

SUPPORT SB 415/HB 703 TO RAISE THE MINIMUM MARRIAGE AGE AND TO PROTECT CHILDREN FROM ABUSE AND COERCION

This commonsense, bipartisan bill (co-patrons: Sen. Jill Vogel and Del. Jennifer McClellan) to ensure full and free consent to marriage will promote the health and wellbeing of Virginia's children and enable marriages to be built on stronger foundations. Supporters include the Virginia Sexual & Domestic Violence Action Alliance and Prevent Child Abuse Virginia.

What's the Law Now?

If you're 18 or have been "emancipated" (age 16 or older and have successfully petitioned a court to be given the legal status and rights of an adult), you can apply on your own for a marriage license.

There is no absolute minimum age "floor", as long as one of two exceptions is met.

Marriage license applications involving minors (unemancipated children under age 18) are filed with court clerks. No judge is involved.

If you're age 16-17, you need parental consent to apply for a marriage license. If you're 15 or younger, you need parental consent and evidence of a pregnancy.

No inquiry is made into whether the marriage is in the minor's best interests or would place him or her at risk of harm.

Children who marry are not automatically emancipated, and so they do not have the legal rights of an adult and remain dependent on other adults to advocate for them.

Yet Child Protective Services' mandate only covers abuse that a child suffers from a parent, guardian or caretaker, not abuse that a child suffers from a spouse.

A marriage can thereby lock a minor in a legally binding and potentially abusive relationship within which she is legally disempowered to advocate for her own protection.

Current law fails to protect children. Thousands of children have been married, as young as 13 years old, 90% are girls, and 90% of the time they married adults, who were sometimes decades older than the child.

How Would This Bill Improve Current Law?

Retain these provisions of current law – if you're 18 or emancipated, you can apply on your own for a marriage license.

Set a "floor" of age 16, below which no child could be married. (Virginia law already sets 16 as the minimum age to emancipate.)

Require a minor who intends to marry to petition a family court judge for emancipation based on that intent.

Allow a pregnancy and/or parental consent to be considered, but not allow them to be determinative of whether it's in the minor's best interests to be married.

This change recognizes that parental consent can hide parental coercion, and that a pregnancy can actually be evidence of rape (or statutory rape, depending on the parties' ages).

Leverage the existing safeguards built into all emancipation proceedings to help ensure that a minor's best interests are considered. The judge would appoint a guardian ad litem for the minor, and could order an investigation by the Department of Social Services or issue other orders as appropriate.

New safety-centered criteria would also apply to emancipation petitions based on a minor's intent to marry. In order to grant the petition, both parties to be married must be present, and the judge would have to find that:

- The minor wants to get married and is not being forced/coerced;
- The individuals are mature enough to decide to marry;
- The marriage will not endanger the minor; and
- It's in the minor's best interests to marry.

If the petition is granted, the minor would be emancipated, empowered with the legal status and rights of an adult to protect herself if she is abused (such as to leave home, go to a shelter, or file for a protective order or divorce).

This bill recognizes that children are acutely vulnerable to abuse and coercion, and prioritizes child protection. It will ensure that only adults, and emancipated minors empowered with the legal rights of adults, can marry.

To learn more about the alarming child marriage statistics and research that inspired this bill, see "Empowering Girls in Virginia to Choose If, When and Whom to Marry" (January 11, 2016), on the Virginia Sexual and Domestic Violence Action Alliance blog, at <http://allianceinaction.org/>; or contact Jeanne Smoot at the Tahirih Justice Center, at jeanne@tahirih.org or 571-282-6196.