

THE PROPOSED GEORGIA HOUSE BILL 847: RECOMMENDATIONS

I. INTRODUCTION

Representatives Butler of the 18th, Oliver of the 83rd, and Smith of the 70th propose in House Bill 847 (“HB 847”) an amendment to Title 15, concerning juvenile proceedings, to address the complex issue of emancipation of minors. This paper provides an analysis of the proposed bill. The analysis includes specific recommendations, additional optional provisions to consider, and a discussion of current case law relating to emancipation. By amending Title 15 to include legislation addressing emancipation, Representatives Butler, Oliver, and Smith add clarity for lawmakers and judges, minors and parents alike to a complicated area of the law.

Emancipation is defined in Black’s Law Dictionary as a “...surrender and renunciation of the correlative rights and duties concerning the care, custody, and earnings of a child; the act by which a parent (historically a father) frees a child and gives the child the right to his or her own earnings...This act also frees the parent from all legal obligations of support. Emancipation may take place by agreement between the parent and child, by operation of law (as when the parent abandons or fails to support the child), or when the child gets legally married or enters the armed forces.”¹ As it has been used statutorily, emancipation confers rights such as the ability to make enforceable contracts, the right to sue and be sued, the right to be domiciled where one desires, and the right to act autonomously to a minor who has shown that he or she is capable of being independent. A minor does not otherwise obtain such rights until reaching the age of majority. In most states, the age of majority is eighteen, and reaching the age of majority grants a minor all the rights of adulthood, except, usually, the right to consume certain controlled substances, such

¹ BLACK’S LAW DICTIONARY (8th ed. 2004).

as alcohol.² In a few states, all having legislation addressing emancipation, the age of majority is not reached until nineteen or twenty-one.³

Twenty other states have enacted comprehensive legislation to specifically address emancipation of minors.⁴ The legislation in these states provides guidelines detailing the process of emancipation (filing a petition, giving notices to all parties, holding a hearing, rescission, etc.) as well as describing the rights and duties of minors, parents, guardians, custodians, and the court during and after the emancipation. An additional eight states have enacted legislation to address emancipation in a less comprehensive manner.⁵ In these states, legislation addresses only one facet of emancipation or amounts to no more than a paragraph definition. As many as seven states have enacted legislation addressing emancipation as it relates to specific areas of the law, such as mental health rights or abortion.⁶

² See Alaska Stat. § 25.20.010 (2005); Ariz. Rev. Stat. § 8-101 (2004); Ark. Code Ann. § 9-3-25(101) (2005); Cal. Fam. Code § 6500-6502 (2005); Colo. Rev. Stat. § 19-1-103 (2004); Conn. Gen. Stat. § 1-1d (2004); Del. Code Ann. Tit. 1, § 701 (2005); Fla. Stat. ch. 1.01 (2005); Ga. Code Ann. § 39-1-1 (2004); Haw. Rev. Stat. § 577-1 (2004); Idaho Code § 32-101 (2005); 750 Ill. Comp. Stat. 30 (2005); Iowa Code § 232.2 (2004); Kan. Stat. Ann. § 38-101 (2005); Ky. Rev. Stat. Ann. § 2.015 (2004); La. Ch. Code art. 116 (2005); Me. Rev. Stat. Ann. Tit. 1, § 72 (2005); Md. Ann. Code art. 1, § 24 (2004); Mass. Gen. Laws Ann. ch. 4, § 7 (2005); Mich. Comp. Laws § 722.1 (2005); Mo. Rev. Stat. § 211.442 (2005); Mont. Code. Ann. § 41-1-101 (2004); Nev. Rev. Stat. Ann. § 129.010 (2004); N.H. Rev. Stat. Ann. § 21-B:1 (2004); N.J. Stat. Ann. § 9:17B: 1 - 4 (2005); N.M. Stat. Ann. § 32A-1-4 (2005); N.Y. Dom. Rel. Law § 2 (2005); N.C. Gen. Stat. § 7B-101 (2005); N.D. Cent. Code § 14-10-01 (2005); Ohio Rev. Code Ann. § 3109.01 (2005); Okla. Stat. Ann. tit. 43, § 551-102 (2004); Or. Rev. Stat. § 109.510 (2003); R.I. Gen. Laws § 15-21-1 (2005); S.C. Code Ann. § 20-7-30 (2004); Tenn. Code Ann. § 37-1-102 (2004); Tex. Civ. Prac. & Rem. Code § 129.001 (2004); Utah Code Ann. § 15-2-1 (2005); Vt. Stat. Ann. tit. 1, § 173 (2004); Va. Code Ann. § 1-13.42 (2005) (repealed effective October 1, 2005); Wash. Rev. Code § 26.28 (2005); W. Va. Code § 49-1-2 (2005); Wis. Stat. § 990.01 (2004); Wyo. Stat. Ann. § 14-1-101 (2005).

