dynamics and

415. Id. § 722.4a(1)(f).
416. Id. § 722.4c(2)(d) (excluding from the definition of "other means of support" general assistance or Aid to Families with Dependent Children).
417. Id. § 722.4c(2)(e).
418. Id. §§ 722.4a(2)(a)–(m).
420. In Santa Clara County, emancipations have since been moved to Probate along with adoptions. Interview with Judge Donald Clark, supra note 120.
dimensions of conflict between parents and teenagers. On the other hand, armed with statutory standards, judges might tend to substitute their subjective judgments for those of informed minors, a development we would oppose.\textsuperscript{421} The object here is not to undercut a minor's autonomy by substituting a judge's view for that of the minor. Instead, judicial awareness of the circumstances surrounding many emancipations might serve to enhance a minor's authority by making sure the minor's request is informed and voluntary.

An alternative to educating law and motion judges would be the assignment of emancipation to a division of the superior courts that already deals with family law matters, such as juvenile, family, or probate divisions. The reassignment would affirm the reality of what presently goes formally unnoticed—that the emancipation process is at heart a family matter. Court judges who may have training and experience in the complexity of family relationships might be more alert to the possibility of family conflict underlying the emancipation request and more aware of less drastic alternatives.\textsuperscript{422} Of course, studies of judicial decision making regarding the custody of children in nonemancipation contexts such as divorce\textsuperscript{423} or civil commitments\textsuperscript{424} suggest that extra-statutory values, biases, and concerns often influence the outcome of cases as much as legislative standards. While such infirmities probably should be accepted as inevitable, assigning emancipation to a more specialized law division still makes better sense than its current haphazard lodging on the undifferentiated civil calendar.

\textsuperscript{421} Because outcome often is related to who makes the decision, part of the question has to be whether one particular decision maker is likely to be better at the job than another. In discussing judicial hearings for foster children, Chambers and Wald explain that "[t]here is little reason to believe that nationwide the substantive rules would lead in fact to wise decisions for children or that in general hearing officers would make wiser decisions than caseworkers. Very little is known about what is best for children in any given case." David L. Chambers & Michael S. Wald, Smith v. OFFER, \textit{in IN THE INTEREST OF CHILDREN} 67, 124 (Robert H. Mnookin ed., 1985).

\textsuperscript{422} Optimism about specialization within the family law bench may be unrealistic. In Santa Clara County, for example, the newest members of the bench traditionally have been assigned to the family division; as judges become more senior they receive more grown-up or high-prestige assignments. Interview with Santa Clara County Superior Court Judge LaDoris Cordell, formerly Supervising Judge of Family Court, Stanford, Cal. (October 14, 1991).


\textsuperscript{424} Dillon et al., \textit{supra} note 232, at 373.
In counties with emancipation practices similar to those of Santa Clara and San Mateo, the result of these suggested reforms might be fewer petitions granted. Truly independent minors would continue to meet standards applied more carefully. But what about those minors, their representations to the court notwithstanding, who are not independent or self-sufficient? Many of the teenagers we interviewed probably would describe themselves in the terms of the Legal Services for Children brochure—kids who “cannot live with [their] parents.” What happens to minors who cannot meet these standards or those in counties like San Francisco where, until recently, emancipation has been essentially unavailable? Many will not be able to stick it out at home, as the congruity of characteristics between adolescent runaways and the minors studied here suggest. The recent evidence from Michigan also suggests a relationship between emancipation and runaways.

425. See CHOICES, supra note 394, at 2.
426. We have some information about what happens when a particular legal process becomes unavailable or inaccessible. For example, in states where minors are required either to inform their parents or to receive judicial permission before obtaining an abortion, birth statistics suggest what happens when they choose to do neither. Studies from Massachusetts indicate that girls who chose not to participate in the “judicial by-pass” scheme often went to the less restrictive state of Rhode Island for abortions. Virginia G. Cartoof & Lorraine V. Klerman, Parental Consent for Abortion: Impact of the Massachusetts Law, 76 AM. J. PUB. HEALTH 397, tbl. 2 at 399 (1986) (concluding that “the major impact of the Massachusetts parental consent law has been to send a monthly average of between 90 and 95 of the state’s pregnant minors across state lines in search of an abortion”). Similarly, minors who are unable to leave home legally through emancipation simply may run away.
428. See Keefe supra note 324, at 12. The relationship among children, parents, and homes suggested by the Michigan findings is paradoxical in the context of the traditional relationship of the three. Parents always have been required to provide homes for their children; the failure to do so has been a standard ground for a neglect petition. The problem of homelessness has modified that requirement in some jurisdictions. In California, for example, a child can no longer be found “dependent” by reason of the family’s lack of emergency shelter. See CAL. WELF. & INST. CODE
Might emancipation be used to facilitate separations without putting minors at risk? As this study has revealed, emancipation is useful to both parents and teenagers who want and in many cases need greater independence from one another. If that fact were recognized explicitly, a reformed emancipation process might satisfy and protect both parents and teenagers. The changes need not be dramatic.

