COMMENTS

Having Their Cake and Eating It Too? Post-emancipation Child Support as a Valid Judicial Option

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INTRODUCTION

At age thirteen, Jhette Diamond moved out of her mother's home. Jhette described the environment in the house as one of substance abuse, domestic violence, and neglect. A motivated and responsible girl, Jhette had worked since the age of eleven and was a dedicated student.

Dominique Moceanu had a markedly different childhood. Under pressure from her parents, Dominique intensively trained to become a world-class gymnast. After winning the gold medal at the 1996 Olympics, Dominique and her teammates became national celebrities and earned millions of dollars in endorsements.

What unites Jhette and Dominique is what both girls did in their later teen years: sue their parents for legal emancipation. Jhette argued that she needed independence to obtain her own report cards and health insurance; Dominique contended that her parents had failed to give her a normal childhood and had squandered her fortune. Courts granted both requests.

While Dominique sought emancipation to protect her income from her parents, Jhette asked the court for the opposite. She petitioned to collect, after emancipation, both retroactive and prospective child support from her mother. The Supreme Court of New Mexico ultimately ruled in Jhette's favor, holding that a minor could be emancipated for certain purposes while reserving the right to seek support from her parent.[1]

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[1] *Diamond v Diamond*, 283 P3d 260, 272 (NM 2012).

The relationship between emancipation and child support is an uncertain aspect of family law. At first glance, these seem like divergent concepts: emancipation severs a relationship between parent and child, while child support creates a financial bond between them. Emancipation can be triggered automatically (through the child reaching the age of majority, marrying, or joining the military) or voluntarily (through a court order requested by the child or parent). For many centuries, the prevailing jurisprudence has held that when a child becomes emancipated, any parental support obligation ceases.[2]

This Comment considers when, if ever, emancipation does *not* end the parents' duty to provide child support. Jhette Diamond's case in July 2012 (*Diamond v Diamond*[3]) was the first of its kind, holding that a child could be considered statutorily emancipated but continue to receive support payments under certain circumstances.[4] This Comment argues that *Diamond* should not be considered rogue or aberrational; instead, several states' emancipation schemes provide room for the concept of "partial emancipation" by which a child may be deemed emancipated for some purposes but not others.

The following Parts undertake the first post-*Diamond* examination of emancipation and child support in the United States. Part I explains the background on emancipation and child support, identifying the statutes and theories behind each. Part II discusses the case law on emancipation and child support, highlighting the majority "either/or" approach adopted in various state courts and how *Diamond* diverged from this in significant ways. Part III finds support for a *Diamond*-like approach by examining: (1) the purpose of child support and emancipation statutes, (2) the treatment of parental rights and obligations in similar statutes, (3) examples of blurred-line instead of bright-line age requirements for minors, and (4) changed circumstances in the status of minors and in other areas of family law. Part III then proposes that judges should consider the totality

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2 See Marsha Garrison, *Autonomy or Community? An Evaluation of Two Models of Parental Obligation*, 86 Cal L Rev 41, 51 (1998) (noting that in the 1870s, "children who were emancipated . . . or who refused to obey reasonable parental commands were no more entitled to parental support than the able-bodied were entitled to public funds"); Donald T. Kramer, 1 *Legal Rights of Children*, § 15:9 at 543 (West rev 2d ed 2005 & Supp 2012) ("Emancipation of a child suspends the parent's support obligation.").

3 283 P3d 260 (NM 2012).

4 See id at 272.

of circumstances in interpreting child support and emancipation rights in individual cases.

I. BACKGROUND: WHAT IS EMANCIPATION AND WHAT IS CHILD SUPPORT?

While the average person might think of his family in terms of love and affection instead of legal obligations, much of the parent-child dynamic is in fact codified by statutes. Parents have the duty to provide their child with support, protection, and education; in return, parents retain the right to the custody, control, services, earnings, and obedience of their child.[5] This relationship generally continues until the child reaches the age of majority, which differs from state to state.[6]

Emancipation and child support can be thought of as legal options for when the traditional family structure goes awry. If a parent does not provide for a child's well-being in tangible ways, a court can order him to make support payments.[7] Emancipation, on the other hand, is akin to ending the period of childhood early: "it denotes the transformation of a child to adult status with the bestowing of attendant privileges and duties and the termination of the legal rights and obligations that had existed between parent and child."[8]

Common law notions of emancipation and child support have been codified in state statutes. Every state has a child support statute. A federal office oversees the child support collections system,[9] meaning that these statutes tend towards uniformity from state to state.[10] By contrast, the codification of

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5 Dana F. Castle, *Early Emancipation Statutes: Should They Protect Parents as Well as Children?*, 20 Fam L Q 343, 343 n 1 (1986), citing 67A *Corpus Juris Secundum Parent and Child* § 3 at 172 (West 1978). See also *Memphis Steel Const. Co v Lister*, 197 SW 902, 904 (Tenn 1917) ("The duties and obligations of parent and child are, in some measure, reciprocal.").

6 For a table of the age of majority in each state, see National Conference of State Legislatures, *Termination of Support: Age of Majority* (NCSL June 2012), online at http://www.ncsl.org/issues-research/human-services/termination-of-child-support-age-of-majority.aspx (visited Nov 24, 2013), citing Office of Child Support Enforcement, Administration for Children & Families, US Department of Health & Human Services, *Intergovernmental Referral Guide* (Nov 26, 2012), online at http://www.acf.hhs.gov/programs/css/resource/irg (visited Nov 24, 2013).

7 See, for example, *Nichols v Tedder*, 547 S2d 766, 769 (Miss 1989) (noting that child support is money for a child's basic care and maintenance).

8 Castle, 20 Fam L Q at 343 n 3 (cited in note 5).

9 See Part I.B.

10 See Patricia W. Hatamyar, *Interstate Establishment, Enforcement, and Modification of Child Support Orders*, 25 Okla City U L Rev 511, 512 (2000).

emancipation law is much more haphazard; some states have no statutes, while other states have statutes detailing the procedure for obtaining an emancipation order and the legal consequences of doing so.

This Part provides background necessary for understanding the uncertainty at the intersection of emancipation and child support. It gives an overview of the state statutes on emancipation and child support, and the confluence of these two concepts in state legislative schemes.

A. Emancipation: Background, Statutes, and Theories

The doctrine of emancipation severs the relationship between child and parent. Courts have analyzed the doctrine of emancipation since as early as 1818.[11] *Black's Law Dictionary* defines emancipation as:

> 1. The act by which one who was under another's power and control is freed.
> 2. A surrender and renunciation of the correlative rights and duties concerning the care, custody, and earnings of a child . . . . This act also frees the parent from all legal obligations of support.[12]

Black's further defines "partial emancipation" as "[e]mancipation that frees a child for only a part of the period of minority, or from only a part of the parent's rights, or for only some purposes."[13]

Grounds for automatic emancipation include the child's reaching the age of majority, entering the military, or marrying.[14] Courts evaluate additional, discretionary grounds for emancipation on a case-by-case basis. These grounds include when a child becomes economically self-sufficient, becomes pregnant, withdraws from parental control and supervision, or refuses contact with a noncustodial parent.[15] The emancipation order typically ends the parent's right to control the child, ends

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[11] See Castle, 20 Fam L Q at 347 n 23 (cited in note 5); Sanford N. Katz, William A. Schroeder, and Lawrence R. Sidman, *Emancipating Our Children—Coming of Legal Age in America*, 7 Fam L Q 211, 211 (1973).

[12] *Black's Law Dictionary* 598 (West 9th ed 2009).

[13] Id.

[14] See, for example, Cal Fam Code § 7002.

[15] See Laura W. Morgan, *What Constitutes Emancipation to Release a Parent from a Child Support Obligation*, 12 Divorce Litig 1, 2 (2000) (summarizing the circumstances under which a minor will be considered emancipated).

the parent's entitlement to the services and earnings of the child, and—most significantly—ends the child's right to parental support.[16]

Emancipation doctrine can be traced from nonexistence in Puritan families of colonial America, to increasing economic protections for child laborers in the Industrial Revolution, to the growth of the state's role in safeguarding the best interests of the child in the Progressive and New Deal eras.[17] For much of the twentieth century, however, emancipation remained a vague common law concept.[18] Emancipation orders were "granted at the court's discretion for specific purposes."[19]

By a recent count, eighteen states today continue to grant emancipations only as a common law construct.[20] The remaining states have enacted statutes that codify each state's rules on emancipation procedures, conditions, and effects. This wave of emancipation statutes evinced a focus on children's rights, as opposed to parents' rights. From the earliest statute in the 1960s to the most recent statute in 2009, the laws have become increasingly specific in their criteria for emancipation and its consequences. Nonetheless, the requirements for emancipation and the effects and purposes served by emancipation have varied greatly from state to state. For this reason, emancipation has been described as a "confused doctrine."[21]

Great variation continues to exist among these statutes today. The statutes typically focus on a combination of variables, as shown in Table 1's sample of state provisions.

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16 See Kramer, 1 *Legal Rights of Children* § 15:1 at 1074 (cited in note 2).

17 Katz, Schroeder, and Sidman, 7 Fam L Q at 212–13 (cited in note 11). Early common law emancipation developed to protect minors against claims by their parents to their wages. See, for example, *Lackman v Wood*, 25 Cal 147, 151 (1864).

18 See Carol Sanger and Eleanor Willemsen, *Minor Changes: Emancipating Children in Modern Times*, 25 U Mich J L Ref 239, 251 (1992) (claiming that until the first wave of emancipation statutes, "[t]he phrase 'emancipation of a minor', as applied to agreements of parent and child, appears to have been rather loosely used").

19 Id at 245.

20 States that lack emancipation statutes are: Colorado, Delaware, Idaho, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, and Wisconsin.

21 Castle, 20 Fam L Q at 356 (cited in note 5).

TABLE 1. VARIABLES IN SELECTED STATE EMANCIPATION STATUTES

State and Statute	Who Can Initiate	Requirements and Considerations	Effects	Procedure
Illinois: 750 ILCS 30/1 et seq (2003)	Parent or child	No objection from minor or parent; minor "has demonstrated the ability . . . to manage his own affairs and to live . . . independent of his parents"	Rights of persons of age of majority, with specific age-based exceptions	Petition, notice, hearing, appeal
Maine: 15 Me Rev Stat Ann § 3506-A (1981)	Child only	Child living apart from parents; juvenile has made provisions for self and is mature; minor's best interest	No legal effects stated in the statute	Petition, possible mediation, hearing, order, appeals
North Carolina: NC Gen Stat Ann § 7B-3500 et seq (1999)	Child only	Family discord and rejection of supervision; minor's best interest	Adult status for petitioner and relief of duties of parent	Petition, summons, hearing, decree, appeals
New Mexico: NM Stat Ann § 32A-21 et seq (1995)	Child only	Minor is "willingly living . . . apart from his parents, . . . is managing his own financial affairs and . . . it [is] in the minor's best interest"	Minor is "considered as being over age of majority for one or more of the [stated] purposes"	Petition by minor, notice to parents, court may issue declaration of emancipation with factual findings

Though the variables are similar from statute to statute, the substantive details of emancipation vary widely. With respect to the standards for emancipation, present statutes range from a broad "best interest of the minor" test[22] to a large set of specific criteria that attempts to capture what considerations should go into a best-interests evaluation.[23] Similarly, the statutes vary in their specificity of the procedures for emancipation[24] and in the rights granted by emancipation.