³ See Ala. Code § 26-1-1 (2005); Miss. Code Ann. § 1-3-27 (2005); Neb. Rev. Stat. Ann. § 43-2101 (2005); 1 Pa. Cons. Stat. § 1991 (2004).

⁴ See Ala. Code § 26-13 (2005); Alaska Stat. § 09.55.590 (2005); Cal. Fam. Code § 7000 - 7143 (2005); Conn. Gen. Stat. § 46b-150 (2004); Fla. Stat. ch. 743.01 - 743.095 (2005); 750 Ill. Comp. Stat. 30 (2005); La. Civ. Code Ann. art. 365-366, 368, 370-374, 376-385 (2005); Me. Rev. Stat. Ann. Tit. 15, § 3506-A (2005); Mich. Comp. Laws § 722.4 - 722.5 (2005); Nev. Rev. Stat. Ann. § 129.020 - 129.140 (2004); N.M. Stat. Ann. § 32A-21 (2005); N.C. Gen. Stat. § 7B-35 (2005); Okla. Stat. Ann. tit. 10, § 91 - 94 (2004); Or. Rev. Stat. § 419B.550 - 419B.558 (2003); S.D. Codified Laws § 25-5-19 - 27 (2004); Tex. Fam. Code Ann. § 31 (2004); Vt. Stat. Ann. tit. 12, § 7151 - 7159 (2004); Va. Code Ann. § 16.1-331 - 334.1 (2005); Wash. Rev. Code § 13.64 (2005); Wyo. Stat. Ann. § 14-1-201 - 206 (2005).

⁵ See Colo. Rev. Stat. § 19-1-103 (2004); Haw. Rev. Stat. § 577-25 (2004); Kan. Stat. Ann. § 38-108 (2005); Mass. Gen. Laws Ann. ch. 201, § 5 (2005); Minn. Stat. § 256D.05 (2004); Mont. Code. Ann. § 41-1-501 (2004); 16 Pa. Cons. Stat. § 2175 (2004); W. Va. Code § 49-7-27 (2005).

⁶ See Iowa Code § 225C.46 (2004) (concerning emancipation as it relates to mental health law); Ky. Rev. Stat. Ann.

The proposed HB 847 is at least as precise and thorough as most of the existing legislation addressing emancipation of minors in the United States. However, despite the breadth of HB 847, the bill omits certain issues concerning emancipation that the legislature may wish to address. Some of these are issues that are addressed by legislation in other states while some are relatively new issues, not yet addressed adequately in any state. The following are recommendations for making the proposed legislation more inclusive in some areas, more flexible in others, and ultimately more effective as a whole.