First, the law simply could conform to its actual use and substitute prospective tests of separation and independence for the retrospective ones now in place. That is, the law could acknowledge that emancipation may be appropriate for minors who successfully demonstrate that they could, though do not already, live separately from their parents.

Several states follow this approach. Indiana, for example, provides that emancipation is proper if the child wishes to be free from and no longer needs parental control and protection and "has an acceptable plan for independent living." Michigan requires that the minor demonstrate "the ability to manage his or her financial affairs, including proof of employment or other means of support." Nevada, North Carolina, and Oregon also substitute a plan or proof of ability for California's requirement of actual experience.

The states that use a prospective test recognize the relationship between emancipation and families in conflict. A petition for emancipation in North Carolina, for example, must contain both the minor's plan for "meeting his own needs" and his reasons for requesting emancipation, but no dissembling about the quality of existing family life is necessary. In ruling on the petition, the judge is authorized to review such specific factors as the extent of family discord, the minor's rejection of parental supervision, and the quality of parental support or supervision. California and other states should consider § 300(b) (West Supp. 1992). Yet as the present study suggests, emancipation may precipitate homelessness or at least the precarious dependency that leads up to its door. Thus, it seems that while a child cannot be removed involuntarily from his family by virtue of homelessness, he can become homeless by virtue of a voluntary departure from his family.

429. IND. CODE ANN. § 31-6-4-16(e)(5)(d) (West 1979).
433. Id. § 7A-718(5).
434. Id. §§ 7A-721 (5)–(7).
adopting a similar mechanism for facilitating the teen's departure even while recognizing the underlying conflict.

B. Better Alternatives?

Like recommendations at the end of other articles concerned with the well-being of children, suggested alternatives are often experimental, expensive, politically devalued, and legally problematic. Nonetheless, other approaches either might bring a complete separation, or make one unnecessary.

Guardianships are the most sensible alternatives to emancipation. Traditionally guardianships provided court approval for parent-appointed, substitute parents on the death of the natural parents. The California statute now provides that a minor fourteen or older may himself file for the appointment of a guardian. The guardian then has "care, custody, and control of, and has charge of the education of, the ward." Guardianship may provide the right mixture of formality and informality, permanence and flexibility to satisfy the minor or ward, the guardian, and the minor's parents. In urging guardianships as an early alternative to foster placements, Hasseltine Taylor explained its unique attractions for prospective guardians:

The [guardian] enjoys the dignity of being in law as well as in fact a substitute parent subject only to the control of the court appointing him. He is not a foster parent whose role is contingent upon continuous supervision by a child welfare agency or juvenile court probation officer. . . .

---

435. To be sure, even in its worst-case applications, emancipation has certain advantages over other dispositions such as running away. See MARK-DAVID JANUS ET AL., ADOLESCENT RUNAWAYS 6–13 (1987). Emancipation is a recognized, relatively unstigmatized status and may signify taking control over one's life. Most of the participants here reported a sense of accomplishment, sometimes pride, in what they had done. See supra note 207 and accompanying text. Emancipation also removes most of the disabling restrictions on minors working and living away from home. See supra notes 108–10 and accompanying text.

436. See 35 CAL. JUR. 3D GUARDIANSHIP AND CONSERVATORSHIP § 300 (1988). Guardianships sometimes are used when one parent has died and the grandparents dispute the custody of the surviving parent.

437. CAL. PROB. CODE § 1510(a) (West 1991).

438. CAL. PROB. CODE § 2351(a) (West 1991).
Many suitable prospective guardians may not be economically secure enough to deliberately want to undertake such a responsibility [as adoption]. Others may feel that prior commitments or obligations are all that can be met comfortably. In some cases guardianship may provide a more satisfying emotional reward for both parties than adoption which is, regardless of legal effects, still a substitute for a natural relationship.\footnote{Hasseltine B. Taylor, Guardianship or 'Permanent Placement' of Children, in THE LAW OF THE POOR 417, 419–20 (Jacobus tenBroek ed., 1966).}

Used in the mid-1960s as alternatives to institutional, group home, or foster care, guardianships offered limited financial responsibility, less supervision than foster care, and a less comprehensive commitment than adoption. Guardianships are similarly attractive in the early 1990s as alternatives to emancipation. Because minors seeking emancipation are usually sixteen, the relationship is finite in duration. Because the minor can choose the guardian, there also may be a greater sense of the cooperative nature of the deal. Although parents may to some degree view guardianships as an admission of parental failure, they may find sufficient relief in knowing that the child is both gone and cared for to balance that dissatisfaction.

