

Emancipation of Minor

written by Richard Leslie | May 24, 2016

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... What is the effect, if any, of your state's emancipation of minor laws on your duty as a mandated reporter of child abuse? The answer to this question varies from state to state, but it is an important question to think about and to answer. One example of how this question may arise involves consensual sexual intercourse between minors or between a minor and an adult. Suppose that a fifteen-year old minor tells her therapist or counselor that she engaged in consensual sexual intercourse with her twenty-two year old friend. Suppose further that such information must be reported by the practitioner as a part of his or her duty to report known or suspected child abuse.

Does the duty to report change if the minor tells the therapist that she has been declared by the court to be emancipated? In order to answer this question, reference must be made both to the child abuse reporting law and to the laws dealing with emancipation of a minor. For instance, how does the child abuse reporting law define the word "child?" Does the child abuse reporting law mention anything about emancipated minors, and if so, does it provide the necessary guidance? In some states, the definition of "child," for purposes of reporting child abuse, is simply "a person under the age of eighteen." No reference may be made to an emancipated minor. In such case, it is important to look at the statutes dealing with emancipation.

The laws dealing with emancipation will typically specify the age at which emancipation may be petitioned for by the minor and/or a parent. In one state, the age is as low as fourteen. In that state, there is also a statute that specifies the legal effects of emancipation. That law specifies that an emancipated minor can enter into legally binding contracts, own real property, establish his/her own residence, sue or be sued, and consent to medical, dental or psychiatric care without parental consent, knowledge or liability, among other things. This law, however, does not say anything about the minor no longer being subject to the child abuse reporting laws because of his or her emancipation. Thus, since the child abuse and neglect reporting law in that state defines a minor as a person under the age of eighteen, emancipation would apparently have no effect upon the duty to report child abuse under the circumstances specified above.

Not every question, however, is as easy to answer. Suppose, for example, that the emancipated minor in the question posed in the first paragraph is married to the twenty-two year old. Would sexual intercourse between the two married persons be required to be reported as child abuse? A review of the applicable laws in the state in question reveals that there is an exception made in the case of sexual intercourse between spouses. In any event, it seems highly unlikely that a child protective services agency would investigate a report of child abuse if a report were made for the consensual sexual intercourse of a fifteen year old with her adult husband. It must be mentioned that just because the

minor indicates that she is emancipated and lawfully married, that does not make it so. Sometimes patients lie or are mistaken. And further, therapists and counselors are not generally expected or required to investigate. Thus, a therapist involved in such a situation might, depending upon circumstances, need to call child protective services and report the facts (and indicate that in his or her opinion this does not appear to be child abuse) and either allow CPS to investigate and then close the case or to decide from the outset that no report will be taken or that no report need be made.