II. SPECIFIC RECOMMENDATIONS FOR HB 847

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House Bill 847

By: Representatives Butler of the 18th, Oliver of the 83rd, and Smith of the 70th

A BILL TO BE ENTITLED AN ACT

To amend Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile proceedings, so as to establish the conditions for minors to become emancipated by law; to provide for definitions; ~~to provide for the rights and duties of parents;~~ to provide for the rights and duties of parents, guardians and custodians; to provide for court proceedings for emancipation; to provide for powers of the court relative to an emancipation proceeding; to provide for rescission and the effect of rescission on obligations, rights, or interests; to provide for the rights and responsibilities of an emancipated minor; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile proceedings, is amended by adding a new article to the end of the chapter, to read as follows:

"ARTICLE 6

15-11-200. Definitions

As used in this article, the term,

§ 311.732 (2004) and Miss. Code Ann. § 41-41-51 (2005) (concerning emancipation as it relates to abortion law); Mo. Rev. Stat. § 302.178 (2005) (concerning emancipation as it relates to operation of motor vehicles law); Neb. Rev. Stat. Ann. § 43-2101 (2005) (concerning emancipation as it relates to marriage law); *and* N.H. Rev. Stat. Ann. § 21-B:2 (2004) (specifically recognizing the emancipation code of other states).

- (1) 'Emancipation' means termination of the rights of the parents to the custody, control, services, and earnings of a minor.
- (2) 'Minor' means a person under the age of 18 years.
- (3) 'Parents' has the same meaning as set forth in Code Section 15-11-2.

15-11-201. Emancipation

(a) ~~Emancipation may occur by operation of law or pursuant to a petition filed by a minor with the juvenile court as provided in this article.~~ Emancipation may occur by operation of law or pursuant to a petition filed by a minor over 16 years of age with the juvenile court as provided in this article.

- (b) An emancipation occurs by operation of law under any of the following circumstances:
- (1) ~~When a minor is validly married;~~ When a minor is validly married, whether or not the marriage has been dissolved, unless the marriage was annulled;
 - (2) When a person reaches the age of 18 years; or
 - (3) During the period when the minor is on active duty with the armed forces of the United States.
- (c) An emancipation occurs by court order pursuant to a petition filed by a minor with the juvenile court as provided in Code Sections 15-11-202 through 15-11-206.

15-11-202. Petition

- (a) A minor seeking emancipation shall file a petition for emancipation in the juvenile court in the county where the minor resides. The petition shall be signed and verified by the minor, and shall include all of the following information:
- (1) The minor's full name and birth date, and the county and state where the minor was born;
 - (2) A certified copy of the minor's birth certificate;
 - (3) ~~The name and last known address of the minor's parents, guardian, or custodian;~~ The name and last known address of the minor's parents, guardian, or custodian; if no parent, guardian, or custodian can be found, the name and address of the minor's nearest known relative residing within this state;
 - (4) The minor's present address and length of residency at that address;
 - (5) A declaration by the minor indicating that he or she has demonstrated the ability to manage his or her financial affairs; the minor may include any information he or she considers necessary to support the declaration; and
 - (6) A declaration by the minor indicating that he or she has the ability to manage his or her personal and social affairs; the minor may include any information he or she considers necessary to support the declaration.
- (b) The petition for emancipation shall include an affidavit by any of the following individuals declaring that the individual has personal knowledge of the minor's circumstances and believes that under those circumstances emancipation is in the best interests of the minor:
- (1) ~~Physician;~~
 - (2) ~~Nurse;~~
 - (3) ~~Member of the clergy;~~
 - (4) ~~Psychologist;~~
 - (5) ~~Family therapist;~~
 - (6) ~~Certified social worker;~~

- ~~(7) Social worker;~~
- ~~(8) School administrator;~~
- ~~(9) School counselor;~~
- ~~(10) Teacher; or~~
- ~~(11) Law enforcement officer.~~
- (1) Physician licensed to practice medicine pursuant to Chapter 34 of Title 43;
- (2) Registered professional nurse or licensed practical nurse licensed pursuant to Chapter 26 of Title 43;
- (3) Psychologist licensed pursuant to Chapter 39 of Title 43;
- (4) Professional counselor, social worker, or marriage and family therapist licensed pursuant to Chapter 10A of Title 43;
- (5) School guidance counselor, school social worker, or school psychologist;
- (6) School administrator, school principal or school teacher;
- (7) Member of the clergy; or
- (8) Law enforcement officer.

