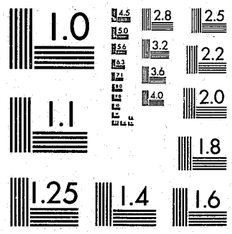
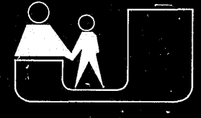





Juvenile Justice Textbook Series

# Minors and the Law





National Council of Juvenile and Family Court Judges

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**National Council of Juvenile and Family Court Judges**

# Minors and the Law

By

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# Juvenile Justice Textbook Series




The Juvenile Justice Textbook Series is published primarily for use in training programs of the National Council of Juvenile and Family Court Judges. Views expressed in these texts are not to be taken as the policy of the National Council of Juvenile and Family Court Judges unless clearly indicated.

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## Introduction

American society today is roughly divided into two groups based in large part on age:

1. Those who have reached the age of majority and thus are entitled to full rights and privileges of citizenship and,
2. Those who have not reached the age of majority—roughly minors—and are not entitled to all the rights and privileges of those who have reached the age of majority.

As in all overly broad categorizations, there are many shades of differentiations.

Those in the majority group rule under the principles of a democratic process, and pass and interpret laws which protect their own status. They reduce the rights of those in the minority group (minors) or even curtail the rights of some members of their own group, based again on age, or based upon sex (gender).

The majoritarian society has decreed that there is a "legal age," variously designated as the age of discretion or the age of legal consent when full citizenship is bestowed upon the individual pro tempore.

But, the bestowal of some rights can be granted in varying degrees at various ages on the whim (discretion) of the majority. For example, those who have *not* reached the age of discretion (majority) may by special laws be granted the privilege of driving a car, the privilege of marrying, the right to leave school, and the right to work in certain trades. However, generally, minors may not vote, read certain magazines, enter into contracts, file suit, leave school or home, hold public office, stay up late on public streets, and buy cigarettes and alcoholic beverages.

The rights of minors vary from age to age and from state to state. In some states the age of minority ends at the twenty-first birthday, while in others it is the eighteenth. Further, "people" of the same age of minority may have different rights in the same state based on a law of emancipation as interpreted by a court and applied to a particular individual.

All of these conditions can result in mass confusion if a minor is determined to assert his/her rights. But gradualism is prevalent in this as in many areas of law.

President Lincoln on September 22, 1862, issued his proclamation abolishing slavery in states then in rebellion against the United States, effective January 1, 1863. However, gradualism was in vogue, and the application of rights of citizenship to that particular group of people was long in materializing.

The rights of another group distinguished by age, rather than by color, have likewise been slow and deliberate in evolving. From ancient times our common law has classified people into three groups for certain purposes: (1) those under seven years of age, (2) those seven to fourteen, and (3) those fourteen and over as adults, at least for purposes of criminal activity. But the enslavement of children to their parents until age twenty-one has had general acceptance, and historically children were generally considered chattels.

## FAMILY LAW

The family, represented by the male head, was dominant. Married women and children were simply components of the family. The family, created by ecclesiastical dominance of the marriage ritual, has undergone and is undergoing many internal and external social and legal changes.

Economic, as well as religious factors, were influential in forming a cohesive unit of the family. The survival of the family depended upon its ability to work as a unit.

Social, economic, and religious factors and influences forced parents to marry and to remain together. These same influences made it nearly impossible for children to be cared for by a single parent.

As families moved from the farm to the city, many women and children found jobs in factories. Their combined wages were needed to sustain the family. As economic conditions improved, many families were able to live on the earnings of the husband/father. The interdependence of husband, wife, and children changed. Men, with their increased earnings, were increasingly independent of the contributions of the family as a unit. Women found themselves in a situtation where their exclusive role was the care of the household and children. In the past, women generally had carried out these duties along with their work in the field and later in the factory.

As this stage, *family law* was devoted to the model of monogamous housewife marriage. American family law developed elaborate sets of rules in an effort to establish a uniform hierarchy and family property relationships intended to assure each partner a share in the property of the other.

Now this model is in question. So are the assumptions of traditional family law that marriage is, in principle, a commitment for life and that legal marriage is the framework within which family behavior takes place.

Kenneth Keniston, in an interview reporting on the work of the Carnegie Council on Children, funded by the Carnegie Corporation, (September 13, 1977, *The MacNeil/Lehrer Report* on "The Family") stated, among other things, that the American family is not "collapsing", just "changing" as a result of outside, not internal, pressures.



He pointed to the reentry of mothers into the labor force caused primarily by great expense during child-rearing years and by the efforts to maintain the living standards of the family.

He labeled as a myth the idea that the adequate, the good family is free standing, self-sufficient, and totally independent. Families, he asserted, are dependent on and share the task of child-rearing with many outside forces—the new roles of the school, the doctor, a series of experts, baby sitters, and television as an electronic parent.

Dr. Keniston's first, and most important, recommendation to the family was that those parents who can work *should have a job*.

Philosophically, the Carnegie report takes a position on *parents, children,* and the *state* that is summarized by Dr. Keniston in the following words:

> . . . Parents are the world's greatest experts on the needs of their children. . . . The goal of public policy should be to build on and strengthen that expertise. Now the way to do that is not by instructing parents what to do, or bringing up children by the state, or imposing all sorts of special restrictions on what parents do, but . . . by increasing the real choices they have. One of the ways to do that is for the government . . . to try to stimulate the economy, to try to stimulate jobs; and secondly, to provide a decent level of income for those Americans who should not be forced to work, for example, mothers with babies who have no other means of support. ("All Our Children," Kenneth Keniston and The Carnegie Council on Children.)

Family law reform must consider the following factors:

1. The plurality of marriage models of which housewife marriage is but one;
2. The economic and social consequences of increasing marriage breakdown and serial marriage;
3. The increasing amount of marriage-like behavior taking place outside the category of formal legal marriage; and
4. The legal/constitutional/political rights of minors vis à vis parents and the state.

Family law reforms evidence a protection of *marital privacy,* withdrawal of the state from regulation of the *formation* and *dissolution* of the legal marriage, and a new focus on the *economic* and child-related consequences of cohabitation in legal or defacto marriage.

### CONSTITUTIONAL RIGHT TO MARITAL PRIVACY

*Griswold v. Connecticut,* 381 U.S. 479 (1965) resulted in the adoption of a policy of law to interfere as little as possible in family life. Here the court emphasized that it was interference with the marriage relationship that was held unconstitutional.