State rules also differ regarding who may initiate emancipation. In some states, either the parent or the child can initiate the process, while other states only allow child-initiated emancipation.[25] Commentators have stressed the need for emancipation statutes to protect parents in addition to children, arguing that "[p]arents are also people with rights who may themselves be the victims of discord created by a child's extreme antisocial behavior"[26] and "[t]hat emancipation of a minor may benefit the parents does not necessarily make it a bad thing."[27]

On the other hand, one critique of emancipation is its potential to be abused by parents. Critics contend that parents can use "unilateral" emancipation to escape their duties of support by abandoning their children.[28] Restricting the initiation of emancipation to children only is one potential line of defense against this abuse. However, even in states with child-only emancipation, there is a concern that parents still play a large role in encouraging emancipation. Parents may push their children to initiate emancipation procedures when the relationship is less than harmonious.[29]

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22 See, for example, Mich Comp Laws Ann § 722.4c(2); Tex Fam Code Ann § 31.005; Ala Code Ann § 26-13-1 (Bender 2009).

23 See, for example, NC Gen Stat Ann § 7B-3504. See also H. Jeffrey Gottesfeld, Comment, *The Uncertain Status of the Emancipated Minor: Why We Need a Uniform Statutory Emancipation of Minors Act (USEMA)*, 15 USF L Rev 473, 486–87 (1981).

24 Compare Fla Stat Ann § 743.015(2)(d) (West 2010) (requiring that the minor must submit a statement of character) with 15 Me Rev Stat Ann § 3506-A (West 2003) (describing only limited procedural requirements for an emancipation petition).

25 See Table 1.

26 Castle, 20 Fam L Q at 372 (cited in note 5).

27 S. Elise Kert, *Should Emancipation Be for Adolescents or for Parents?*, 16 J Contemp Legal Issues 307, 309 (2007).

28 Ilse Nehring, *"Throwaway Rights": Empowering a Forgotten Minority*, 18 Whittier L Rev 767, 775 (1997).

29 See Kert, 16 J Contemp Legal Issues at 308 (cited in note 27) (noting that emancipation might "prove a windfall for a parent who has little or no control over a teenager").

B. Child Support: Background, Statutes, and Theories

Child support is money that a "particular parent is ordered to pay for [a] child's basic, necessary living expenses, namely food, clothing, and shelter."[30] The diverse origins of child support obligations include "common law, state poor laws, divorce codes, bastardy laws, and criminal nonsupport laws."[31] The purposes were equally varied, ranging from reimbursing local governments for public aid to discouraging out-of-wedlock births.[32]

Today, child support is a term in family law referring specifically to a transfer of income from a noncustodial parent to support the expenses of the child's care.[33] Private support refers to funding from a nonresident parent; public support is paid for by the government.[34] A parent's duty of support continues during the child's minority, or, in some states, until the child graduates from high school.[35]

Child support has a federal statutory source in Title IV-D of the Social Security Act.[36] The statute demands that every state that receives Temporary Assistance for Needy Families (TANF) funds[37] must establish a child support agency.[38] This state agency is obligated to help the federal Office of Child Support Enforcement (OCSE) to meet its collection goals.[39] The statute also

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30 *Nichols*, 547 S2d at 769. See also *General FAQs* (California Department of Child Support Services 2011), online at http://www.childsup.ca.gov/home/generalfaqs.aspx (visited Nov 24, 2013).

31 Daniel L. Hatcher, *Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State*, 42 Wake Forest L Rev 1029, 1034 (2007).

32 Id.

33 Irwin Garfinkel, *The Child-Support Revolution*, 84 Am Econ Rev 81, 81 (May 1994).

34 Id.

35 See, for example, Kan Stat Ann § 23-3001(b) (stating that the duty of support lasts until the child graduates high school).

36 Social Services Amendments of 1974 § 101(a), Pub L No 93-647, 88 Stat 2337, 2351, codified as amended at 42 USC § 651 et seq.

37 TANF replaced a similar program called Aid to Families with Dependent Children (AFDC) in 1996. See Office of Family Assistance, *TANF-ACF-PI-2004-03 (Use of TANF Funds to Recover Aid to Families with Dependent Children (AFDC) Overpayments)* (Department of Health and Human Services July 14, 2004), online at http://www.acf.hhs.gov/programs/ofa/resource/policy/pi-ofa/2004/pi2004-3htm (visited Nov 24, 2013).

38 See 42 USC § 602(a)(2) (defining "eligible state" as having, among other requirements, certified that the state will "operate a child support enforcement program").

39 The child support program was established by Congress in 1975 and underwent significant reforms following welfare reform legislation in 1996. See Office of Child Support Enforcement, *OCSE Fact Sheet* (Department of Health and Human Services), online at http://www.acf.hhs.gov/programs/css/resource/ocse-fact-sheet (visited Nov 24, 2013).

requires that individual parents applying for assistance must establish mechanisms to collect funds from noncustodial parents.[40]

The federal government mandates the development of numerical support guidelines, initiates reforms to collection methods, and often pays for uncollected obligations.[41] However, each state is left to make its own law regarding such decisions as methods of collection.[42] Unlike emancipation statutes, there is fairly widespread consistency among states. Almost all states have embraced a continuity-of-expenditure approach, by which support obligations are calculated using a formula designed to estimate what the child's expenses would have been had the family remained intact.[43] Four others have followed a policy driven by the goals of poverty prevention, an approach first embraced in Delaware.[44] This approach uses a formula to establish minimum "primary support" values to meet the needs of an adult and one or more children, and then calculates parental contribution to this target in proportion to each parent's income.[45]

Overall, the current child support system is described as having "mixed" incentives.[46] It considers best interests of the child and family a primary objective. However, the state also foots a huge bill in welfare payments to children that would have been covered by support obligations from noncustodial parents if a proper support order had been in place. Thus, collecting from these parents to reimburse the state remains a significant priority.[47]

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40 See Hatcher, 42 Wake Forest L Rev at 1045 (cited in note 31). See also Laura W. Morgan, *Child Support Fifty Years Later*, 42 Fam L Q 365, 367–69 (2008).

41 See Garrison, 86 Cal L Rev at 54 (cited in note 2).

42 Ira Mark Ellman and Tara O'Toole Ellman, *The Theory of Child Support*, 45 Harv J Leg 107, 113 & n 22 (2008).

43 Garrison, 86 Cal L Rev at 60–61 (cited in note 2) (noting that all but five states embraced the continuity-of-expenditure approach in adopting their child support guidelines). See also, for example, *Voishan v Palma*, 609 A2d 319, 321 (Md 1992) ("The conceptual underpinning [of Maryland's child-support guidelines] is that a child should receive the same proportion of parental income, and thereby enjoy the standard of living, he or she would have experienced had the child's parents remained together.").

44 Garrison, 86 Cal L Rev at 61 & n 106 (cited in note 2) (noting that Delaware, Hawaii, Montana, and West Virginia have adopted a poverty prevention formula in their guidelines).

45 Id at 61.

46 Hatcher, 42 Wake Forest L Rev at 1048–51 (cited in note 31).

47 See id at 1051.

Critics have argued that the government's fiscal interests often conflict with the best interests of the children.[48] Stating that the current child support system developed from "competing interests and purposes," one commentator identified the tensions that these two objectives of child support create.[49] For example, the state requires a mother receiving welfare to establish a child support order to collect from the noncustodial father of her child. These funds will go to the government and will serve the government's interest of welfare reimbursement.[50] However, the mother may have reasons why it is not in the best interests of the child to have the father involved. She may not want her child to know his father or may fear domestic violence or retaliation.[51] But the alternative of noncooperation may result in the termination of her welfare payments. Because of this undesirable tension, the commentator advocated for an abandonment of the government-reimbursement function in favor of a greater focus on the maintenance of families and their economic self-sufficiency.[52]

C. The Relationship between Emancipation and Child Support

It is a widely held proposition that a court finding of emancipation terminates any support obligation of a parent.[53] The logic is that a minor's reliance on parental support "indicates continued financial dependence."[54] If a child cannot demonstrate financial independence, under most statutes, the child will not meet the standards for emancipation.[55] Conversely, if the court finds that the child is financially independent, then a support order will not be necessary.[56]

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48 See, for example, id at 1032–33.

49 Id at 1032–34.

50 Hatcher, 42 Wake Forest L Rev at 1045 (cited in note 31).

51 Id at 1045–46.

52 See id at 1045–46, 1079–82.

53 See Garrison, 86 Cal L Rev at 51 (cited in note 2); Kramer, 1 *Legal Rights of Children* § 15:9 at 543 (cited in note 2). It is important to note that this Comment addresses two kinds of support obligations: child support (state orders to noncustodial parents) and more general parental support (the statutory duty of parents to support their minor children). The widely held proposition is that both duties are extinguished upon emancipation.

54 Castle, 20 Fam L Q at 351 (cited in note 5).

55 See notes 158–61 and accompanying text.

56 Note that "financial independence" is also sometimes referred to as "financial responsibility" or "financial self-sufficiency." The general formulation given by Professor Dana F. Castle is a measure of "the ability of the child to provide for her/himself without parental assistance." Castle, 20 Fam L Q at 370 (cited in note 5). However, Professor

However, as with other aspects of emancipation, the statutes differ regarding what happens to a support obligation when a child is emancipated. Within the states that have emancipation statutes, variation exists in the legal effects of emancipation on support. Several states do not mention child support in their emancipation statutes.[57] Other states decree that a child support order does not automatically terminate upon emancipation, but it may be terminated at the discretion of the judge.[58] One state, Michigan, goes even further, *requiring* by statute that a parent will continue to be financially liable for an emancipated minor.[59] Additionally, several states demand that divorced or unmarried parents continue to support their children's college expenses, even beyond the age of majority.[60]

Most commonly, statutes explicitly list the purposes for which the minor will be considered emancipated, and these lists include the termination of support by the minor's parents.[61] However, language varies as to whether the emancipated minor must be considered emancipated for *all* of the listed purposes, or whether a judge may choose among the listed purposes for a particular emancipation.[62]

This distinction stems from a textual difference in the statutes. Some states say that a child shall be emancipated "for all purposes that result from reaching the age of majority."[63] This has been referred to as "all-or-nothing" emancipation, meaning a petition for emancipation terminates all parental obligations to the child. Other states' language is more flexible, providing that

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Castle notes that some courts have looked more to the child's future capability to provide for himself as opposed to his current demonstration of independence. Id.

