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Child Marriage in the U.S.: Loopholes in State Marriage Laws Perpetuate Child Marriage

Sarah Ochieng¹

I. INTRODUCTION

The practice of child marriage is often discussed in the context of developing countries and many people find it unthinkable that child marriage also occurs in developed countries such as the United States of America.² However, child marriage is a serious problem in the United States that affects thousands of children each year.³ In fact, approximately 248,000 children were married in the U.S between 2000 and 2010.⁴ Among those were children as young as twelve years old.⁵ The majority of minors married adults between eighteen and 25 years old.⁶ Several hundred minors legally married adults who were in their 40s, 50s, 60s, and 70s.⁷ There are loopholes in state marriage laws that perpetuate child marriage by providing exceptions that make the set statutory minimum age irrelevant.⁸ For example, while some states do not set a statutory minimum age (the age floor) at which a person can get married, state marriage laws that set a statutory minimum age at the age of majority (eighteen

¹ Associate Member, (2020) Immigration & Human Rights Law Review

² Daniele Selby, *Child Marriages Happen in the US, Too. Here's Everything You Need to Know*. Global Citizen (Sept. 3, 2019), <https://www.globalcitizen.org/en/content/child-marriage-in-the-us-what-to-know/>

³ *Id.*

⁴ Unchained At Last, *Child Marriage – Shocking Statistics*, Unchainedatlast.org (2019), <https://www.unchainedatlast.org/child-marriage-shocking-statistics/> (last visited Nov. 3, 2019).

⁵ *Id.*

⁶ Anjali Tsui, *Married Young: The Fight over Child Marriage in America*, FRONTLINE (Sept. 14, 2017), <https://www.pbs.org/wgbh/frontline/article/married-young-the-fight-over-child-marriage-in-america>

⁷ *Id.*

⁸ *Id.*

years old) have exceptions that allow children to get married.⁹ Currently, only two states—Delaware and New Jersey—set the statutory minimum at eighteen years old without exceptions.¹⁰

This comment reviews the loopholes in state marriage laws. Part II considers the scope of child marriage as a human rights violation and the effects of child marriage. It also provides a background of the loopholes in state marriage laws, and a focus on the marriage laws of California, Alaska, Delaware, and New Jersey as examples of the different approaches states have chosen in enacting their marriage laws. Part III provides an analysis of the problem with the exceptions in the marriage laws. Part IV analyzes the case law and legislative history of the different approaches taken by different states. Finally, Part V suggests the approach state laws should take in eliminating the existing loopholes.

II. SCOPE AND BACKGROUND

A. Child Marriage is a Human Rights Violation

Child marriage is a violation of human rights.¹¹ In Article I of the Convention on the Rights of the Child, the United Nations declared that children are defined as “every human being below the age of eighteen years unless under the law applicable to the child,

⁹ Tahiri Justice Ctr., Forced Marriage Initiative, *Understanding State Statute on Minimum Age and Exceptions*, (July 1, 2019), https://www.tahirih.org/wp-content/uploads/2016/11/State-Statutory-Compilation_Final_July-2019_Updated.pdf

¹⁰ Bethlehem Feleke, *Delaware Becomes First US State to Fully Ban Child Marriage*, CNN (May 12, 2018), <https://www.cnn.com/2018/05/12/us/delaware-child-marriage-ban/index.html>; Susan Livio, *New Jersey bans child marriages. New law raises minimum age to 18*, NJ Advance Media for NJ.com (Jan 22, 2018), https://www.nj.com/politics/2018/06/no_more_child_brides_in_nj_new_law_says_they_must.html

¹¹ U.N. Office Of The High Comm'r For Human Rights *Child and Forced marriage: a violation of human rights*, OHCHR, (Nov 3 2016), <https://www.ohchr.org/EN/NewsEvents/Pages/ChildForcedMarriage.aspx>

majority is attained earlier.”¹² Article XVI of the Universal Declaration of Human Rights states that marriage should be entered into freely, and the persons entering into marriage must be of full age—when they can legally marry.¹³ In addition, Article XVI of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women commands that the minimum age for marriage be specified and child marriage be declared illegal.¹⁴ The minimum age for marriage and the requirement of the registration of all marriages are also specified in Articles I, II, and III of the 1962 Convention on Contest to Marriage.¹⁵

