

Protecting Children in Texas from Forced Marriage and Other Harms of Child Marriage PROPOSED LEGISLATIVE REFORMS

The legal minimum marriage age in all states should be set at 18 (or the age of majority (“legal adulthood”), if higher). While certainly adults can also be forced into marriage, and can also find themselves in marriages by choice that are abusive or exploitative, children are uniquely vulnerable to coercion and especially disabled—legally and practically— from preventing or leaving a marriage that threatens them with harm.

WHAT ARE THE CURRENT LAWS IN TEXAS ON MINIMUM MARRIAGE AGE?

The youngest age at which one can *independently* consent to marry in Texas is 18. Between age 16-18, only parental consent (or the consent of another person who has the legal authority to consent to marriage for an underage applicant) is required to obtain a marriage license.

Under age 16, or absent parental consent, the “minor” (child under age 18) in the minor’s own name, in the county in which a parent resides or, if the parent is non-resident, in a county where the minor lives, may file a petition to “the court” for permission to marry. The petition must state why the minor desires to marry, whether each parent is living or dead, the name and address of each living parent, and whether any other person has been granted the legal right to consent to marriage for the minor. The court shall appoint “an amicus attorney or attorney ad litem” to represent the minor. If, after a hearing, the court believes marriage to be in the best interest of the minor, the court, by order, shall grant the minor permission to marry.ⁱ

HOW BIG IS TEXAS’S CHILD MARRIAGE PROBLEM?ⁱⁱ

Texas has some of the highest numbers in the nation: nearly 40,000 children under age 18 were married over 2000-2014 (the latest year for which data is available). Nearly 4,500 children were married in a single year alone (2000). Over the last several years, an average of about 2,000 children a year have been married.

Though, consistent with national trends, the number of children who are married each year is decreasing (e.g., under 800 were married in 2014), advocates are concerned that the *children who are still marrying in 2017* are among the *most vulnerable to abuse and exploitation* – because children with a true say in the matter are choosing, instead, to wait until they are older to marry.

In addition to the sheer numbers, other aspects of Texas’s child marriage statistics are alarming:

- Most are girls married to adult men – sometimes much older. For example, many 15-17 year old girls have been married to men over age 50 (and even over age 60!), and several girls under age 15 were married to men 2 or 3 times their age.
- Children are being married younger than they can legally consent to sex outside of marriage. The ages and age differences of the parties put clerks and judges in the position, effectively, of sanctioning statutory rape. Children as young as 12 and 13 were married over 2000-2014 (judge-approved).

HOW DO THE CURRENT LAWS FAIL TO PRIORITIZE CHILD PROTECTION?

Texas's current laws fails to prioritize child protection in several ways. There are a number of loopholes and lax procedures that enable “bad actors” seeking to abuse and exploit children in the guise of marriage to avoid scrutiny and evade detection, and the child to be exposed to potentially lifelong harm, including:

- There is no statutory age “floor” below which a child cannot be married.
- Parental consent (which can hide parental coercion) can lower the legal age to marry below age 18, and the consent of only one parent can suffice.
- Older minors can be approved to marry without ever going before a judge, since judicial approval is only required for parties under age 16 – even though 16-17 year olds are equally, if not more so, at risk of forced marriages than younger minors, and nearly equally disempowered to prevent or escape them.
- Procedural safeguards are lacking – Among other concerns, the law does not require that a judge specializing in family law or juvenile justice make the decision. Also, while a hearing is held and an attorney is appointed, the attorney's fees must be paid by the minor. In addition, there are no other “due diligence” steps mandated (such as pulling any past case files involving the minor at Dept. of Family and Protective Services, or providing for in-chambers interviews) that would help promote disclosures to reveal a forced marriage or other threats. Importantly, too, a minor granted permission to marry is still a minor, with limited legal rights; she is not emancipated until after the marriage.
- Substantive criteria are lacking – Other than examining the self-reported (and possibly coached/coerced) reasons the minor seeks to marry, the only guidance given the judge is to consider the minor's “best interest”. No other substantive, safety-centered criteria have been outlined (e.g., age differences, whether the intended spouse has a history of crimes of violence or against children, etc.).

Extensive U.S.-based as well as global studies document the many harms of child marriage, including greater vulnerability to domestic and sexual violence, more medical and mental health problems, steep high school drop-out rates, and increased likelihood of future poverty, as well as up to 80% divorce rates.

Permitting children to marry, even if by choice, stacks the odds against them of a healthy and fulfilling life, and is bad public policy – it is not in the best interest of either the state, or the individual. Delaying marriage a year or two will impose minimal burden on bona fide couples, and provide maximum protection for children at risk.

PROTECT CHILDREN FROM ABUSE AND COERCION:

SET THE LEGAL MINIMUM MARRIAGE AGE AT THE AGE OF MAJORITY (LEGAL ADULTHOOD)

The best barrier against forced marriages of children specifically, and against the risks and harms of child marriage generally – the approach that sets a simple, clear, and straightforward standard that leaves no room for misinterpretation or misapplication – is to eliminate all exceptions that permit children to marry.

As an alternative, we urge that an exception exist only for minors legally emancipated by court order, under the grounds and procedures for mature minors age 16-17 set forth in Texas Family Code §§31.001 to 31.007.ⁱⁱⁱ

Forced and child marriage in Texas is a serious problem with a simple, first-step solution – ensuring that only legal adults empowered to advocate for themselves can enter the legal contract and potentially lifelong commitment that marriage entails.

ⁱ Texas Family Code §§2.102-2.103.

ⁱⁱ Source for statistics: Texas Department of State Health Services, Center for Health Statistics. On file and available upon request.

ⁱⁱⁱ A position statement recently adopted by the International Academy of Family Lawyers urges legal reforms in every country and state to set the legal age to marry “at 18 (or above, if the age of majority is higher), with an exception only for emancipated minors empowered to advocate for themselves.” See IAFL Press Release (September 2016), available at <https://www.iafl.com/newsletters/archive/iafl-press-release-forced-marriage-2016/index.html>.