57 See, for example, Alaska Stat Ann § 09.55.590 (Lexis 2012); 15 Me Rev Stat Ann § 3506-A (West 2003); Tex Fam Code Ann § 31.006. In some states, including those without emancipation statutes, the child support statute lists emancipation as a terminating event for a child support order. See Colo Rev Stat Ann § 14-10-115(13); Ga Code Ann § 19-6-15(e); Minn Stat Ann § 518A.39 (subd 5); Neb Rev Stat § 42-371.01(1).

58 See, for example, Ark Code Ann § 9-27-362(e)(10); Ky Rev Stat Ann § 403.213.(3). Nev Rev Stat Ann § 129.130.4 states that a parental support obligation will be terminated, but the judge has the option to provide for its continuation by decree.

59 Mich Comp Laws Ann § 722.4e(2).

60 See notes 158–61 and accompanying text.

61 See, for example, Ariz Rev Stat Ann § 12-2454.B; Cal Fam Code § 7050(a); NC Gen Stat Ann § 7B-3507(2); 12 Vt Stat Ann § 7156(a)(6); Va Code Ann § 16.1-334.12; Wash Rev Code Ann § 13.64.060(1)(a).

62 Compare 12 Vt Stat Ann § 7156(a) (noting that a child is emancipated for "all purposes") with Wash Rev Code Ann § 13.64.060(1) (noting that a child is emancipated for certain enumerated purposes, but the emancipation is not limited to those purposes).

63 12 Vt Stat Ann § 7156(a). See also Fla Stat Ann § 743.015(7) (West 2010); NC Gen Stat Ann § 7B-3507(1); Va Code § 16.1-334; Nev Rev Stat § 129.130.

a child shall be emancipated "for the purposes of, but not limited to [the following]" or "for one or more of the purposes enumerated."[64] Even those states that lack emancipation statutes recognize judicial emancipations, and those states mostly list "emancipation" in the child support statutes as an event that will terminate child support.[65] Listing emancipation as a trigger for the end of child support is fairly common across state child support statutes, regardless of whether the state has an emancipation statute or not.

Many commentators reiterate the conventional view that emancipation and continued support of the child are incompatible.[66] However, Professor Sanford N. Katz, Professor William A. Schroeder, and Lawrence R. Sidman wrote in 1973 that courts were, in some circumstances, willing to grant "partial emancipation" by which a child would be able to "assert rights normally incident to complete emancipation while still able to enforce parental obligations."[67] But case law provides "imprecise guidance" on one manifestation of partial emancipation: the relationship between child support and emancipation.[68]

One commentator argued strongly for continued parental support in the case of "throwaway children," defined as "abandoned children . . . [and children] whose parents make no effort to get them back after they run away."[69] She claimed that in these situations, parents unilaterally benefit from abandoning their children and that such children should therefore be able to be emancipated while continuing to receive parental support.[70] She compared this process to "rehabilitative alimony" in a

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64 Wash Rev Code Ann § 13.64.060(1); NM Stat Ann § 32A-21-4. See also Mont Code Ann § 41-1-503(2).

65 See, for example, NH Rev Stat Ann § 461-A:14; NJ Stat Ann § 2A:34-23.a; NY Fam Law § 413.1(b)(2).

66 See, for example, Sanger and Willemsen, 25 U Mich J L Ref at 299 (cited in note 18) (noting that "emancipation provides parents with two financial benefits otherwise unavailable until the child reaches majority. It ends the parents' support obligation and limits their legal liability for their child's conduct").

67 Katz, Schroeder, and Sidman, 7 Fam L Q at 215 (cited in note 11). See also Gottesfeld, Comment, 15 USF L Rev at 494 (cited in note 23) (noting that "[h]istorically, courts could emancipate minors for either all purposes or for limited purposes").

68 Castle, 20 Fam L Q at 350–51 (cited in note 5).

69 Nehring, 18 Whittier L Rev at 770 (cited in note 28).

70 Id at 775, 805–10 (arguing that "when a minor is evicted from the home by a unilateral act of the parent, the parents should be required, by law, to make support payments").

divorce,[71] in that the support would only continue temporarily until the child had reached the age of majority.[72]

Professor Katz, Professor Schroeder, and Sidman criticized this vision of partial emancipation as "a doctrine for children, enabling a minor to vindicate certain rights that he would otherwise be barred from asserting, yet cloaking him with the continuing protection afforded by parental obligations."[73] They referred to this as the "hav[ing] their cake and eat[ing] it" view of emancipation and child support.[74] Other academics have been similarly hostile. Professors Carol Sanger and Eleanor Willemsen urged that emancipation should be thought of like a waiver: the child gains emancipation while relinquishing his statutory entitlement to financial support by his parents.[75]

Against this backdrop of competing theories of emancipation and child support, it is no surprise that legislatures have drafted different statutory schemes addressing whether and how emancipation ends a duty of support. Further, courts interpreting these laws have reached different conclusions—even when analyzing different cases governed by the same state statute. Part II identifies cases that have confronted these questions.

II. EMANCIPATION AND CHILD SUPPORT CASES: TRADITIONAL AND NONTRADITIONAL APPROACHES BY COURTS

The traditional notion that emancipation and child support are mutually exclusive is still the most accepted.[76] Accordingly, decisions break down into unsurprising patterns. In many cases, courts have found no emancipation of the child and a consequent continuation of support; in a somewhat smaller number of cases, courts have found emancipation and no continuation of support.

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71 Rehabilitative alimony is "alimony payable for a short but specific and terminable period of time, which will cease when the recipient is, with reasonable efforts, self-supporting." David H. Kelsey and Patrick P. Fry, *The Relationship between Permanent and Rehabilitative Alimony*, 4 J Am Acad Matrim Law 1, 1–2 (1988).

72 Nehring, 18 Whittier L Rev at 807 (cited in note 28).

73 Katz, Schroeder, and Sidman, 7 Fam L Q at 227 (cited in note 11).

74 Id. See also Gottesfeld, Comment, 15 USF L Rev at 500 (cited in note 23) ("[I]f a minor is to be emancipated for beneficial purposes, the minor should be prepared to face some of the disadvantages of adulthood as well.").

75 Sanger and Willemsen, 25 U Mich J L Ref at 328–29 (cited in note 18).

76 See Rebecca E. Hatch, *Proof of the Emancipation of Child in Order to Terminate Child Support*, Am Juris Proof of Facts 3d § 1 (2009).

Rejecting the traditional view, one court recently found both emancipation and a continuation of child support.[77]

A. The Traditional Approach: Emancipation Terminates Child Support

Courts are hesitant to grant emancipation if there is an indication of continued financial need on the part of the child.[78] One common way this situation arises is in cases that involve a claim by a parent to nullify the parent's child support obligations. The parent typically argues that the child was so estranged as to warrant a declaration of emancipation.[79]

In *Tew v Tew*,[80] the child's father sought to modify his child support obligations by declaring the child emancipated against the wishes of the custodial mother.[81] The court held that the child should not be emancipated, even though she was employed.[82] The child was held to be incapable of supporting her own finances and thus could not meet the statutory requirements for emancipation.[83]

Cases from other states follow the same pattern.[84] It is largely inconsequential whether a state has an emancipation statute; in either situation, a court will examine the child's alleged estrangement from the parents and ability to support himself. In each case following this pattern, the court held that the

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77 Again, it is worth stressing the two related support obligations potentially at issue. The previous Section discussed language in the statutes about whether existing child support orders, as well as general parental duties of support, are extinguished upon a child's emancipation. This Part analyzes cases in which courts have grappled with the same questions.

78 See Katz, Schroeder, and Sidman, 7 Fam L Q at 225–26 (cited in note 11).

79 Some cases also involve a noncustodial parent seeking reimbursement for child support paid to the custodial parent following the child's emancipation. Courts generally grant this request under the traditional view that emancipation terminates a child support obligation. See, for example, *Rohner v Long*, 57 SW3d 920, 923 (Mo App 2001).

80 924 NE2d 1262 (Ind App 2010).

81 Id at 1264. Indiana's child support statute, Ind Code Ann § 31-16-6-6, provides several means by which a child may be deemed emancipated and support cut off. Under section 6(b)(3), the child may be considered emancipated if she is "not under the care or control of . . . either parent." Separately, under § 6(a)(3), the child may be considered emancipated for the purposes of support if she is over eighteen, not enrolled in school, and capable of supporting herself through employment. The *Tew* court did not address Indiana's free-standing emancipation statute, Ind Code Ann § 31-34-20-6, in its opinion.

82 *Tew*, 924 NE2d at 1266–67.

83 Id at 1267.

84 See, for example, *Anderson v Loper*, 689 S2d 118, 120 (Ala Civ App 1996); *Thomas B. v Lydia D.*, 886 NYS2d 22, 26–27 (NY App 2009); *Purdy v Purdy*, 578 SE2d 30, 31 (SC App 2003).

child could not be emancipated due to his or her lack of financial self-sufficiency. Thus, the court ordered a continuation of child support.

In a smaller number of cases, courts have held that a child was sufficiently independent to be legally emancipated. Consistent with the traditional approach, these courts terminated the child support order following their finding of emancipation. In the New York case *Labanowski v Labanowski*,[85] the father sought to dismiss his support obligations to his children, who had allegedly estranged themselves from him.[86] The appellate court held that the father's claim could not be dismissed, concluding that "a child of employable age, who actively abandons the noncustodial parent by refusing all contact and visitation, without cause, may be deemed to have forfeited his or her right to support" and remanding for a full hearing on whether the estrangement was unjustified.[87]

There are *many* more cases in which states have ruled on what constitutes emancipation for the purposes of continuing or severing a child support obligation.[88] Similarly, various treatises have summarized the factual situations under which courts have and have not found minors to be emancipated.[89] However, these cases proceeded under the assumption that emancipation ends a child support obligation. In essence, the inquiry is a one-step process: whether the child is emancipated determines whether the child will continue to receive support.

In sum, the emancipation cases fall neatly into a pattern, either granting emancipation or granting child support. While states have markedly different laws on emancipation and child

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85 857 NYS2d 737 (NY App 2008).