~~(c) A copy of the petition for emancipation and a summons to appear at the hearing shall be served on the minor's parents or guardian. A notice of hearing shall be sent to any individual who provided an affidavit as set forth in subsection (b) of this Code section.~~

15-11-203. Summons and answers

(a) Upon filing of the petition, summons shall be issued forthwith on all persons named in the petition. The summons shall be served at least 30 days before the time set for the hearing, and a copy of the petition shall be served together with the summons and shall be made in the manner provided in Code Section 9-11-4, relating to service in civil practice.

(b) Upon receiving notice of the petition for emancipation, a person named in the petition shall have 30 days to file an answer in the juvenile court in which the petition has been filed.

~~15-11-203.~~ 15-11-204. Attorneys and guardian ad litem

After a petition for emancipation is filed, the court may:

- ~~(1) Assign an employee of the court to investigate the allegations of the petition and to file a report containing the results of the investigation with the court; Appoint a guardian ad litem to investigate the allegations of the petition and to file a report determining whether the allegations of the petition are true and making a recommendation as to whether it is in the best interest of the minor that the petition for emancipation be granted;~~
- (2) Appoint an attorney for the minor; or
- (3) Appoint an attorney for the minor's parents or guardian if they are indigent and if they oppose the petition.

~~15-11-204.~~ 15-11-205. Grounds for emancipation

(a) The hearing shall be before a judge; and the court shall issue an emancipation order if it determines that emancipation is in the best interest of the minor and the minor establishes all of the following:

- (1) That the minor's parent or guardian does not object to the petition; or if a parent or guardian objects to the petition, that the best interests of the child are served by allowing the emancipation to occur by court order;
- (2) That the minor is a resident of the state;

(3) That the minor has demonstrated the ability to manage his or her financial affairs, including proof of employment or other means of support; 'other means of support' does not include general assistance or aid received from means-tested public assistance programs such as Temporary Assistance for Needy Families or similar programs under Title IV-A of the federal Social Security Act;

(4) That the minor has the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing; and

(5) That the minor understands his or her rights and responsibilities under this article as an emancipated minor.

(b) A minor who petitions the court for emancipation shall have the burden of showing by a preponderance of evidence that emancipation should be ordered.

(c) ~~If the court issues an emancipation order, the court shall retain a copy of the order until the emancipated minor becomes 25 years of age.~~ If the court issues an emancipation order, the court shall retain a copy of the order until the emancipated minor becomes 25 years of age. Upon request, the emancipated minor shall be entitled to a certified copy of the court order granting emancipation.

(d) An emancipation obtained by fraud is voidable. Voiding such an order does not affect an obligation, responsibility, right, or interest that arose during the period of time the order was in effect.

(e) The minor or a parent or guardian of the minor may appeal the court's grant or denial of an emancipation petition. The appeal shall be filed in the ~~court of appeals.~~ Court of Appeals.

~~15-11-205.~~ 15-11-206. Rescission

(a) A minor emancipated by court order may petition the juvenile court that issued the emancipation order to rescind such order.

(b) A copy of the petition for rescission and a summons shall be served on the minor's parents.

(c) The court shall grant the petition and rescind the order of emancipation if it finds any of the following:

(1) That the minor is indigent and has no means of support;

(2) That the minor and the minor's parents agree that the order should be rescinded; or

(3) That there is a resumption of family relations inconsistent with the existing emancipation order.

(d) If a petition for rescission is granted, the court shall issue an order rescinding the emancipation order and retain a copy of the order until the minor becomes 25 years of age.

(e) Rescission of an emancipation order does not alter any contractual obligations or rights or any property rights or interests that arose during the period of time that the emancipation order was in effect.

(f) The minor or a parent of the minor may appeal the court's grant or denial of a petition for rescission of an emancipation order. The appeal shall be filed in the ~~court of appeals.~~ Court of Appeals.