However, in *Eisenstadt v. Baird,* 405 U.S. 438 (1972) the Supreme Court began to blur the distinction between the effects of legal and informal marriage. In *Eisenstadt* the court, on the basis of *Griswold,* held that the anti-contraceptive law of Massachusetts was unconstitutional in its application to unmarried people.

### CONSTITUTIONAL RIGHT TO MARRY

In *Loving v. Virginia,* 388 U.S. 1 (1967) the court said, "Marriage is one of the basic civil rights of man, fundamental to our very existence and survival," thus placing the right to marry on a constitutional level and casting doubt on many of the impediments and prohibitions in the laws of various states.

It should be noted that the Uniform Marriage and Divorce Act of 1970 (National Conference of Commissioners on Uniform State Laws) reduced prohibited marriages to two categories: bigamy and close relatives.

### STATE WITHDRAWAL FROM REGULATING THE FORMATION OF LEGAL MARRIAGE

In 1971, the California legislature reenacted an 1877 law, the confidential marriage, or the "Wedding Chapel Act," which provided for the elimination of the blood test, marriage license, and waiting period. It further provides that the sealed documentation of the wedding be sent to the county clerk.

Texas and Montana have a similar law on the books. The Uniform Marriage and Divorce Act, endorsed by the American Bar Association as a model act in 1974, contains a provision resembling the California law.

### DE FACTO MARRIAGE

There is developing a new body of law on the legal effects of de facto marriage which imitates legal marriage. According to the United States Census Bureau Report (May 4, 1977), 1,300,000 persons are sharing living quarters while 660.000 two-person households have an unrelated adult of the opposite sex.

The December, 1976 decision of the California Supreme Court (*Marvin v. Marvin,* 557 P.2d 106) demonstrates the legal and financial consequences of a de facto marriage. A woman who lived with a mar seven years, brought suit to enforce an alleged *oral contract* under which she was entitled to one-half of the property acquired during that period and taken in the man's name, and to support payments.

"During the past 15 years, there has been a substantial increase in the number of couples living together without marrying." (Footnote 1. "The 1970 census figures indicate that today perhaps eight times as many couples are living together without being married as cohabited ten years ago.") *Marvin.* l.c. 109

> We conclude that the judicial barriers that may stand in the way of a policy based upon the fulfillment of the reasonable expectations of the parties to a nonmarital relationship should be removed. As we have explained, the courts now hold that express agreements will be enforced unless they rest on an unlawful meretricious consideration. We add that in the absence of an express agreement, the courts may look to a variety of other remedies in order to protect the parties lawful expectations. (Footnote 24. "We do not seek to resurrect the doctrine of common law marriage.") The courts may . . . determine whether that conduct demonstrates an implied contract or implied agreement of partnership or joint venture or some other tacit understanding between the parties. . . . The courts may, when appropriate, employ principles of constructive trust . . . or resulting trust. Finally, a nonmarital partner may recover in quantum meruit for the reasonable value of household services rendered. . . . (*Marvin.* l.c. 122)

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An interesting historical note may be relevant at this point. South Carolina has a unique record for the dissolution of marriage. Divorces have been granted only since 1949; they were also permitted during a brief period after the Civil War, from 1872 to 1878. In all of her years, South Carolina was the only state in the Union which did not allow divorce. Marriage could be dissolved through annulment but was seldom used because the courts adhered strictly to the ecclesiastical grounds for such decrees.

Prior to 1949, South Carolinians were so strongly opposed to the legal dissolution of marriage that they evolved a common law of their own. This included both social and legal recognition of extramarital family relationships. The law even prescribed the proportionate share of property which a married man could give to the woman who was not his lawfully wedded wife. (*American Marriage and Divorce.* 109, Jacobson 1959).

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### CHILD-RELATED CONSEQUENCES OF DE FACTO MARRIAGE

The elimination of most legal distinctions between children born in legal marriage and those born out of legal marriage has gone far to deprive marriage of one of its *traditionally* most important effects, *Levy v. Louisiana,* 391 U.S. 68 (1968); *Weber v. Aetna,* 406 U.S. 164 (1972); and *Trimble v. Gordon,* 97 S.Ct. 1459 (1977). (Illinois Probate Act allowed illegitimate children to inherit by intestate succession only from the mother while legitimate children inherit by intestate succession from both parents. Held: Illinois Act denies equal protection of Fourteenth Amendment.)

### DISSOLUTION OF MARRIAGE

American family law is now moving in the direction toward the practical end of regulation of divorce by government. Marriage "breakdown" is becoming generally recognized as a sole cause for divorce. All states have de facto unilateral divorce in practice, regardless of the legal formalisms.

Divorce at will become a recognized reality in the 1973 Washington Marriage Dissolution Act (26.09.030 Wash. Rev. Code, Ann. Supp. 1975) under which the court is required to grant a divorce upon petition of one party alleging marriage breakdown. If, however, one spouse objects, the divorce will be granted only after a five-month waiting period.

As divorce has come to be considered a right necessary for each individual's pursuit of happiness or self-fulfillment, it is evident that there is a movement to separate economic and child custody issues from the issue of divorce itself.

Thus, the law of economic relations between the spouses has been reorganized around the image of the *double earner,* outside the family or within the family, rather than the housewife marriage and the single earner husband.



## MINORS AND THE LAW

### EMANCIPATION

Emancipation originated in the Roman law. It involved the imaginary sale by a father to a son of the father's right to his son's services until age twenty-one. Justinian substituted *manumission* before a magistrate.

Emancipation was not widely practiced in the common law of England but was used to a limited extent in the American common law. In Colonial America, if Massachusetts laws are a prototype, children and servants were equally subjected to harsh punishments for offenses ranging from "long hair" to "stubbornness." Child labor was crucial to the economic system and parental rights to a minor's services and wages was a practical necessity.

Accordingly, the doctrine of emancipation was not in wide use until after the beginning of the twentieth century when industrial development led to the unprecedented use and abuse of child labor. During the period 1900 to 1960, emancipation was largely judge-made on a case-by-case basis influenced by the judges' personal prejudices and values.

Emancipation as a legal process for the termination of certain rights and duties between parent and child may be partial or complete. Complete emancipation is best exemplified by an express *agreement* in which the parents relinquish their rights to their child in exchange for the child relieving them of their financial obligations of support, as in Roman law. Note that this is not the same as termination of parental rights for purposes of adoption in which all rights and obligations, including inheritance, are legally terminated and the parent-child relationship is completely and permanently severed.

Partial emancipation may create a situation in which *all* rights are terminated for a part of the child's minority; some rights are terminated for a part of the child's minority; or some rights are terminated for all of the child's minority. The parental rights here involved are the parent's custody and control of the minor and the right to the child's services and earnings.