86 Id at 739.

87 Id at 740 (quotation marks omitted). See also *McKay v McKay*, 644 NE2d 164, 168 (Ind App 1994) (holding that a twenty-year-old son's refusal to interact with his father was sufficient ground for terminating the father's responsibility to pay child support); Castle, 20 Fam L Q at 351 (cited in note 5) ("Usually, where a child voluntarily leaves home without parental permission even though the parent is willing to support the child within the family household, a court will terminate the parent's support obligation.").

88 See, for example, *Cure v Cure*, 767 NE2d 997, 1002 (Ind App 2002) (holding that a father could not declare his daughter emancipated for the purpose of relieving his child support obligation); *Dowell v Dowell*, 73 SW3d 709, 717 (Mo App 2002) (holding that a daughter was emancipated and her father's child support obligation was discharged); *Ragan v Ragan*, 931 SW2d 888, 891 (Mo App 1996).

89 See generally, for example, Morgan, 12 Divorce Litig 1 (cited in note 15); Alice M. Wright, *What Voluntary Acts of Child, Other than Marriage or Entry into Military Service, Terminate Parent's Obligation to Support*, 55 ALR5th 557 (1998).

support—ranging from no statutes to explicit and detailed statutes—state court decisions have nonetheless been largely consistent. These cases, for the most part, do not examine the individual state's statutory language in great detail to determine whether emancipation and child support should perhaps continue to coexist in an individual case. Instead, they rely upon the traditional understanding that emancipation and child support are mutually exclusive.

There is, however, one interesting caveat: the cases hint in dicta at reasoning that would support an erosion of this bright line. In *Tew*, the court noted that full emancipation is not required for a child support order to be modified because "[u]nder certain circumstances, repudiation [of the parental relationship] will obviate a parent's obligation to pay certain expenses for a child."[90] By contrast, in *Labanowski*, the court distinguished cases in which the children voluntarily withdrew themselves from their parent from cases in which the severance of the relationship was due to the "parent's malfeasance, misconduct, neglect, or abuse."[91] In the latter cases, prior courts have refused to relieve parents of support obligations.[92]

Courts have thus implied that they are willing to make decisions based on the actions of the child and parent, irrespective of a formal emancipation decision—that is, they will end child support in the case of willing child repudiation, and they will continue child support obligations in the case of parental malfeasance. But no case—until July 2012—explicitly used this reasoning to break down the statutory emancipation–child support wall.

B. A New Approach: Emancipation and Continued Child Support

One recent case has broken the trend, allowing a form of statutory partial emancipation by which the child was deemed emancipated but retained the right to seek child support from

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90 *Tew*, 924 NE2d at 1269. *Tew* reasoned that "adult children who willfully abandon a parent must be deemed to have run the risk that such a parent may not be willing to underwrite their educational pursuits." Id, quoting *McKay*, 644 NE2d at 167.

91 *Labanowski*, 857 NYS2d at 740.

92 See *Thomas B.*, 886 NYS2d at 26 (noting the rule that self-emancipation due to a child's willing abandonment of the parent requires that the abandonment "not [be] the result of actions on the part of the parent"); *Wiegert v Wiegert*, 699 NYS2d 597, 598 (NY App 1999) (noting the same for a case of abuse); *Alice C. v Bernard G.C.*, 602 NYS2d 623, 631 (NY App 1993) (noting the same for a case of neglect).

her mother. In *Diamond*, the district court described Jhette Diamond as a "'classic case' for emancipation": she left the troubled home of her mother and was thriving independently while living with foster parents.[93]

The lower court investigated the requirements for emancipation under the New Mexico Emancipation of Minors Act.[94] This Act states, in relevant part about the general grant of emancipation power:

> Any person sixteen years of age or older may be declared an emancipated minor for one or more of the purposes enumerated in the Emancipation of Minors Act if he is willingly living separate and apart from his parents, guardian or custodian, is managing his own financial affairs and the court finds it in the minor's best interest.[95]

In Jhette Diamond's case, the court found each of these conditions met.[96]

The district court then ruled on Jhette's motion for continued support from her mother, finding that it was possible to award support even after emancipation. The court order of emancipation thus stated that Jhette was "an emancipated minor in all respects, except that she shall retain the right to support from [her mother]."[97] The New Mexico Court of Appeals reversed, holding that "New Mexico law does not permit a minor emancipated pursuant to the [Emancipation of Minors Act] to collect child support payments" and that a court may not "pick and choose the purposes for which a child is emancipated."[98]

On appeal, the Supreme Court of New Mexico examined the plain language and legislative purpose of the Act. This Act, first adopted in 1981 and recodified in 1995, was passed in response to a call for a legislative statement of emancipation and its consequences.[99] It sets forth requirements for a petitioner seeking emancipation and a procedural mechanism for a minor to obtain a declaration of emancipation.[100]

Regarding the effects of emancipation, the Act states:

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93 *Diamond*, 283 P3d at 261.

94 NM Stat Ann § 32A-21-1 et seq.

95 NM Stat Ann § 32A-21-4.

96 *Diamond*, 283 P3d at 261.

97 Id at 263.

98 *Diamond v Diamond*, 245 P3d 578, 579, 582 (NM App 2010).

99 *Diamond*, 283 P3d at 264.

100 See id at 264–65; NM Stat Ann § 32A-21-7(A).

> An emancipated minor shall be considered as being over the age of majority for one or more of the following purposes:
> (A) consenting to medical, dental or psychiatric care without parental consent, knowledge or liability;
> (B) his capacity to enter into a binding contract;
> . . .
> (D) his right to support by his parents;
> . . .
> (F) establishing his own residence;
> (G) buying or selling real property.[101]

The court examined the phrase "one or more of the following purposes" to determine whether it would permit a court to craft an emancipation order tailored to include only those effects of emancipation that support the best interests of the child.[102] The court ruled in the affirmative, notwithstanding the statute's requirement that the child be managing his own financial affairs as a precondition for emancipation.[103] Holding that "[it did] not see management of one's financial affairs and entitlement to support as inherently contradictory," the court allowed a child to be legally emancipated while still requiring her mother to support her financially.[104] The court found textual support for this result in the use of the disjunctive "or" in the phrase "one *or* more of the following purposes."[105]

Similarly, the court determined the Act's provision that a child be "managing his own financial affairs" need not mean that a child was completely economically self-sufficient.[106] Under this reading, a child could be emancipated without a showing of total self-sufficiency, leaving the court to determine whether continuation or establishment of a child support order was appropriate.[107]

The court based its interpretation of the statute on an investigation of "managing [one's] financial affairs" in other types of cases, such as guardianship, conservatorship proceedings, and spousal support.[108] In guardianship and conservatorship

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101 NM Stat Ann § 32A-21-5.
102 *Diamond*, 283 P3d at 266–67.
103 See text accompanying notes 95–96.
104 *Diamond*, 283 P3d at 267.
105 Id at 266 (emphasis added).
106 Id at 267.
107 Id.
108 *Diamond*, 283 P3d at 267–68.

proceedings, the phrase is used to refer to the individual's capacity and ability to manage his affairs, as opposed to his economic self-sufficiency.[109] Further, the court noted that in spousal support cases, the spouse may be very well able to manage her own affairs and still be entitled to support.[110] The court thus viewed the use of "managing [one's] own financial affairs" in the emancipation statute to be (1) defined as the ability to self-support, not the means to do so; and (2) not contradicted by a continued entitlement to support. The court also observed that the Act's provision that the minor could continue to receive public assistance worked against the notion that a minor must be exclusively self-supporting to be emancipated.[111]

The court bolstered its reasoning with a study of the legislative purpose of the Act, which was to provide flexibility to tailor emancipation orders to suit the best interests of the child.[112] Finally, the court looked to cases in New Mexico and other states that predate the passage of the Emancipation of Minors Act, finding evidence that courts would grant common law partial emancipations while continuing the parents' support obligations.[113]

Diamond thus raises the following question: Should there be such a thing as limited statutory emancipation when it comes to child support? The next Part examines this question, primarily in the context of states that have emancipation statutes, but also with application to those states that have common law emancipation only.

III. WHY COURTS CAN—AND SHOULD—FOLLOW *DIAMOND*

Diamond unsettled the question of whether statutory emancipation must terminate or preclude a child support order in the absence of explicit language to the contrary. This Comment finds several avenues of support for the claim that *Diamond* should not be an outlier, and that the court's grant of partial

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109 See id at 267.

110 Id at 267–68.

111 Id at 268.

112 See *Diamond*, 283 P3d at 266–67.

113 See id at 269–71. See also, for example, *Fevig v Fevig*, 559 P2d 839, 841 (NM 1977) (holding that "there was a partial emancipation of [the minors] with respect to their parents' right to discipline and care for them," but without extinguishing the parents' duty of support).

statutory emancipation while continuing child support should provide instruction to other judges.[114]

This Part first looks to the broad purposes behind emancipation and child support statutes and to the interpretation of similar statutes in the child custody and nonemancipation support contexts. Next, it discusses ways in which emancipation does not provide a bright line for the termination of parental obligations; in several areas, parents remain liable and responsible for their emancipated minors. Finally, it examines changed circumstances in families and the liberalization of family-law policies over the last fifty years.

Concluding that there are ample grounds to support a decision that an emancipation order should not automatically terminate a child support obligation, this Part then examines the likelihood that judges in different states will adopt this rationale. It ends with a proposal for a totality-of-circumstances approach that would advise when continuing child support would be warranted in an individual case.

A. The Purposes behind Emancipation and Child Support Statutes

This Section examines the similarities among state emancipation statutes and argues that *Diamond* is applicable outside New Mexico. State legislatures considered their respective emancipation and child support statutes to have similar goals: serving the best interests of the child and providing a financially sound solution to the state.[115]

1. Best interests of the child.

Though emancipation statutes vary greatly, they nearly always demand that a declaration of emancipation should only be granted if it is in the minor's best interest.[116] The *Diamond* court

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[114] The Comment's solution speaks broadly to the notion of general post-emancipation support and is not limited to the situations in which a child support obligation was already in place. As in *Diamond*, a party seeking emancipation may also move for the establishment of a child support order, assuming the court determines that a duty of parental support continues.

[115] For a discussion of differences among individual states in the appropriateness of applying a *Diamond*-like interpretation in a particular state given the differing statutes, see Part III.E.

