



FALLING THROUGH
the cracks



TAHIRIH
JUSTICE
CENTER®

HOW LAWS ALLOW CHILD MARRIAGE
TO HAPPEN IN TODAY'S AMERICA

AUGUST 2017

WHO WE ARE

The Tahirih Justice Center is a national, non-profit organization that aims to end violence against immigrant women and girls through free, holistic direct services, policy advocacy, and training and education. Tahirih serves courageous survivors of abuses such as domestic violence, sexual assault, female genital mutilation/cutting, human trafficking, “honor” violence, and forced marriage. Since Tahirih opened in 1997, we have helped over 22,000 women and children access justice.

Through our specialized Forced Marriage Initiative (FMI), Tahirih is leading efforts at the federal and state levels to tackle forced marriage as a domestic U.S. problem impacting U.S. citizen and immigrant women and girls. We coordinate a broad National Network to Prevent Forced Marriage with over 6,000 members, and chair a core Forced Marriage Working Group with over 40 diverse organizational and individual members, including survivor advocates. Since launching the FMI in 2011, through direct services and national technical assistance, Tahirih has worked on over 500 forced marriage cases involving U.S. women and girls, triaging requests for help to date from 35 states and 20 countries (when U.S. victims have been taken abroad for forced marriages).

For more information, please visit tahirih.org or preventforcedmarriage.org, or contact us at FMI@tahirih.org.



Jeanne Smoot, Tahirih's Senior Counsel for Policy and Strategy (bottom right), witnesses Virginia Governor Terry McAuliffe signing our historic bill to make Virginia the first state in the nation to limit marriage to legal adults.

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EXECUTIVE SUMMARY

Child marriage is a real and persistent problem in the United States. Between 2000 and 2015, well over 200,000 children under age 18 were married in America. The majority of them were girls, and the majority married adult men.¹ Mounting U.S.-specific research shows that child marriages can result in devastating consequences and put young people at great risk of lifelong harm.

Many are surprised to learn that state laws allow children to marry in today's America. Currently, most states' laws set the minimum age of marriage at 18 but allow for exceptions to the rule, such as parental consent, that can drop the true minimum marriage age much lower in practice. In fact, half of U.S. states do not set any bottom line age "floor" whatsoever, meaning that as long as exceptions are met, a child of any age could be married.

While the status quo is alarming, a growing movement to end child marriage in the United States is making progress. In 2016, after a legislative campaign led by the Tahirih Justice Center, Virginia became the first state in the nation to limit marriage to adults age 18 or older, with a narrow exception only for court-emancipated minors who have been given the full legal rights of adults. In June 2017, Texas and New York also signed bipartisan bills into law that limit marriage to legal adults and establish meaningful safeguards against forced marriage.

These reforms are just the beginning. Lax laws around the country still allow for thousands of children to be married and must be changed. This report provides state lawmakers and advocates in the United States with the information they need to pass laws that more effectively

protect children from the harms of child marriage.

Tahirih's analysis of relevant laws across all 50 U.S. states and Washington, DC, combined with our experience serving hundreds of girls and young women facing forced marriages, reveals that the most simple, straightforward, and powerful solution is to set the minimum marriage age at 18, without exceptions. In states where this is not immediately possible, alternative reforms must legally empower those permitted to marry to advocate for themselves and safeguard them against forced marriage and other harm.

Tahirih is committed to ending child marriage in America. We urge advocates and lawmakers across the country to critically examine how state laws put children at risk and join us in this historic movement.

at a glance:

HOW DO STATE LAWS ON MINIMUM MARRIAGE AGE COMPARE?

In October 2017

- **25 states** do not set any age floor by statute
- **3 states** (Virginia, Texas, and New York, in order of enactment) limit marriage to legal adults
- In **8 states and Washington, DC**, clerks alone – without judges – can approve marriages of all minors
- **Only 17 states** require judges to consider the minors' best interests
- **9 states** expressly permit pregnancy to lower the minimum marriage age

INTRODUCTION

Child marriage happens in alarming numbers across America today. Children from diverse backgrounds can be married at young ages, often under intense pressure from family members.² Regardless of the motivations, the impacts of marriage to the health and well-being of children can be severe. The laws that govern marriage, which are set by each state independently, allow this to continue.

This report provides state lawmakers and advocates in the United States with the information they need to pass laws that more effectively protect children from the harms of child marriage.³ The Tahirih Justice Center advocates for the age of marriage to be set at 18 in every state. Because this may not be immediately achievable in some states, Tahirih has worked with lawmakers to pass laws that help prevent child marriages and ensure that older teens who do marry are given the full rights of legal adults. This analysis aims to equip stakeholders with a nuanced understanding of the laws that allow children to be married so that they may differentiate meaningful safeguards from weak half-measures.

To prepare this report, Tahirih analyzed relevant laws across all 50 U.S. states and Washington, DC,⁴ and assessed which provisions make children more vulnerable to forced marriages and other risks of early marriage, and which might actually help them to stay safe. Tahirih also drew on insights into the dynamics of forced and early marriage from our experience serving hundreds of girls and young women being forced to marry, recent U.S.-based research, and the life stories of the courageous survivors with whom Tahirih is partnering on a historic national campaign to end child marriage in the United States.