~~15-11-206.~~ 15-11-207. Effect of emancipation

(a) A minor emancipated by operation of law or by court order shall be considered to have the rights and responsibilities of an adult, except for those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, and other health and safety

regulations relevant to him or her because of his or her age. A minor shall be considered emancipated for the purposes of, but not limited to, all of the following:

- (1) The right to enter into enforceable contracts, including apartment leases;
- (2) The right to sue or be sued in his or her own name;
- (3) The right to retain his or her own earnings;
- (4) The right to establish a separate domicile;
- (5) The right to act autonomously, and with the rights and responsibilities of an adult, in all business relationships, including, but not limited to, property transactions and obtaining accounts for utilities, except for those estate or property matters that the court determines may require a conservator or guardian ad litem;
- (6) The right to earn a living, subject only to the health and safety regulations designed to protect those under the age of majority regardless of their legal status;
- (7) The right to authorize his or her own preventive health care, medical care, dental care, and mental health care, without parental knowledge or liability;
- (8) The right to apply for a driver's license or other state licenses for which he or she might be eligible;
- (9) The right to register for school;
- (10) The right to marry;
- (11) The right to apply for medical assistance programs and for other welfare assistance, if needed;
- (12) The right, if a parent, to make decisions and give authority in caring for his or her own minor child; and
- (13) The right to make a will.

(b) The parents of a minor emancipated by court order are not liable for any debts incurred by the minor during the period of emancipation.

~~15-11-207.~~ 15-11-208. Other considerations

(a) The duty to provide support for a minor child shall continue until an emancipation order is granted.

(b) A child who has become emancipated under this article shall not be considered a 'deprived child' for purposes of Part 6 of Article 1 of this chapter."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

III. ANALYSIS OF RECOMMENDATIONS

A. Section 15-11-201 (a)

As written, the statute would allow any minor, regardless of how young, to file for emancipation. In most cases the requirements of emancipation (proof of employment, determination that emancipation is in the best interest of the minor, etc.) would prevent very

young children being granted emancipation, however, it would be best to choose an age limit and eliminate any possible ambiguities about how young is too young to file for emancipation.

Of the states with comprehensive emancipation statutes, Alaska, Connecticut, Florida, Illinois, Maine, Michigan, Nevada, New Mexico, North Carolina, Oregon, South Dakota, Vermont, Virginia, and Washington require the minor to be over 16 years of age to be emancipated.⁷ Alabama, where the age of majority is 19, requires a minor to be over 18 years of age to file for “relief from disabilities of nonage”.⁸ Texas requires a minor to be either 17 years of age or at least 16 years of age and living separate and apart from the minor’s parents, managing conservator, or guardian.⁹ In Wyoming the minor must be at least 17 years of age.¹⁰

In Georgia, a person is considered a child for the purposes of delinquency if that person is under the age of 17, and a person is considered a child for the purposes of status offences or deprivation if that person is under the age of 18.¹¹ The age of majority in Georgia is 18.¹² The recommended language requires a minor to be over 16 years of age to file for emancipation.

B. Section 15-11-201 (b) (1)

As written, the statute leaves unclear the implications of divorce to a minor who has been validly married. California’s statute solves this problem by adding “whether or not the marriage has been dissolved” to a clause indicating that a valid marriage of a minor causes emancipation.¹³

In Georgia, however, divorce as well as annulment must be addressed. The recommended

⁷ Alaska Stat. § 09.55.590 (2005); Conn. Gen. Stat. § 46b-150 (2004); Fla. Stat. ch. 743.015 (2005); 750 Ill. Comp. Stat. 30/3-1 (2005); Me. Rev. Stat. Ann. Tit. 15, § 3506-A (2005); Mich. Comp. Laws § 722.4c (2005); Nev. Rev. Stat. Ann. § 129.080 (2004); N.M. Stat. Ann. § 32A-21 (2005); N.C. Gen. Stat. § 7B-3500 (2005); Or. Rev. Stat. § 419B.558 (2003); S.D. Codified Laws § 25-5-15 (2004); Vt. Stat. Ann. tit. 12, § 7151 (2004); Va. Code Ann. § 16.1-331 (2005); Wash. Rev. Code § 13.64.010 (2005).

