Child Labor Laws and the Impossibility of Statutory Emancipation

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Notes

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INTRODUCTION

The United States Supreme Court has long held that the concept of the family in the eyes of the law relies on the belief that “parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions.”\(^1\) This presumption that minors are incapable of making decisions for themselves is continually echoed in the field of family law, where minors are dependently linked to their parents and are viewed as a class of people with many restrictions, yet few rights and responsibilities.\(^2\) Although many juveniles have no need or reason to seek access to these rights and responsibilities before reaching majority, some children experience extenuating circumstances which might necessitate that their adult rights and responsibilities be granted at an earlier age.\(^3\)

Fortunately, many states have now created a process by which minors can voluntarily assume many of the responsibilities of their adult counterparts, known as statutory emancipation.\(^4\) Statutory emancipation has been viewed as “an extraordinary grant of authority to minors in a legal system where even older children are permitted to decide very little

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3. See generally id. at 273-282 (illustrating some of the reasons why children seek emancipation).
for themselves."  

In order to take advantage of this transition from adolescence, children must be able to demonstrate that they meet the requirements set forth in the statute. Although the requirements vary from state to state, one common element is that the child must be able to demonstrate the ability to financially support him or herself.

Despite the ability to become legally emancipated, one key issue remains that makes successful emancipation nearly impossible for the vast majority of minors. Although emancipated minors would be granted a "comprehensive promotion into adulthood," they are still subject to all federal and state work restrictions that exist for children their age. Emancipated minors must comply with the hour and workplace restrictions that the Fair Labor Standards Act of 1938 (hereinafter FLSA) imposes.

Unless these minors qualify for one of the few child labor carve outs set forth in the FLSA, it is highly unlikely, if not impossible, for them to earn enough money to support themselves as required under their state's emancipation statute.

Although we will call for vast reform of the emancipation process in subsequent sections of this note, it is critical to understand that emancipation is not for the vast majority of teenagers. We are not arguing that the emancipation process should be easier, but that the process that already exists, which demands financial stability, is not currently possible due to FLSA restrictions and the conflict it creates with emancipation statutes. We are advocating for reform that would realistically empower qualified teenagers to take the necessary steps to meet the requirements in the statute. Currently, mature minors seeking emancipation are unable to follow through with plans for financial stability due to very limited work hour and condition restrictions that all

5. See Sanger & Willemsen, supra note 2, at 244.
7. See, e.g., CAL. FAM. CODE § 7120 (Deering 2015); CONN. GEN. STAT. § 46b-150b; WASH. REV. CODE ANN. § 13.64.060.
8. See Sanger & Willemsen, supra note 2, at 245 (citing INST. OF JUDICIAL ADMIN., AM. BAR ASS’N, JUVENILE JUSTICE STANDARDS PROJECT 22 (1980)).
9. See, e.g., WASH. REV. CODE ANN. § 13.64.060 ("An emancipated minor shall be considered to have . . . . [t]he right to work, and earn a living, subject only to the health and safety regulations designed to protect those under age of majority regardless of their legal status." (emphasis added)).
10. See, e.g., Becoming Emancipated, supra note 6, at 2.
children must comply with pursuant to the Act.\textsuperscript{12}

Part I of this note will address the foundational background that is essential to understanding why the FLSA creates such burdensome restrictions for emancipated minors. We must first explain what emancipation is in order to fully appreciate the problems that minors face due to federal labor and employment laws and why they are significant. Part II will explain the statutory construction of both emancipation statutes and federal and state child labor laws. This section will demonstrate why federal statutes that were intended to protect children frequently over-regulate teenage employment and make it extremely difficult for state governments to create laws that address the concerns and needs of their residents. Part III further analyzes how FLSA restrictions prevent emancipated minors from fulfilling the requirements of their emancipation. Statutory employment limitations and work condition restrictions, coupled with issues regarding parental consent in order to obtain employment, prevent minors from being employed in certain positions or working enough hours to enable them to become self-supporting. Finally, Part IV will set forth our proposed solution in order to remedy these significant problems.

In Part IV we propose a two part solution to help resolve the issues that statutory emancipation creates. First, although emancipation statutes contain extensive requirements that a minor must meet in order to qualify for emancipation, courts must use a more exhaustive process when determining whether or not to grant emancipation.\textsuperscript{13} Many minors that seek emancipation are granted it despite such requirements.\textsuperscript{14} Moreover, the process from start to finish frequently occurs in less than one week.\textsuperscript{15} This current process likely results in many minors becoming emancipated who are not good candidates.\textsuperscript{16} Implementing an initial process that includes a court ordered investigative tool will allow judges to learn more about the minor and his or her plans after emancipation.\textsuperscript{17} This increase of information will ideally result in

\begin{itemize}
\item \textsuperscript{12} See Becoming Emancipated, supra note 6, at 2.
\item \textsuperscript{14} See Sanger & Willemsen, supra note 2, at 247.
\item \textsuperscript{15} See id.
\item \textsuperscript{16} See id. at 271.
\item \textsuperscript{17} Examples of investigative tools that are used by family courts include Investigation and Reports and Forensic Mental Health Assessments. See LEXIS\textregistered Nexis ANSWER GUIDE NEW YORK FAMILY COURT PROCEEDINGS § 4.42 (2014), LEXIS (explaining that New York family courts use an I&R from probation to learn about the history of the juvenile’s conduct, his or her family
\end{itemize}
judges granting emancipation to only those who are legitimately qualified. While this will require a greater upfront court cost, the results will likely prevent unqualified emancipated minors from later relying on various forms of public assistance in order to survive, a fate that many emancipated minors under the current process will experience.\(^{18}\)

Second, the FLSA should adopt a carve out provision similar to the existing carve out for child actors and performers.\(^{19}\) Such a carve out would exempt emancipated minors who are employed or seeking employment from the child labor provisions of the FLSA.\(^{20}\) Currently, emancipated minors must follow all federal and state child labor laws and regulations.\(^{21}\) Thus, even if an individual state exempts emancipated minors from its child labor statutes, the child must still abide by the “more protective” FLSA provisions.\(^{22}\) The lack of a carve out often makes abiding by both the requirements in the emancipation statute and FLSA child labor provisions an impossibility. Although this conflict between emancipation and labor statutes may appear to serve as a deterrent, many minors are unaware of the inability to work long hours and restricted jobs until after becoming emancipated.\(^{23}\) Carve out provisions in the FLSA will allow states with emancipation statutes to create regulations for emancipated minors as the state sees fit and in a manner that would permit the minor to become financially independent. If these changes are not implemented, emancipated minors will continue to struggle financially in order to survive under the current labor statutes, making their new found “freedom” an impossibility.

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situation and school adjustment, and any previous psychological or psychiatric reports on the individual); KIRK HEILBRUN ET AL., FORENSIC MENTAL HEALTH ASSESSMENT 3 (2002) (“The phrase ‘forensic mental health assessment’ (FMHA) . . . describe[s] the process by which certain mental health professionals (psychologists, psychiatrists, and social workers) conduct evaluations for the courts and/or at the request of attorneys. Such evaluations are intended to facilitate better informed legal decision making or assist attorneys by performing evaluations that . . . may be useful for the attorney in representing a client. FMHA is thus a single name for evaluations conducted by individuals of different disciplines . . . ”).

18. See Sanger & Willemsen, supra note 2, at 291.
20. See id.; see also CAL. LAB. CODE §§ 1308.7, 1391 (Deering 2015).
23. See Sanger & Willemsen, supra note 2, at 273-74. Due to the lack of published research in this field, many of the examples and case studies we will cite throughout this note are from Sanger and Willemsen’s study.

http://scholarlycommons.law.hofstra.edu/hlelj/vol33/iss1/7
I. WORKING AS AN EMANCIPATED MINOR

The heart of an emancipated minor’s problems stem from their work-related restrictions and limitations. However, it is essential that we first explain relevant family law concepts in order to fully understand and appreciate the extent of the problems that the FLSA restrictions create for emancipated minors. The problems that emancipated minors face may seem trivial without a background foundation of what emancipation is and why individuals seek it.

A. What is an Emancipated Minor?

In court cases and statutes, “minor,” “child,” and “juvenile” are generally synonymous terms. A minor is any individual who is “under the age of legal competence.” This age varies from state to state, but is generally eighteen. Upon attaining the legal age of majority and being considered an adult, individuals become entitled to full civic rights, are subject to full legal obligations, and are generally regarded as able to handle his or her individual affairs in the eyes of the law.

Emancipation, in the broadest sense, refers to when one is freed from the power and control that another formerly asserted over that individual. One can be emancipated from legal, social, or political restrictions. In the United States, emancipation has been used historically to refer to slavery or bondage, most notably as in the Emancipation Proclamation. In more recent United States history, emancipation has commonly referred to a child becoming independent from the control, financial support, and responsibility of his or her parents.

27. See Majority, BLACK’S LAW DICTIONARY, supra note 24.
29. See Emancipate, BLACK’S LAW DICTIONARY, supra note 24.
30. See Emancipation Proclamation, BLACK’S LAW DICTIONARY, supra note 24. ("An executive proclamation, issued by President Abraham Lincoln on January 1, 1863, declaring that all persons held in slavery in designated states and districts were freed.")
parents or guardians.\(^{31}\)

Common-law emancipation has taken on various forms.\(^{32}\) Courts have recognized since the early 1900s that emancipation may be either total or partial.\(^{33}\) Since this time, case law has established that:

Complete emancipation gives to the minor his time and earnings and gives up the parents' custody and control, and in fact works an absolute destruction of the filial relation. Emancipation may, however, be partial. A minor may be emancipated for some purposes and not for others. The parent may authorize his minor child to make contracts of employment and collect and spend the money earned and still not emancipate him from parental custody and control.\(^{34}\)

Partial emancipation has further been recognized as freeing a child for only a select part or period of the individual’s minority, from some of the parent’s rights, or for certain purposes.\(^{35}\) Although emancipation statutes terminate parental responsibility to financially support the child,\(^{36}\) some courts have found that parents can be obligated to pay child support to their partially emancipated children.\(^{37}\)

B. Why do Children Seek Emancipation?

During periods of previous reform in California in the 1970s, many agencies in support of emancipation statutes recognized and advocated that emancipation would by no means benefit or suit all teenagers.\(^{38}\) Only teenagers that had the emotional and financial capabilities to live autonomously from both their parent’s and the state’s assistance were

\(^{31}\) See Emancipate, BLACK'S LAW DICTIONARY, supra note 24; Legal Advice & Referral Ctr., supra note 28.

\(^{32}\) See infra notes 37-39.

\(^{33}\) See P. J. Hunycutt & Co. v. Thompson, 74 S.E. 628, 629 (N.C. 1912).

\(^{34}\) Lu... Harvey, 154 N.W. 1097, 1098 (Minn. 1915) (citing Lowell v. Newport, 66 Me. 78 (1876); Porter v. Powell, 44 N.W. 295 (Iowa 1890); P. J. Hunycutt, 74 S.E. 628).