One of the reasons child marriage is a human rights violation is due to its negative effects on children. Child Marriage negatively affects many children by denying them childhood experiences, and disrupting their education, which in turn negatively affects the economy, puts them at risk of domestic violence and abuse, and has

¹² Convention on the Rights of the Child (CRC) (1989) 1577 UNTS 3. During the preparations for the International Youth Year (1985), the United Nations defines “youth” as those persons between the age of 15 and 24 years based on the statistics on youths. However, the United Nations Convention on the Rights of the child intentionally defined children as persons under the age of 18 because “it hoped that the Convention would provide protection and rights to as large an age-group as possible and because there was no similar United Nations Convention on the Rights of Youth.” *See*. United Nations—Department of Economic and Social Affairs (UN-DESA), <https://www.un.org/development/desa/youth/what-we-do/faq.html>

¹³ Universal Declaration of Human Rights (1948) GA Res. 217A (III), UN Doc A/810 at 71 (1948), <https://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx>. Although the United Nations does not define “full age,” it assumes that men and women are of full age when they are legally able to marry.) *Universal Declaration of Human Rights*, Stand Up For Human Rights (2019), <https://www.standup4humanrights.org/en/article.html>

¹⁴ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) 1249 UNTS 13, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

¹⁵ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) 1763 A (XVII), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx>

a perverse impact on global health as it is linked to sexually transmitted diseases and early pregnancies.¹⁶ Regarding early pregnancies, every year, tens of thousands of young girls die from pregnancy complications, which is the leading cause of death for adolescent females.¹⁷ Additionally, when young mothers give birth, the health of their children is jeopardized because the “growth of the mother competes with that of the fetus.”¹⁸ As a result, an adolescent mother’s child weighs on average 200 grams less than a child born to a matured woman.¹⁹

Because child marriage violates human rights and negatively affects children, many international organizations and nonprofit groups are working together in the fight against child marriage, with the hope of eventually ending it. Organizations such as Girls Not Brides, International Center for Research on Women, Walk Free, and the United Nations Populations Fund are dedicated to ending child marriage in communities and through that effort, providing young girls with a better future.²⁰ In the United States, the Unchained At Last organization and its allies have spearheaded the fight against child marriage.²¹ Most of the effort to combat child

¹⁶ Nawal M. Nour, *Health Consequences of Child Marriage in Africa*, *Emerging Infectious Diseases* vol. 12, 11 (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3372345/>

¹⁷ Rachel Vogelstein & Alexandra Bro, *It’s Time to Close the Loopholes on Child Marriage in the U.S.*, *FORTUNE* (February 20, 2019), <https://fortune.com/2019/02/20/child-marriage-minimum-age-us/>

¹⁸ World Health Org., *Nutrition: Nutrition of women in the preconception period, during pregnancy and the breastfeeding period Report* by the Secretariat, EB130/11 (20 December 2011), http://apps.who.int/gb/ebwha/pdf_files/EB130/B130_11-en.pdf

¹⁹ *Id.*

²⁰ Carlos Olson, *16 Organisations Working to Stop Child Marriage*, The Pixel Project’s “16 For 16” Campaign (December 6, 2013), <https://16days.thepixelproject.net/16-organisations-working-to-stop-child-marriage/>

²¹ Unchained At Last, *About Child Marriage, take action to end child marriage today*, Unchainedatlast.org (2019), <https://www.unchainedatlast.org/laws-to-end-child-marriage/> (last visited Nov. 3, 2019).

marriage in the United States has been through child marriage legislation since the loopholes in state marriage laws perpetuate child marriage in the U.S.²² Noticeable efforts have been made in two states, Delaware and New Jersey where both states passed legislation to end child marriage.²³

B. Comparison of Statutory Minimum Age among States

Nine states set their statutory minimum marriage age at eighteen: Delaware, New Jersey, Georgia, Kentucky, New York, Ohio, Texas, and Virginia.²⁴ However, only two, Delaware and New Jersey, have no exceptions to the minimum age.²⁵

Eighteen states, and Washington, D.C., set their statutory minimum marriage age at sixteen years old. These states are Alabama, Arizona, Arkansas, Colorado, Connecticut, Illinois, Iowa, Louisiana, Minnesota, Missouri, Montana, New Hampshire, North Dakota, South Carolina, South Dakota, Utah, Vermont, and Wisconsin.²⁶

