

EXTENDING ARTICLE 7 PINS PROCEEDINGS TO CHILDREN AGED 16 AND 17

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Under New York Family Court Act (FCA) § 413, parents are obligated to provide financial support for their unemancipated children under the age of 21. Yet parents are unable to file a petition under FCA Art. 7 to have a child declared a "person in need of supervision" (PINS) unless the child is under the age of 18 and the problems related to the petition began before the child's sixteenth birthday. This creates an injustice to parents of children of age 16 or older who may disregard their parents' guidance and yet file a petition to force the parents to provide them with financial support. The state legislature should extend the jurisdiction of Family Court to hear PINS petitions for all children up to age 18, thus making the state intervention through PINS proceedings available to more of these parents.

The current age restrictions on PINS petitions came about through the courts' attempts to deal with the original flawed Article 7 legislation passed in 1962. FCA § 712(a) states that a "person in need of supervision" may be a "male less than sixteen years of age and a female less than eighteen years of age who does not attend school . . . or who is incorrigible, ungovernable, or habitually disobedient and beyond the lawful control of a parent or other lawful authority . . ." In 1972, the Court of Appeals held that the differential treatment of children based on sex was a violation of the Equal Protection Clause of the U.S. Constitution. Since then, in the absence of legislative guidance, the courts have resolved the problem by allowing PINS petitions to be brought only for children under 16 of both sexes, although pursuant to FCA § 714(a), a petition may be brought concerning a child of 16 or 17 if the "need for supervision allegedly arose" when the child was under 16.

According to Family Court Act commentator Douglas Besharov, the Article 7 PINS procedures, as amended in 1982 to remove juvenile delinquency proceedings from the Article, were meant to provide a less-stigmatizing alternative to deal with children who were "status offenders" rather than actual law-breakers. A status offense is behavior that is not illegal, but is considered socially unacceptable for a person of a certain status, such as the habitual truancy of an elementary or high school student. The intervention of the court was conceived as offering treatment in the place of punishment, with the ultimate object of reforming the problem child into a responsible, productive member of society. This legislative goal is demonstrated by the fact that the court may, on its own motion, change the PINS proceeding to a neglect proceeding if the evidence indicates that the child's behavior is the result of parental neglect.

If a court finds that a child is a person in need of supervision (PINS), it may place the child in his or her own home, the home of a relative, with the Department of Social Services or the Division for Youth, but only for strictly limited time periods. The court may also issue orders of protection setting forth "reasonable conditions of behavior" not only for the child but also "a parent or other person legally responsible for the child's care" who is "before the court."

Though commentators have pointed out that the existing PINS system does not work perfectly, and the original vision of providing assistance for the child and family has perhaps not been lived up to, it is arguable that the current system is better than nothing. Why then should not the PINS petition jurisdiction be extended to children aged age 16 or 17? Our general expectations are that children of 16 and 17 years will, like younger children, live at home with their parents and under their supervision. We expect that most of these children will continue to attend school, or at least live at home, behave their parents' general wishes, and at about 18 or 19 probably leave home for college or a job and a place of their own. The general view is that children under 18 need some kind of regular adult supervision, if not by their parents then by others in the place of parents, and Article 7 was designed to help provide that when, for whatever reason, the parents are unable to provide that supervision. The current state of the law -- which cuts off PINS petitions for 16 and 17 year old children (unless PINS-related acts arose earlier) would seem on the face of it not to coincide with those expectations.

A further inconsistency arises from the fact the under FCA § 413(1)(a), parents are required to pay for the "care, maintenance and education of any unemancipated child under the age of twenty-one years" [FCA § 413(1)(b)(2)]. Parents of a difficult child of 16 or 17 may find themselves unable to control that child, unable to file a petition for PINS, and yet required to pay child support. There seems to be little justification for not providing these parents with the assistance provided to parents of children under 16 in the same situation.

A parent's statutory obligation of financial support for children under twenty-one under FCA § 413(1)(b)(2) apparently does not apply if the child is "emancipated."