[116] See, for example, Ala Code Ann § 26-13-1 (Bender 2009); Cal Fam Code § 7122(a); Conn Gen Stat Ann § 46b-150b; NM Stat Ann § 32A-21-4; 12 VT Stat Ann § 7155(a). Connecticut's statute is unique in that it demands merely that emancipation

noted that the New Mexico Legislature specifically added this requirement prior to enactment.[117] The court found "persuasive indications of the Legislature's intent that district courts should tailor emancipation orders to the best interests of the minor in each particular case."[118] The existence of identical best-interests language in other state statutes suggests that this reasoning should not be limited to New Mexico. This should come as no surprise: the best-interests-of-the-child standard is common throughout family law, appearing in custody, abuse, neglect, and paternity cases.[119]

The standard is also relevant in the child support context. Although the legislative debate over the federal child support statute was described as limited and confused,[120] several scholars and courts have argued that child support is also primarily predicated on serving the best interests of the child.[121] Further, the Office of Child Support Enforcement includes this phrase as part of its mission and demands that state agencies keep this objective in mind.[122]

Courts have interpreted the best-interests language in emancipation statutes to mean that emancipation should not be granted if the child is not financially self-sufficient, and would be better off remaining financially supported and unemancipated. But coupled with the idea that child support is also designed to serve the child's best interest, courts could justifiably conclude that, in some cases, the child's best interest would best be

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be in the best interest of the minor, any child of the minor, or the parents or guardian of the minor.

117 *Diamond*, 283 P3d at 267.

118 Id at 266–67. See also id at 271 (noting that "[i]t is well-settled law that when [a] case involves children, the trial court has broad authority to fashion its rulings in [the] best interests of the children") (quotation marks omitted).

119 See Jason M. Merrill, Note, *Falling through the Cracks: Distinguishing Parental Rights from Parental Obligations in Cases Involving Termination of the Parent-Child Relationship*, 11 J L & Fam Stud 203, 207 (2008) (observing that, especially in the case of abuse and neglect, "[n]early every jurisdiction provides that the best interests of the child are the number one priority in parental termination proceedings").

120 See Garrison, 86 Cal L Rev at 91 (cited in note 2).

121 See Hatcher, 42 Wake Forest L Rev at 1032–33 (cited in note 31).

122 See, for example, Office of Child Support Enforcement, *Requests for Locate Services, Referrals, and Electronic Interface* (Department of Health and Human Services 2012), online at http://www.acf.hhs.gov/programs/css/resource/requests-for-locate-services-referrals-and-electronic-interface (visited Nov 24, 2013) (noting that state child support and welfare agencies can work together "so that child support services may be provided in appropriate cases and tailored to the needs of individual families in the best interests of the child").

served by both emancipation and continued parental support.[123] Given that both emancipation and child support statutes share the goal of furthering children's best interests, granting post-emancipation child support may be the most faithful way to further this joint legislative purpose.

2. Financial soundness.

A secondary goal of emancipation and child support statutes was creating a system that would not impose a large financial burden on the state. For example, the sponsors of the bill that led to California's emancipation statute[124] promised that more frequent emancipation would not cost the state additional money.[125] The focus in nearly every emancipation statute on ensuring that the minor is financially secure before granting emancipation serves this legislative goal of avoiding a financial burden. State legislatures wanted to be confident that, by establishing emancipation statutes, they would not be merely transferring the costs of dependent children from their parents to the state.

Similarly, as discussed in Part I.B, a longstanding stated intent of the federal child support program was to force parents to reimburse the government for welfare payments.[126] One mission of the child support movement was to support the popular societal view that both parents, as opposed to the state, have the primary obligation to support their child.[127]

Requiring that emancipated children be capable of managing their own affairs and allowing post-emancipation child support *would* help ensure that emancipated children will not become dependent on state support. Financial responsibility, far from being inconsistent with continued support, might instead be contingent upon it. Recall that some state statutes "have used capability and not accomplishment as the measure [of financial independence]."[128] The *Diamond* court also found that "managing

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123 This argument is even stronger in cases in which children are seeking emancipation due to parental malfeasance or neglect.

124 Cal Fam Code § 7000 et seq.

125 See Sanger and Willemsen, 25 U Mich J L Ref at 256 (cited in note 18) (noting that the alternative to emancipation is often expensive state-run foster care).

126 See notes 36–52 and accompanying text.

127 See Morgan, 42 Fam L Q at 367 (cited in note 40) (noting the Congress-induced shift in the burden of support from the public to the private sphere).

128 Castle, 20 Fam L Q at 370 (cited in note 5). See also Utah Code Ann § 78A-6-803 (noting that the minor must be "capable of living independently" and "capable of managing his or her own financial affairs").

[one's] financial affairs" referred to an individual's capability, and not his means, to self-support.[129] This definition is consistent with the goal of avoiding costs to the state. Indeed, the child seeking emancipation would be incentivized to demonstrate the ability to manage his financial affairs if doing so would mean he has a chance of emancipation while retaining support from his parents. Requiring the combination of financial responsibility and continued parental support may in fact be the most financially feasible option for the state, consistent with the statutory goals.

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The emancipation–child support question fuses two sets of statutes: the state statutes on child support orders and the state statutes on emancipation. A hybrid approach, allowing both emancipation and continued child support, might be cost-effective while serving the best interests of the child. Moreover, as will be discussed below, this approach is consistent with the application of similar statutes concerning the obligations of parents whose rights have been terminated, as well as with those concerning the rights of parents who are behind on their obligations.

B. Parental Rights and Obligations Are Already Separated

The notion that parental rights and obligations are reciprocal—meaning, if one terminates, so does the other—has already been undercut in several areas of family law. In both child custody and child support situations, courts have recognized that a parent's obligations may continue even after his rights are severed. Post-emancipation child support conceptually fits with this new pattern.

1. Child custody.

Similar to the emancipation and child support question, a split exists among states as to whether termination of parental rights by the state—due to neglect or abuse—also terminates a child support obligation. Traditionally, the rights and obligations of parenthood were viewed as joined; one author noted that "[t]he majority of courts hold that parental rights and parental

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[129] *Diamond*, 283 P3d at 267. See also Part II.B.

obligations are reciprocal in nature."[130] The logic is that, if the parent is losing the right to custody, to visitation, and to control the child's training and education, the child should likewise lose the right to support. The best-interests explanation is that a child's relationship with an abusive parent cannot be totally severed if a payment relationship continues to exist.[131]

For example, in *Ponton v Tabares*,[132] a court terminated a father's parental rights after allegations of sexual abuse.[133] The court then granted his petition to relieve his child support obligation, finding that a severance of all ties to an abusive parent was in the child's best interest.[134] The opinion stated that other jurisdictions similarly had held that an "obligation to pay child support ended when [the] parental rights were terminated."[135]

However, a wave of states is "beginning to stray from [ ] the majority rule that parental rights and obligations are reciprocal."[136] Two cases highlight an increased willingness to diverge from this traditional approach. In Michigan, one court recently noted that the plain language of the relevant statute does not associate parental obligations with parental rights; instead "the statutory structure indicates the Legislature's determination that parental rights are distinct from parental obligations, and nothing in the statutory structure indicates that the loss of parental rights automatically results in the loss of parental obligations."[137] There, the court held that the parent had no authority for the claim that he was entitled to have his child support obligation suspended when his parental rights terminated.[138]

A lower panel in this case had articulated that the goal of terminating parental rights was to "protect the child."[139] The court noted that cutting off child support upon the termination of parental rights would not protect the child from additional harm from his parent. Additionally, the court worried that ending support obligations upon a finding of abuse may create a perverse disincentive to report abusive behavior if such a report

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130 Merrill, Note, 11 J L & Fam Stud at 204 (cited in note 119).
131 Id at 207–08.
132 711 S2d 125 (Fla App 1998).
133 Id at 126.
134 Id.
135 Id.
136 Merrill, Note, 11 J L & Fam Stud at 209 (cited in note 119).
137 *In re Beck*, 793 NW2d 562, 563–64 (Mich 2010).
138 Id at 565.
139 *In re Beck*, 788 NW2d 697, 700 (Mich App 2010).

would mean the end of child support upon the state finding of malfeasance.[140]

In a similar case, the Rhode Island Supreme Court agreed that "automatically cutting off financial support to a child at the time parental rights to the child are terminated ignores the plain language and intent of our statutes."[141] Other courts have held that financial payments do not equal a continued relationship with the parent.[142]

Several states have embraced this modern approach, expressly detaching parental obligations and rights. State statutes note that rights can be curtailed while obligations continue. In contrast to the traditional approach that rights and obligations are reciprocal, now "[n]early every jurisdiction provides that the best interests of the child are the number one priority in parental termination proceedings."[143] Jason M. Merrill argues that discharging a child support obligation will often do exactly the opposite and be unduly harmful to the child.[144]

Many of these arguments also apply to the emancipation–child support context. Parental misconduct, though not typically rising to the level of neglect that would warrant state intervention, is often at issue in emancipation proceedings. Emancipation courts could thus turn to the logic of the Michigan and Rhode Island courts. Most broadly, the courts' language supports a reading that the rights and obligations of parents need not be considered entangled in every case.

The strongest counterargument to this reasoning comes in the "have their cake and eat it" view of post-emancipation child support. Professor Castle described the argument this way: "The standard of living of a child without parental support may be

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[140] See id. See also Merrill, Note, 11 J L & Fam Stud at 211 (cited in note 119) ("The financial struggle faced by single mothers often places them in the precarious situation of choosing between protecting their children by filing a petition to terminate the rights of an abusive or neglectful co-parent, or preserving the child's right to support by foregoing such a petition.").

[141] *State v Fritz*, 801 A2d 679, 688 (RI 2002). The child support statute, RI Gen Laws § 15-5-16.2, states that "the court may from time to time upon the petition of either party review and alter its decree relative to the amount of support and the payment of it," consistent with the best interests of the child. RI Gen Laws § 15-5-16.2(a), (c)(2). The *Fritz* court noted that the parental termination statute, RI Gen Laws 1956 § 15-7-7, addresses only the "legal rights of the parent to the child" and not the reverse, indicating that the child could maintain a right to support from his parent even after parental rights are terminated. *Fritz*, 801 A2d at 685.

[142] See Merrill, Note, 11 J L & Fam Stud at 208 & n 51 (cited in note 119).

[143] Id at 207.