Guardianships resemble the novel disposition introduced unsuccessfully in the California legislature in 1975—the "minor in need of placement."\footnote{See supra note 55.} The definition of a minor in need of placement was any person over the age of fourteen who "without regard to fault either of the minor or his parents, exhibits anxiety, depression, hostility, or other emotional problems caused or exacerbated by his relationship with his parents and who expresses or otherwise manifests a desire to be separated from his parents."\footnote{AB 1819, 1975–76 Reg. Sess. (1975).} The definition is perhaps predictably Californian in its psychological orientation, but it comprehends the circumstances of many teenagers for whom living at home has become unworkable.

A second alternative is reflected in programs designed to prevent separations by restricting the parent-child relationship under the same roof. The Children's Hearing Project (CHP) from Massachusetts is an example of this model. An
initial goal of the Project was to show that the much-criticized status offense category could be "replaced by a voluntary, family-centered service separate from the coercive control of the state." 442

The essence of the Children's Hearing Project is family mediation. 443 Teenagers brought to the juvenile court as status offenders and their families were diverted by the court from the regular judicial process to the Project. The mediation was designed to "encourage[ ] structured negotiation about concrete issues of family life in which mutual small agreements serve cumulatively to change patterns of family functioning." 444 Its purpose was not to "probe deeply into feelings or the dynamics of family relationships," 445 but rather to develop contractual agreements on the subjects causing greatest conflict between parent and teenager. Intervention focused on solving specific problems—"curfews, chores, staying out late, the child's social life, and school attendance." 446 Trained community volunteers helped the parties learn to "sidestep their domestic conflicts" and to shift from "arguing, getting angry, violence and punishment" to talking and negotiating. 447

These same goals seem equally appropriate and may be more attainable for families who use emancipation as their method of "sidestepping" domestic conflict. Both types of

442. MERRY & ROCHELEAU, supra note 254, at 198.
443. Id. Because the juvenile court did not dismiss the cases referred to CHP, it could not be learned whether the referrals actually reduced the court caseloads. See also Christine Rinik, Juvenile Status Offenders: A Comparative Analysis, 5 HARV. J.L. & PUB. POL'Y 153, 204-09 (1982) (describing the Massachusetts project).

A similar program of family mediation designed to make daily life between parents and teenagers livable is Homebuilders. See Edward C. Hinckley, Homebuilders: The Maine Experience, CHILDREN TODAY, Sept.-Oct. 1984, at 14, 15 (discussing Maine's home-based, family-oriented program which strives to enable the child to remain at home for at least one year following the termination of services); Jill McCleave Kenney et al., Homebuilders Keeping Families Together, 45 J. CONSULTING & CLINICAL PSYCHOL. 667 (1977).
444. MERRY & ROCHELEAU, supra note 254, at 200.
445. Id. at 93.
446. Id. at 88.
447. Id. at 142, 148. Another technique taught was to learn at times to avoid conflict by "leaving the room or ignoring things." Id. at 142. The stress in CHP on shifting from arguing and punishment to talking and avoidance may suggest a difference in the pre-intervention methods of dispute resolution used by the CHP and emancipation families. The emancipation families seemed to use avoidance frequently, though their use of it was not part of a solution to improve family functioning and seemed to lead to eventual blow-ups.
families have high levels of internal conflict; disputes frequently center on control over the minor's social life, school attendance, and behavior at home; and the parents are desperate either to get control or to get rid of the child.\textsuperscript{448} Conflicts with parents in both groups centered on "emerging autonomy: the teenager's working, allowance, and concerns with money and clothes, his or her privacy, privileges of television or phone use, and patterns of drinking or drug use."\textsuperscript{449} Family mediation may be especially suitable for emancipation families; because the emancipation candidates are older, the contracts negotiated would have a shorter lifespan than the four or more years often faced by the CHP families.