Five states: Nebraska, Nevada, Oregon, Florida, and Tennessee, set their statutory minimum marriage age at seventeen.²⁷ While three states, Indiana, Kansas, and Maryland, set their statutory minimum at fifteen. In Alaska and North Carolina, the statutory minimum is fourteen.²⁸

On the opposite side of the spectrum are states whose marriage laws do not set a statutory minimum age for marriage and allow the marriage of any child as long as the statutory exceptions, such as parental consent, judicial approval, or pregnancy are met.²⁹ These states include California, Idaho, Maine, Massachusetts,

²² *Id.*

²³ *Id.*

²⁴ Tahiri Justice Ctr., *supra* note 9

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

Michigan, Mississippi, Oklahoma, Pennsylvania, Rhode Island, Washington, West Virginia, and Wyoming.³⁰

C. Loopholes in State Marriage Laws

Although some states set a statutory minimum marriage age, the minimum age is lowered when statutory exceptions, such as parental consent, judicial consent, and pregnancy allow children to get married under certain circumstances. These loopholes are problematic because it is difficult to ensure that a girl willfully marries and is not being coerced by parents or their “adult partner,” who might otherwise be prosecuted for statutory rape.³¹

(i) Parental Consent Exception

Parental Consent, which sometimes hides parental coercion, is the most common exception used.³² Under this exception, children who are under the statutory minimum age may get married if their parents’ consent to that marriage. Oftentimes, parents have to sign only a marriage license application.³³ The following are some states that include the parental consent exception in their marriage laws: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Ohio, and Florida. Additionally, states that recognize common law marriages—a marriage where two people capable of getting married live together as spouses and hold themselves as spouses for a specified amount of time—may find a minor’s common law marriage valid, even without parental or judicial approval.³⁴

³⁰ *Id.*

³¹ Nurith Aizeman, *The Loopholes That Allow Child Marriage In The U.S.*, NPR (August 30, 2017), <https://www.npr.org/sections/goatsandsoda/2017/08/30/547072368/a-look-at-the-loopholes-that-allow-child-marriage-in-the-u-s>

³² *Id.*

³³ Unchained At Last, *supra* note 4

³⁴ See, e.g., *In re Marriage of J.M.H.*, 143 P.3d 1116, 1119 (Colo. App. 2006) (“The common law marriage of a person is valid, regardless of

(ii) Judicial Approval Exception.

Another exception in state marriage laws is the judicial approval exception. This allows children under the statutory minimum age to marry as long as a judge grants that child permission.³⁵ Compared to all the state marriage laws that allow minors to get married if the statutory exceptions are met, only seventeen states: California, Colorado, Connecticut, Georgia, Iowa, Kentucky, Louisiana, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, Ohio, Texas, Utah, and Virginia, require that all minors get judicial approval before marriage.³⁶ The judicial approval exception effectively lowers the legal requirement, hence creating a loophole for couples whose age or age difference would otherwise trigger a statutory rape charge.³⁷

In addition, most of the marriage laws are silent on the considerations that judges should make when approving the marriage license of a minor, and often, a judge only has to approve the parental consent.³⁸ Consequently, “judges [s]erve to rubber-stamp parental consent rather than act as independent gatekeepers against the abuse and exploitation of children in the guise of marriage.”³⁹ Moreover, the judicial approval exception does not specify that the deciding judge should have particular expertise in matters such as family law, juvenile law, or domestic relations court.⁴⁰ Furthermore, “only New York, North Carolina, Texas, and Virginia have express provisions requiring the appointment of counsel to represent minors at hearings on petitions for permission

whether the person has reached the age of competency as established by statute, if the person is competent under the common law.”); see also *In re Miller*, 448 A.2d at 25 n.6 (statutory age requirement not applicable to common law marriages in action to declare juvenile a dependent child).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Nurith, *supra note* 31

to marry, or in the case of Texas and Virginia, to be emancipated and give them the rights of an adult."⁴¹