### EMANCIPATION IMPLIED IN LAW

Marriage and membership in the armed services are sufficient in themselves to automatically constitute emancipation. (Note: Hawaiian statute emancipates a minor through marriage.) The reason is that control of the minor by parents is inconsistent with the new status of the minor.

In all other situations, absent a pertinent statute, emancipation is determined by all of the surrounding circumstances on a case-by-case basis, and a minor may be emancipated for some purposes and not for others. This judge-made law produces many inconsistencies and is very difficult to use as a predictive device.

Some questions that the courts consider in emancipation proceedings are as follows:

Is the minor living at home?
Is the minor paying room and board at home?
Are the parents exercising disciplinary control over the minor?
Is the minor independently employed and, if so, does he retain his wages and spend them without parental restraints?
Is the minor responsible for the debts he incurs and the extent of parental contribution towards his outstanding bills?
Does the minor own a major commodity?
Do the parents claim him as a dependent for tax purposes?
Is age a critical element?

None of these factors is conclusive because a child may live away from the home of his parents, receive his wages for the week, pay his own expenses therefrom, and yet not be freed from the authority and control of his father who is entitled to the earnings from his services.

The controlling factor, however, is the *nature of the claim asserted*. Emancipation can well be an ancillary issue that is incidentally disposed of in the process of determining other major issues in a case. These cases present many inconsistent results and destroy their precedential effect in the law of emancipation—identical fact situations can end with different results.

Reader May Note State Statutes/Cases



## INTRAFAMILY TORTS

An immunity rule bars tort action by parents against their minor children and conversely by minor children against their parents. However, if the minor child is emancipated, either party may bring a tort action against the other. It is difficult in these intrafamily tort actions to determine whether the result is dictated by the court's dislike for the family tort immunity doctrine or is controlled by the court's views on adult rights and responsibilties for minors.

*Warren v. Long,* 141 S.E.2d 9 (N.C. 1965)

A thirty-year-old female, mentally incompetent and dependent on her family, unable to support herself, was found unemancipated and, therefore, could not sue her mother for damages from an accident.

*Gilliken v. Burbage,* 139 S.E.2d 753 (N.C. 1965)

A minor did not live at home, worked, kept wages, and was not listed as a dependent on his father's tax return. He was held emancipated, and the minor could bring a tort action against the parent.

*Vaupel v. Bellach,* 154 N.W.2d 149 (Iowa 1967)

A minor worked on a farm at age seventeen, then in a factory, and lived in his own apartment. At the time of the automobile accident (19), he was collecting unemployment compensation while living at home without paying. The court held that he was not emancipated in an action brought against the minor by a third party for contribution for injuries to his mother in an automobile accident while the minor was driving. Because he was not emancipated, his mother could not sue him and, therefore, no action for contribution lies.

The emancipation issue in intrafamily tort cases can be avoided by rejecting the intrafamily tort immunity doctrine.

*Falco v. Pados,* 282 A2d 351 (Pa 1971)

A minor daughter may collect from her mother's insurance carrier for accidental personal injuries.

Reader May Note State Statutes/Cases



## MINOR'S WAGES

The common law doctrine of parental control over the services and wages of minor children created not only an area of potential conflict between the minor and his parents, but with third parties as well. In particular, it put the minor's employer in a difficult position. If he paid wages to the minor and disregarded or overlooked parental rights to the minor's earnings, the employer could be required to pay the parents as well. To avoid this double payment, the courts have relied on emancipation.

*Rounds Bros. v. McDaniel,* 118 S.W. 956 (Ken. 1909)

A suit was brought by a father against his son's employer to collect wages paid by the employer to the father's minor son. The son started work at age fourteen, moved from his father's home at sixteen, and received no support. The father filed suit when the son was eighteen.

The Kentucky Supreme Court denied the father's claim, finding that the son was emancipated by implication, and also, the father was estopped from making his claim.

The emancipation doctrine is adjustable to varying situations. Where the only issue is the employer's right to avoid double payment, the courts are inclined to find emancipation, as in ***Rounds, supra***. The same is true when the only issue is the minor's right to keep his wages. But where these are not the sole issues, the court may extend itself denying emancipation.

Thus, a court found *no* emancipation in a situation where the minor earned wages and spent them without objection from his parents when the real issue was the parents' obligation to pay necessary medical expenses which were beyond the minor's financial ability. ***Lufkin v. Harvey,*** 154 N.W. 1097 (Minn. 1915) and, to the same effect ***Hunycutt v. Thompson,*** 74 S.E. 628 (N.C. 1912)

Reader May Note State Statutes/Cases



## CHILD SUPPORT

Emancipation is used as a *defense* by parents to a minor's claim for support.

*Turner v. Turner,* 441 S.W.2d 105 (Ky. 1969)

A father was required to pay child support to his twenty-year-old daughter, even though she had previously been employed and supported herself, so that she could resume her education.

This may be an example of partial emancipation where all rights are terminated for a part of the child's minority. When the period of partial emancipation expires, the minor is entitled to support on the grounds that the parental duty of support revives if the child undergoes a change in status which makes her dependent again.

The duty to support a minor child is revived after emancipation caused by enlistment in the *armed forces* is terminated, as in *Corbridge v. Corbridge,* 102 N.W.2d 764 (Ind. 1952).

However, the duty to support a minor child is *not* revived after emancipation caused by marriage which is terminated by divorce, as in *Meyer v. Meyer,* 493 S.W.2d 42 (Kan. 1973).

*Stanton v. Stanton,* 421 U.S. 7 (1972), 97 S.Ct. 717 considered a Utah statute which established twenty-one as the age of majority for males and eighteen for females *as applied to parents' obligation to support their children.*

The Supreme Court held that this distinction between the sexes violates constitutional provisions and held that "males and females cannot be treated differently for child support purposes consistently with the Equal Protection Clause of the United State Constitution."

Reader May Note State Statutes/Cases

## MINORS' CONTRACTS

As uncertain as the law generally is in its application to the rights of minors and the use of the emancipation doctrine, we do not reach the ultimate in uncertainty until we come to the rights of minors in the field of contracts. In the modern economy, minors have a substantial amount of purchasing power and the conflicting pulls arise from the effort to prevent imposition on minors, on the one hand, and the attempt to prevent injustice to those dealing with minors.

The common law makes minors' contracts voidable, not void, subject to disaffirmance, subject to restitution under certain circumstances, subject to the "necessaries" doctrine, subject to assertion of misrepresentation and estoppel, and finally, subject to statutory changes.