\(^{35}\) See Diamond v. Diamond, 283 P.3d 260, 270 (N.M. 2012); see Partial Emancipation, BLACK'S LAW DICTIONARY, supra note 24.

\(^{36}\) See, e.g., W. VA. CODE § 49-4-115 (2015) ("[T]he parents or custodians have no right to the custody and control of such child or duty to provide the child with care and financial support."); VA. CODE. ANN. § 16.1-334 (2015) ("The parents shall be relieved of all obligation to support the minor.").

\(^{37}\) Diamond, 283 P.3d at 270.

\(^{38}\) See Sanger & Willemsen, supra note 2, at 254-55 (citing and quoting a letter from Linda Gollober, President of Youth Advocates, Inc., to Governor Jerry Brown that explained the importance of emancipation for teenagers and the types of teenagers that would typically seek emancipation and benefit from it).
viable candidates for emancipation. Although many agencies held the misguided belief that only "good kids" seek emancipation, today it is essential to appreciate that not all teenagers make good candidates for emancipation. With this consideration in mind, there are many valid reasons that a minor would seek emancipation. One study found that many minors were introduced to the idea of emancipation as a potential solution for various problems that they faced, including "school residency requirements, stopping domestic violence, moving out of a tense family situation, or getting a scholarship." Although the reasons for seeking emancipation are highly individualized, some broader categories warrant further investigation.

1. Child Neglect, Abuse, and Maltreatment

In a study of emancipated minors in California, many minors interviewed indicated that they had some sort of significant or substantial conflict with one or both parents prior to their emancipation. These individuals additionally reported that their emancipation was frequently prompted by an adult in their life, such as a parent, police officer, boyfriend, or counselor. Some minors seek emancipation due to physical or sexual abuse by a parent, a family member, or another household tenant.

Scholar Gregory Loken expressed the fear that emancipation statutes "facilitate the parental abandonment and exile of children." This abandonment can lead newly homeless children to seek emancipation as their only option, regardless of their ability to work or truly survive on their own. Although the emancipation process may be initiated by either the child or the parent, courts require that the child is interested in emancipation and that he or she is able to prove that

39. See id. at 255.
40. See id. at 254-55.
41. See infra Part I.B.
42. Sanger & Willemsen, supra note 2, at 273.
43. See id. at 297.
44. See id.
47. See id. at 1736.
48. See A Teenager's Guide to Emancipation, CTLAWHELP.ORG (Jan. 2011), http://ctlawhelp.org/a-teenagers-guide-to-emancipation; Emancipation of Minors—Laws, supra note 26 (stating that most state courts require that adults petition the court; thus, a minor, parent, or guardian ad litem may petition the court for the minor's emancipation).
emancipation would be in his or her best interests.49

2. Health Care, Signing Contracts, and Other Emancipation Benefits

Although emancipation laws vary from state to state,50 many minors seek emancipation to receive specific benefits or services.51 Minors who are granted emancipation by a court typically have the ability to consent to and enter into contracts, sue, have control of financial earnings, obtain a work permit without parental consent, make a will or trust, and make decisions regarding medical and dental care.52 Minors often seek emancipation to confront legal obstacles that they would otherwise be prevented from overcoming.53 For example, one seventeen-year-old male went into business with a partner who was forty-two years old.54 He decided to pursue emancipation because it was the only way he would have been able to sign a valid, enforceable contract without a parent or guardian.55 Emancipation can help minors to overcome legal obstacles in business and in work situations where they would otherwise not be able to do so.

The ability to consent to and enter into contracts by having a binding signature alleviates the need for parental consent.56 This new right may make it easier for an emancipated minor to obtain a driver’s license or sign other binding documents,57 but the ability to sign documents does not translate into the ability to become financially independent.58 For example, an emancipated minor can sign a work

49. See Sanger & Willemsen, supra note 2, at 261; Emancipation of Minors—Laws, supra note 26; Becoming Emancipated, supra note 6, at 6 (“There are some parents who would like their child to be emancipated because it means the parents are no longer legally responsible for providing financially for their child. However, emancipation is meant to be an improvement in your life, not a way for parents to get out of their responsibilities.”).
53. See Sanger & Willemsen, supra note 2, at 273-74.
54. See id. at 274.
55. Id.
56. See id.
57. See id.
58. See id. at 290.
permit and get a job without parental consent. However, an emancipated minor is still subject to the various wage and hour laws.

Based on the FLSA child labor provisions, a minor who is fifteen years old cannot work more than eighteen hours per week during the school year. Even if a minor is emancipated he or she must still comply with these limitations. The ability to sign a work permit is meaningless if minors cannot work enough hours to support themselves. Of the eighteen emancipated minors surveyed in the Sanger and Willemsen article, twelve of them expressed that their financial situation had become more stressful than it was before. Many minors who seek emancipation work in food service or sales, jobs that are typically paid at a low hourly rate. A cap or limit on the amount of hours emancipated minors can work at these low-paying jobs could significantly impact how much money they can make, which may negatively impact their ability to maintain financial independence. Without a provision in the FLSA exempting emancipated minors from such restrictions most minors will not be able to work enough hours to support themselves.

3. Freedom and Independence from Parents

One study from the early 1990s by Carol Sanger and Eleanor Willemsen found that nearly all minors seeking emancipation looked forward to their impending freedom from their parents' control. There are many practical legal benefits of emancipation, such as the capability to decide where to live independent of their parents' authority. Minors may experience this increase in autonomy due to their new ability to enroll themselves in school or in a college, sign a lease, sell property, and apply for a credit card or a loan. Emancipated minors may also be

59. See Becoming Emancipated, supra note 6, at 1.
60. Id.
62. See Becoming Emancipated, supra note 6, at 2.
63. Sanger & Willemsen, supra note 2, at 290.
64. See id. at 290-91.
66. Sanger & Willemsen, supra note 2, at 276.
68. See id.
eligible for certain forms of public assistance, such as welfare or food stamps, independently of their parents.69

Unfortunately, many minors do not realize until after emancipation that their new freedom is also accompanied by consequences, responsibilities, and restrictions.70 Even though a minor is emancipated, he or she is still unable to vote until the age of eighteen and would be unable to consume alcohol until the age of twenty-one.71 Additionally, emancipated minors are subject to age requirements that are imposed by the statutes of many agencies, such as the Department of Motor Vehicles.72 They are also subject to new restrictions, such as being required to attend school until they graduate or turn eighteen.73

4. The Ability to Work New Jobs and Greater Hours

A significant legal question that emancipation raises is how being granted emancipation will affect a minor’s ability to work. Sanger and Willemsen’s study also found that some minors sought emancipation so that they could work longer shifts that legally only older individuals were permitted to work.74 For instance, nearly all minors in Indiana must obtain a permit to work if they are under the age of eighteen.75 In order to obtain one of these permits, minors must first be hired by an employer and provide proof of their age to an accredited high school for approval.76 The employer must then provide the accredited high school with written notice of their intent to hire the minor and his or her anticipated work hours and duties.77 One major effect of becoming

70. See Sanger & Willemsen, supra note 2, at 244-45.
71. See Emancipation Law: Benefits & Consequences, supra note 52.
72. See id. (explaining that minors in the state of California are unable to apply for a learner’s permit from the Department of Motor Vehicles before they meet the statutory age requirement to drive).
73. See id.; see also Becoming Emancipated, supra note 6, at 2. While we are certainly not advocating that these individuals should drop out of school, the options that mature, emancipated minors have should not be more greatly restricted than their non-emancipated counterparts. See infra Part IV.A.
74. See Sanger & Willemsen, supra note 2, at 273-74.
76. See id.
77. See id.
emancipated is that minors no longer need parental consent to obtain work permits. 78

Although emancipated minors can obtain work permits without their parent’s consent, emancipation does not remove any of the federal labor restrictions that are placed on these individuals due to their age. 79 Emancipated minors must still follow all federal child labor laws and regulations, in addition to work permit rules that vary from state to state. 80 Thus, emancipation does not confer the ability to work unlimited hours upon the juvenile. Unfortunately, many minors are not fully informed, or are even unaware, of the work hour and condition restrictions that they face after becoming emancipated. 81 These labor and employment restrictions create a very circular problem. Minors may become emancipated on the condition that they be able to financially support themselves, but their work options are more limited than adults. 82 This may lead to their inability to earn a living and fulfill the requirements of the emancipation statute.

C. How does a Child Become Emancipated?

There are a number of different ways that minors can become emancipated. 83 Children are considered emancipated upon reaching the age of majority. 84 A minor is considered to be emancipated when he or she “has achieved independence from his or her parents, such as by getting married before reaching age 18 or by becoming fully self-supporting.” 85 Children can also become emancipated through an agreement between the parent and child, a court order, or upon entering the armed forces or a military academy. 86

Unlike more traditional judicial emancipations that are granted for

79. See Emancipation Law: Benefits & Consequences, supra note 52; see also Becoming Emancipated, supra note 6, at 2.
80. See Becoming Emancipated, supra note 6, at 2.
81. Sanger & Willemsen, supra note 2, at 333-34.
82. See, e.g., id. at 294.
83. See Emancipation, BLACK’S LAW DICTIONARY, supra note 24; Legal Advice & Referral Ctr., supra note 28.
84. See Legal Advice & Referral Ctr., supra note 28.
85. Emancipation Law & Legal Definition, supra note 50.
86. See id.; Emancipation, BLACK’S LAW DICTIONARY, supra note 24.
specific purposes, such as protecting a minor's wages, statutory emancipation gives minors a much more comprehensive set of rights.\footnote{See Sanger & Willemsen, supra note 2, at 244-45.}

For example, in order to become emancipated under the California statute, the minor seeking emancipation must file a petition for a judicial declaration of emancipation with the civil clerk's office.\footnote{See Emancipation, CAL. SUPER. CT. TUOLUMNE CNTY., https://www.tuolumne.courts.ca.gov/divisions/emancipation.shtml (last visited Dec. 27, 2015).} The petition must state why the child is seeking emancipation and how he or she meets or plans to meet the requirements outlined in the statute.\footnote{Id.} This form of emancipation allows people who are still classified as minors to access some of the privileges, rights, and responsibilities that are typically only available to those who have turned eighteen.\footnote{See Hirby, supra note 26; see also A Teenager's Guide to Emancipation, supra note 48; What is Emancipation?, CAL. CTS., http://www.courts.ca.gov/documents/cab3233.pdf (last visited Dec. 27, 2015).}

Upon turning eighteen, newly recognized adults can get married, sign contracts, and seek housing independent from their parents or legal guardians.\footnote{See Hirby, supra note 26.} Additionally, upon reaching the age of eighteen, individuals are no longer subject to work restrictions that apply to those under this age.\footnote{See Fair Labor Standards Act Advisor: Hours Restrictions, U.S. DEP'T LAB., http://www.dol.gov/elaws/esa/flsa/docs/hours.asp (last visited Dec. 27, 2015).} Without such work restrictions individuals are free to take any job that they want or need. Despite gaining access to the rights and responsibilities of their eighteen-year-old counterparts, emancipated minors must still abide by all federal and state employment statutes that are applicable to children their age.\footnote{See WASH. REV. CODE ANN. § 13.64.060 (West 2015).}

Roughly half of the states have individual statutory guidelines for emancipation that set forth the specific circumstances in which a minor can seek emancipation.\footnote{See Emancipation of Minors--Laws, supra note 26.} The process varies from state to state, but each statute generally has the five following requirements:

1. The minor is a certain minimum age or older.

2. They willingly want to live separate and apart from their parents with the consent or acquiescence of the parents (the parents do not object to the minor living apart from them).
3. The minor can manage their own finances.