However, in some states, certain criteria must be met before a judge can approve the marriage of minors. For example, in Colorado, where the minimum marriage age is sixteen, a judge can approve the marriage of a sixteen-year-old only after making a "reasonable effort [t]o notify the parents or legal guardians of each underage party" and if the court, after reviewing the report of the guardian ad litem who is appointed to investigate the minor's best interests, finds that the minor "is capable of assuming the responsibilities of marriage and that the marriage would serve the [minor's] best interest."⁴²

Among states with the judicial approval exception that apply to minors under certain circumstances, only 17 states mandate that judges consider the minor's best interest.⁴³ Moreover, twelve states, and Washington D.C., empower clerks to issue a marriage license to minors without receiving approval from respective judges.⁴⁴

(iii) Pregnancy Exception

The marriage laws in seven states: Ohio, Arkansas, Indiana, Maryland, New Mexico, North Carolina, and Oklahoma, expressly allow pregnancy to lower the statutory minimum marriage age.⁴⁵

⁴¹ Tahirih Justice Ctr., *Falling Through the Cracks* (2017), <http://www.tahirih.org/wp-content/uploads/2017/08/TahirihChildMarriageReport-1.pdf>

⁴² Colo. Rev. Stat. § 14-2-108

⁴³ Tahirih Justice Ctr., *supra* note 41. The 17 states that mandate that judges to consider the minors interests are Alaska, Arizona, Arkansas, Colorado, Delaware, Illinois, Iowa, Kansas, Maine, Montana, Nevada, New Hampshire, North Carolina, Pennsylvania, Texas, Utah, Virginia, and West Virginia.

⁴⁴ Tahirih Justice Ctr., *supra* note 9. (These states are Alabama, Florida, Maryland, Missouri, Nebraska, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Vermont, and Wisconsin.)

⁴⁵ *Id.*

In some cases, the laws require the parents of the female to approve, but not the parents of the male. For example, the South Carolina Code of Law states:

A marriage license may be issued to an unmarried female and male under the age of eighteen years who could otherwise enter into a marital contract, if such female is pregnant or has borne a child, under the following conditions:

(a) the fact of pregnancy or birth is established by the report or certificate of at least one duly licensed physician;

(b) she and the putative father agree to marry;

(c) written consent to the marriage is given by one of the parents of the female, or by a person standing in loco parentis, such as her guardian or the person with whom she resides, or, in the event of no such qualified person, with the consent of the superintendent of the department of social services of the county in which either party resides;

(d) without regard to the age of the female and male; and

(e) without any requirement for any further consent to the marriage of the male.⁴⁶

The pregnancy exception is considered most problematic because it can be evidence of rape, and the loopholes in state marriage laws often protect the perpetrators from legal consequences by forcing the victims to marry rapists.⁴⁷

(iv) The Immigration Loophole

⁴⁶ S.C Code §20-1-300 (2018)

⁴⁷ Tahirih Justice Ctr., *supra* note 9

Although parental consent, judicial approval, and pregnancy are the most common loopholes in state marriage laws, the U.S. Immigration system also provides a loophole that allows underage girls to marry.⁴⁸ The Immigration and Nationality Act (INA) does not have a minimum age requirement for immigration benefits for spouses or fiancées.⁴⁹ The only consideration the U.S. Citizen and Immigration Services (USCIS) makes is whether the age at marriage “violates the laws of the place of celebration or the public policy of the U.S. state in which the couple plans to reside.”⁵⁰ However, the USCIS laws slightly differ from the states, in that, even if a particular state in which the couple plans to reside requires minors to show parental or judicial consent to legally marry, USCIS does not have this requirement.⁵¹

In light of these loopholes, states in the U.S. have different approaches to how they draft their state marriage laws. The different approaches are (A) laws that lack a statutory minimum age, (B) laws with a statutory minimum, but with exceptions, and (C) laws with statutory minimum age with no exceptions. California, Alaska, Delaware, and New Jersey have respectively taken these three approaches in their marriage laws.