Does emancipation affect a minor's right to disaffirm a contract?

In *Kiefer v. Fred Howe Motors, Inc.*, 158 N.W.2d 288 (Wisc. 1968), a twenty-year-old, married "minor," father of a child, disaffirmed a used car contract. The Wisconsin Supreme Court approved. *Note:* Is this evidence of disapproval of used car dealers rather than a legal proposition?



However, in *Merrick v. Stephens,* 337 S.W.2d 713 (Mo. Ct. App. 1960), a nineteen-year-old emancipated minor disaffirmed payments on a house mortgage, also there was evidence that he misrepresented his age. The court indicated that emancipation does not per se make an infant sui juris, but added the element of "necessaries," and that he is liable under the contract.

The following are some statutory changes from common law:

| | |
|---|---|
| Kentucky | Minors fifteen and over may contract for insurance. |
| California | Minors may contract for artistic services and professional sports, if approved by the court. |
| Massachusetts | Minors eighteen and over may contract for repair, purchase or sale of an auto and will be held liable if it was with parental consent. |
| Many states | Minors over sixteen may contract for higher education loans, not subject to disaffirmance. |

Reader May Note State Statutes/Cases

### STATUTORY EMANCIPATION

*Automatic* emancipation may be the result of a legislative act. States may reduce the age of emancipation to eighteen in a move for *general total emancipation*. Exceptions may include forbidding the use of alcoholic beverages until age twenty-one.

In other instances, a minor may be emancipated for specific acts only, such as entering contracts or voting under the Twenty-sixth Amendment. In the State of Hawaii, a minor is emancipated by marriage, but may not vote, use alcoholic beverages, and remains under the jurisdiction of the juvenile courts.

There are convincing arguments in favor of statutory emancipation. Young people aged eighteen through twenty-one are the best educated segment of the population. Legal equality should be extended to this group as a matter of fairness because they work, pay taxes, and assume other adult responsibilities. Furthermore, more than one million young people serve in the armed forces of this nation.

On the issue of college students who wish to register to vote, the California Supreme Court ordered registration at the minor's resident. In *Jolicoeur v. Mihaly*, 488 P.2d 1 (1971), the court said that "a minor 18 or older is necessarily emancipated for all purposes relating to voting when he is given the vote in his own right, without regard to the consent of his parent or guardian."

Reader May Note State Statutes/Cases



### MEDICAL TREATMENT

Under common law, minors could not consent, without parental approval, to *medical treatment*. Treatment of a minor by a doctor without parental consent constituted a battery for which the doctor was liable in damages.

Currently, legislatures are evolving a series of acts which define rights of minors to secure medical care under certain circumstances for specified purposes. These laws establish the extent of parental consent required, the obligation of the doctor to notify parents, and parental financial liability.

Exceptions to the common law restrictions existed in the case of emancipation, or in an emergency. Many states have enacted statutes which eliminate the need for parental consent in the following special categories:

1. *Veneral disease:* All but five states permit minors to consent. Some statutes apply to all minors under twenty-one. Some require a minimum age of twelve. Some require a report to parents (Hawaii).
2. *Substance abuse:* As with venereal disease, some states have no age minimum for treatment.
3. *Donate blood:* Most states permit blood donation if the minor is over eighteen.
4. *Health Services:* In California minors fifteen or over, may consent to hospital, medical, surgical, dental treatment, if they are living apart from parents and managing their own affairs. In Connecticut, minors over eighteen may use all health services without restrictions.
5. *Pregnancy:* Minors may consent to medicial examination for pregnancy without parental consent in California, Hawaii, Maryland, Minnesota, and Alaska over age fifteen; Delaware over twelve; Alabama fourteen or older, high school graduate, married.

*Notice to Parents*

In jurisdictions where minors can consent to medical treatment, the notification of parents varies.

1. Doctor is *not required* to notify parents (notification is left to doctor's discretion) — Colorado, Maine, Connecticut, California.
2. Doctor *may advise* — California, Kansas.
3. Doctor may use his discretion to notify if he considers it to be beneficial to minor's health — Kentucky.
4. Doctor's failure to advise would be detrimental to minor's health — Minnesota.
5. Doctor is required to advise parents of positive diagnosis of veneral disease or pregnancy — Hawaii, Iowa.
6. Doctor must make reasonable efforts to persuade minor to agree to notify parents — Florida.
7. Doctor may notify parents over refusal of minor if failure to notify will have serious health consequences for the minor — Maryland.

In *Alpin v. Morton,* 21 Ohio St. 536 (1871), a doctor was liable for unconsented disclosures as an invasion of privacy for notice given to parents when not medically required.

*Parental Responsibility for Medical Services*

On the matter of the parents' financial responsibility for the minor's medical treatment, the statutes are generally silent. However, in *Wallace v. Cox,* 188 S.W. 611 (Tenn. 1916), parents are responsible unless the minor is emancipated.



In Minnesota the minor must pay, if the parents' health insurance covers the family, the minor is a real party in interest and can sue on contract (but the insurance company can notify the parents).

*Medical Services – Emancipated Minor*

It should be noted that under common law the emancipated minor does not need parental consent for medical services. *State ex rel. Scott v. Lowell,* 80 N.W. 877 (Minn. 1899). *Smith v. Seibly,* 431 P.2d 719 (Wash. 1967). Some statutes so provide —usually when the minor is "living apart" and managing his financial affairs—as in Minnesota. The doctor is protected in cases where the minor mispresents his age, and the doctor acts in good faith—Pennsylvania and Alabama.

*Medicial Services – The Good Samaritan*

In the case of immediate danger to life and limb of a minor the courts ruled an exception to parental consent. *Jackovach v. Yocum,* 237 N.W. 444 (Iowa 1931); *Luka v. Lowrie,* 136 N.W. 1106 (Mich. 1912).

Some states statutes permit examination and treatment including *blood transfusions* when delay will endanger "life, limb, or mental well-being of the patient" Mass. Ch. 112, #12E (1970), Georgia, Illinois, and Maryland. But parents must be *notified* as promptly as possible.

An unemancipated minor of *sufficient maturity* and judgment may consent to treatment sans prior parental consent—Mississippi, New Hampshire.

Reader May Note State Statutes/Cases

ABORTION AND CONTRACEPTIVES

*Planned Parenthood v. Danforth,* 96 S.Ct. 2831 (1976)

The state may not constitutionally give parents *absolute power* to veto the proposed abortion by a minor daughter in violation of her wishes and with the approval of her physician.