4. The minor has a source of income that does not come from any illegal activity.

5. Emancipation would not be contrary to the minor’s best interests; it is good for them.\(^\text{95}\)

Courts will typically consider each of these factors and use them to determine whether or not a minor qualifies for emancipation.\(^\text{96}\)

With regard to the first criterion examined by the courts, there are still age limits attached to emancipation.\(^\text{97}\) On its face, this is understandable since it is unlikely that an eight-year-old will have the maturity necessary to be able to satisfy the remaining prongs. Furthermore, it is impractical for minors below the minimum age set forth in the statute to seek emancipation because they would still be subject to age restrictions that are present in other laws, such as driving restrictions and school attendance requirements.\(^\text{98}\) California is the only state that allows statutory emancipation for children at the age of fourteen, while other states with emancipation statutes set the minimum age requirement at sixteen.\(^\text{99}\) Even where a minor has been granted emancipation and has a work permit, it is not a guarantee that they will be able to work additional hours.\(^\text{100}\)

The decision to seek emancipation must also be the child’s choice; the court will not grant emancipation without the child’s consent.\(^\text{101}\) This issue is particularly important when a child’s emancipation becomes relevant to the course of his or her parents’ divorce or child support proceedings,\(^\text{102}\) or it appears that he or she is seeking

\(^{95}\) Emancipation Law & Legal Definition, supra note 50.

\(^{96}\) See id.

\(^{97}\) See Sanger & Willemsen, supra note 2, at 261 n.96.


\(^{99}\) See CAL. FAM. CODE § 7120(b)(1) (Deering 2015); Sanger & Willemsen, supra note 2, at 261 n.96; see, e.g., MICH. COMP. LAWS ANN. § 722.4c(2)(b) (West 2015) (explaining that minors must be sixteen years old to petition for emancipation); ARIZ. REV. STAT. ANN. § 12-2451(A)(1) (2015) (stating that a minor must be at least sixteen years of age to file a petition for an emancipation order).

\(^{100}\) See infra Part III.D.

\(^{101}\) See Sanger & Willemsen, supra note 2, at 260-61; Becoming Emancipated, supra note 6, at 5.

\(^{102}\) See Legal Advice & Referral Ctr., supra note 28; see, e.g., Diamond v. Diamond, 283 P.3d 260, 270 (N.M. 2012) (demonstrating how the child’s status as an emancipated minor relates to
emancipation due to a parent’s abandonment, abuse, or neglect. The term “emancipation” is colloquially used to refer to a situation where a minor is considered legally independent of their parents. However, this colloquial use of the term “emancipation” is not tantamount to a court order of emancipation.

Courts are also particularly concerned with the financial stability of the minor applying for emancipation. If the minor cannot support himself without the aid of his or her parents or guardian, a court is not going to grant his or her emancipation. A minor’s source of income is integral to his or her ability to independently manage his or her own finances. A court is more likely to grant emancipation to a minor who has a steady job and is financially stable than a minor who is still financially dependent on his or her parent or guardian. Finally, even if a minor satisfies all of the requirements of the statute, the court may still determine that emancipation is not in the individual’s best interests and consequently deny the minor’s petition. Each of these factors taken in totality appears to create a workable system for determining which individuals would be good candidates for legal emancipation.

D. Why are Courts Hesitant to Grant Emancipation?

One of the reasons courts may hesitate to grant emancipation is because “[m]inors seeking emancipation may not grasp the complete meaning of adult legal status, but most understand and intend emancipation to be a big deal.” Minors may not fully be aware that the parent’s obligation to pay child support.

103. See Loken, supra note 46, at 1728-30.
105. See Emancipation in Kentucky: Questions and Answers, LEGAL AID NETWORK KY., (Aug. 2009), http://kyjustice.org/node/618 (“[A]n implied emancipation can be revoked if the parent later changes their mind.”). But see Emancipation of Minors, GETLEGAL.COM, http://public.getlegal.com/legal-info-center/emancipation-of-minors/ (last visited Dec. 28, 2015) (“[W]hen the court grants emancipation, all duties owed by the parents are terminated.”) (explaining that the court may order an “implied partial emancipation,” however, this form of emancipation is ordered by the court and is distinct from the colloquial use of implied emancipation).
106. See Sanger & Willemsen, supra note 2, at 261.
107. See id.
108. Emancipation Law & Legal Definition, supra note 50.
110. See Sanger & Willemsen, supra note 2, at 261.
111. Id. at 246.
being emancipated means that any legal obligation that parents or guardians have toward their children has ended. This could be detrimental for minors who are not successful in their endeavors or find themselves unable to pay rent.

For example, if a minor is granted emancipation in Connecticut he or she is responsible for "rent, buying food, for medical bills . . . buying clothing [and if an emancipated minor has a baby, they] will have to pay for the things the child needs." Additionally, the state makes it clear that "until [minors turn] 18 years old, [he or she] will nearly always be required to live with an adult to receive financial assistance from the government. Even if [they] qualify for financial assistance, the money [they] get may not be enough to pay bills." The court’s rationale for limiting emancipation is valid; nevertheless, it creates unforeseen financial consequences.

The prospect of forcing children into emancipation is another valid concern and a reason why courts may be hesitant to grant emancipation despite the requirement that emancipation must be the minor’s choice. However, proper procedure and statutes would provide mature individuals who are actually interested in emancipation, such as Jhette Diamond, with another option. In Diamond v. Diamond, sixteen-year-old Jhette, with the help of an attorney, petitioned the district court of New Mexico for a declaration of emancipation instead of seeking a judicial finding that would place her in government care. Jhette started working at eleven and moved out of her mother’s home when she was only thirteen due to domestic violence and substance abuse issues. Jhette initiated her emancipation proceedings and repeatedly testified about her situation until her case was ultimately resolved by the Supreme Court of New Mexico. The district court found and the supreme court affirmed that Jhette was able to make responsible choices and tend to her own financial needs, making her “a classic case” for emancipation. Jhette Diamond is a clear example of when statutory

112. See id. at 246-47.
113. Id. at 264, 291.
114. A Teenager’s Guide to Emancipation, supra note 48; see H.B. 5176, 2002 Gen Assemb., Reg. Sess. (Conn. 2002) (illustrating that the bill relieves a parent of any obligations they have to care for a minor who was formally in their guardianship).
117. Id. at 261.
118. Id.
119. Id. at 261-62.
120. Id. at 261.
emancipation can be the proper course of action for a struggling individual. Because these individuals exist, courts must distinguish between minors who can really benefit from emancipation from those who it will be harmed by it.

II. THE STATUTORY CONSTRUCTION REGARDING EMANCIPATION AND CHILD LABOR LAWS

A. Federal and State Emancipation Provisions

Although there are federal statutes that refer to emancipated minors, there is no official statute illustrating a federal policy on how to emancipate minors.\(^{121}\) This is likely because matters that can be considered “family law” are typically under the discretion of state and local courts, instead of the federal government.\(^{122}\) For example, the District of Columbia utilizes federal statutes regarding the termination of parental rights and the age of majority, but not statutes allowing emancipation.\(^{123}\) Since the federal government has not provided a basic structure and framework regarding emancipation, the states have made their own policies and procedures.\(^{124}\) Each of the fifty states and the District of Columbia has some sort of state policy regarding the emancipation of minors.\(^{125}\) Several states and the District of Columbia will only provide minors with judicial emancipations, while the remaining slight majority of states have statutory emancipation regulations.\(^{126}\) The provisions of the states with statutory regulations

\(^{121}\) See, e.g., 20 U.S.C.S. § 1087vv(1)(C) (LexisNexis 2014).

\(^{122}\) See Family Law in the 50 States, AM. BAR ASS’N, http://www.americanbar.org/groups/family_law/resources/family_law_in_the_50_states.html (last visited Dec. 28, 2015) (“Matters dealing with marriage, divorce, separation, domestic violence, child abduction, child custody [and] visitation, child support, adoption, trusts, wills, estates, property, etc. are under the jurisdiction of state and local courts.”).

\(^{123}\) Emancipation of Minors—Laws, supra note 26. The District of Columbia is governed by federal law and if a federal emancipation statute existed, as will be proposed below, it would apply here. Id.

\(^{124}\) See Bethany Stasiak, Statutory and Judicial Emancipation of Minors in the United States, BOSTONCOOP.NET, http://www.bostoncoop.net/led/emancipation/emancipation_deliverable.pdf (last visited Dec. 28, 2015) (examining the chart that illustrates the “statutory schemes” for all of the states that have a procedural process for emancipation).

\(^{125}\) See id.

\(^{126}\) See id. Note that the state of North Dakota does not have formal statutory regulations and has never heard a case of judicial emancipation, as a result it has been included with those states that have judicial emancipation. See supra Part I.B. (illustrating the difference between judicial emancipation and statutory emancipation).
CHILD LABOR LAWS AND EMANCIPATION

vary, but each statute contains qualifications for minors to become emancipated.\footnote{See, e.g., FLA. STAT. ANN. § 743.015 (LexisNexis 2015), MONT. CODE ANN. § 41-1-501 (2015); NEV. REV. STAT. ANN. § 129.090 (LexisNexis 2015).}

\section*{B. Federal and State Work Restriction Laws for Minors}

Similar to the regulations regarding the emancipation of minors, federal and state labor laws differ.\footnote{See Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. §§ 201-219 (2012); FLA. STAT. ANN. § 743.015; MONT. CODE ANN. § 41-1-501; NEV. REV. STAT. ANN. § 129.090.} Child labor laws and work environment conditions and restrictions are governed on the federal level by the FLSA.\footnote{See 29 U.S.C. §§ 201-219; DOL CHILD LABOR PROVISIONS, supra note 61, at 1.} While there are necessary exceptions to labor laws regarding minors, there are reasons why the laws are as strict as they are.