D. Examples of Different Approaches

(i) No statutory Minimum Approach: California Marriage Law

The California Marriage law has a set statutory minimum age for marriage and allows marriage at any age if the statutory exceptions are met.⁵² California has both the parental exception⁵³

⁴⁸ Rachel Vogelstein & Alexandra Bro, *supra* note, 17

⁴⁹ 8 U.S.C 13 §1551-74 (2004)

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Tahiri Justice Ctr., *supra* note 9

⁵³ Cal. Fam. Code § 302

and judicial approval,⁵⁴ where minors are allowed to marry as long as they file a court order or written permission from at least one parent or the guardian of each minor with the clerk of the court.⁵⁵ To obtain a marriage license, a certified copy of the order must also be presented to the county clerk.⁵⁶ The law expressly states, “An unmarried person under 18 may be issued a marriage license upon obtaining a court order granting permission to the underage person or persons to marry, per the requirements described in Section 304.”⁵⁷ Section 304 sets out procedures that the court follows before granting minors who meet the parental and the judicial exception to marry. The court requires Family Court Services to:

- (1) Separately interview the parties intending to marry and, if applicable, at least one of the parents or the guardian of each party who is a minor.
- (2) Prepare and submit to the court a written report, containing any finding of potential force, threat, persuasion, fraud, coercion, or duress by either of the parties or their family members relating to the intended marriage. The Family Court is also required to include their marriage recommendations and any concerns.⁵⁸

After receiving the report from Family Court Services, the court separately interviews the parties, on camera, before making a final determination regarding the court order and considers whether there is evidence of undue influence or coercion.⁵⁹ After determining the ability of the parties to pay for counseling, if the court deems it necessary, it may require the parties seeking consent to marry to

⁵⁴ Cal. Fam. Code § 303

⁵⁵ Cal. Fam. Code § 302 (b)

⁵⁶ *Id.*

⁵⁷ *Id.* at (a);(b)

⁵⁸ Cal. Fam. Code § 304 (a)

⁵⁹ *Id.*

attend non-denominational premarital counseling to learn about social, economic, and personal responsibilities of marriage.⁶⁰

(ii) A Set Statutory Minimum with Exceptions
Approach: Alaska Marriage Law

Alaska, which sets the statutory minimum marriage age at fourteen years old, allows young children at the age of sixteen to get married as long as they can provide written consent of their parents, or “from the parent who has custody or control of the minor.”⁶¹ The minor is then required to file the written consent with the licensing officer issuing the marriage license and must meet the general conditions for obtaining a marriage license such as:

- (a) Identification of the parties;
- (b) no legal objection to the marriage;
- (c) parties not intoxicated; and
- (d) an officer provides information about fetal alcohol syndrome.⁶²

However, Alaska does not require minors who are members of the armed forces of the United States while on active duty to provide parental consent, but they must provide proof of active duty status.⁶³ The Alaska marriage laws have a judicial exception loophole as it empowers a superior court judge to allow a minor who has reached fourteen years old—the minimum marriage age—to marry if the judge determines that it is in the minor’s best interest and that either:
⁶⁴

- (i) The parents have given their consent; or

⁶⁰ Cal. Fam. Code § 304 (c)

⁶¹ Alaska Stat. § 25.05.171 (a)

⁶² *Id.*

⁶³ *Id.* See AK Dept. of Health and Social Services. Division of Public Health, Marriage Licenses, *Marriage Licenses*, AK DHSS, 2019, <http://dhss.alaska.gov/dph/VitalStats/Pages/marriagel/default.aspx>

⁶⁴ Alaska Stat. § 25.05.171 (b)

- (ii) The parents are
 - (a) arbitrarily and capriciously withholding consent;
 - (b) absent or otherwise unaccountable;
 - (c) in disagreement among themselves on the question; or
 - (d) unfit to decide the matter.⁶⁵
- (iii) A Set Statutory Minimum with no Exceptions Approach: Delaware and New Jersey

Both Delaware and New Jersey have set their statutory minimum marriage age at eighteen years old with no exceptions. The Delaware marriage law expressly states, “No Individual under the age of 18 shall be granted a marriage license.”⁶⁶ Similarly, the New Jersey marriage laws states, “A marriage or civil union license shall not be issued to a minor under the age of 18 years.”⁶⁷

III. THE PROBLEM WITH THE EXCEPTIONS IN THE MARRIAGE LAWS

The problem with allowing minors to get married is that minors are not yet mature enough to make the right decision, and rarely understand the consequences of their actions. In addition, under the law, since a minor cannot enter into a legal contract, it is safe to say they also lack the legal capacity to enter into marriage.