[144] See id at 208.

well below that which was available to him within the family unit. But, allowing a child to continue to enjoy those comforts and advantages while defying parental authority permits the 'destruction of all parental authority.'"[145]

Judge Roger Monroe, concurring in *Anderson v Loper*,[146] expressed this fear in support of his conclusion that the child in that case was not emancipated even though he had moved out against his parent's wishes.[147] The judge commented that "the law is doing no favors to either the 'child' or the parents by requiring the parents to continue to support that 'child' under the guise of child support" because continuation of child support would remove any incentive the child would have had to be obedient.[148] He stated: "In essence, we make it possible for her [to] disobey her parents."[149]

These concerns about children's behavior in a post-emancipation–child support world may very well be outweighed by concerns about parents' behavior in the alternate status quo world of no post-emancipation child support. In the neglect and abuse context, courts have been cautious about creating incentives to "force" a breaking of parental rights if that would relieve a parent of a child support obligation.[150] Mandating termination of support after emancipation may create perverse incentives in a similar way: the child should not fail to seek emancipation in cases in which it is advisable for fear of having child support cut off, nor should the parent push the child toward emancipation because the parent wants relief from a support obligation.

Further, it is important to stress that in no situation will post-emancipation child support be guaranteed. Its availability in appropriate cases would not bind the hands of judges in the kinds of cases of concern to Judge Monroe, when awarding support might be counterproductive.

It is unclear whether the concern about adults behaving strategically should be greater than the concern about children behaving strategically. But it is clear that both must be fairly considered as part of the discussion—and it is arguably the case that the costs and harms of adults behaving strategically are

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145 Castle, 20 Fam L Q at 370 (cited in note 5).

146 689 S2d 118 (Ala Civ App 1996).

147 Id at 120–21 (Monroe concurring).

148 Id (Monroe concurring).

149 Id at 121 (Monroe concurring).

150 See Merrill, Note, 11 J L & Fam Stud at 207–08 (cited in note 119).

more widespread, from a child-welfare perspective and from the systemic value of parental responsibility.

2. Child support.

In contrast to the child-custody situation, parental rights *are* often explicitly tied to their obligations when it comes to an existing child support order. There are many cases in which a parent's failure to pay child support resulted in a termination or limitation of parental rights.[151] The state has a strong interest in enforcing child support obligations through restrictive measures as a means of deterring parents from shirking their obligations.

This may seem like a counterexample, in that parental obligations and rights are linked. Post-emancipation child support demands the opposite: a conceptual separation of parental rights and obligations, such that obligations might continue even after rights are terminated. However, the broader goals of both policies would be similar, using child support as a stick. Parents who fail to provide a stable home for children such that children seek emancipation arguably should not be relieved of support obligations, much as courts have found that parents who fail to pay their child support orders should not be immediately entitled to such rights as visitation.

C. The Line Is Already Blurred

If emancipation were in practice a complete change in a child's legal status, one would expect the following: Parents would have no obligations or liabilities to their emancipated children. Unemancipated children would have no rights of adulthood before reaching the age of majority. And finally, one would predict that emancipation would be as the law intends for it to be, a severance that is both total and permanent.

In reality, none of these propositions is true. This lends support to the idea that the emancipation line is already blurred. Indeed, there is significant evidence that emancipation was never a bright line at all; partial emancipation as a concept has existed for decades. Prior to the enactment of emancipation

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[151] See, for example, *In re K.D.*, 647 SE2d 360, 369 (Ga App 2007) (holding that the father being behind on child support was enough to support termination of parental rights). But see *In re B.W.Z.-S.*, 222 P3d 613, 617 (Mont 2009) (holding that the fact that a father was behind on child support payments did not warrant an order terminating his parental rights to child).

statutes, common law cases discussed partial emancipation.[152] Traditionally, these partial emancipations were very specific: a child could be emancipated, for example, for the limited purpose of being able to retain his own wages. Some of these cases have even gone so far as to hold that parental support should, in some circumstances, continue beyond emancipation.[153]

It would be a surprising outcome if legislatures intended emancipation statutes—at least those that do not explicitly bar post-emancipation child support—to foreclose an option of partial emancipation that would have been available at common law.[154] Post-emancipation child support is merely a point further along the common law spectrum; instead of the child being emancipated for limited purposes, he may be emancipated for all purposes of majority save one: the right to collect support from his parents.

Courts are increasingly recognizing that flexibility and discretion are often key to serving the best interests of the child. Various cases demonstrate this trend.

1. Post-emancipation parental liability.

In several contexts, emancipation does not grant parents a total reprieve from their obligations. One academic notes that "[p]itfalls [a]wait [e]mancipated [p]arents" who end up with unexpected expenses and liability following the emancipation of their children.[155] She gives the example of parental liability for auto accidents caused by emancipated minors.[156] In California, the California Vehicle Code trumps any emancipation order, meaning that a parent who signed a child's application for a

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[152] See, for example, *In re Sonnenberg*, 99 NW2d 444, 447–48 (Minn 1959) ("With the passage of time a number of courts, including this court, have come to recognize (although loath in many instances to recognize what they were doing by name) that emancipation be complete, partial, conditional, absolute, or limited as to time or purpose.") (citation omitted); *In re Marriage of Robinson*, 629 P2d 1069, 1072 (Colo 1981) (noting that "[a] minor may be emancipated for some purposes but not for others").

[153] See *In re Sonnenberg*, 99 NW2d at 448 (noting that courts have held that emancipation may be limited to termination of parental rights and control without relieving the parent of his obligations of support); *Fevig v Fevig*, 559 P2d 839, 841 (NM 1977) (finding that support could continue because emancipation was "partial" but noting explicitly that "there is no express emancipation in this case").

[154] For a use of the traditional rule that a statute should be read as not to override long-standing common law, see *United States v Texas*, 507 US 529, 534 (1993).

[155] See generally Christina Baine DeJardin, *Pitfalls Await Emancipated Parents*, 16 J Contemp Legal Issues 311 (2007).

[156] Id at 312–13.

driver's license is still financially responsible for the child's torts even after the child is emancipated.[157]

Similarly, even beyond the statutory age of majority that triggers automatic emancipation, several state courts have ordered divorced parents to continue supporting their children's educational expenses.[158] This has been a contentious issue for courts. Some states have held that they are without jurisdiction to order child support payments beyond the age of majority.[159] There is variety in state positions today,[160] but several states do disregard the supposed "automatic emancipation" age of majority in ordering that a support order continue while the child pursues his college education.[161] This suggests that the law already recognizes support for children beyond the age of majority, where a strict interpretation of the emancipation–child support line would not.

2. Pre-emancipation medical decisions.

Conversely, several areas of law already grant minors authority over decisions or roles that typically fall to parents. The most striking example of this is in the medical context. While traditionally parents have full authority to provide or withhold consent for minors to receive medical treatment,[162] courts and legislatures have carved out notable exceptions.

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[157] Cal Fam Code § 7050(d). See also Cal Vehicle Code § 17707; DeJardin, 16 Contemp Legal Issues at 312 (cited in note 155).

[158] See, for example, *Baldino v Baldino*, 575 A2d 66, 69 (NJ Super Ct 1990) (stating that a child above the age of majority would continue to be unemancipated for the purposes of support while he sought further education).

[159] See, for example, *Curtis v Kline*, 666 A2d 265, 270 (Pa Super Ct 1995) (holding that a Pennsylvania statute requiring parents subject to a support obligation to pay for college expenses was unconstitutional).

[160] See Madeline Marzano-Lesnevich and Scott Adam Laterra, *Child Support and College: What Is the Correct Result?*, 22 J Am Acad Matrim Law 335, 341–72 (2009) (surveying the states' rules on college child support).

[161] See Judith G. McMullen, *Father (or Mother) Knows Best: An Argument against Including Post-majority Educational Expenses in Court-Ordered Child Support*, 34 Ind L Rev 343, 347 n 23 (2001) (citing that college expenses may be imposed on divorced parents in eighteen states).

[162] See Michelle Oberman, *Turning Girls into Women: Re-evaluating Modern Statutory Rape Law*, 85 J Crim L & Criminol 15, 47 (1994) (finding that, at common law, minors lacked the legal authority to consent to health treatment and that any treatment required parental consent).

Many states allow minors to obtain treatment for sexually transmitted diseases and substance abuse.[163] Similarly, several states recognize the "Mature Minor Doctrine" by which minors have the right to consent to medical treatment without parental approval.[164] The doctrine authorizes the minor to consent "if that minor is of sufficient maturity and intelligence to understand and appreciate the benefits and risks of the proposed treatment."[165] This right has been recognized in Arkansas, Georgia, Illinois, Kansas, Maine, Michigan, Mississippi, Missouri, New York, Nevada, Ohio, Tennessee, and West Virginia.[166]

3. Post-emancipation revocation.

Emancipation orders are not, in reality, permanent. For example, the Family Code in California authorizes the court to rescind an emancipation order if the minor has no means of support.[167] This revocation can be initiated by the child or an agent of the state, such as the District Attorney.[168] As such, Christina B. DeJardin argues that "[t]he true rule seems more like that a parent doesn't have to support the emancipated minor so long as the minor doesn't need to be supported."[169] Similar abilities to

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163 See Christine M. Hanisco, Note, *Acknowledging the Hypocrisy: Granting Minors the Right to Choose Their Medical Treatment*, 16 NY L Sch J Hum Rts 899, 899–900 (2000).

164 Id at 912. See also Lawrence Schlam and Joseph P. Wood, *Informed Consent to the Medical Treatment of Minors: Law and Practice*, 10 Health Matrix 141, 151 (2000) (stating that "[t]he doctrine permits minor children to seek required medical treatment with confidentiality, and ensures that they receive treatment in situations in which requiring parental consent would prevent them from doing so").

165 Nancy Batterman, *Under Age: A Minor's Right to Consent to Health Care*, 10 Touro L Rev 637, 641 (1994).

166 See Alicia Ouellette, *Body Modification and Adolescent Decision Making: Proceed with Caution*, 15 J Health Care L & Pol 129, 133 & n 32 (2012) (discussing the complexity of the law surrounding health decisions by minors and listing states that recognize the mature minor doctrine); Hanisco, Note, 16 NY L Sch J Hum Rts at 913 n 108 (cited in note 163).

167 Cal Fam Code § 7130(b). See also DeJardin, 16 J Contemp Legal Issues at 313 (cited in note 155).

168 See Cal Fam Code § 7132(a). See also DeJardin, 16 J Contemp Legal Issues at 313 (cited in note 155); Shireen Boulos and Jessica Goldberg, *Emancipated Minors*, in Jacqueline V. Lerner, Richard M. Lerner, and Jordan Finkelstein, eds, 1 *Adolescence in America: An Encyclopedia* 251, 252–53 (ABC-CLIO 2001) ("[A] few states allow emancipation to be revoked if a minor later becomes dependent on public benefits.").

169 DeJardin, 16 J Contemp Legal Issues at 313 (cited in note 155).

rescind emancipation during the child's minority exist in Wisconsin and Iowa.[170]

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Given these "loopholes," one has to ask how much of a departure post-emancipation child support, in certain circumstances, would be from the current state of the law. Parents are already unable to control unemancipated children's medical decisions; they can, however, be liable for emancipated children's torts and educational expenses; and an emancipation order can be terminated if a child is unable to support himself. These represent examples of how far bright-line emancipation has been faded into a gray zone, mostly by judicial interpretations of statutes.

