

WHEN IS A CHILD EMANCIPATED ?

Generally speaking a child is emancipated when that child reaches the age of 21 years. That age can be extended if the child is disabled. Further, payment for college expenses can extend past the child's 21st birthday.

The justifications for having a child being emancipated are as follows:

A. The child marries. Ironically, the fact that the child has a child out of wedlock is NOT an act of emancipation;

B. The child is inducted into the armed services. The date of emancipation is not when the child signs any enlistment papers, but when the child actually is sworn in as a member of the armed services;

C. The child is not living under the care or custody of either parent.

The first two provisions are really easy to prove, since there's always a marriage license or induction certificate to pinpoint.

The third provision sometimes raises an issue of a child living part time with one parent, and part time on his own, coming home to get his laundry done, and to get financial help from one of his parents.

The other provision-- what I call the "lazy eighteen year old" rule is more difficult to prove, and requires a court to find the following:

1. The child is over 18, and has not been enrolled in school for more than four months; and

2. The child is or is not capable of supporting him or herself.

The court upon making these findings, may order that a child is totally or partially emancipated.

Some of the knotty issues involved are as follows:

AA. What does "enrolled in school" mean? Does it mean taking a full academic load. Does merely being enrolled in school, and not regularly taking classes count? Does the child have to maintain any particular grade point average?

BB. How much money does a child have to earn before the court determines that the child is totally or partially able to support himself?

CC. What does it mean to have a child "partially emancipated"? Does it mean that instead of figuring support for two children (if there's another unemancipated child), support is figured for one and a half children?

One very, very important point. Support stays the same, even if a child reaches 21 and is emancipated, unless there's an order reducing child support. A number of support payors, who have two children unilaterally reduce the support by half, when the older of the two children is emancipated. If a child is emancipated, support will be based upon a recalculation based upon the Indiana Child Support Guidelines based upon the factors that exist as of the emancipation.

As with all requests for the court to modify a support order, the court can, but is not required, to make the new order retroactive to the date that request is made— and no earlier. That's why it's important to promptly file a petition asking that a support order be modified, as soon as any of the tests for emancipating a child are met.