Minors, specifically adolescents, sometimes succumb to peer pressure to engage in sexual activities. In such a situation, a man may convince a girl to have sex with him and even marry him. When the girl becomes pregnant, the girl can be manipulated to view marriage as the only option for a better life.

The parental exception is problematic because it fails to recognize that some parents do not always have the child’s best

⁶⁵ *Id.*

⁶⁶ Del. Code tit. 13, § 123

⁶⁷ N.J. Stat. § 37:1-6

interest at heart, and some even abuse their children. For example, in rural areas, in a situation where a girl gets pregnant, some parents might force her to marry the person who impregnated her so as to avoid shame in the family. In relation to this, the parental consent exception can hide coercion, manipulation, and even abuse, and therefore, when a child marries under this exception, that child might be subjected to child abuse, which is often harder to recognize once the marriage is finalized. The situation might even worsen when a child is in custody of a guardian who does not have the child's best interest at heart. This is because the parent-child bond may be absent in a guardian-child relationship.

In addition, since the pregnancy exceptions can prevent child predators from statutory rape charges,⁶⁸ it gives child predators an incentive to continue with their actions, and even impregnate the girl they rape. This is because, as discussed, when a girl is pregnant, her parents or guardian, and even a judge, are more likely to allow her to marry.

The judicial exception is also problematic because usually the judges are not given enough direction on how to assess the situation, and often approve a minor's marriage based on whether the minor has parental consent. Although some states require the judge to base their decision making by putting the minor's interest first, it is unclear as to whether a judge can assess the minor's interest merely from the fact that the minor's parents have permitted the minor to marry.

Furthermore, the fact that the marriage laws include the different exceptions: parental exception, pregnancy exception, and judicial exceptions, which are required in most state laws before a minor is allowed to marry, infers that minors are not, by themselves, deemed capable of consenting to marriage. Additionally, these exceptions deprive married minors of the same constitutional protections offered to unmarried minors, such as protections against sexual predators, which subject predators to statutory rape charges.

⁶⁸ Nurith, *supra* note 31

IV. CASE LAW AND LEGISLATIVE HISTORY ON THE DIFFERENT APPROACHES

California

Common law marriages were considered invalid in California after the California Civil Code of 1895 was amended.⁶⁹ Under Cal. Civ. Code, §§59, 60, 61, all kinds of marriages, apart from the ones that were considered void from the beginning—incestuous marriages, interracial marriages, and bigamous marriages—were valid or voidable.⁷⁰ Concerning the legal age of consent, only the marriages of females under fifteen years old or males under eighteen years old, without consent from parents or guardians were voidable.⁷¹ Otherwise, as long as the female had reached fifteen years old or older, and the male had reached eighteen years old, both parties could marry without showing parental consent.⁷²

In California, the issue of the appropriate legal age of marriage consent was first addressed in the 1918 appellate case of *Johnson v. Alexander*,⁷³ which involved two parties who were married when the wife was fifteen-years-old without permission from her parents or guardians.⁷⁴ The wife, through her ad litem guardian, argued that the marriage should be annulled under Cal. Civ. Code §82 because she was under the legal age of consent and had not received parental consent.⁷⁵ Therefore, in ruling on the case, the court addressed an issue of the construction of Cal. Civ. Code §82, which allowed for annulment of marriage for certain reasons, including if the party whose guardian seeks annulment had not

⁶⁹ *Norman v. Norman* 121 Cal. 620 (1898), 54 Pac. 143, 66 Am. St. Rep. 74, 42 L. R. A. 343; *Estate of Shipp* (1914) 168 Cal. 640, 144 Pac. 143.

⁷⁰ *People v. Souleotes* 26 Cal. App. 209 (1915), 146 Pac. 903.

⁷¹ *People v. Gonzales* 6 Cal. App. 255 (1907), 91 Pac. 1013; *People v. Beavers* 99 Cal. 286 (1893), 33 Pac. 844.

⁷² *Matter of Guardianship of Ambrose*, 170 Cal. 160, 149 Pac. 43. (1915)

⁷³ (Dec. 13, 1918) 27 Cal. App. Dec. 823.