D. Changed Circumstances in Parent-Child Dynamics and Family Law

There are two categories of changed circumstances that are important considerations for emancipation law. First, children are growing up faster than they did a generation ago, and, second, family instability has increased. These help explain why emancipation has become more of a relevant issue and why courts should perhaps evaluate emancipation statutes more critically than when they were first passed. Partly in response to these changed family dynamics, several other areas of family law have liberalized in both statutory and nonstatutory ways, suggesting that emancipation law is on a similar trajectory away from rigid categories. Where the reexamination of emancipation statutes is necessary, the patterns that have emerged in like areas of family law can provide critical guidance.

1. Children's maturity and family stability.

Children are becoming adultlike at an earlier age as a result of social and technological changes in the post–World War II era. Professor Castle wrote that minors are "growing up faster today, maturing at an earlier age, and more capable of handling their own affairs."[171]

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[170] See Chadwick N. Gardner, Note, *Don't Come Cryin' to Daddy! Emancipation of Minors: When Is a Parent "Free at Last" from the Obligation of Child Support?*, 33 U Louisville J Fam Law 927, 936 (1995).

[171] Castle, 20 Fam L Q at 360 (cited in note 5).

At the same time, society has moved far from the stereotypical nuclear, two-parent family unit of the 1950s.[172] Family composition has rapidly changed, through greater divorce, single-parent families, and remarriages.[173] A recent article noted, "Single-parent households make up about thirty percent of all families."[174] Census data indicate that fewer people marry today and divorce rates are higher. The percentage of births to unmarried women increased dramatically, from 5 percent of all births in 1958[175] to 40 percent of births in 2011.[176] By some accounts, "[o]ver the second half of the twentieth century . . . [f]amily instability [ ] increased sharply."[177] It is notable that most of these changes occurred *after* the wave of emancipation statutes in the 1960s and 1970s.

What do the faster onset of adulthood and the decline in traditional families mean for emancipation? There are two expected outcomes. First, one would expect that emancipations have become more common, suggesting that greater attention should be paid to the laws surrounding them. It is no longer the case, as it may have been in 1968, that emancipation was described as a "peculiar and, fortunately, unimportant corner of the law."[178]

Second, it is likely that the emancipation statutes—written and enacted a generation ago—might not adequately capture the needs of today's families.[179] Consider the increasingly common

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[172] See Morgan, 42 Fam L Q at 365 (cited in note 40) (arguing that the 1950s' model of the nuclear family has been rendered obsolete).

[173] See Ann Laquer Estin, *Golden Anniversary Reflections: Changes in Marriage after Fifty Years*, 42 Fam L Q 333, 334 (2008) (noting that changes in the family and in family law have "come fast and furious" since 1958).

[174] Samin Valimohammadi, *Are Two Parents Really Better than One?*, 16 J Contemp Legal Issues 9, 9 (2007).

[175] Estin, 42 Fam L Q at 335–36 (cited in note 173).

[176] Suzanne M. Bianchi, *Changing Families, Changing Workplaces*, 21 Future of Children 15, 18 (Fall 2011).

[177] Id at 16.

[178] Castle, 20 Fam L Q at 359 (cited in note 5), quoting Homer H. Clark, *The Law of Domestic Relations in the United States* § 8.3 at 240 (West 1968).

[179] Not every emancipation statute is a relic of a different generation; Arizona's statute, for example, was passed in 2005. Arizona explicitly authorized that "[a]n emancipation order issued pursuant to this article terminates a parent's or legal guardian's . . . [f]uture child support obligations relating to the emancipated minor." Ariz Rev Stat Ann § 12-2454.B. It could thus be argued that, if the circumstances were so changed from the 1970s, a legislature in 2005 would have recognized the need for greater flexibility in enacting a modern statute.

However, the bill summary from the House in Arizona suggests that the legislature was influenced by the language in existing statutes in passing its own. The emancipation

situation of siblings raising younger siblings because their parents are unfit.[180] Under the current emancipation–child support dichotomy, if these children sought emancipation from their parents, they might lose the right to needed financial support. If child support were to be granted in select post-emancipation situations, these children would not lose an entitlement to support based on factors outside their control.

2. Family-law liberalization.

In other areas of family law, laws have better evolved to protect the rights of family members in tense family situations. A parallel exists between liberalizing the rights of children in broken families and liberalizing divorce laws for parties in dissolving marriages.[181] Professors Sanger and Willemsen drew this connection, noting that "[i]ncompatibility and irretrievable breakdown are not concepts limited only to the marital relationship."[182]

Until the mid-twentieth century, fault-based divorce was the norm in American jurisdictions; "divorce was seen as a remedy for those spouses who had been wronged by their partner."[183] But as values changed, the concern of "the strong public interest in preserving marriage" became less salient.[184] By 1985, nearly

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and child support question was not directly discussed in the passage of the bill. See HB 2428 Bill Summary, 47th Ariz Legis, 1st Reg Sess, 2005, online at http://www.azleg.gov//FormatDocument.asp?inDoc=/legtext/47leg/1r/summary/h.hb2428_02-16-05_hs.doc.htm&Session_ID=82 (visited Nov 24, 2013). That one state chose to use more restrictive language in the passage of its statute should not weigh heavily against the argument that circumstances have dramatically changed in families.

[180] See Heather Won Tesoriero, *Siblings Raising Siblings*, Time *1 (May 6, 2001), online at http://www.time.com/time/magazine/article/0,9171,108827-1,00.html (visited Nov 24, 2013) (noting that two million children grow up in kinship care away from their parents).

[181] Following the 1960s, it became significantly easier for women to collect monetary compensation from ex-spouses even in no-fault divorces. See Herma Hill Kay, *An Appraisal of California's No-Fault Divorce Law*, 75 Cal L Rev 291, 306–07 (1987) (noting that "[e]vidence of fault is no longer admissible to determine the existence of irreconcilable differences, nor can it be used to modify or revoke spousal support where the supported spouse is living in nonmarital cohabitation with another person . . .") (citation omitted). *Diamond* drew this as a relevant comparison in discussing that another kind of support, spousal support, does not depend on any discussion of whether the recipient is capable of managing his or her own financial affairs. See *Diamond*, 283 P3d at 267–68.

[182] Sanger and Willemsen, 25 U Mich J L Ref at 348 (cited in note 18).

[183] Lauren Guidice, *New York and Divorce: Finding Fault in a No Fault System*, 19 J L & Pol 787, 793 (2011).

[184] Id at 794 (quotation marks omitted).

every jurisdiction had abandoned fault-based divorce.[185] It became significantly easier for spouses to obtain divorces in no-fault regimes.

In addition to lessening the requirements for divorce, "[t]he law [ ] largely abandoned the moral discourse that once surrounded marriage and divorce, and the status norms that once defined the rights and obligations of husbands and wives."[186] Laws became increasingly neutral on the norms of marriage and family law.[187] This focus on neutrality as to how families are structured—and what options are available in the case of the breakdown of the family unit—has modern implications for emancipation. Some pro-minor results that would have been viewed with skepticism in a fault-based-divorce world are now accepted as supporting the best interests of the child. For example, consider the minor's increased ability to make his own medical decisions even absent any signs of parental abuse.[188]

The fact that an increasing number of states are enacting emancipation statutes means that emancipation procedures are, in many jurisdictions, becoming clearer, and that the option of emancipation is more available. However, the circumstances under which emancipations occur are broader than was initially anticipated. It is likely true, for example, that in enacting its emancipation act, the California legislature thought emancipation would terminate a child support obligation. But it is also true that the legislature understood emancipation primarily as a tool for granting official recognition to the children who had voluntarily left their homes, such that they would not be picked up as runaways.[189] According to one of the California emancipation statute's principal authors, the drafters "never imagined" parental manipulation would play a role in emancipation proceedings.[190] The fact that emancipations are occurring in a wider variety of circumstances than was initially contemplated by the

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185 See id at 793. New York was a notable exception, retaining fault-based divorce until 2010. See Domestic Relations Law, in Relation to No Fault Divorce, 2010 NY Sess Laws ch 384, codified at NY Dom Rel Law § 170(7).

186 Estin, 42 Fam L Q at 335 (cited in note 173).

187 See id.

188 See Part III.C.2.

189 Sanger and Willemsen, 25 U Mich J L Ref at 246 (cited in note 18).

190 Id at 331 n 375.

legislature suggests that a reevaluation of the emancipation–child support dichotomy may be in order.[191]

Many states do not require parental "consent" to emancipation if the court finds it in the minor's best interest. And yet, the termination of child support upon emancipation serves as a major impediment. It is akin to requiring a finding of fault prior to divorce: adding a barrier to what may be a desirable, even inevitable, outcome.

In the divorce case, the modernization took place through the liberalization of statutes. But this Comment does not argue that a legislative shift and rewriting of statutes would be necessary to accomplish what may, in fact, be in the best interest of the child in the emancipation context. There is ample precedent suggesting that courts may reinterpret family-law doctrine based on changed circumstances. For example, presumptions of paternity have evolved. It was a strong common law presumption that a child of a married woman is a product of the marriage.[192] A mother or other party seeking to establish paternity by a man who was not her husband had to overcome this "marital presumption" by clear and convincing evidence.[193] But courts have recognized that this presumption is not always useful in modern family situations and may serve the counterproductive function of estopping mothers or putative fathers from establishing paternity.

In *Brinkley v King*,[194] the court questioned the presumption "because the nature of male-female relationships appears to have changed dramatically since the presumption was created."[195] The court noted that "separation, divorce, and children born during marriage to third party fathers" have become relatively common.[196] Thus, applying the principle of *cessante ratione legis cessat et ipsa lex*,[197] the court announced a rule of declining to apply the marital presumption in cases in which it did not

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191 See note 80 and accompanying text. See also *Redd v Redd*, 901 NE2d 545, 548–49 (Ind App 2009) (stating that both the mother and the father of a minor sought to modify their child support obligations after the mother sought a petition for emancipation).

192 See *Brinkley v King*, 701 A2d 176, 179 (Pa 1997).

193 Id.

194 701 A2d 176 (Pa 1997).