*Bellotti v. Baird*, 96 S.Ct. 2857

The Supreme Court deferred determination on a Massachusetts law which required minors to obtain a court order in the absence of parental consultation. While not sanctioning the procedure of prior court approval in the absence of parental consent, the Court held open the possibility that some form of adult consent, either parental or judicial, which does not grant total and arbitrary power to prohibit and which does not unduly burden the right of a minor to seek an abortion, *may* be constitutionally permissible. The case was remanded for an interpretation of the Massachusetts statute by the state court on the procedures imposed by it.

*In re Smith,* 295 A.2d 238 (1972).

The parents went to juvenile court for an order requiring their sixteen-year-old unwed daughter to submit to a therapeutic abortion (to which she objected). The court held that the minor had the right to consent without parental approval which includes the power to *withhold consent* over parental objection. Therefore, the juvenile court could not act.



*Ballard v. Anderson,* 484 P.2d 1345 (Cal. 1971) same as *Danforth*.

*Carey v. Population Services,* 97 S.Ct. 2010 (June, 1977).

The New York statute which prohibited distribution of nonmedical contraceptives to persons under sixteen, and to those over sixteen except through licensed pharmacists, was held unconstiutional.

Reader May Note State Statutes/Cases

STATUTORY PROVISIONS FOR JUDICIAL EMANCIPATION

Eight states — Alabama, Arkansas, Kansas, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas — have statutory provison for judicial emancipation. Petitions filed and court decrees may give minors all of the rights of adults or specific rights only, subject to restriction.

These eight states have certain limitations on the right to file petition. In four of those states, the person must be eighteen years of age. In Arkansas, a sixteen-year-old female may file, while in Tennessee a sixteen-year-old married minors may file. In the state of Mississippi, a thirteen-year-old girl was emancipated, *McLeiter v. Rackley,* 114 So. 128 (1927). Kansas and Oklahoma do not require parental consent to file; this can be done by a friend of the minor.

Judicial emancipation may be partial or complete. Minors may sue and be sued; buy and sell real estate. In *Howard v. McMarchy,* 166 So. 917 (Miss. 1956), the court held that the right of a minor to buy and sell real estate does not include the power to mortgage real estate.

Reader May Note State Statutes/Cases



STATUTORY AGE REQUIREMENTS AND EMANCIPATION—CONFLICT

The effect of statutory age restrictions is shown in the case in which a twenty-three-year-old defendant had a mentality of a ten-year-old. The defendant asked for transfer to juvenile court. Denied. *State v. Bradshaw,* 337 So.2d 1032 (Fla. App. 1976). *Juvenile Court Digest,* February, 1977.

A minor wife who was emancipated by marriage was charges in criminal court. The defense stated that she was of juvenile court age and asked that she be transferred to juvenile court, even though she is emancipated. The Louisiana Supreme Court ordered the transfer, stating that "emancipation is a civil concept." *State v. DuBois.* 334 So.2d 412 (La. 1976)

*Landsberg v. Board of Examiners,* 166 So. 917, 919 (Miss. 1936)

The statutory minumum age for teachers was eighteen years. A seventeen-year-old, emancipated minor was held ineligible, despite emancipation.

The question of age and juvenile court procedures were discussed in *In the matter of K,* 554 P.2d 180 (Ore. App. 1976), *Juvenile Court Digest,* December, 1976. The juvenile was eleven years of age. According to state law a juvenile must be twelve to be committed to a state training school therefore, *Gault* and *Winship* were not applicable because there was no possibility that the juvenile could be placed in a state institution. The application of the Fifth Amendment and the reasonable doubt standard established for juvenile courts by the Supreme Court in *Gault* and *Winship* do not apply. Compare *E.L.L. v. State,* 572 P.2d 786 (Alaska 1977) *Juvenile Law Digest* v. 10, no. 3, p. 68 (March 1978).

*Curfew*

There are statutory restrictions applicable only to minors, such as curfew (couvre feu—cover the fire). Eleven jurisdictions have curfews with ages varying from under eighteen to under twelve. In Rhode Island, the authority to enforce curfews is vested in the police chief. There have been a number of cases on the constitutionality of curfews.

In *Bykofsky v. Middletown,* 401 F.Supp. 1242 (Penn. 1975) curfew was held *constitutional,* and was upheld by the court of appeals without opinion, 535 F.2d 1245. Cert. denied, 97 S.Ct. 395 Justices Marshall, Brennan, and White dissented and would grant certiorari. Marshall in a dissenting opinion, joined in by Brennan, wrote:

> The questions squarely presented by this case, then, is whether the due process rights of juvenile are entitle to lesser protection than those of adults. The prior decisions of the Court provide no clear answer. We have recognized the "constitutional rights do not mature and come into being magically only when one attains the state defined age of majority. Minors as well as adults are protected by the Constitution and possess constitutional rights." *Planned Parenthood v. Danforth,* 96 S.Ct. 2831; see also *Tinker v. Des Moines Independent Community School Dist.,* 393 U.S. 503, 511. But we also have acknowledged that "the state has somewhat broader authority to regulate the activities of children than of adults. . . ."(*Danforth.*) Not surprisingly, therefore, the lower courts have reached conflicting conclusions in addressing the issue raised here.

*Naprstek v. City of Norwich,* 545 F.2d 815 (2nd Cir. 1976), *Juvenile Court Digest,* March, 1977, p. 72, held the curfew law void for vagueness and *unconstitutional* because the statute had no time limit to end curfew.

*People v. Chambers,* 360 N.E.2d 55 (Ill. 1977)

The court held the statute *constitutional* and said that it does not unconstitutionally restrict a minor's right of free speech and association. But see *W.J.W. v. State,* 456 So.2d 48 (Fla. App. 1978). A Florida District Court of Appeals held that curfew is an unconstitutional invasion of personal rights and liberties. *Juvenile Law Digest* v. 10, no. 6, p. 134 (June 1978).





## COMPULSORY SCHOOL ATTENDANCE

On the problem of compulsory school attendance, the age restrictions vary from none in Mississippi to a maximum of eighteen years. If the minor is living apart from his parents, in some states the minor has the right to attend public school in a district in which the parents do not live. The state of Minnesota has no restriction in this area. Arizona statutes say that a minor must attend school in the district where he is domiciled, not where the minor may be a resident at the time.

Minors may be exempt from school attendance in Arkansas if the minor is working with parental consent or married. Religious exemption is possible as in *Yoder* and *Pierce v. Society of Sisters.*

MINORS — MARRIAGE

As to marriage of minors, common laws allow marriages at age seven, but the marriage remains inchoate until the female is twelve and the male is fourteen. Presently, fourteen states honor this common law.