⁷⁴ *Id.*

⁷⁵ *Id.*

attained the age of legal consent and entered into marriage without approval from his or her parents, guardian, or a person who is in charge of him or her.⁷⁶ Specifically, the court addressed whether the “age of consent” in Section 82 “refer[ed] to the age of fifteen years specified in [Cal. Civ. Code §56] as the age at which females, not otherwise disqualified, are capable of consenting to and consummating marriage, or whether it refers to the age of eighteen years, specified in section [Cal Civ. Code 69].”⁷⁷ Under Cal. Civ. Code 56, girls at the age of fifteen years were considered capable of consenting to and consummating the marriage⁷⁸ while Cal. Civ. Code 69 provided that:

If the male is under the age of 21 years, or the female is under the age of eighteen years, and such person has not previously married, no license must be issued by the county clerk unless the consent in writing of the parents of the person under age, or one of the parents, or his or her guardian, is presented to him, duly verified by such parents, or parent, or guardian; and such consent must be filed by the clerk, and he must state such facts in the license.⁷⁹

The court relied on fifteen years as the legal age of marital consent, the minimum age set in Cal. Civ. Code 56, and held that the wife was not entitled to annulment under Cal. Civ. Code 82 since the wife was fifteen years old at the time of marriage.⁸⁰ The court further held that if a clerk fails either “willfully or through mistake” to perform his duties as specified in Cal. Civ. Code §69 and issues license to a girl under eighteen years old who does not have approval from her parents or guardians, if the marriage is “solemnized,” her

⁷⁶ *Id.* at 178

⁷⁷ *Id.* at 178-79

⁷⁸ *Id.* at 179

⁷⁹ *Id.* (quoting (Cal. Civ. Code, § 69)).

⁸⁰ *Id.*

marriage is valid, and the clerk's failure to correctly perform his duty does not make that marriage "void or voidable."⁸¹

There have been recent attempts to change the California Marriage laws as State Senator Jerry Hill, D-Sn Mateo, introduced Senate Bill 273, which was approved by Governor Brown and filed with the Secretary of State on September 21, 2018.⁸² The bill provides safeguards against forced underage marriage since forced underage marriage is common in California as "there is no threshold age for marriage and the state stopped asking for age on marriage forms in 1986."⁸³ The bill, which is now the current California law, made the following reforms as an improvement to the previous California law, it required that:

- (a) Family Court Services separately interview each individual intending to marry and at least one of the parents of the minor in the prospective relationship.
- (b) Family Court Services shall then submit a report to the court with any findings of coercion or duress on the minor and recommendations for granting or denying the court order to marry.
- (c) If Family Court Services knows or reasonably suspects that the minor is a victim of child abuse or neglect, that is to be reported to child protective services.
- (d) The judge shall then interview each of the parties intending to marry after reviewing the Family Court Services report.

⁸¹ *Id.*

⁸² *SB-273 Marriage and domestic partnership: minors*, California Legislative Information (2017-2018), http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB273

⁸³ Leslie Guevarra, *Governor Brown Signs Bill by Senator Jerry Hill to Help Prevent Minors from Being Forced into Marriage or a Domestic Partnership*, Office of State Senator Jerry Hill (September 21, 2018), <https://sd13.senate.ca.gov/news/2018-09-21-governor-brown-signs-bill-senator-jerry-hill-help-prevent-minors-being-forced>

- (e) The judge shall also consider whether there is evidence of coercion or undue influence on the minor when determining to issue the order granting permission to marry.
- (f) The court shall also provide the minor with information about the rights and responsibilities of being emancipated which will occur when they are married.
- (g) The parties would have to wait one month after receiving the order granting permission to marry before they are eligible to obtain a marriage license from the county.⁸⁴

This was aimed to give judges more direction before giving judicial consent.⁸⁵ However, these requirements do not apply to seventeen-year-olds with a high school diploma or an equivalent high school certificate.⁸⁶ At the same time, sixteen and seventeen-year-olds “who are pregnant or whose prospective spouse or domestic partner is pregnant would be exempt from the 30-day waiting period.”⁸⁷

Although the bill initially imposed a minimum marriage age of eighteen years old—an attempt to ban all underage marriages—it was scaled back after some advocacy groups opposed the imposed age of eighteen by claiming that marriage is a fundamental right and there were no legitimate reasons to deprive minors of that right.⁸⁸ The ACLU also opposed the imposed age of eighteen by claiming that although the goal of the bill—protecting children—was a noble one, it was wrong to have a minimum age requirement because “such a ban unnecessarily and unduly intrudes on the fundamental right of marriage without sufficient cause... We do not believe there