\subsection*{1. Federal Labor Law Provisions}

Under the FLSA, child labor is considered to be oppressive if:

\[\text{Any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation.}\footnote{29 U.S.C. § 203(1).}

The FLSA provides employment restrictions for those under the age of eighteen and creates further limitations for individuals under the age of sixteen.\footnote{Id.} These provisions of the FLSA are not without purpose and “were enacted to ensure that the children’s employment will not physically harm them or interfere with their schooling.”\footnote{Thirsty’s, Inc. v. U.S. Dep’t of Labor, 57 F. Supp. 2d 431, 434 (S.D. Tex. 1999).} However, the fact that emancipation is an option demonstrates that there are instances in which the government recognizes that exceptions need to be made.\footnote{See infra Part IV.}

Despite earlier federal child labor laws being deemed unconstitutional,\footnote{See Hammer v. Dagenhart, 247 U.S. 251 (1918); Jonathan Grossman, Fair Labor Standards Act and the Emancipation of Minors (2015).} the FLSA has passed judicial scrutiny\footnote{See infra Part IV.} and remains
the foundation of child labor standards today. Although the FLSA also governs minimum wage, overtime pay, and recordkeeping, it was created, in part, to provide young workers with safe work environments by restricting the hours and conditions in which they can work. This was done to safeguard their health and enable them to take advantage of educational opportunities.

The FLSA contains provisions that provide protection to employees of certain enterprises and industries, as well as employees of some individual firms that are not covered enterprises, as long as that firm engages in interstate commerce. The FLSA entitles minor employees to the same minimum wage, overtime, safety and health, and nondiscrimination protections as their adult counterparts, in addition to specific provisions that apply solely to children.

The FLSA establishes fourteen as the federal minimum age for nonagricultural employment. Fourteen-year-old employees may only work in select occupations outside of school hours for limited lengths of time. Unless a job is specifically permitted, fourteen- and fifteen-year-old workers are prohibited from that type of employment. Under FLSA guidelines, fourteen- and fifteen-year-olds are prohibited from being employed:

1. During school hours, except as provided in Work Experience and Career Exploration Programs and Work-Study Programs;

2. Before 7 a.m. or after 7 p.m. except from June 1 through Labor Day when the evening hour is extended to 9 p.m. (time is based on local standards; i.e., whether the locality has adopted daylight savings time);

3. More than 3 hours a day on a school day, including Fridays;


135. See United States v. Darby Lumber Co., 312 U.S. 100 (1941).
137. See DOL CHILD LABOR PROVISIONS, supra note 61, at 4.
138. See id.
139. See id. at 2.
141. See DOL CHILD LABOR PROVISIONS, supra note 61, at 4.
142. See id. at 4-7.
143. See id. at 6-7.
4. More than 8 hours a day on a non-school day;

5. More than 18 hours a week during a school week; and

6. More than 40 hours a week during non-school weeks. 144

The FLSA establishes sixteen as the basic minimum age for most types of employment. 145 Upon reaching the age of sixteen, restrictions on hours are lifted and minors can become employed in any occupation that has not been declared hazardous by the Secretary of Labor. 146 Unlike their fourteen- and fifteen-year-old counterparts, who must be expressly granted permission to seek various jobs, this age group is permitted to seek any type of employment except for the seventeen categories that have been deemed “hazardous occupations.” 147 Once minors turn eighteen they are free to enter into occupations that have been deemed hazardous. 148 Although these restrictions do not appear to be stringent, these minors must still abide by additional state labor laws. 149

Should an employer violate one or more of the labor law provisions of the FLSA, he or she may be subject to various penalties for the violation, including civil money penalties, goods injunctions, injunctions to compel compliance, and criminal sanctions up to $10,000 for every willful violation. 150 Other federal and state laws may provide different or higher standards than the FLSA regulations. 151 When such laws differ, the employment rules set forth that provide the greatest protection to the minor must be observed. 152 The FLSA is additionally limited in scope. It does not apply to children that are employed by their parents in non-hazardous occupations, children that are employed as actors or performers in productions, children delivering newspapers, or children working from home to produce wreaths chiefly composed of natural holly, pine, cedar, or other evergreens. 153

144. See id. at 4.
145. See id. at 3.
146. See id.
147. See id. at 8.
148. See id. at 3.
150. DOL CHILD LABOR PROVISIONS, supra note 61, at 26.
151. See id. at 1.
152. See id.; Youth & Labor: State Labor Laws, supra note 149.
153. See DOL CHILD LABOR PROVISIONS, supra note 61, at 3.
Creating an exemption for emancipated minors may seem contrary to the purpose of the Act,\textsuperscript{154} nonetheless, the FLSA already contains carve out provisions for minors who are working in certain fields.\textsuperscript{155} For example, under 29 U.S.C. § 213(c)(1), child labor laws set out in 29 U.S.C. § 212 do not apply to minors who are working in agriculture.\textsuperscript{156} According to the language of the statute, child labor laws do not apply to minors that are less than twelve years old, so long as they are employed by their parent or guardian, or have parental consent.\textsuperscript{157} Additionally, child labor laws do not apply to minors fourteen years of age or older, or to minors between the ages of twelve and thirteen, as long as they have parental consent or their parent is working on the same farm.\textsuperscript{158}

The FLSA also has provisions that allow waivers to be issued by the Secretary of Labor for minors as young as ten and eleven to be "employed outside school hours under prescribed conditions to hand harvest short season crops for no more than 8 weeks between June 1 and October 15 in any calendar year."\textsuperscript{159} Furthermore, the FLSA provides exemptions to minors who work for their parents.\textsuperscript{160} There are no restrictions on minors, regardless of age, if they are "employed by their parents at any time in any occupation on a farm owned or operated by his or her parent(s)."\textsuperscript{161} The federal legislature has made it clear by creating these various exceptions that there are times when it is necessary to exempt minors from labor regulations.

There are already federal statutory exceptions laid out regarding child labor in specific fields.\textsuperscript{162} Minors who benefit greatly from these

\begin{itemize}
\item \textsuperscript{154} See id. at 1.
\item \textsuperscript{156} Id. § 213(c)(1).
\item \textsuperscript{157} Id.
\item \textsuperscript{158} Id.
\item \textsuperscript{159} See Wage and Hour Division: State Child Labor Laws Applicable to Agricultural Environment, U.S. DEP'T LAB., http://www.dol.gov/whd/state/agriemp2.htm (last updated Jan. 1, 2015); 29 C.F.R. § 575.1(a)(B)(iii) (2015). It should be noted that the Secretary of Labor has never granted one of these waivers, just that the possibility exists. Id.
\item \textsuperscript{161} Youth & Labor: Agricultural Employment, supra note 160; see also Child Labor Rules Advisor: Exemptions from Child Labor Rules in Non-Agriculture, supra note 160 (noting that parental exemptions apply to hours and occupations deemed non-hazardous, but hazardous occupations still require people to reach the age of eighteen, even if it is run by the parents of the individual).
\item \textsuperscript{162} See V. Nathaniel Ang, Comment, Teenage Employment Emancipation and the Law, 9 U. PA. J. LAB. & EMP. L. 389, 405-08 (2007); see, e.g., 29 C.F.R. § 575.1(b) (2015) (demonstrating that
\end{itemize}
exemptions are in the entertainment industry. On the federal level, "[s]ection 13(c) of the Act provides an exemption from the child labor provisions for 'any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.'" 29 C.F.R. § 570.125 states that the term "performer" is broader than the term "actor" and has come to define a performer as:

a person who performs a distinctive, personalized service as a part of an actual broadcast or telecast including an actor, singer, dancer, musician, comedian, or any person who entertains, affords amusement to, or occupies the interest of a radio or television audience by acting, singing, dancing, reading, narrating, performing feats of skill, or announcing, or describing or relating facts, events and other matters of interest, and who actively participates in such capacity in the actual presentation of a radio or television program.

These exemptions were designed for minors in the entertainment industry because the industry was considered to be safe, and did not need to be regulated because acting and performing was not considered to be "oppressive child labor." Alternatively, children in today's entertainment industry face issues with their privacy and parental misuse of their money. Despite these issues, the federal government still allows minors in the entertainment field to be exempt from all FLSA child labor regulations. With respect to minors in the entertainment field and other select industries, the federal government has relied on individual states to create regulations to protect children where the

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164. 29 C.F.R. § 570.125.

165. Id. ("The term 'performer' . . . shall not include such persons as script writers, stand-ins, or directors . . . nor shall it include persons who participate in the broadcast or telecast purely as technicians such as engineers, electricians and stage hands.").

166. Ang. supra note 162, at 398, 405.


168. Id. ("[T]he federal Fair Labor Standards Act of 1938 . . . provisions don't apply to child performers and child farm workers because of the FLSA's so-called 'Shirley Temple Act' exemptions.").
FLSA is silent. 169

An examination of statutes in California and New York demonstrate that the state governments have created labor laws for minors in the entertainment industry in the absence of FLSA provisions. 170 California and New York are the central hubs of the entertainment industry and, therefore, have a large body of law regarding child entertainers. 171 For example, the California statute regarding minors who are in the entertainment industry is much more relaxed than the statute regarding other minors. 172 The California statute for working hours for minors in the entertainment industry states, "[n]o minor shall be employed in the entertainment industry more than eight hours in one day of 24 hours, or more than 48 hours in one week; or before 5 a.m., or after 10 p.m. on any day preceding a schoolday." 173

The California statute for minors outside the entertainment industry, however, states that, "while school is in session, no employer shall employ a minor 16 or 17 years of age for more than four hours in any school day." 174 The maximum amount of hours that a minor generally can work is significantly less than those which a minor who is in the entertainment industry can work. 175 This demonstrates that it would be more difficult for a non-actor or performer to meet the financial requirements of the emancipation statute merely due to their chosen occupation.

The Shirley Temple Act, which created this exemption for child actors and performers, additionally created other narrower exemptions for minors in other occupations. 176 Congress eventually began to concede that the federal working age restrictions were not flexible enough by including additional disjointed exemptions over time. 177 These amendments to the FLSA have created additional exemptions for newspaper deliverers, evergreen-wreath makers working from home, seventeen-year-old automobile and truck drivers, and school-exempt

169. See Jessica Krieg, There's No Business Like Show Business: Child Entertainers and the Law, 6 U. PA. J. LAB. & EMP. L. 429, 429 (2004) ("[C]hildren working in the entertainment industry are exempt from the Fair Labor Standards Act (FLSA), thus regulation of this industry is left to the individual states.").
170. See CAL. LAB. CODE § 1308.7 (Deering 2015); N.Y. LAB. LAW § 130 (Consol. 2015).
171. See Mercer, supra note 167.
172. See CAL. LAB. CODE § 1391.
173. CAL. LAB. CODE § 1308.7(a).
175. See CAL. LAB. CODE §§ 1308.7, 1391(a)(1), (4).
176. See Ang, supra note 162, at 398-99.
177. Id.
teenage workers in family sawmills.\textsuperscript{178} 

Unfortunately, the FLSA’s attempt to prevent “oppressive child labor” also led to the over-regulation of teenage employment.\textsuperscript{179} Many of the exemptions that do exist arose from industry reactions to over-regulation.\textsuperscript{180} The lack of flexibility present in the FLSA has created problems for emancipated youth the FLSA was not altered as emancipation statutes arose to reflect the needs of these teenagers. Moreover, emancipated minors have likely been unable to advocate for altering these restrictive laws because they represent a very small portion of the population and are not limited to one geographical area or any specific area of employment.\textsuperscript{181} This overregulation does not allow state governments to regulate emancipated minors in a similar manner to the way in which they are capable of regulating child actors and performers.