Emancipation families may be reluctant to enter family mediation because the process requires sustained engagement with the enemy and involves third parties.\textsuperscript{450} But mediation along the CHP model may differ sufficiently from family therapy to be tolerable. For example, by using both private and joint sessions, parent-child interaction under the CHP model avoided stubborn "family meetings" which replicated existing parent-child power structures and tended to silence children.\textsuperscript{451} Preventive mediation aimed simply at establishing a domestic truce would seem a reasonable approach to families of minors who might otherwise become emancipated only because no other satisfactory mechanism for establishing a truce is apparent.\textsuperscript{452}

\textsuperscript{448} One difference is that unlike the emancipation study, the CHP cases rarely mentioned problems associated with driving. The probable explanation is that because the average age in the CHP study was 14 years, the group was simply too young to drive. \textit{Id.} at 40.

\textsuperscript{449} \textit{Id.} at 112.

\textsuperscript{450} The 51 cases studied averaged 4.1 months in mediation. \textit{Id.} at 37.

\textsuperscript{451} Both parents and children were "more likely to be angry and less likely to cooperate in joint sessions and more likely to offer suggestions in private sessions." \textit{Id.} at 86.

\textsuperscript{452} Another program specifically-tailored for the adolescent population, the Federal Independent Living Initiative, attempts to create self-sufficiency for teenagers at a later chronological point, and is currently limited to those in foster care. Independent Living Initiative, 42 U.S.C. § 677(a)(2) (1988). The congressional purpose behind the program is to "prepare [participants] to live independently upon leaving foster care." 42 U.S.C. § 677(d) (1988).

The legislation provides general guidelines about the kinds of services appropriately included within state programs, such as encouraging high school or vocational training, counseling, and training in daily living skills. \textit{Id.} The states have responded to these guidelines with different degrees of practical and theoretical specificity. Florida, for example, provides assistance to adolescent foster children to "develop skills
CONCLUSION

The uses and consequences of emancipation described here are not simply problems about legal process; rather, they reflect a familiar problem to which neither law nor society has offered clear or helpful answers: what to do when parents and teenagers need to separate. Incompatibility and irretrievable breakdown are not concepts limited only to the marital relationship.

Emancipation fills the gap with unintended brilliance. It provides an efficient solution to the problem of serious conflict between teenagers and the adults with whom they live. The supporters of emancipation simply were unable to foresee or to control the complexity and interrelationships of factors which contribute to emancipation's development as a mechanism for familial dispute resolution, such as power dynamics within families, judicial rubber-stamping practices, and the particular attractiveness of the procedure for families in conflict.

Other family law scholars have identified the limitations of law in solving the problems families face. For example, Michael Wald and David Chambers draw attention to the inability of judicial decisions to make multiple changes simultaneously, so that one reform is accompanied by others that will tend to assure overall success. They conclude that:

[M]any of the “ideal” reforms require altering several parts of the system at once. For example, it may make sense to strengthen the rights of foster parents in a system that limits the need for placement and helps biologic parents regain custody. However, unless changes can be made simultaneously, just strengthening foster parents’ rights may actually make matters worse. Legislators can make simultaneous changes; courts rarely can or do.453

---

453. Chambers & Wald, supra note 421, at 130.
But while legislatures can do this, the present study suggests that often they do not. One reason may be an inability to see interconnections between the different parts of a problem, especially when as here the family is not operating within the context of an already-identified "system" such as foster care. Another reason may be the inability to see the problem at all, as here where the problem solved (parent-teen conflict) is not the one legislators meant to solve (the contractual incapacity of independent minors). Attention has been given in the context of judicial decision making to the problem of "empirical questions without empirical answers." The problem here is not that social science has no answers, but that neither courts nor legislatures are posing questions. As Jane Ellis has observed in studying the implementation of the State of Washington's new custody law:

We pass laws based on unexamined assumptions all the time and don't return to examine the result. Where the laws affect economically sound adults, this is less of a problem. The system is self-correcting to the extent the adults can afford to appear in court to litigate the interpretation or application of the new statute. When the law affects parties and nonparties who have little or no resources (i.e., children and many divorcing parents of both genders), the state has more responsibility for tracking the result of what it has imposed and correcting problems as they come to light.

The problem that has come to light here has been the adaptive use of emancipation to facilitate separations between teenagers and their parents. But to the extent that emancipation attends to the need of teenagers and parents to separate from one another, it ignores the factors necessary for secure separations—such things as economic self-sufficiency, educational success, and emotional security.