⁸ Ala. Code § 26-13-1 (2005).

⁹ Tex. Fam. Code Ann. § 31.001 (2004).

¹⁰ Wyo. Stat. Ann. § 14-1-203 (2005).

¹¹ Ga. Code Ann. § 15-11-2 (2004).

¹² Ga. Code Ann. § 39-1-1 (2004).

¹³ Cal. Fam. Code § 7002 (2005).

language provides for emancipation to continue once a minor is validly married unless that marriage is annulled.

C. Section 15-11-202 (a) (3)

For the case of a minor whose parents, guardian, or custodian cannot be located, requiring the minor to submit the name and address of his or her nearest known relative residing within the state has the potential of bringing forth a relative who would be willing to aid the minor. Nevada has a provision requiring this information on a petition for emancipation.¹⁴ The recommended language is modeled after the Nevada provision.

D. Section 15-11-202 (b)

The recommended language here is suggested so that the new statute will be consistent with pre-existent Georgia code. The Child Abuse Reporter statute, for example, uses similar language to list mandatory reporters.¹⁵

E. Section 15-11-203 (formerly Section 15-11-202 (c))

The statute as written does not explicitly provide the process by which parties to the petition can answer the petition. This option of answering an emancipation petition is provided in the emancipation codes of Alabama and Alaska.¹⁶ In Vermont the minor's parents, guardian, or custodian are given an opportunity to be heard at the hearing.¹⁷

The requirements of notice should also be strengthened to prevent conflict after an emancipation order is issued. For example, California's emancipation code reads: "Before the petition for a declaration of emancipation is heard, notice the court determines is reasonable shall be given to the minor's parents, guardian, or other person entitled to the custody of the minor, or

¹⁴ Nev. Rev. Stat. Ann. § 129.090 (2004).

¹⁵ Ga. Code. Ann. § 19-7-5 (c)(1) (2004).

¹⁶ Ala. Code § 26-13-4 (2005); Alaska Stat. § 09.55.590 (2005).

¹⁷ Vt. Stat. Ann. tit. 12, § 7154 (2004).

proof shall be made to the court that their addresses are unknown or that for other reasons the notice cannot be given.”¹⁸ Illinois’s code reads: “All persons named in the petition shall be given written notice within 21 days after the filing of the petition for emancipation. Those persons shall have a right to be present if a hearing is sought or scheduled and to be represented by counsel....All notices shall be served on persons named in the petition by personal service or by "certified mail, return receipt requested, addressee only". If personal service cannot be made in accordance with the provisions of this Act, substitute service or service by publication shall be made...”¹⁹

The recommended language reflects language that is consistent with the procedure required in a termination of parental rights hearing. The language also adds an option to answer the petition. This part of the statute has been made into a new section. This is consistent with pre-existing Georgia code for juvenile proceedings such as termination of parental rights hearings.

F. Section 15-11-204 (1) (formerly Section 15-11-203) (1))

Instead of appointing a general employee of the court, the recommended language changes the statute so that the court may appoint a guardian ad litem who may not only investigate the allegation in the petition but aid the court by making a recommendation as to whether or not emancipation is in the best interest of the child.

G. Section 15-11-205(c) (formerly Section 15-11-204 (c))

Considering that juvenile records may or may not be considered closed, the emancipated minor may at some point need proof of emancipation after emancipation has been granted. The recommended language will facilitate this need.

¹⁸ Cal. Fam. Code § 7121 (2005).

¹⁹ 750 Ill. Comp. Stat. 30/8 (2005).

H. Other changes

The bill heading has been changed to be consistent the statute. Also, the recommendations include titles for each section. Again, the purpose of this recommendation is consistency with other statutes relating to juvenile proceedings.