3. State Labor Laws for Minors

In addition to the FLSA, there are state laws that impact child labor.\textsuperscript{182} Every state has laws concerning child labor provisions and compulsory school attendance.\textsuperscript{183} Employers must follow all applicable federal and state laws concerning child employment.\textsuperscript{184} Although the FLSA does not require minors to obtain “work permits” or limit the number of hours a day that minors at least sixteen-years-old may work, many states have such requirements and limitations.\textsuperscript{185}

States often have their own guidelines for the hours that minors are allowed to work. Generally states have similar restrictions.\textsuperscript{186} New York State laws, for example, set forth different work restrictions for fourteen- to fifteen-year-olds than sixteen- to seventeen-year-olds.\textsuperscript{187}

\textsuperscript{178} Id. at 406-07. 
\textsuperscript{179} See id. at 400-01. 
\textsuperscript{180} Id. at 406. 
\textsuperscript{181} See supra Part I.B.2. 
\textsuperscript{182} See, e.g., ARIZ. REV. STAT. ANN. § 12-2451 (2015); CONN. GEN. STAT. § 46b-150b (2015); MONT. CODE ANN. § 41-1-501 (2015); UTAH CODE ANN. § 78A-6-803 (LexisNexis 2015); WASH. REV. CODE ANN. § 13.64.060 (West 2015). 
\textsuperscript{183} See DOL CHILD LABOR PROVISIONS, supra note 61, at 1; Youth & Labor: State Labor Laws, supra note 149. 
\textsuperscript{184} See DOL CHILD LABOR PROVISIONS, supra note 61, at 2; Youth & Labor: State Labor Laws, supra note 149. 
\textsuperscript{185} DOL CHILD LABOR PROVISIONS, supra note 61, at 2. 
\textsuperscript{186} See infra Part II. 
Minors who are sixteen or seventeen years old are restricted in the number of hours they can work when school is in session. These individuals can only work four hours a day Monday through Thursday and eight hours on Friday, Saturday, and Sunday. They are limited to working a total of twenty-eight hours of work a week.

Similar to the standards set out in the FLSA, the regulations for those who are fourteen to fifteen years old are even more restrictive. Fourteen- to fifteen-year-old minors are limited to working three hours on school days and no more than eight hours on any other day. They can work no more than eighteen hours per week while school is in session. When school is not in session, minors between the ages of fourteen and seventeen can work up to forty hours per week.

Some states impose stricter regulations than the standards expressed in the FLSA for agricultural employment. The FLSA does not limit the amount of hours a minor working in agriculture can work. Minors working in the agricultural field in Arizona, however, are limited to working eight hours a day or forty hours per week while school is not in session. When school is in session they are limited to working three hours a day and up to eighteen hours a week.

State governments also recognize that there are certain instances when children should be allowed to work more than the regulated permitted hours. Arkansas, Idaho, Illinois, Michigan, Mississippi, Nebraska, Pennsylvania, Texas, and Wyoming each have maximum daily or weekly hours regulations that exceeds the federal limitations. If an exemption were made to the FLSA, these variances demonstrate that states could make individual regulations that would allow emancipated minors to work the number of hours necessary to become financially independent.

188. Id.
189. Id.
190. Id.
191. Id.
192. Id.
193. Id.
195. Wage and Hour Division: State Child Labor Laws Applicable to Agricultural Environmental, supra note 159.
196. Id.
197. Id.
199. Id.
III. CURRENT EMANCIPATION LAWS AND FLSA RESTRICTIONS CREATE AN UNREALISTIC OPTION FOR MINORS

A minor who meets the qualifications for emancipation still has an uphill battle ahead of them. Emancipated minors face issues of statutory limitations, work type restrictions, hour restrictions, and even parental consent. Achieving emancipation is practically meaningless if a state statute prevents minors from working. Even if a minor obtains a work permit, there are still restrictions regarding the type of work that he or she can perform, further straining the ability of the minor to maintain financial independence. Moreover, in some circumstances parental consent is still required for certain things, even for emancipated minors. Combined, these factors make it difficult for emancipated minors to survive on their own.

A. Statutory Employment Limitations

One example of this is that in some states, even emancipated minors need to apply for a work permit in order to obtain employment. Work permits, or working papers, grant those who are under the age of majority permission to seek and earn wages for work. Emancipation does not confer upon minors the ability to obtain employment without such restrictions. For instance, in California:

The only exception from child labor and compulsory school attendance laws enjoyed by an emancipated minor is that he/she may apply for a work permit without the parent’s permission. An emancipated minor may sign, in place of the parent, the “Statement of Intent to Employ Minor and Request for Work Permit.”

200. Infra Part III.
201. Infra Part III.A.
202. Infra Part III.B.
203. Infra Part III.C.
204. Becoming Emancipated, supra note 6, at 1-2 (illustrating that while parental consent is not necessary to obtain a work permit, emancipation is not an automatic ticket to getting work if one is under the age of majority).
205. See Work Permits, BLACK’S LAW DICTIONARY, supra note 24.
206. STATE OF CAL. DEP’T OF EDUC., WORK PERMIT HANDBOOK FOR CALIFORNIA SCHOOLS 5-6 (2009) [hereinafter WORK PERMIT HANDBOOK], https://www.hslda.org/hs/state/ca/WorkPermitHandbook2009%203_.pdf. But see Child Labor FAQs, supra note 75. In the state of Indiana, if a minor has been granted emancipation, he or she does not need to obtain a work permit. Id.
According the California Education Code, there is no guarantee that a work permit will be granted. \(^{207}\) In fact, in California, full time work permits will only be issued to fourteen to sixteen year-olds:

> [W]hen a diploma of graduation from the prescribed elementary is held, and one of the following circumstances exist: (1) the parent or guardian of the minor child presents a sworn statement that the parent or guardian of the minor is incapacitated for labor through illness or injury, or that through the death or desertion of the father or mother of the minor, the family is in need of the earnings of the minor and that sufficient aid cannot be secured in any other manner; (2) the minor is unable to reside with his or her family and the earnings of the minor are necessary for the support of the minor; and (3) the minor is residing with a foster care provider, or guardian receiving foster care funds for the minor, if the provider or guardian obtains written authorization from the minor’s social worker, probation officer, or child protective services worker acting as an officer of the court. \(^{208}\)

California is not the only state that established strict standards for granting work permits. In Massachusetts, a “minor cannot be granted a permit unless the specific employer, work address, and job description have been provided.” \(^{209}\)

Despite an emancipated minor’s increased access to privileges and rights, there are situations where these minors currently do not gain right. \(^{210}\) In some circumstances emancipated minors may even lose rights. \(^{211}\) For example, in the realm of education, each state has a minimum age in which students can elect to stop going to school. \(^{212}\) Compulsory school laws vary on a state-to-state basis, but in some states minors are permitted to “drop out” of school before they turn eighteen. \(^{213}\) Minors in Pennsylvania can “drop out” of school at the age

\(^{207}\) CAL. EDUC. CODE § 75 (Deering 2015); CAL. EDUC. CODE § 75, 49130 (Deering 2015).

\(^{208}\) CAL. EDUC. CODE § 75, 49130.


\(^{210}\) See Hirby, supra note 26; see also A Teenager’s Guide to Emancipation, supra note 48; What is Emancipation?, supra note 90; Becoming Emancipated, supra note 6, at 2.


\(^{213}\) See Pa. Emancipation of Minors, supra note 51.
of seventeen without school approval or the permission of their parents or guardians.\textsuperscript{214} Furthermore, sixteen-year-olds in Pennsylvania can “drop out” of school if they are employed during school hours and hold an employment certificate.\textsuperscript{215}

The laws of most states also allow minors below the age of compulsory school attendance to stop going to school with parental approval.\textsuperscript{216} Although minors who are living with their parents are able to stop attending school before they reach the age of majority, emancipated minors are not afforded the same opportunity.\textsuperscript{217} We are by no means advocating that emancipated minors should discontinue their education for other pursuits; however, these individuals should not lose rights that they would otherwise be afforded if they were still under their parents’ or guardian’s care.

In the United States, emancipation has no effect on the following: working as many hours as one wants, the age of consent, the age for alcohol consumption, and the voting age.\textsuperscript{218} Although, it makes sense that becoming an emancipated minor would not change the laws regarding these factors, failing to change restrictions on work hours and the ability to obtain work makes surviving as an emancipated minor extremely difficult, with many individuals ending up unemployed or in juvenile detention.\textsuperscript{219} Even those who manage to gain work permits are still faced with restrictions regarding the types of jobs they can take and the hours they can work.\textsuperscript{220}

\textbf{B. Work Condition Restrictions}

Another limitation that emancipated minors often face regards the type of work that they can seek out and accept legally.\textsuperscript{221} On its face, this is a logical restriction because an emancipated minor is still just that, a minor. It is difficult to dispute that laws that prohibit a fourteen-year-old from working as many hours as one wants can be seen as providing a reasonable level of protection. However, restricting the types of jobs they are allowed to take part in is a significant constraint on their ability to earn an income.

\textsuperscript{214} Id.
\textsuperscript{215} Id.
\textsuperscript{216} Can You Drop Out of School? Should You?, supra note 212.
\textsuperscript{217} See Emancipation: You’re on Your Own, Kid, supra note 211; Becoming Emancipated, supra note 6, at 2.
\textsuperscript{218} Becoming Emancipated, supra note 6, at 2.
\textsuperscript{219} Sanger & Willemsen, supra note 2, at 270-72 (illustrating the struggles of the eighteen emancipated minors surveyed).
\textsuperscript{220} Becoming Emancipated, supra note 6, at 2.
\textsuperscript{221} See generally DOL CHILD LABOR PROVISIONS, supra note 61, at 5, 8-25 (listing the occupations that minors are not permitted to work and explaining exemptions, which do not apply to emancipated minors).
old from working twelve or more hour shifts on a construction site were created to protect and ensure the minor’s safety. However, in certain situations, laws that create this level of protection may be more of a hindrance to many minors than a protective measure.²²²

Our proposed FLSA carve out for emancipated minors is no more extreme than the exemptions that already exist. One such exemption regards the hours that children can work when they work for their own parents or a family-owned business.²²³ According to the United States Department of Labor, if a minor is working for his or her parents, he or she can “work any time of day and for any number of hours.”²²⁴ The regulations put in place by each state do not apply to minors under these circumstances, as long as their place of employment is “solely owned by their parents.”²²⁵ Hypothetically, a minor who is living at home, is not paying rent, and is attending school full time could legally work forty or more hours a week in a restaurant washing dishes as long as it is his mother’s restaurant. Conversely, an emancipated minor who lives on his own must pay his own rent and also attend school.²²⁶ This individual cannot work unlimited hours.²²⁷

Work condition restrictions vary by age group and are generally split into the following three categories: those under fourteen, those ages fourteen to fifteen, and those between the ages of sixteen and eighteen.²²⁸ There are several jobs listed under 29 C.F.R. § 570.33 that minors who are fourteen or fifteen years old are prohibited from working.²²⁹ Some of these jobs include: manufacturing, mining, processing occupations, all baking and cooking activities except cooking which is permitted by 29 C.F.R. § 570, and any other job that the Secretary of Labor also declared hazardous or detrimental to the health or well-being of minors between the ages of sixteen and eighteen.²³⁰ Additionally, the full list contained in the regulation is not exhaustive and other types of work can qualify as prohibited to minors in this age group.²³¹

²²² See Sanger & Willemsen, supra note 2, at 270-72.
²²⁴ Id.
²²⁵ Id.
²²⁶ See Becoming Emancipated, supra note 6, at 1-2, 4.
²²⁹ Id. § 570.33.
²³⁰ Id.
²³¹ Id.
These restrictions severely limit the type of work that is available to minors of this age group. For example, those who qualify for emancipation (or those with parental permission) can only qualify for jobs in the following categories: office and clerical work (including the operation of office machines), teaching or performing as a tutor, cashiering, price marking and bagging, and carrying out customers’ orders. Unfortunately, these few listed jobs may not be feasible options for emancipated minors. To illustrate, while “[e]mancipated minors have the right to work and earn a living” they must also “adhere to labor laws with regard to health and safety regulations ‘designed to protect those under the age of majority regardless of their legal status.’”