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Associated Press, *Underage Marriages get new restrictions in California*, The Mercury News (September 22, 2018), <https://www.mercurynews.com/2018/09/22/underage-marriages-get-new-restrictions-in-california/> (noting that “the Children’s Law Center of California told lawmakers that its clients have chosen to marry so their children would be born and raised by married parents, or as a way to get out of the foster care system, according to a legislative analysis.”).

is yet good evidence regarding the nature, location or severity of this problem in California.”⁸⁹

Alaska

Similarly, there have been recent efforts to change the current marriage laws in Alaska as state senator Berta Gardner proposed Senate Bill 133—aiming to completely ban the marriage of fourteen- and fifteen-year old’s and instead raise the mandatory minimum marriage age to sixteen.⁹⁰ The bill will allow marriage for sixteen and seventeen-year-old minors “who are officially on their own—emancipated by a judge who has found it is in their best interest to live independently.”⁹¹

Delaware

Delaware made history as the first state to completely ban child marriage in the United States.⁹² This was done in May 2017 through House Bill 337, which passed unanimously and was championed by House Representative Kim Williams and signed into law by Governor John Carney.⁹³ Before passing HB 337, the Delaware marriage laws allowed the marriage of children of any age if they received parental consent and a judge’s approval.⁹⁴ Representative Williams explained the importance of protecting

⁸⁹ David Whiting, *California lacks minimum marriage age, puts children in danger*, The Orange County Registrar (June 15, 2017), <https://www.ocregister.com/2017/06/15/california-lacks-minimum-marriage-age-puts-children-in-danger/>

⁹⁰ Lisa Demer, *Alaska Legislature urges ban on Marriage for 14-and 15-year old’s*, ANCHORAGE DAILY NEWS (January 11, 2018), <https://www.adn.com/politics/alaska-legislature/2018/01/10/too-young-to-marry-alaska-legislator-urges-ban-on-marriage-for-14-and-15-year-olds/>

⁹¹ *Id.*

⁹² Bethlehem, *supra* note 10

⁹³ Delaware House Democrats, *Williams Bill Ending Child Marriage*, <http://www.dehousedems.com/press/williams-bill-ending-child-marriage-signed-0>

⁹⁴ *Id.*

children from child marriage saying, “Children under 18 have no legal standing—they cannot file for divorce, utilize a domestic violence shelter, apply for a loan or open a credit card. They cannot enter into a legal contract, but until this bill was signed, they could be married as a child without any way of escaping an abusive marriage.”⁹⁵ Senator Anthony Delcollo—the prime sponsor of HB 337—praised the passage of the bill.

The bill was also praised by other members of Congress, such as Senator Nicole Poore who explained that the bill was important because forced marriage is connected to poverty, sexual assault, and human trafficking. The Senator emphasized that the fact that the bill passed unanimously highlights the serious problem created by underage marriage.⁹⁶

V. CONCLUSION

Following the Delaware and New Jersey example, states should amend their marriage laws and set the statutory minimum age requirement to eighteen with no exceptions. As Senator House Rep. Williams opined, children who have not attained the age of eighteen do not have legal standing, and therefore, do not have the right to an attorney. They also cannot enter into a legal contract, file for divorce, use a domestic violence shelter, or even apply for a loan or credit card. Accordingly, minors should not be allowed to marry. In addition, that child marriage prevents children from obtaining an education, enjoying optimal health, bonding with age mates, and sometimes from choosing their husband provides a good policy reason for states to increase their statutory minimum age to eighteen without exceptions. This is because children have a right to be protected from abuse, lack of education, coercion, and much more. Our society should aim to protect children, especially because they often lack the level of maturity to discern what is right from wrong,

⁹⁵ CNN WIRE, *Delaware is now first U.S State to fully ban child marriage*, CBS 6 (May 12, 2018), <https://wtvr.com/2018/05/12/delaware-is-now-first-us-state-to-fully-ban-child-marriage/>

⁹⁶ *Id.*

and to even understand the consequences of their actions—even actions they choose freely.