

# Emancipation - Termination of Support

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## **Q: When does a parent's duty to support a child end?**

A: Ordinarily, a parent's duty to support a child terminates automatically when the child reaches the age of twenty-one. There are two exceptions. One is where a court determines that, under the particular circumstances of the case, support for a child should terminate before the child's twenty-first birthday. The other exception is where the court finds that support for an incapacitated child may continue beyond the child's twenty-first birthday.

**Beginning July 1<sup>st</sup>, 2012 the state of Indiana will lower the emancipation age from 21 to 19.**

## **Q: Under what circumstances may a court terminate support for a child under age of 19?**

A: There are two ways that a parent's duty to support a child may terminate before the child's nineteenth birthday. Neither happens automatically. Both require a judge to decide that facts exist to justify terminating a parent's duty to support a child. The first way to terminate support before the child's nineteenth birthday is for the court to determine that the child has become emancipated. This occurs if the court finds that any of the following three circumstances exists:

- (1) the child is on active duty in the United States armed services;
- (2) the child has married; or
- (3) the child is not under the care or control of:
  - (A) either parent; or
  - (B) an individual or agency approved by the court; and
  - (C) the child is, in fact, self-supporting.

The second way to terminate support before the child's nineteenth birthday is where the court determines that all of the following three circumstances exist:

- (1) the child is at least eighteen (18) years of age;
- (2) the child has not attended a secondary school or postsecondary educational institution for the prior four months and is not enrolled in a secondary school or postsecondary educational institution; and
- (3) the child is, or is capable of, supporting himself or herself through employment.

## **Q. What if the child is incapacitated?**

A: If the court finds the child is incapacitated, the court may require the parents to continue support beyond the child's nineteenth birthday. It is possible that the requirement to support an incapacitated child will continue indefinitely.

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**Q: Who has the burden of proof?**

A: The party seeking to terminate the duty of support has the burden of proving that the child is emancipated or that support should terminate before the child's nineteenth birthday. If a parent is trying to continue the support obligation beyond the child's nineteenth birthday, the parent wishing to continue the support must prove the child's incapacitation and inability to support himself.

**Q: How do I file a request to terminate support if emancipation is not automatic?**

A: The party seeking to emancipate and terminate a child support obligation must file a petition to emancipate in the court that issued the support order. You should consult an attorney if possible. However, the Indiana Supreme Court's Self Service Legal Center has on-line forms and other materials to assist parties proceeding without counsel. See <http://www.in.gov/judiciary/selfservice/>.

**Q: If a child has married, becomes active in the military, or has died, does the child need to be emancipated by the court, or is it automatic by operation of law?**

A: The court must find that one of these conditions has occurred.

**Q: Is a child emancipated if the child is convicted of a crime and becomes incarcerated? What about when the child has a child of his or her own?**

A: A child's incarceration or birth of his or her own child does not, by itself, mean that a child is emancipated. However, these are facts that a court can consider in the overall picture of whether the child is emancipated.

**Q: What happens to the child support obligation if a child is emancipated?**

A: The answer depends on whether there remain any other children covered by the support order and how the order is worded.

(1) In the simple case where the support order covers only one child, the child support obligation terminates on the date of the child's emancipation.

(2) In a minority of cases involving two or more children, the support obligation is stated as a divisible or "per child" order, for example, "\$50 per week per child, for a total of \$100 per week." Where the order is phrased in this way, the current support owed for the emancipated child drops off automatically when the one child emancipates.

(3) In the majority of cases involving two or more children, the support obligation is stated as a non-divisible or "in gross" order, for example "\$100 per week for the support of the two children." Where the order is phrased in this way, the current support owed does not change even though one of the children has become emancipated, unless the order is modified. Without a modification, the order stays the same until the order is modified or all the children covered by the order are emancipated.

**Q: My child support order was issued by one state but is now being enforced by another. Which state's age of emancipation controls?**

A: Generally, the age of emancipation of the state that issued the original support order controls, even if the order is later modified and enforced by one or more other states. There are some exceptions, however, depending on the particular circumstances of your case.