In New Hampshire, a thirteen-year-old female may marry. Younger females may marry, if pregnant.

Minimum Age for Legal Marriage*

| | Male | Female |
|---|---|---|
| 21 jurisdictions | 21 | 18 |
| 24 jurisdictions | 18 | 18 |
| 10 jurisdiction | 21 | 21 |

*50 states, District of Columbia, U.S. Territories and Possessions.



Courts have ruled on sex discrimination in the age for marriage. An Ohio judge in 1974 declared that the statute with a minimum age for marriage license at eighteen for males and sixteen for females violated the state's equal rights amendment, 1 *Fam. Law Rptr.* 2165 (1975).

In Utah, the statute provided that males aged twenty-one and females aged eighteen could obtain a marriage license sans parental consent. The court held that the statute constituted a denial of due process. *Lovato v. Lovato,* 1 *Fam. Law Rptr.* 2848 (1975).

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## TOBACCO

One the question of the use of tobacco, thirty-six states by statute make it illegal to sell or give tobacco to minors. In Florida, minors may receive and smoke tobacco, but it is a misdemeanor to sell or give a minor tobacco. In Arizona, it is a misdemeanor for a minor to carry cigarettes across the state.

Reader May Note State Statutes/Cases



## LIQUOR

On the use of liquor, twenty-four states permit its purchase by eighteen-year-olds. Seven states permit nineteen-year-olds to buy liquor. In fourteen states, the age is set at twenty-one. The question of sex discrimination with respect to the sale of alcoholic beverages was raised in *Craig v. Boren,* 97 S.Ct. 451 (1976). An Oklahoma statute prohibited the sale of 3.2% beer to males under the age of twenty-one and to females under eighteen. The court held that the statute provided invidious discrimination against males ages eighteen to twenty and violated equal protection.

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DRIVER'S LICENSE

A minor's right to obtain an automobile driver's license again varies among the states. There is no age minimum in Georgia. The age to obtain a license varies from fourteen in Arkansas to twenty-one in Colorado. Twenty-five states issue a driver's license at age of sixteen. Nineteen states will issue to an eighteen-year-old, and three states permit a minor to obtain a license at age fifteen. One state requires the minor to be age sixteen and one-half; three states require the minor to be age seventeen; and one requires the minor to be aged twenty-one. (The list includes the 50 states, District of Columbia and U.S. Territories and Possessions.)

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MINOR'S RIGHT TO SELECT CUSTODIAL PARENT

On the minor's right to select which parent he wishes to reside with after the parents are divorced, Georgia permits a child over fourteen to select the parent, provided that parent is a fit guardian. *Harbin v. Harbin,* 230 S.E.2d 889 (Ga. 1976), *Juvenile Court Digest,* May 1977, p. 152; *Family Law Quarterly,* v. XI, No. 1, p. 1. In *Lacy V. Lacy,* 553 P.2d 928 (Alaska, 1976), the court held that the exclusion of testimony of two teenaged boys as to their preference was an error. See also *Lewis v. Lewis,* 252 N.W.2d 237 (Mich. App. 1977); 3 *Family Law Rptr.* 2434 (1977).

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EMANCIPATION—ELIGIBILITY THROUGH EMANCIPATION OF CHILDREN OF MIDDLE INCOME FAMILIES

*For College Scholarships*

In the May 25, 1977 *Wall Street Journal,* it was reported that minors in families in the $20,000—$40,000 annual income bracket are not eligible for scholarships or other aid for college tuition. The article noted a recent trend by minors in this situation to emancipate themselves by marriage or establishing a separate residence in order to qualify for such aid.

*For College Admission*

A nineteen-year-old minor, unmarried, and financially independent established separate residence with parental consent to gain admission to public college. The minor was declared emancipated. *Lev v. College of Marin,* 99 *Cal. Rptr.* 476 (1971).

*For Welfare*

A nineteen-year-old minor moved to another state, got a job and an apartment. The court held the minor emancipated for purposes of receiving welfare. *In re Fuhr,* 184 N.W.2d 22 (1971).

Reader May Note State Statutes/Cases



SINGLE SEX HIGH SCHOOLS—REVIVING "SEPARATE BUT EQUAL"

Two senior high schools in Philadelphia admit academically superior students; one admits only boys and the other only girls. A girl, admittedly qualified, applied for admission to the all boys school and was turned down. She filed suit in the U.S. District Court alleging violation of her right to equal education.

The district court held that she was denied an opportunity to attend a coeducational, academically superior school, and that the evidence did not establish a fair and substantial relationship to the school board's legitimate interest. *Vorcheimer v. School District of Philadelphia.* 400 F.Supp. 325 (E.D. Pa. 1975).

On appeal, the Third Circuit Court reversed and ruled in favor of the school board, 532 F. 2d 880 (1976). The circuit court concluded that the purpose of the school board was to furnish an education of as high a quality as possible and that the admission policy based on gender classification did not offend the equal protection clause of the Constitution. Affirmed by the Supreme Court, April 19, 1977: Per Curiam "The judgment is affirmed by an equally divided Court." 97 S.Ct. 1671.

Reader May Note State Statutes/Cases



SCHOOL DISCIPLINE—CORPORAL PUNISHMENT

*Baker v. Owen,* 395 F.Supp. 294, (U.S. Dist. Ct. M.D. North Carolina, 3 judges, April 23, 1975). On appeal to the U.S. Supreme Court that Court on October 20, 1975, entered the following order, "Judgment affirmed." 96 S.Ct. 210.

A sixth-grade student and his mother brought action against a school principal and others, claiming that their constitutional rights were violated when the student was corporally punished by his teacher over his mother's objections and without procedural due process.

The three-judge district court, Craven, circuit judge, held that the Fourteenth Amendment liberty embraces the right of parents generally to control the disciplining of their children, but the state has a countervailing interest in the maintenance of order in the schools, sufficient to sustain the right of teachers and school officials to administer reasonable corporal punishment for disciplinary purposes; that teachers and school officers must accord student minimal procedural due process in the course of inflicting such punishment; and that the spanking of the student in question did not amount to cruel and unusual punishment.

Russell Carl Baker, a sixth-grader, was paddled on December 6, 1973, for violating the rule against throwing kickballs except during designated play periods. His mother opposed corporal punishment on principle and had requested the principal and certain teachers that Russell Carl not be corporally punished. Russell Carl received two licks in the presence of a second teacher and in view of the other students.