A finding of emancipation is however not synonymous with termination of child support. E.g., in *Wayne County Dept of Social Services v. Schultz*, 366 NYS2d 845 (Fam Ct. 1975), the court found a 17-year-old boy who left home because of "unbearable" conditions to be emancipated, but held that because the child was on welfare the father's support obligation was not terminated. Emancipation in New York state is a matter of judicial rather than statutory law. It deals primarily with the financial aspects of the parent-child relationship -- a finding of emancipation not only often terminates the parent's support obligation but ends the child's duty to provide services to the parent. Emancipation most often arises as an issue when a child, or social services on behalf of the child, sues for financial support under FCA § 413.

In determining whether a child is emancipated, and thus whether the parent or parents are obligated to pay support, the courts consider such factors as whether then child is in fact self-supporting or is capable of being self-supporting, whether he or she lives at home, attends school, and is under parental control and guidance. A child who is in fact supporting him or herself will be found to be emancipated, while a child who is below an age to be legally employable cannot be emancipated as a matter of law. Similarly, a child who marries or joins the military may, though not necessarily, be found to be emancipated. In the cases most relevant to this discussion, a child may also be found to be emancipated if he or she is of an age to be self-supporting and has voluntarily and without justification -- ie, without abuse, neglect, unreasonable demands, or other parental bad behavior -- left the parental home in order to evade parental control and guidance.

It is perhaps not surprising that the great majority, though certainly not all, the cases in which child is found to be emancipated and the parent's obligation to pay child support ceases involve children 18 and older. For example, parents have been held not to be obligated to pay child support in the following cases: a 20-year-old college student insisted on living off-campus and staying out of state for the summer break against her father's wishes; an 18-year-old girl moves out of her father's home without good cause, moves in with her paramour, has a baby and goes on public assistance; an 18-year-old girl left her father's home without good cause, moved in with former stepmother, goes on public assistance; an 18-year-old daughter without justification moves to end parent-child relationship by refusing to visit with or communicate with her father and changes her name; a 19-year-old boy moves out after his father insisted he either get a job or go to college.

The stated rationale of these cases is that the courts will not interfere in the parent-child relationship by forcing a parent to support financially a child of an age to take care of him or herself who has voluntarily chosen to disobey the parent's reasonable wishes. It seems, therefore, that the function of emancipation differs fundamentally from the function of FCA Article 7 PINS proceedings. While a finding of emancipation prevents state interference in a parent-child relationship where a child of employable age has, without parental neglect or bad behavior, taken steps against the parent's wishes, the function of a PINS proceeding is quite different: here the state deliberately involves itself in the parent-child relationship, in its role of *parens patriae*, essentially taking over the raising of a child when the parents are unwilling or unable to control the child.

In keeping with this, courts have refused to declare a child emancipated when the parent's own behavior is perceived to somehow be to blame for the child's alienation from the parent, as in the following cases: a 19-year-old girl who moved out of her father's home to live with her boyfriend, have a child, and go on public assistance, was not emancipated as she had not moved out voluntarily and without good cause as there was not sufficient room and money for her at home; a 19-year-old boy who moved out of his father's house at age 15 after a heated argument to live with his mother is not emancipated and father must continue to pay support as evidence shows the father caused the breakdown in communication and did not attempt to contact his son; a daughter had good cause to abandon her father's home and he must continue to pay support when the child was expelled from her mother's home and the father would not let her move in with him, instead demanding that she attend a military or boarding school.

Thus, the defense of emancipation is by its nature of limited use for many parents of difficult to control children, as the courts are perhaps particularly likely to find some parental failing when the child in question is under the age of 18. And, as stated above, the Article 7 PINS legislation as it is now enforced applies only to children up to age 15, or ages 16 and 17 if the behavior in question began earlier. This leaves a gap of two years during which parents are obligated to support an alienated child without the assistance of PINS intervention, and without much likelihood of a court finding that the child is emancipated. It would surely be in keeping with the original intent of Article 7 as discussed above to extend jurisdiction to all children up to the age of 18.

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