195 Id at 180–81.

196 Id at 181. See also *Michael H. v Gerald D.*, 491 US 110, 113–15 (1989) (Scalia) (plurality).

197 Translated as "[w]hen the reason of the law ceases, the law itself also ceases." *Black's Law Dictionary* at 1821 (cited in note 12).

make sense.[198] This holding did not merely change common law presumptions; it explicitly modified the application of the Uniform Act on Blood Tests to Determine Paternity,[199] which courts had previously applied only after the initial paternity presumption was overcome.[200]

Similarly, other areas of family law have liberalized in response to the changing structures of families. For most of the latter part of the twentieth century, court decisions evinced an "attitude that the mother had a prima facie right to custody" of children.[201] But "the maternal preference rule seems to have eroded somewhat in recent years," in favor of a "best interests of the child" approach.[202] This trend has held both in common law jurisdictions and in jurisdictions in which child custody statutes have expressed a view as to whether the mother or father should be preferred.[203]

These examples of changed circumstances demonstrate why emancipation doctrine may be liberalizing at the same pace as analogous areas of family law. The practice of banning child support post-emancipation is a prime candidate for *cessante ratione legis cessat et ipsa lex*, given that modern children's best interests would sometimes be served by living independently while still receiving support. A neutral, non-fault-based option may be the most respectful way a court can stay out of family dynamics. The next Section takes these lessons from the purposes behind emancipation statutes, similar statutes, and the evolution of other areas of family law to propose an approach for judges to use in determining how to evaluate emancipation and child support in an individual case.

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198 *Brinkley*, 701 A2d at 181.

199 23 Pa Cons Stat Ann § 5104(c).

200 See *Brinkley*, 701 A2d at 186–87 (Newman concurring and dissenting). In changing the use of the presumption, Justice Newman noted that Pennsylvania was one of only a few states that refused to allow a rebuttal of the presumption. See id at 188. See also David D. Meyer, *The Constitutional Rights of Non-custodial Parents*, 34 Hofstra L Rev 1461, 1464 (2006) ("Increasingly, however, noncustodial parents are turning their attention to the courts as well, demanding better or equal treatment as a matter of constitutional right."); Melanie B. Jacobs, *Overcoming the Marital Presumption*, 50 Fam Ct Rev 289, 293–94 (2012).

201 Thomas R. Trenkner, *Modern Status of Maternal Preference Rule or Presumption in Child Custody Cases*, 70 ALR3d 267 (1976).

202 Id at 268.

203 See id at 270.

E. Proposal: Totality of Circumstances

Based on an analogy to other areas of family law, this Comment argues for a totality-of-circumstances approach to the emancipation–child support question. It is certainly not the case that a court should award continued child support to every child seeking emancipation. But, as *Diamond* demonstrates, it is also not the case that *no* child seeking emancipation deserves continued child support. This Comment takes the position that the intent of both emancipation and child support statutes, a comparison to other statutes, and a study of changed circumstances all counsel in favor of a flexible approach to the relationship between emancipation and child support.

The following proposal addresses two critical questions: how a totality-of-circumstances approach would be effectuated and in which states this approach is more or less likely to succeed.

First, instead of viewing emancipation as a black-and-white line, the court should view the emancipation package as something that can be unbundled to the extent a state's statute allows. The primary question is *for what purpose(s)* the minor should be considered emancipated. As part of this inquiry, the court should consider whether the emancipated minor should continue to receive support from his parents. Based on language of emancipation statutes and of similar statutes, as well as an evaluation of the differing purposes in drafting these statutes, the following questions are of highest importance.

TABLE 2. QUESTIONS FOR CONSIDERATION IN GRANTING POST-EMANCIPATION SUPPORT OR OTHER BENEFITS

Question	Purpose of the Question	Implications
1. Who initiated the emancipation?	Legislatures did not intend for emancipation to be a coercive tool for parents to relieve their obligations.	If parent → evidence for continued support. If child → look to other factors.
2. To what extent is the parent responsible for the child's decision to seek emancipation?	Legislatures did not intend for emancipation to be a coercive tool for parents to relieve their obligations. Legislatures intended for the "best interests of the child" to be a primary consideration.	Greater evidence for continued support the more that a parent exhibited behavior that caused the child to emancipate.
3. What are the minor's financial obligations and other sources of support?	Courts and statutes have begun to employ the more expansive read of "managing one's financial affairs."	Greater evidence for continued support if child is ineligible for other sources of state support, if financially responsible.
4. What are the child's educational goals and expenses?	Legislatures intended for the "best interests of the child" to be a primary consideration.	Greater evidence for continued support if child is in school.

In an area of law as complex and personal as family dynamics, one-size-fits-all statutes may, in practice, fail to achieve the

legislature's goal of advancing the best interests of the child. These statutes may have secondary goals, such as procedural efficiency and clarity, but ultimately each comes down to child well-being. Courts can help make these statutes more effective by focusing their inquiry on the best interests of the child.

Second, this proposal addresses the question of where a totality-of-circumstances approach is most likely to be implemented. A *Diamond*-inspired solution to post-emancipation child support is not limited to New Mexico. The evidence for such comes broadly from similar legislative goals across the states in emancipation and child support statutes, comparison to other statutes, evidence of the lines being blurred, and changed circumstances.

New Mexico's statute, listing that a minor shall be emancipated for "one or more of the [enumerated] purposes,"[204] is especially flexible. Other states are vague on the explicit effects of emancipation. By contrast, a number of states expressly ban post-emancipation child support.

The likelihood of implementation of a *Diamond*-like scheme thus varies across the states. In some states, this Comment's proposed approach would fit neatly with existing state law (these states designated "high"). These "high" states have an emancipation statute with language that leaves room for a *Diamond* view of unbundling the consequences of emancipation as laid out in the statute.

In states that lack emancipation statutes altogether, a *Diamond* solution still holds promise. In granting judicial emancipations, judges in these states can still embrace the spirit of *Diamond* by setting a judicial order defining the consequences of emancipation. This is more likely to succeed in states that have child support statutes that do not mention emancipation (designated "medium"). In these "medium" states, a judge would have discretion to determine whether continued child support should exist as part of an emancipation order, because no child support statute would expressly forbid this.

It is a different story for states without emancipation statutes, but whose child support statutes list "emancipation" as a terminating event (designated "low"). Even in these states, however, judges may be able to grant post-emancipation child support. If a statute does not define what emancipation is, the judge

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[204] NM Stat Ann § 32A-21-4.

has more discretion in determining whether the child is "emancipated" for the purpose of the child support statutory termination. The judge should look to the common law understanding of emancipation, which (as discussed in Part III.C) often distinguished total from partial emancipation.[205]

Partial emancipation was considered, at common law, to have different legal effects than total emancipation. Citing the 1969 case of *Turner v Turner*,[206] Professor Katz, Professor Schroeder, and Sidman stated that:

> [A] partially emancipated child is occasionally able to assert rights normally incident to complete emancipation while still able to enforce parental obligations. Thus, for example, a minor child . . . may still be eligible to receive child support on the theory that, since only a partial emancipation took place, the child could revert to an unemancipated status at any time prior to attaining the age of majority.[207]

By the same logic, a judge may determine that a child seeking continued child support is only partially emancipated, such that the child's status would not bar him from continued support under the child support statute.

Alternatively, in states that do not define emancipation in a statute, there is reason to believe that not all kinds of emancipation would have been contemplated by the legislature as terminating events. Consider, for example, Kentucky's child support statute, Ky Rev Ann Stat § 403.213. It states: "Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child shall be terminated by emancipation of the child." Kentucky does not have an emancipation statute that defines emancipation. The child support statute, however, explains the different specifications for support if the emancipation is triggered by marriage or age. If by stating that child support terminates at emancipation, the legislature really meant "upon the age of majority or marriage," then the child support mandate may be less applicable to voluntary emancipations. Though the case for implementation of a *Diamond* approach is not as strong as in other states, judges in these "low" states could consider whether granting post-emancipation child

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[205] See *Robinson*, 629 P2d at 1072 (noting that "[a] minor may be emancipated for some purposes but not for others").

[206] 441 SW2d 105 (Ky App 1969).

[207] Katz, Schroeder, and Sidman, 7 Fam L Q at 215 (cited in note 11).

support would be consistent with their states' common law definitions of emancipation.

Finally, states with a statute that explicitly bars post-emancipation child support represent a fourth category of states. These cannot adopt a *Diamond* framework without a legislative change (designated "no").

Informed by a study of state statutes, the following table lays out the four categories of the likelihood of judges implementing the *Diamond* approach—by which a child may be deemed emancipated and still able to collect child support—in different states.

TABLE 3. LIKELIHOOD OF IMPLEMENTATION OF A *DIAMOND* APPROACH

High	State has an emancipation statute that does not have "all-or-nothing" language: for example, Alabama, Alaska, Arkansas, Illinois, Michigan, Missouri, Montana, Nevada, Tennessee, Texas, Vermont.
Medium	State has no emancipation statute: for example, Colorado, Delaware, Hawaii, Idaho, Massachusetts, Ohio, Pennsylvania, South Carolina, Wisconsin.
Low	State has no emancipation statute, but the child support statute lists emancipation as a terminating event for child support: for example, Kentucky, Minnesota, Nebraska, New Hampshire, New Jersey, New York.
No	State has emancipation statute that explicitly bars post-emancipation child support: for example, Arizona, California, Connecticut, Illinois, Iowa, Mississippi, Oregon, South Dakota, Utah, Virginia, West Virginia, Wyoming.

CONCLUSION

Emancipation has become a popular statutory tool in the past forty years. Unfortunately, statutes and case law have failed to keep up with the complex and intricate situations that

surround emancipation. The *Diamond* court carefully analyzed this problem in one such confused context: the relationship between emancipation and child support. The court ultimately determined that the best interests of the child would be met—and the emancipation statute would not be violated—if the court awarded post-emancipation child support.

Diamond was the first time a court specifically made this pronouncement in the context of statutory partial emancipation. This Comment argues that the logic is eminently sensible. Indeed, there is evidence that post-emancipation child support may have been a concept that drafters of the relevant statutes would have cited with approval. An analysis of the goals of the emancipation and child support statutes supports this solution, as it aligns with both the best interests of the child and financial soundness for the state.

Similarly, the *Diamond* solution gains support from the fact that the emancipation line is already blurred. Unemancipated children are now able to make their own medical decisions in many states; by contrast, emancipated children can still force their parents to pay for their car accidents and college expenses. Finally, other areas of family law are moving in the same direction: liberalization away from rigid categories.

The solution could be introduced to varying degrees in the fifty states. In some states that have flexible partial emancipation language, judges could implement a *Diamond* approach today. In others, such a system may still be possible, either under the terms of existing statutes or through legislative reform.

For both parents and children, the notion of post-emancipation child support may create the proper incentives to achieve the best outcome for the family. Rather than "having their cake and eating it too," the better framing of post-emancipation child support may be—in some cases—"the best of both worlds."