North Carolina Statute empowers school officials to "*use reasonable force in the exercise of lawful authority to restrain or correct pupils and to maintain order.*" Mother and son attacked the constitutionality of the statute because it allows corporal punishment of her child over parental objections, without adequate procedural safeguards. Further, the mother charged that this violated her parental right to determine disciplinary methods for her child. The son objected on the grounds that the punishment violated his right to procedural due process and, in this instance, amounted to cruel and unusual punishment.

On the issue of notice, the court said that except for conduct which is so disruptive in nature as to shock the conscience, corporal punishment must never be used unless a student is informed beforehand that the specific misbehavior could occasion its use. Corporal punishment must never be used as a first line of punishment. A teacher or principal must punish corporally in the presence of a second school official who must be informed beforehand and in the student's presence of the reasons for the the punishment. (l.c. p. 303).

*Ingraham v. Wright*

Ingraham was slow to respond to a teacher's irstructions and received more than twenty licks with a paddle while held over a table in the principal's office, resulting in hematoma requiring medical attention, and he was out of school for eleven days. Co-plaintiff Andrews was paddled several times for minor infractions and was struck once on the arms, depriving him of full use of his arm for a week.

*State statute authorized limited corporal punishment* by negative inference and proscribed punishment which was "degrading or unduly severe" or which was inflicted without prior consultation with the principal or the teacher in charge of the school. School board regulations contained explicit directions and limitations for corporal punishment.

Twenty-one states authorize moderate use of corporal punished in public schools. Massachusetts and New Jersey prohibit corporal punishment in public schools.

Justice Powell ruled that two questions would be considered: (1) is paddling of students to maintain school discipline cruel and unusual punishment in violation of the Eighth Amendment; and (2) does due process require prior notice and opportunity to be heard?

The Supreme Court held:

1. The Eighth Amendment proscription of cruel and unusual punishment applies only to those convicted of a crime and is inapplicable to school paddlings.
2. Corporal punishment in public schools implicates a constitutionally protected liberty interest, but we hold that the traditional common law remedies are fully adequate to afford due process.

The Court held that due process does not require notice and a hearing prior to the imposition of corporal punishment in the public schools, as that practice is authorized and limited by the common law [and Florida has preserved the common law constraints and remedies]. 97 S.Ct. 1401, 1977.

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## CONCLUSION

### EQUAL PROTECTION AND MINORS/JUVENILES

The status of infancy, or minority, largely determines the rights and duties of a child before the law regardless of his actual age or maturity.

Justification for such a broad, chronologically determined classification relies on the indiscriminate assumption of physical and intellectual differences between adults and children carried over from ancient times.

There is obviously some sense to this rationale except that the dividing point at twenty-one or eighteen years is artificial and simplistic. It obscures the dramatic differences among children of different ages and the striking similarities between older children and adults. The capacities and the needs of a child of six months differ substantially from those of a child of six or sixteen years of age.

Older children have some additional legal rights before majority, bestowed arbitrarily by statutes, such as the rights to drive automobiles, drop out of school, marry, vote, and work.

Older children are subject to some of the same constraints that are imposed on adults, such as being subject to the same criminal laws when they are beyond the age of juvenile court jurisdiction.

The Supreme Court has ruled that the Constitution requires recognition of particular rights of children in the following cases:

*Haley v. Ohio, Gallegas v. Colorado:* Fourteenth Amendment against coerced confession
*Kent:* right to hearing
*Gault:* right to attorney, right vs. self-incrimination, right to confrontation
*Winship:* burden of proof
*Barnette:* right to refuse to salute U.S. flag when it violates religious beliefs
*Tinker v. Des Moines School District:* right to wear black armband to protest Vietnam war.

Beyond this, the law's concern with children involves limits on parental control either of protection or justifiable punishment of the child. The theory of the state's intrusion into families involves a contradiction. It first assumes that the proper relationship between parent and state favors parental control of the child; then, the parens patriae doctrine is used to justify state interference with parental control even up to the point of termination of parental rights.

Fears about arbitrary and harmful state intervention have led to increased rights of parents so that they now have certain procedural guarantees before the state



may remove their children. *Stanley v. Illinois* (1972). But only recently has attention focused on rights of children who are involved in state intervention, as against their parents, and also the state when it attempts to assume parental responsibilities.

The basic rationale for depriving people of rights is that certain individuals are incapable of exercising the right to take care of themselves and, therefore, need special social policies and institutions to safeguard their "position." It is presumed that under the circumstances, society is doing what is best for the individuals.

If children are citizens, where are their rights to equal protection under the Fourteenth Amendment? The equal protection clause of the Fourteenth Amendment has been applied by the Supreme Court through a two-tiered standard of judicial review in assessing the constitutionality of state action.

The first analysis in cases involving equal protection problems invests the state legislation with a presumption of constitutionality and requires merely that the distinctions created by the challenged legislation bear some reasonable relationship to a conceivable legitimate state purpose. The measure of its reasonableness is the degree of its success in treating similarly those similarly situated.

On the other hand, in the cases involving *"suspect classification"* or touching on *"fundamental interests,"* the Supreme Court has adopted an attitude of active and critical analysis, subjecting the classification to *strict scrutiny*. Under this standard, the state bears the burden of establishing not only that it has a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose.

The Supreme Court recognizes as suspect those classifications based on race in *Loving v. Virginia, Brown v. Board of Education;* national origin in *Oyama v. California,* 332 U.S. 633; and alienage (aliens and welfare) in *Graham v. Richardson,* 403 U.S. 365.

### EQUAL PROTECTION AND ILLEGITIMACY

*Mathews v. Lucas,* 96 S.Ct. 2755 (June, 1976)

Provisions of the Social Security Act that condition the eligibility of illegitimate children for insurance benefits upon a showing that the deceased wage earner was the child's parent and at the time of his death was living with the child or was contributing to his support are permissible as a reasonable statutory classification. The Court held that:

> *. . . this discrimination against illegitimates has never approached the severity or pervasiveness of the historic legal and political discrimination against women and Negroes.* We therefore adhere to our earlier view (see *Labine v. Vincent,* 401 U.S. 532) that the Act's (Social Security) discrimination between individuals on the basis of their legitimacy does not *command extraordinary protection* from the majoritarian political process, *San Antonio Independent School District v. Rodriquez,* 411 U.S. 1, *which our most exacting scrutiny would entail.* [Italic added]

In *Rodriquez,* 411 U.S. 1, 28, the Court identified a *"suspect class"* entitled to the protections of *strict judicial scrutiny* as one "saddled with such disabilities, or subject to such a history of purposeful unequal treatment, or relegated to such a position of powerlessness as to command extraordinary protection from the majoritarian political process." (l.c. p. 2762).