That many adolescents cannot remain with their families, or cannot do so without restructuring their relationships with some external intervention, is nothing new. That many teenagers cannot live independently without adequate and

454. See John Monahan & Laurens Walker, Empirical Questions Without Empirical Answers, 1991 Wis. L. Rev. 569 (organizing legal questions into categories to which social science can reasonably respond).
455. Ellis, supra note 326, at 180–81.
appropriate educational, emotional, and economic support is no surprise. We have to take these facts seriously when designing social, legislative, and institutional regimes able to take on the complexities of contemporary adolescent and familial life. Until now, the law has not been up to this task in any direct or explicit way. Until it is, families will continue to use what law is available not to solve their problems but to approximate solutions.
Dear [ ]:

We are professors at Santa Clara University studying the emancipation process. We are trying to learn more about emancipation by talking with people who have actually been involved with the process. In going through the public records at the courthouse we learned that you had filed for emancipation. We are writing to ask if you would help us.

The specific purpose of our research is to understand how the emancipation process is used and what it is like to go through it. To do this, we are contacting everyone who was emancipated in local counties in 1985 through 1987. We would like very much to speak briefly with you about your experiences with emancipation, and we would also like to speak with other people who participated in your emancipation process—your parents and officers of the courts.

If you decide to help us with this project, you will be talking with Valerie Houghton, a third year law student who is doing the interviewing. We may request interviews with others who had a role in the process. In doing these interviews, we will be following the university's research guidelines. One of these guidelines is the protection of your privacy through a policy of not discussing our conversation with you with anyone at all other than the research staff.
One of our assistants is attempting to reach you by phone in hopes that an interview can be arranged at a time and place convenient for you. We are unsure of your current phone number so if you have not heard from us but would like to help us you can call us. You can reach us by calling the Psychology Department secretary, Rosa Antoine, at (408) 554-4493 or the interviewer, Valerie Houghton, at (408) 244-7942.

We want to understand how emancipation is working and how it might be improved. We hope you will participate in this research project and we will be happy to answer any questions you might have. We look forward to hearing from you.

Most sincerely,

Eleanor W. Willemsen, Ph.D.
Psychology Professor

Carol Sanger, J.D.
Law Professor

EWW:CS/dk
APPENDIX B: INTERVIEW QUESTIONS IN SEQUENCE

I. Preliminary

1. Let’s start with how you found out about emancipation[.]
   a. When was that?
   b. Did you know what it was?
   c. Who recommended it? Why?

2. After you heard about it, what did you do next?

3. How long after you first heard about it did you start the emancipation process?
   a. How did you know where to go?
   b. Ever been there before?
   c. How did you get there?
   d. How did you get the fee?
   e. What was it like for you?

II. The Decision

4. Let’s back up for a minute to the decision to become emancipated. How did that happen?
   a. Who was involved in the decision?
   b. How much did they influence you?

5. How did the people close to you react to the decision?
   a. Were they supportive of you?
   b. Did your parents think it was a good idea?
   c. If they didn’t like the idea, why did they sign anyway?
6. Did your parents agree with each other?

7. Is there anyone else who had a special reaction?

8. After the decision was made, how did you react to it?

III. Family Relation

9. May we talk for a minute about the relationship between you and your family?

10. When was the last time you lived with one or both of your parents ([for example, did the minor] split before the emancipation or via an alternative living situation)?

11. Who was living in your home at this point?

12. How did everyone get along with each other[?]

13. How would you describe your relationship with each member of the (family or household)?
   a. Parent figures
   b. Sibling figures
   c. Any family members who weren't living in the house with you?

14. Who listened to you in your family?

15. Often, people in families don't agree on everything. How did your family handle that?

16. If your (key parenting figure) were here, what would he/she tell me about how you got along with the family before the emancipation process began (homework, outside job, schoolwork)?

IV. Expectations and Outcome

17. What about since then, were your parent's/parents' expectations met?
18. In comparison with other people your age, how do you see yourself handling everyday problems that normally arise (maturity and confidence levels)?

19. What does the word “emancipation” mean to you today?

20. At the time you began the emancipation process, what were your expectations?

21. Since the time of your emancipation, have you moved? Changed jobs? Changed partners?

22. How do your old expectations fit with what’s happening now in your life?
   a. physical (job, home, income)
   b. emotional (partner, friends, family)

23. If you were laid off or seriously hurt in an accident, who could you count on for help? (Inject supportive statement)

24. Given the wisdom you have now from your experience, if you could go back to the time before you were emancipated, would you want to?

V. Closing

25. Is there anything else you’d like to tell me at this point about the emancipation process and how it worked for you?

26. Do you have any suggestions of how you would like to see the process changed to be more effective or helpful?

Thank you

P.S.

Need to insert at some point, the question “Was everything on your form true?” and “How much of what was on your form was 100% true?”