IV. OPTIONAL CONSIDERATIONS

The following is a list of issues that HB 847 could be changed to include. Making changes to address these issues is optional. The statute could be improved by the addition of some of the following optional recommendations, but the statute will not function improperly if HB 847 is not altered to reflect any of these issues.

A. Limited Emancipation

If HB 847 is enacted, a minor will be able to file for complete emancipation. The minor will not be able to file for limited emancipation and the juvenile court will not be able to grant emancipation for a limited purpose. The ability to grant limited emancipation would aid the juvenile court in its efforts to do what is in the best interest of the child. For example, in Georgia case *Street v. Cobb County School District*, a U.S. District Court determined that a seventeen-year-old student living with her boyfriend rather than her parents was effectively emancipated and that the school district in which she was attending school could not force her to go to school in the district her parents resided in rather than the district in which her boyfriend resided.²⁰ After HB 847 is enacted, it would be more difficult for a court to say that a minor such as the one in *Street v. Cobb*, was “effectively” emancipated when a court had never *actually* emancipated the minor. However, such a minor, if not allowed to attend school in the district in which she was actually living, might choose to drop out of school instead. That would clearly not be in the best interest of the minor. A judge in such a case should have the option of emancipating the

minor with regard to school attendance or the right to reside independently of her parents.

Recommendations: Add the following provision as a new section entitled “Limited emancipation”. If a minor petitioning for emancipation does not meet the requirements of 15-11-205 (a), the juvenile court may choose instead to issue an order emancipating the minor in a limited capacity. If the court chooses to grant limited emancipation to the minor, the court order should delineate the rights and responsibilities granted to the minor. Such an order may be appealed, rescinded, or voided according to the provisions regarding appeal, rescission, or voidance of emancipation in this Article.

B. Mediation.

Leaving open the possibility of mediation before a hearing is held might resolve family problems leading to emancipation before the drastic measure of emancipation need be adopted at all. Before allowing a minor to have an emancipation hearing, the court should have the option of referring the minor and his or her parents/guardians to mediation. A solution brought through mediation would have the benefit of being tailored to the families’ needs, agreeable to all parties, and enforceable by the court. Further, mediation is typically faster and more effective than a court hearing. Maine’s emancipation statute, for example, contains the following provision: “2-A. MEDIATION. Upon the filing of a petition and prior to a hearing under this section, the court may refer the parties to mediation. Any agreement reached by the parties through mediation on any issues shall be stated in writing, signed by the parties and presented to the court for approval as a court order.”²¹

Recommendations: Add the following provision as a new section entitled “Referral to mediation”. Refer the parties to mediation. Any agreement reached by the parties through

²⁰ *Street v. Cobb County School District*, 520 F.Supp. 1170 (N.D. Ga. 1981).

²¹ Me. Rev. Stat. Ann. Tit. 15, § 3506-A (2005).

mediation on any issues shall be stated in writing, signed by the parties and presented to the court for approval as a court order.

C. Requiring a high school diploma.

A requirement that HB 847 did not include is a requirement that an emancipated minor hold a high school diploma. Vermont's code requires a minor who wishes to be emancipated to hold a high school diploma or its equivalent or to be earning passing grades in an educational program approved by the court and directed towards the earning of a high school diploma or its equivalent.²² This requirement may be too stringent for Georgia's minors. However, evidence of a high school diploma or G.E.D. might influence a court's decision as to whether or not a minor is responsible enough to be emancipated.

Recommendations: Replace 15-11-204 (a) (4) with the following: That the minor has the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing or proof that the minor holds a high school diploma or its equivalent; and

D. Emancipation for minors who are homeless.

Illinois's emancipation legislation specifically addresses homeless minors.²³ More research should be done to determine how emancipation might help Georgia's homeless minors.

Recommendations: For now, no specific recommendations concerning this issue exist.

E. Rights and repercussions of being an emancipated minor.

The following are provisions from other state codes that were not included as the rights and repercussions of being an emancipated minor in HB 847. The legislature may wish to consider adding one or more.

²² Vt. Stat. Ann. tit. 12, § 7151 (2004).