Typically, people who work as grocery store baggers or clothes sales associates make minimum wage. These restrictions make it unnecessarily difficult for emancipated minors to remain financially independent.

The restrictions which are applied to minors who are between the ages of sixteen and eighteen are more relaxed than those applied to younger minors, but are still burdensome for those who need to maintain financial independence. 29 C.F.R. §§ 570.51-570.68 include a list of hazardous jobs that minors between the ages of sixteen and eighteen will not be allowed to perform. These regulations eliminate essentially all potential jobs in construction or jobs which involve heavy machinery. These restrictions are in place to ensure the safety of minors in the workplace; however, the jobs available to most minors outside of the entertainment industry or successful entrepreneurial ventures have been severely limited to those that likely do not pay high, or even livable, wages.

Minors can occasionally work in jobs that have been deemed hazardous under partial exemptions. There are “[l]imited exemptions...”

232. See id. § 570.34.
235. See 29 C.F.R. § 570.33.
236. See id. §§ 570.51-570.68.
237. See id.
238. See Desilver, supra note 234 (demonstrating that non-hazardous occupations such as cashiers, retail sales, and cleaners are common amongst minimum wage earners).
from some of the hazardous occupations rules [that] allow 16- and 17-year-old apprentices and student-learners to perform otherwise prohibited work (hazardous jobs) under certain conditions." Apprentices are allowed to work in many hazardous jobs. Some of these positions include using power-driven woodworking machines; meat and poultry slaughtering, packing, or processing; using power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs; and roofing operations, including all work on or about a roof. Emancipated minors have more financial responsibilities than their non-emancipated peers, who can work these hazardous positions under the title of "apprentice." Therefore, if exceptions can be made for non-emancipated minors to work with dangerous equipment in high risk occupations, then emancipated minors should at least be subject to fewer restrictions regarding their hours or type of employment.

C. Parental Consent

Supreme Court precedent has established that parents have a constitutional right to make decisions with regard to the "care, custody and control of their children" under the Due Process Clause of the Fourteenth Amendment. Due to this constitutional right to parent, parental consent is typically required in order for a minor to become emancipated. Unfortunately, requiring parental consent in order to even achieve emancipation can further complicate an already strained relationship between a child and his or her parents or guardians. Although parental consent is a requirement, emancipation may be possible for minors to obtain without parental consent because a parent's right to make decisions for their child can be taken away. If a parent refuses to consent to the child's emancipation a court may find that the

240. Id.
241. Id.
242. Id. (noting that this list is not exhaustive).
245. See id.; Becoming Emancipated, supra note 6, at 3.
246. See Becoming Emancipated, supra note 6, at 6 (explaining that minors should consider the possibility that emancipation could cause a complete break between the individual and his or her parents and that becoming emancipated could additionally upset other family members).
247. Cataldo, supra note 233, at 594; see also Becoming Emancipated, supra note 6, at 3.
parent acquiesced by permitting the child to live outside of the home.\textsuperscript{248} However, a judge is not obligated to find that a parent acquiesced to his or her child's emancipation under these circumstances.\textsuperscript{249} Additionally, consent through acquiescence requires that the minor is already living outside of the parent's home.\textsuperscript{250}

Moreover, a minor who lives with his or her parents or guardians and is under their authority may have more freedom than an emancipated minor because many laws require parental consent. Parental consent is often used to grant permission to make decisions that are typically reserved only for those who have reached the legal majority, such as getting married and joining the armed forces.\textsuperscript{251} For example, in Indiana, a minor, who is at least sixteen years of age may work extended hours with a parental permission form.\textsuperscript{252} Similarly, one must be eighteen to join the Army, but a minor can join the armed forces at the age of seventeen with parental consent.\textsuperscript{253} Parental consent to join the Army is not required for emancipated minors who are seventeen as long as they can present court documentation of their emancipation.\textsuperscript{254} Although parental consent also allows minors to participate in jobs that would otherwise be unavailable to them, emancipated minors are frequently not exempted from such employment restrictions.\textsuperscript{255}

D. Employment Laws and Financial Impossibility

Current employment laws make it incredibly difficult for emancipated minors to maintain their financial independence. These restrictions likely do not have a major financial effect on minors who still live at home and are not dependent on their income for living expenses. However, emancipated minors between the ages of fourteen and seventeen who must be financially independent likely cannot make a living under such hours or occupational restrictions.\textsuperscript{256}

\textsuperscript{248} \textit{Becoming Emancipated}, supra note 6, at 3.
\textsuperscript{249} \textit{Id.}
\textsuperscript{250} \textit{Id.}
\textsuperscript{252} \textit{Child Labor FAQs}, supra note 75.
\textsuperscript{253} \textit{Age and Parental Permission}, supra note 251.
\textsuperscript{254} \textit{See id.}
\textsuperscript{255} \textit{See WORK PERMIT HANDBOOK}, supra note 206, at 5-6 (illustrating that without a work permit, minors cannot work and emancipated minors still need a work permit to seek employment); \textit{see, e.g., 29 U.S.C. § 213(c) (2012); WASH. REV. CODE ANN. § 13.64.060(1)(g) (LexisNexis 2015).}
\textsuperscript{256} \textit{See Fair Labor Standards Act Advisor: Hours Restrictions, supra note 92.}
In the study conducted by Sanger and Willemsen, of eighteen emancipated minors, only four of them were “doing well,” and the remaining participants were heavily reliant on social assistance or dependent on non-parental adults. Ten of the eighteen surveyed are in temporary living situations and dependent on adults who are not blood related for assistance. One of the girls surveyed said that since becoming emancipated she had moved six times, was not working, and her only source of income was welfare and social security. Additionally, she was nonresponsive when asked if her boyfriend, who she lived with, made any financial contribution.

Another minor who was interviewed by Sanger and Willemsen expressed an interest in working overtime, but was unable to do so. When speaking about his experience, he stated:

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. They 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.

These hours limitations, like the ones set by the federal government, likely do not burden those who are still living at home with their parents. However, hour limitations combined with job restrictions make it practically impossible to make a month’s rent, let alone buy other essentials, such as utilities, groceries, and clothing. These individuals demonstrate that financial independence is difficult to obtain as an emancipated minor.

If the minor qualifies for the child actor or performer exemption or has a substantial relationship with his or her parents or guardian this may not be an issue. Actress Drew Barrymore was granted emancipation from her parents at fifteen. She had the money and connections to support herself where most other individuals would not be able to, despite her rough childhood. Many youth seeking emancipation do not have the connections and opportunities afforded to Barrymore and

257. Sanger & Willemsen, supra note 2, at 264, 271.
258. See id. at 291.
259. Id.
260. Id.
261. Id. at 294.
262. Id.
263. Shapiro, supra note 163.
264. Id.
other child actors and performers.265 Without the ability to financially support oneself, a minor will not meet the statutory requirements for emancipation.266

Many children who are granted emancipation end up with criminal records, on the streets, and dependent on state and or federal aid programs.267 If minors become financially unstable, they are at a greater risk for sexual abuse and having poor access to proper healthcare.268 Current “[e]mancipation legislation, premised as it is on the belief that adolescents can survive on their own, works against creation of those structures, and, worse, can create procedural hurdles that block homeless children’s access to services previously available.”269 Changes to the current laws and statutes will give emancipated minors a greater chance of thriving on their own.

IV. PRACTICAL LEGAL SOLUTIONS FOR EMANCIPATED MINORS

Statutes and legislation regarding emancipated minors have changed over time.270 There have been two waves of emancipation statutes since they were first created in the nineteenth century.271 The first wave of emancipation statutes provided little guidance to courts and minors and were only adopted by eight states.272 Most states during the first wave additionally failed to set a minimum age in which a minor could apply for emancipation.273 The second wave of emancipation statutes clarified and expanded on what was left out of the first wave.274 The second wave of changes introduced language to clarify what emancipation would provide to minors, create a list of reasons why a minor may be granted emancipation, and set the standards that courts would use to determine the outcome of a minor’s case.275

Amending emancipation statutes is not a new concept and some of the gaps or ambiguities were addressed in the second wave.276

265. See id.
266. See Emancipation Law & Legal Definition, supra note 50.
267. See Cataldo, supra note 233, at 595.
268. Id.
269. Loken, supra note 46, at 1736.
270. Gottesfeld, supra note 13, at 466.
271. Id.
272. Id. at 477-78.
273. Id. at 479.
274. Id. at 479, 479 n.34.
275. Id. at 479.
276. See id.
Unfortunately, these changes were not enough to reach the heart of the current problems because labor and employment statutes remained the same. The process of becoming emancipated needs to be implemented in a more rigorous manor and the corresponding labor and employment statutes additionally need to be changed to reflect the greater amount of responsibilities that these individuals have. Labor and employment statutes, particularly the FLSA, must be amended to allow minors who are granted emancipation the ability to work enough to fulfill the requirements of their emancipation. A provision must be included that exempts emancipated minors from complying with the hours restrictions placed on all others within their perspective age class.

A. Proposed Changes to Granting Emancipation

On its face, the current process for a minor to become emancipated appears to be rigorous. According to the Connecticut Order of Emancipation statute, if after a hearing the court finds that:

(3) the minor willingly lives separate and apart from his parents or guardian, with or without the consent of the parents or guardian, and that the minor is managing his own financial affairs, regardless of the source of any lawful income; or (4) for good cause shown, it is in the best interest of the minor, any child of the minor or the parents or guardian of the minor, the court may enter an order declaring that the minor is emancipated.\(^\text{277}\)

Ideally, these factors would be enough to determine whether or not a minor qualifies for emancipation. Unfortunately, minors often slip through the cracks in the system.\(^\text{278}\) The first proposed change is necessary to ensure that minors who are granted emancipation will be able to maintain financial independence.