*Trimble v. Gordon,* 97 S.Ct. 1459 (April, 1977)

An Illinois statute provided that an illegitimate child could only inherit from its mother by intestacy was held unconstitutional.

> Appellants urge us to hold that classifications based on illegitimacy are *"suspect"* so that any justifications must survive *"strict scrutiny."* We considered and rejected a similar argument . . . in *Mathews v. Lucas.*
>
> *As we recognized in Lucas, illegitimacy is analogous in many respects to the personal characteristics that have been held to be suspect when used as the basis of statutory differentiations. . . . We nevertheless concluded that the analogy was not sufficient to require "our most exacting scrutiny."* [Italics added]

But, *Lucas* also establishes that the scrutiny *"is not a toothless one."*

## MINORS' ACCESS TO CONTRACEPTIVES/ MAJOR CHORD AND MINOR DISCORD

*Carey v. Population Services International,* 97 S.Ct. 2010 (1977).

*Carey* is important for its ruling on the particular facts involved but is equally noteworthy for its analysis of its prior decisions and discordant opinions on minors' rights.

First it extends the logic of *Grisworld v. Connecticut,* 381 U.S. 479 (1965), striking down a Connecticut statute prohibiting the use of contraceptives, and succeeding cases, which recognized a fundamental right of personal privacy protected by the due process clause of the Fourteenth Amendment against government intrusions not justified by compelling reasons, by its holding that a state may not burden an adult's decision whether to bear a child by prohibiting anyone other than a licensed pharmacist from distributing non-hazardous contraceptives. And further the Court concluded that a state may not deny minors access to contraceptives. This part of the opinion was adopted by four Justices with three others concurring in the result.

The plurality in *Carey* also indicated that a parental consent requirement would not pass constitutional scrutiny although Justice Powell suggested that parental consultation without a parental veto would be valid.

Justice Brennan, in the majority opinion, wrote in some detail in an effort to harmonize the many opinions of the Court dealing with the constitutional rights of minors. He acknowledged that "the question of the extent of state power to regulate conduct not constitutionally regulable when committed by adults is a



vexing one, perhaps not susceptible to precise answer. We have been reluctant to attempt to define 'the totality of the relationship of the juvenile and the state.' *In re Gault,* 387 U.S. 1 (1967). Certain principles, however, have been recognized. 'Minors, as well as adults, are protected by the Constitution and possess constitutional rights.' *Planned Parenthood of Central Missouri v. Danforth,* 96 S.Ct., at 2843. '[W]hatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.' *In re Gault,* 387 U.S., at 18, 87 S.Ct., at 1436."

The opinion of Justice Brennan then elaborated on this last reference to *Gault* in a footnote, #14, 97 S.Ct., at 2020, which referred to prior decisions of the Court on constitutional rights of minors:

> Thus minors are entitled to constitutional protection for freedom of speech, *Tinker v. Des Moines School District,* 393 U.S. 503 (1969), *West Virginia State Board of Education v. Barnette,* 319 U.S. 624 (1943); equal protection against racial discrimination, *Brown v. Board of Education,* 347 U.S. 483 (1954); due process in civil contexts, *Goss v. Lopez,* 419 U.S. 565 (1975); and a variety of rights of defendants in criminal proceedings, including the requirement of proof beyond a reasonable doubt, *In re Winship,* 397 U.S. 358 (1970), the prohibition of double jeopardy, *Breed v. Jones,* 421 U.S. 519 (1975), the rights to notice, counsel, confrontation and cross-examination, and not to incriminate oneself, *In re Gault,* 387 U.S. 1 (1967), and the protection against coerced confessions, *Gallegos v. Colorado,* 370 U.S. 49 (1962); *Haley v. Ohio,* 332 U.S.596 (1948).

To support his statement that the extent of state power to regulate the conduct of minors when similar conduct by adults is not constitutionally regulable is a "vexing" question, Justice Brennan notes that:

> On the other hand, we have held in a variety of contexts that "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults" (97 S.Ct. at 2020.) *Prince v. Massachusetts,* 321 U.S. at 170, *Ginsberg v. New York,* 390 U.S. 629 and *McKeiver v. Pennsylvania,* 403 U.S. 528.

Although the *Carey* ruling supports the right to privacy in connection with decisions affecting procreation and extends the right to minors as well as to adults the protection afforded minors is not as broad as that afforded adults. State restrictions inhibiting privacy rights may be valid if they serve *"any significant state interest"* whereas such restrictions applicable to adults must serve a *"compelling state interest."* Justice Brennan acknowledges that the "significant state interest" test is less rigorous than the "compelling state interest" applied to restrictions on the privacy rights of adults but justifies the lesser scrutiny applied to minors as appropriate:

> [B]ecause of the States' greater latitude to regulate the conduct of children, *Prince v. Massachusetts* and *Ginsberg v. New York,* referred to above, and for the further reason that:
>
> [T]he right to privacy implicated here is 'the interest in independence in making certain kinds of important decisions' *Whalen v. Roe,* 97 S.Ct. at 876, and the law has generally regarded minors as having a lesser capability for making important decisions. (97 S.Ct. at 2021, footnote 15.)

## "PERSONAL LIBERTY" DOCTRINE AND EQUAL PROTECTION FOR MINORS

The California Supreme Court in dealing with minors' rights, in a decision ante-dating *Carey,* has at least to some extent departed from the U.S. Supreme Court's philosophy of looking at state restrictions on minors rights. California has declared "personal liberty" to be of fundamental interest second only to life itself and, therefore, subject to strict scrutiny. This in effect places a minor's right to personal liberty on the same plane as an adult's right to personal liberty. Thus any state restriction on a minors' personal liberty must support a "compelling state interest" to withstand constitutional attack rather than the less rigorous "significant state interest" test adopted by the U.S. Supreme Court.

In *People v. Olivas,* 551 P.2d 375 (June 1976) the California Supreme Court dealt with a California statute which provided that upon conviction for a misdemeanor a defendant between sixteen and twenty-one years of age could be committed for "treatment" to the Youth Authority rather than to a penal institution. Such commitment to the Youth Authority would be for a term of two years or until the twenty-third birthday, which ever occured later. Olivas, age nineteen, was committed to the Youth Authority thereby being subjected to a potential term of more than three years. For the same crime the maximum sentence for an adult was six months.

On appeal to the California Supreme Court it was held that Olivas could not be detained for more than six months, the maximum time applicable to an adult. The court thus placed a minor's right to personal liberty on the same plane as that of an adult to equal protection. In doing so the court rejected the theory of "treatment" as a quid pro quo for unequal treatment under law.

END