²³ 750 Ill. Comp. Stat. 30 (2005).

1. The right to compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor.²⁴
2. The right to enlist in the armed forces of the United States without parental consent.²⁵
3. The right to borrow money for their own higher educational expenses.²⁶
4. The right to consent to donation, without compensation therefore, of her or his blood and to the penetration of tissue which is necessary to accomplish such donation.²⁷
5. Ending all vicarious liability of the minor's parents or guardian for the minor's torts²⁸
6. Being prosecuted as an adult under the criminal laws of the state.²⁹

V. CASE LAW

A survey of recent case law in the states with comprehensive emancipation legislation reveals two additional subjects to consider: child support and emancipation by marriage.

A. Child Support.

Specific case law provides that once a child is emancipated, a parent no longer has a duty of support.³⁰ This may imply that an emancipation statute should include the subject of child support. In Georgia, O.C.G.A. § 19-6-15 (e) already addresses this issue. The statute states: “The duty to provide support for a minor child shall continue until the child reaches the age of majority, dies, marries, or becomes emancipated, whichever first occurs; provided, however, that, in any temporary or final order for child support with respect to any proceeding for divorce, separate maintenance, legitimacy, or paternity entered on or after July 1, 1992, the trier of fact, in the exercise of sound discretion, may direct either or both parents to provide financial assistance

²⁴ Cal. Fam. Code § 7050 (2005).

²⁵ Conn. Gen. Stat. § 46b-150d (2004).

²⁶ Fla. Stat. ch. 743.05 (2005).

²⁷ Fla. Stat. ch. 743.06 (2005).

²⁸ S.D. Codified Laws § 25-5-15 (2004)

²⁹ Vt. Stat. Ann. tit. 12, § 7156 (2004);

³⁰ See, e.g., *Anderson v. Loper*, 689 So.2d 118 (Ala. Civ. App. 1996); *In re Marriage of Gillespie*, 890 P.2d 1083

to a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that such financial assistance shall not be required after a child attains 20 years of age. The provisions for support provided in this subsection may be enforced by either parent or the child for whose benefit the support is ordered.”³¹

B. Emancipation by Marriage

It is not always obvious that a marriage will cause a minor to become emancipated. For example, in the Texas case of *Husband v. Pierce* a fifteen-year-old minor entered into a valid Mexican marriage without parental consent or a court order.³² The court in that case determined that the marriage emancipated the girl until the marriage was annulled. In another Texas case, *Kinger v. Hintz*, a court determined that an informal marriage did not emancipate a fifteen-year-old girl.³³ In Georgia, common law marriage is not currently recognized as a valid form of marriage.³⁴ Minors can marry without the consent of their parents if they are older than 16 years of age or the female is pregnant, and they can marry with the consent of their parents if they are younger than 16 years of age.³⁵ Because the laws of marriage are clearly defined thus in Georgia, informal marriages will not present a problem to the emancipation statute. Minors could become validly emancipated through marriages in other states that would not have been considered marriages in Georgia. However, there is no specific need to address this in HB 847.

VI. CONCLUSIONS

Enacting legislation that specifically addresses emancipation is step forward in the

(Wash. App. Div. 1995); *Thomas v. Thomas*, 913 P.2d 854 (Wyo. 1996).

³¹ O.C.G.A. § 19-6-15 (e).

³² *Husband v. Pierce*, 800 S.W.2d 661 (Tex. App. 1990).

³³ *Kinger v. Hintz*, 2003 WL 22996941 (Tex. App. 2003).

³⁴ O.C.G.A. § 19-3-3.1(2004).

³⁵ O.C.G.A. § 19-3-2 (2004).

process of clarifying juvenile law in Georgia. With the recommended language, HB 847 is a model for emancipation legislation in the United States. It is both broad and flexible, and it takes into account the situation of juveniles in Georgia, pre-existing code pertaining to juveniles, and policy concerns about minors seeking emancipation. It is highly recommended that this legislation be enacted during the next legislative session.