



Protecting Immigrant
Women and Girls
Fleeing Violence

Letter to **OPPOSE SB 273**

(to amend laws concerning judicial approvals of petitions for minors to marry)

Submitted to the California Assembly Judiciary Committee

For hearing June 27, 2017 at 9:00 a.m.

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The Tahirih Justice Center (Tahirih) is a national non-profit legal advocacy organization that aims to end violence against women and girls through direct services, policy advocacy, and training and education. Since Tahirih opened in 1997, we have helped protect over 20,000 women and children from domestic violence, sexual assault, human trafficking, female genital mutilation/cutting, “honor” violence, forced marriage, and other abuses. We have unique legal and policy expertise in forced marriage and child marriage as U.S. problems, including through assistance we have provided on California cases.

Tahirih regrets that, at this juncture, we must withdraw our earlier support and respectfully register our opposition to SB 273 in its current form. The bill simply does not go far enough to change a status quo that puts children in California at acute risk.

As earlier letters (attached) that Tahirih submitted for Senate hearings on the bill make clear, Tahirih strongly supported SB 273 as-introduced to set the legal minimum marriage age at 18, without exception. We continue to believe this approach offers the best protection for vulnerable children not only against forced or coerced marriages, but also against the many harms that can result from early marriage, even if voluntary. (Please see *attached background on the health, safety, and development concerns raised by marriage under age 18 in the U.S.*)

Tahirih also expressed qualified support for SB 273, even as it was significantly amended and passed by the Senate Judiciary Committee, because the bill at that time:

- Included two immediate first-steps to address child marriage in California:
 - Standardizing court practice statewide with respect to judicial approvals of petitions for minors to marry, to try to vet for abuse or coercion; and
 - Authorizing data collection by the Judicial Council in preparation for taking additional protective measures in the future; and
- Provided a foundation upon which we hoped the Assembly would build several additional safeguards that are critical to prevent forced marriages and other harm.

Unfortunately, however, SB 273 has been further weakened, not materially or meaningfully strengthened, as it has moved forward.

The Senate Appropriations Committee struck the crucial data-gathering provision. Moreover, only a few, very slight amendments have been added to SB 273 as the Assembly Judiciary Committee will consider the bill at Tuesday’s hearing.

Several vitally important elements that, for Tahirih, constitute minimum safeguards in any judicial-approvals processⁱ are still missing from SB 273, including:

- **The bill lacks an age “floor” of at least 16.** Ideally, age 18 would be that floor, in line with the age of majority (“legal adulthood”) and the minimum legal age of consent for sex.

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Banning marriage under age 16, however, would at least protect the youngest minors who are most susceptible to coercion to marry, and most likely to be trapped in an abusive marriage without resources or options to help them escape. The failure of SB 273 to set an age “floor” of at least 16 continues to permit a child of *any age* to be approved to marry by a California court.

- **The bill lacks a mechanism to ensure that any minor who is granted permission to marry is emancipated before marriage.** Without emancipation, the minor is still, under the law, a *child*. Under Cal. Family Code §7002(a), minors are automatically emancipated *after* marriage, *but that grant of legal adulthood comes too late* for a girl who, prior to the marriage, lacks the full rights and options an adult would have to prevent it from happening in the first place. Many girls will not feel safe disclosing to a court the threats they are facing, out of fear or uncertainty of the consequences to themselves or others. Emancipation before marriage offers a girl a final self-help failsafe, enabling her to leave that courtroom and keep walking to safety and an independent life of her own choosing if need be, rather than down the aisle to an unwanted marriage.
- **The bill does not appoint an attorney to represent the minor through the hearing.** Under both current law and SB 273, a minor has to face a daunting judicial-approvals process without a legal advocate to apprise her of her rights and options. Both her parents and an older “partner” may be pressuring her to marry, and denying her any other choice. Without an understanding of where she could go or who would help her if she revealed her true circumstances, and fearful of retribution at home if she discloses threats or abuse, a minor is likely to give only coached answers, and SB 273’s protective intent will never be realized.

Tahirih is also very concerned that several other key criteria have not been included in SB 273, such as a requirement that the judge consider whether the marriage is in the minor’s best interest.

Finally, Tahirih has fresh reservations that the Family Court Services (FCS) interviews proposed by SB 273 will prove effective in protecting girls against forced marriages. In a recent case involving a girl under age 16 in California who was threatened with a forced marriage, a report was made *directly* to Child Protective Services (CPS) and to law enforcement, and yet no investigation was opened and the girl was returned home to her parents. With this case in mind, and even assuming that FCS could identify that a girl was being coerced, we question whether an *indirect* referral from FCS to CPS would yield any better outcome.

SB 273 in its current form will be insufficient to protect vulnerable girls from forced marriages and other harms that can result from marriage before age 18. California can do far better to protect children from potentially lifelong, irreparable harm, and we urge the Assembly Committee to join Tahirih in challenging the state to set a higher bar.

Marriage should be reserved to legal adults who are fully empowered to advocate for themselves.

We therefore urge the Committee to consider a stronger alternative to SB 273 in its current form, as follows:

- Set age 18 as the minimum marriage age, with a single exception for minors who meet the criteria for emancipation by a court under Cal. Family Code §§7120-7122, and who are at least age 16; and
- Appoint counsel to represent the minor in the emancipation hearing.

Tahirih respectfully asks this Committee not to favorably report SB 273 in its current form.

ⁱ Notably, the joint general recommendation/general comment No. 31 of the U.N. Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful Practices (November 4, 2014), para. 54 (f), urges States to adopt legislation that ensures: “When exceptions to marriage at an earlier age [than 18 years] are allowed in exceptional circumstances, the **absolute minimum age is not below 16 years**, grounds for obtaining permission are legitimate and strictly defined by law and marriage is permitted only by a court of law upon full, free and informed consent of the child or both children who appear in person before the court.” (*emphasis added*)