The majority of critical legal scholarship on emancipation statutes arose throughout the 1990s, shortly after, many states began creating these provisions.\(^\text{279}\) Despite early scholarship calling for uniform

\(^{277}\) CONN. GEN. STAT. § 46b-150b (2015) (omitting parts (1) and (2) of the statute because emancipation through marriage or armed services employment is outside the scope of this note).

\(^{278}\) See, e.g., Ragan v. Ragan, 931 S.W.2d 888, 891 (Mo. Ct. App. 1996) (demonstrating one case where twin brothers became emancipated, but did not become financially self-sufficient after emancipation and relied on being claimed as dependents by a relative in order to receive public assistance).

\(^{279}\) See, e.g., Loken, supra note 46; Sanger & Willemsen, supra note 2.
emancipation statutes throughout the states, the basic requirements of many statutes are similar, but still vary. The most common complaint presented in these studies is that the new emancipation statutes made the process far too easy for children and adults alike. There were concerns, not only that children would not take emancipation seriously, but also that these statutes would be abused by their parents or guardians. These are legitimate concerns in light of the difficulties that many emancipated minors encounter post-emancipation. A problem that these studies do not address is the court process in which minors become emancipated and the work restrictions that they are still subject to after these proceedings.

The first improvement that should be taken is to make the process that the courts use in granting emancipation more exhaustive to ensure that applicants actually meet the qualifications set forth in the emancipation statute. While the statutes establish stringent requirements, the process currently used by courts is relaxed in its application. In Connecticut, those seeking emancipation must fill out a form with their personal information, their reason for seeking emancipation, and a short explanation elaborating on their reason. After scheduling a hearing date, a minor goes before a judge who has the sole ability to grant or deny emancipation. Such liberal discretion leads to conflicting results where too many unqualified minors are granted emancipation. These discrepancies are further compounded

280. See Gottesfeld, supra note 13, at 475.
282. See, e.g., Loken, supra note 46, at 1728-29 ("This legislation, in sharp contrast with the common law tradition of judicial emancipation, has made it relatively easy in practice for adolescents to sever their ties with parents, and, less obviously, for parents to escape their obligations to troublesome teenagers."); Sanger & Willemsen, supra note 2, at 262-63 ("In California only a minor—not parents or the state—can petition for emancipation.... To facilitate this, the Legislature instructed that emancipation proceedings 'be as simple and inexpensive as possible'.... The Judicial Council complied, and like the old Castro convertible couches, emancipation was made 'so easy, even a child can do it.'").
283. See Loken, supra note 46, at 1728-30.
284. See generally Sanger & Willemsen, supra note 2, at 265-98.
285. See generally Loken, supra note 46; Sanger & Willemsen, supra note 2.
286. See Sanger & Willemsen, supra note 2, at 249 n.39.
289. See Sanger & Willemsen, supra note 2, at 305.
due to the differences in emancipation statutes and family court structures from state to state.

Another example of this problem was illustrated in Sanger and Willemsen’s study that examined counties in California. This study found that, “emancipation is easily available. In the two counties studied, each of the ninety petitions filed over a two-year period was granted ... [and] emancipation’s ready availability in some counties enhances its attractiveness.” Many minors who apply for emancipation misinterpret what benefits they can actually receive from it. This increased attractiveness due to such availability left minors unprepared for increased responsibilities in difficult circumstances after being granted emancipation. In struggling to gain steady employment, minors are often surprised by the fact that they still cannot do things such as bartend or get a driver’s license due to their age. Overall, emancipation can be summed up in following way:

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


291. See Family Law in the 50 States, supra note 122. Family Law Quarterly publishes annual charts that summarize and compare the basic laws and grounds for various family law issues in each of the fifty states. Id. This source contains links to each of the six charts and further explains that matters that frequently can be considered “family law” “are under the jurisdiction of state and local courts.” Id.

292. See Sanger & Willemsen, supra note 2, at 305.

293. See id.

294. Id. at 293-94.

295. See id.

296. Id.
decision to become emancipated is regarded with ambivalence. 297

Whether it is parental influence, lack of work, or other procedural red tape, a lot of these issues would be resolved if the court took a more stringent approach in determining who is eligible and should be granted emancipation.

The process regarding emancipation hearings is not rigorous and in some cases is not taken seriously. 298 One minor was able to obtain emancipation without speaking to or even seeing a judge. 299 She handed a clerk her form who brought it to a judge, and ten minutes later she was emancipated. 300 Another minor gave a judge his business card with his business information. 301 The judge proceeded by asking no questions and merely signed his application papers. 302 A third minor expressed that the judge only asked basic questions to establish that he did not lie on the application, but the process was not as difficult as he had anticipated. 303 Sanger and Willemsen explained that "the way things were' as opposed to 'how they sounded' sometimes went to the heart of the requirements for emancipation." 304

Changes need to be made to the process in order to circumvent these assembly-line-like emancipations. Only looking at a piece of paper filled out by a teenager and never speaking to him or her about it is not sufficient proof that he or she meets the requirements for emancipation. This method of granting emancipation does not guarantee that an individual is earnest about his or her financial stability, living situation, occupation, and familiarity with the process of emancipation. Nor does this process ensure that a minor understands the effect that emancipation would have on his or her life.

Furthermore, minors applying for emancipation should not be able to complete the process within a week of submitting the necessary form. These forms alone can be misleading and without some sort of investigation it could be possible for a judge to approve an emancipation that looks good on paper, but is actually not a full and accurate representation of the situation. These misleading applications are not merely speculation, but are an unfortunate reality. When one court was

297. Id. at 297.
298. See id. at 284-86.
299. Id. at 284.
300. Id.
301. See id. at 285-86.
302. Id. at 286.
303. Id.
304. See id.
examining a minor’s independent financial status, the minor told that judge that he was financially independent. In reality, he received $150 a month from his father and he received an extra $50 for behaving well in court that day. The minor was aware that his statements regarding his financial independence were not true; however he lied to give the judge an “appropriate” answer and was subsequently emancipated.

Even when the judge was suspicious of this young man’s answer to an inquiry, it was not enough to prevent granting his emancipation. Despite the judge’s suspicion regarding whether or not it was his choice to pursue emancipation, this young man said that he would not have told the judge that his father was pushing him towards emancipation because his father appeared with him before the judge. This minor lied in order to become emancipated and he is likely not alone. When the judicial process for emancipation is decided in these quick courtroom settings with brief question and answer periods, it is difficult to come to a decision that is in the minor’s best interest.

Changing the process used by the courts to determine whether or not emancipation is beneficial to the minor will help alleviate the problem of unqualified minors becoming emancipated. For example, Virginia already has statutes that allow for greater measures to be taken. In section 16.1-332 of the Virginia Code, when determining whether a minor qualifies for emancipation, “[i]f [it is] deemed appropriate the court may [ ] require the local department of social services or any other agency or person to investigate the allegations in the petition and file a report of that investigation with the court.” The purpose behind using various forensic mental health assessments in criminal, civil, and family court is to “facilitate better informed legal decision making.”

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305. Id. at 287.
306. Id.
307. Id.
308. Id. at 288.
309. Id.
310. See id.
312. Id.
313. Heilbrun et al., supra note 17 at 1; see also Jane Beresford, Frequently Asked Questions, JANE BERESFORD, PSY.D., http://www.drberesford.com/FAQs/ (last visited July 20, 2015) ("A forensic assessment can provide valuable information towards understanding the person who stands before the court, including a better understanding of family issues, personality variables, critical life experiences and psychological stress... The report presents a comprehensive portrait of the person and allows the court to take into account extenuating and mitigating circumstances."")
decision of why a minor might seek emancipation and what their living and financial situation is like will lead to a greater amount of information being brought to the court that can be used in determining whether or not a minor should be granted emancipation.

The State of Virginia is able to do this because it has a statute in place addressing this issue, but the wording of the statute itself may prevent it from being fully utilized. The statute says that a court “may” require an investigation, not that it “must.” States should be implementing these procedures when examining any minor’s petition or application for emancipation. Furthermore, the use of an investigative tool should be mandatory instead of permissive. This would create a larger up front expense for states or individuals seeking emancipation, but it will likely save money in the long run. Ensuring that only qualified minors may become emancipated may prevent the high reliance on welfare or other state aid. Taking this preemptive action will help ensure that only minors who are financially stable are granted emancipation.

Dependence on state aid is an unfortunate reality for some emancipated minors. Seventeen-year-old twin brothers Robert and Joseph Ragan became emancipated after their father alleged that he consented to his sons leaving their home and becoming self-

Without an assessment, important psychological issues may not be identified, brought to the courts’ attention, and considered . . . .")

314. See VA. CODE. ANN. § 16.1-332.
315. Id.
317. See, e.g., Ragan v. Ragan, 931 S.W.2d 888, 891 (Mo. Ct. App. 1996) (illustrating that after the two twin brothers were unable to support themselves post-emancipation they were supported by state assistance); Sanger & Willemsen, supra note 2, at 291.

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supporting. On appeal, it was discovered that the boys had run away to their aunt’s house and were supported by a monthly aid to families with dependent children (AFDC) check that she received after both brothers lost their jobs. The Court of Appeals of Missouri reviewed one of its previous decisions in which the court held that children can become emancipated even though they receive “significant financial and other material support from others.” When the court reviewed its prior decision in regards to this case, it held:

The “significant financial and other material support” referred to in Sparks and in other cases analyzed in Sparks was contributed either by family members or came from student loans. Support in those cases was not in the form of cash from the state via an AFDC payment. The very nature of the AFDC payment in this case, i.e., cash for a dependent child when necessary to prevent neglect and give proper care, distinguishes this case from Sparks and the cases on which Sparks relied.

As a result of this analysis and the lack of sufficient evidence to support the previous judgment, the court reversed the trial court’s ruling. If an investigative tool was initially used by the trial court to learn more about this family, the state could have been saved the costs of AFDC payments and appellate litigation.

In addition to examining the reasons for seeking emancipation and the financial status of the applicant, courts should also examine a minor’s plan for future employment and their living situation. Having a steady source of income is something that can only aid minors in remaining off of government assistance. The purpose of the “self-supporting” language within emancipation statutes is likely to discourage youth from devising a plan that relies on public aid. An inquiry into a minor’s plans for financial independence regarding their work status would help to eliminate these bad candidates.

318. Ragan, 931 S.W.2d at 889.
319. Id.
320. Id. at 891 (quoting Sparks v. Trantham, 814 S.W.2d 621, 625-26 (Mo. Ct. App. 1991)).
321. Id.
322. Id.
323. See, e.g., id.
324. See id. (“We cannot imagine that the legislature intended the phrase ‘self-supporting’ to mean that a child could achieve that status at the expense of the state by means of AFDC benefits. It was inappropriate for the trial court to hold that Robert and Joseph were self-supporting and emancipated when it was necessary for ‘a needy eligible relative’ to obtain financial aid from the state based on the boys’ status as ‘dependent children.’”).
After surveying emancipated minors, Sanger and Willemsen found that, "[t]he principal direct impact of emancipation was an increase in economic stress." Moreover, the majority of the minor surveyed were not employed full time. Of those surveyed:

[T]welve 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.... Others were working in jobs such as sandwich-making ("foodcraft") or sales. But most of the participants were not working, and several had changed jobs frequently following their emancipations.

Only five of those surveyed were steadily employed, demonstrating that it may be rare that an emancipated minor is able to find stable work.

Changing the way courts evaluate those seeking emancipation is the first step in ensuring that minors can survive post-judgment. If minors are not in a position to provide themselves with stability, then they probably do not meet the financial qualifications for statutory emancipation. Nonetheless, this first step is not enough on its own. A minor who is granted emancipation still faces the challenge of satisfying the age-related work restrictions established in the FLSA and state statutes. Changes must be made to federal labor and employment statutes in order for emancipated minors, who are not child actors, performers, or holiday wreath makers, to have a chance at maintaining financial independence.

B. Proposed Changes to the Labor Statutes for Emancipated Minors

Despite being created to protect children, the current FLSA provisions do not address employment-related concerns, such as different limitations on hours and work condition restrictions, which are relevant to emancipated minors. Thus, unless an emancipated minor seeks employment in an area that has an express FLSA exemption (e.g., actors and performers), he or she must abide by all federal and state

325. Sanger & Willemsen, supra note 2, at 290.
326. See id.
327. Id. at 290-91.
328. Id. at 290.
child labor work restrictions and provisions.\textsuperscript{331} Abiding by such restrictions thereby limits his or her ability to become self-supporting and fulfill the requirements of the emancipation statute.

In order for emancipated minors to have the ability to work and effectively support themselves, the FLSA must adopt a carve out provision that exempts these individuals from the child labor provisions that apply to all children in section 212. We propose that the following statutory provision be adopted in order to provide emancipated minors with the ability to become truly financially independent:

\begin{quote}
The provisions of section 12 [29 USCS § 212] relating to child labor shall not apply to any child employed or seeking employment after being granted a court order of emancipation.
\end{quote}

The FLSA child labor provisions originally intended to protect children and enable them to receive an education.\textsuperscript{332} Although the proposed statute exempts emancipated minors from these protective child labor provisions, our proposed changes to the emancipation process have already protected minors by limiting emancipation to only those who are truly qualified.\textsuperscript{333} Emancipated minors can be further protected by state-specific statutes that address work provisions for emancipated minors.\textsuperscript{334} When federal and state statutes are in conflict, the regulation that provides the greatest amount of protection for the minor prevails.\textsuperscript{335} Therefore, state statutes providing more protection for the emancipated minor than the new FLSA provision, would serve as the

\textsuperscript{331} See Youth & Labor: State Labor Laws, supra note 149.

\textsuperscript{332} See supra Part II.B.

\textsuperscript{333} See, e.g., CAL. FAM. CODE § 7122(a) (Deering 2015) ("The court shall sustain the petition if it finds that the minor is a person described by Section 7120 and that emancipation would not be contrary to the minor’s best interest."). The “best interests of the child” is commonly understood to be:

[T]he deliberation that courts undertake when deciding what types of services, actions, and orders will best serve a child as well as who is best suited to take care of a child. “Best interests” determinations are generally made by considering a number of factors related to the child’s circumstances . . . with the child’s ultimate safety and well-being the paramount concern.

CHILDREN’S BUREAU, Determining the Best Interests of the Child, CHILD WELFARE INFO. GATEWAY 2 (Nov. 2012), https://www.childwelfare.gov/pubPDFs/best_interest.pdf. Because of the court’s personal knowledge of the child’s individual circumstances, the judge granting the order of emancipation is in the best position to ensure that that child is adequately protected when granting emancipation. Becoming Emancipated, supra note 6, at 4.

\textsuperscript{334} States would be able to include provisions for emancipated minors in their already existing child labor laws. See Youth & Labor: State Labor Laws, supra note 149; DOL Child Labor PROVISIONS, supra note 61, at 1.

\textsuperscript{335} See Youth & Labor: State Labor Laws, supra note 149.
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law in that jurisdiction.\textsuperscript{336}

This concept is also true in the reverse. Even if a state currently exempts emancipated minors from work restrictions, that individual is still subject to federal laws if they offer "the most protection to youth workers."\textsuperscript{337} This is problematic because, as the FLSA is currently written, states with emancipation statutes that create exemptions for these minors so that they are able to become financially self-sufficient are preempted by the "more protective" FLSA provisions.\textsuperscript{338} This unfortunate situation is true in states such as Maine, where a minor who is legally emancipated is exempt from all of the state's hourly restrictions for minors, but still must comply with federal work hour restrictions.\textsuperscript{339} For instance, if a fifteen-year-old is emancipated in California and subsequently moves to Maine, he or she will be limited to working eighteen hours a week during school weeks under the FLSA, despite Maine's hours exemption for emancipated minors, thereby making the state statute completely ineffective.\textsuperscript{340} Because minors and employers alike must conform with the regulations contained in both the state and federal laws, it is essential to change the provisions of the FLSA to ensure that employers of emancipated minors in any of the states or federal jurisdictions are not violating federal law.

Although federal laws will not be in place to regulate the work conditions or limit the hours of emancipated minors, states would still retain the ability to create statutes to regulate these individuals, similar to the way in which states are able to create statutes regulating child actors and performers.\textsuperscript{341} Regulations for child actors and performers are not without flaws, however, this is largely due to the fact that some states do not have specific laws regulating the child entertainment industry.\textsuperscript{342} Although this is a concern, the issues that result from the lack of regulation in the child entertainment industry would not directly translate to the regulation of labor and employment for emancipated minors because of the first protective measure in the family court level

\textsuperscript{336} See id.

\textsuperscript{337} See id.

\textsuperscript{338} See, e.g., Maine Laws Governing the Employment of Minors, supra note 22.

\textsuperscript{339} See id.; Fair Labor Standards Act Advisor: Hours Restrictions, supra note 92.

\textsuperscript{340} See Maine Laws Governing the Employment of Minors, supra note 22; Fair Labor Standards Act Advisor: Hours Restrictions, supra note 92.

\textsuperscript{341} See Wage and Hour Division: Child Entertainment Laws As of January 1, 2015, U.S. DEP’T LAB., http://www.dol.gov/whd/state/childentertain.htm (last updated Dec. 2014) (explaining whether or not each state individually regulates child entertainment and which laws and provisions apply child actors and performers in each state).

\textsuperscript{342} See Mercer, supra note 167.
of our proposal.\textsuperscript{343} In order for this FLSA exemption to apply, a child must first go through the court process of emancipation, in which the court determines that emancipation is not contrary to the child’s best interests and that the child demonstrates sincere interest and ability in becoming financially self-sufficient.\textsuperscript{344} Child actors and performers are not entitled to a similar court protection; thus, the issue of abuse in that field is more prevalent.\textsuperscript{345} Moreover, regulations regarding employment restrictions for emancipated minors must be made on a state-by-state basis because of the varying nature of emancipation statutes coupled with some states not having emancipation statutes at all.\textsuperscript{346} Our proposed FLSA provision would permit states with statutory emancipation the ability to create legislation that meets the needs of its residents. Some states already recognize that emancipated minors may have different financial and employment needs than their non-emancipated peers, which has been reflected in labor and employment statutes that would permit emancipated minors to work additional hours or different jobs.\textsuperscript{347} Thus, these states have already provided for the needs of their residents and are prepared if such a carve out statute is adopted.

Statutes that already exist and are in place create justifiable reasons to adopt an exemption regarding the working hours and conditions for emancipated minors. For example, a complete exemption from work permit regulations already exists in Indiana.\textsuperscript{348} In Indiana, minors between the ages of fourteen and seventeen must apply for a work permit before they can even begin training at a job.\textsuperscript{349} However, the standard is different for minors who are emancipated.\textsuperscript{350} In Indiana, “[i]f the minor has been legally emancipated, has graduated from high school (or its equivalency) or if the minor will be working for a business that is solely-owned by a parent, he/she is not required to obtain a work”

\begin{footnotes}
\item[343] See supra Part.II.B.1.
\item[344] Emancipation Law & Legal Definition, supra note 50.
\item[346] See, e.g., CAL. FAM. CODE § 7120 (Deering 2015); CONN. GEN. STAT. § 46b-150b (2015); MICH. COMP. LAWS ANN. § 722.4c(2)(b) (West 2015); WASH. REV. CODE ANN. § 13.64.060 (LexisNexis 2015); W. VA. CODE § 49-7-27 (2015); see also Emancipation of Minors—Laws, supra note 26 (listing the states that do and do not have emancipation statutes).
\item[347] See, e.g., Maine Laws Governing the Employment of Minors, supra note 22.
\item[348] Child Labor FAQs, supra note 75.
\item[349] Id.
\item[350] Id.
\end{footnotes}
The Indiana statute takes out one of the barriers in work permit rules for emancipated minors that is still used in other states.\textsuperscript{352} If the state of Indiana found such an exemption acceptable, other states could create similar regulations to provide for their emancipated minors.

CONCLUSION

Although many states have created a statutory process in which minors can become emancipated, fulfilling the financial requirements set forth in these statutes appears to be more of an illusion than a reality. Despite the recognition over twenty years ago that statutory emancipation was flawed, little has been done to alter or improve the process. Being a financially self-supporting emancipated minor is more than ever a practical impossibility, unless the individual is a child actor or performer who is exempt from the provisions contained in the child labor section of the FLSA.\textsuperscript{353} Without such an exemption on the federal level, states lack the freedom to regulate emancipation, essentially precluding the states from altering or producing acts in a field of law that is typically reserved for them. This exemption, coupled with a more exhaustive process of investigating and reporting on minors before they are granted emancipation, will ensure that emancipated individuals are committed to and legally able to become financially independent and self-sufficient.

\textsuperscript{351} Id.
\textsuperscript{352} See, e.g., Child Labor FAQs, supra note 75.
There are legitimate reasons for the laws being as strict as they are, however, there are also legitimate reasons why some minors are seeking emancipation. This legal method of gaining more rights and responsibilities should not be restricted due to broad child labor provisions that have express exemptions for minors of all ages in select fields of work. Minors who are not good candidates should not be granted orders of emancipation. Conversely, minors who have demonstrated that they have a legal source of income are capable of managing their own financial affairs, and meet all other statutory requirements, should be afforded the means necessary to comply with emancipation requirements. Although no statute is without its flaws, these initial steps will help to turn emancipation into a realistic plan for many deserving youth.

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