CHILD MARRIAGE IS A REAL AND PERSISTENT PROBLEM IN THE UNITED STATES

Based on state marriage license data recently obtained by advocates⁵ and then expanded upon by *PBS Frontline*,⁶ well over 200,000 children under age 18 were married between the years 2000 and 2015 in America.⁷

Drilling down on these statistics in any given state exposes more alarming findings. For example, records from the Virginia Department of Health show that from 2004 to 2013, nearly 4,500 children were married.⁸ Nearly 90% of them were girls, nearly 90% married adults, and some of those adults were decades older.⁹ Similar records from Maryland show that 3,100 children were married from 2000 to 2014.¹⁰ Again, the vast majority of them were girls marrying adult men. Based on Tahirih's analysis of age differences, dozens of pregnant 15-year-old girls were likely victims of statutory rape

“The night before the ceremony my mother sat up with her best friend and tried to plan a way out. She had a choice: marry him as my grandmother insisted, or accept the consequences. She had no money, no way of getting a job, nowhere to go...At certain ages, parental permission looks more like coercion. There are a lot of tears at an 8th grade girl’s bachelorette party.”

Francisca Ortega, “A Child Bride in Texas: My Mom, Age 14, Was Forced to Marry a Man She’d Just Met,” *Houston Chronicle*, January 27, 2016

and married to the perpetrators.¹¹ In Texas, nearly 4,500 children were married in a single year, and from 2000 to 2014, a staggering 40,000 children were married. Children as young as 12 and 13 years old were approved by a judge to be married.¹² Yet under Texas law, sexual intercourse with children of those ages constitutes aggravated child sexual assault, a first-degree felony punishable by up to life in prison.¹³

These startling figures demonstrate that child marriage persists in present-day America, and that it stands at stark odds with other state laws and policies meant to protect vulnerable children from abuse and exploitation.¹⁴

THE IMPACT OF CHILD MARRIAGE IN THE UNITED STATES

Extensive global data exists about the many harms of early and child marriage, including its linkages to maternal and child mortality, domestic and sexual violence, human trafficking, and HIV infection.¹⁵

Mounting U.S.-specific evidence also demonstrates the devastating, lifelong consequences that can result from early and child marriage in America:

- Between 70% and 80% of marriages involving individuals under age 18 end in divorce. For teen mothers, getting married and later divorcing can more than double their likelihood of poverty.¹⁶
- A girl's education can be interrupted or discontinued when she marries, limiting her ability to become financially independent in the event of domestic violence or divorce. Girls who marry before the age of 19 are 50% more likely to drop out of high school and four times less likely to graduate from college.¹⁷
- A study of U.S. women who married as children found that they experienced significantly higher rates of psychiatric disorders,¹⁸ and other research has

shown they are more likely to experience a range of serious medical problems.¹⁹

These substantial personal costs can also mean tremendous intergenerational and social costs.²⁰

“When she tried to re-enroll in school, Anna found that her hands were tied. ‘They assumed I was pregnant, and when I told them I wasn’t they said that it was bound to happen, and they couldn’t have that at their school.’

She tried calling her old school for her transcripts to apply for a GED but needed a parent’s permission, and she and her mother weren’t speaking.”

Devin Tomb, [“Child Marriage Still Happens in America.”](#) *Good Housekeeping*, September 23, 2016

“When I was 15, I dreamed of being an attorney. Instead of pursuing an education, I found myself in a relationship where I was being controlled physically, mentally, and financially.”

Sara Tasneem, [“Child Marriage Laws in CA Act as Loopholes That Allow for Statutory Rape.”](#) *The Daily Californian*, May 31, 2017

“‘It was a terrible life,’ Johnson recalls, recounting her years as a child raising children...She ended up with pregnancy after pregnancy — nine children in all — while her husband periodically abandoned her.”

Nicholas Kristof, [“11 Years Old, a Mom, and Pushed to Marry Her Rapist in Florida.”](#) *The New York Times*, May 26, 2017

Furthermore, when a child marries an adult, an unequal power dynamic is created that puts the child at risk of abuse. Domestic violence, which involves one party's exploitation of power and control over the other, is highly likely. As it is, girls and young women in the U.S. are acutely vulnerable to physical, emotional, or verbal abuse:²¹

- Nationally, girls and young women aged 16 to 24 experience the highest rate of intimate partner violence, and girls aged 16 to 19 face a victimization rate almost triple the national average.²²
- The younger the adolescent, the more likely it is that she has experienced coercive sex if she is sexually active. This is the core understanding that underlies statutory rape laws.²³
- In addition, “[b]eing physically or sexually abused makes teen girls six times more likely to become pregnant.”²⁴

It is therefore likely that girls who enter or are forced into child marriages are also experiencing high rates of abuse, and that the abuse will continue into the marriage.²⁵

MINORS HAVE LIMITED RIGHTS AND OPTIONS

Children face many obstacles when they try to resist or escape marriages into which they are being forced or coerced, or if they try to flee domestic violence occurring before or during a marriage. Typically, individuals are considered minors and have limited rights before they turn 18, unless they are legally emancipated, that is, officially given the rights of an adult. Before a girl gains the rights of a legal adult, she may be legally unable to take critical steps to protect herself. In the United States, the legal dividing line between children and adults is significant and meaningful, and can leave a child trapped in a marriage with an adult.²⁶

Depending on the state, a girl facing a forced marriage may not be able to leave home without being taken into custody and returned by police. She may not be able to stay in a domestic violence shelter at all or in a youth shelter for longer than a few days. If friends take her in, they could risk being charged with contributing to the delinquency of a minor or harboring a runaway. And, if she tries to get a place of her own, she may find no one willing to rent to her since in many circumstances, minors cannot be held to contracts they enter.²⁷

“[Donna] Pollard said the abuse started as soon as the marriage did. She remembers several times the police coming, but speaking only to her husband who gave reassurances that everything was OK...Even if the police had removed her, she would likely have been returned her to her mother, who would likely have turned her over to her husband.

‘So essentially, I was trapped,’ said Pollard. ‘I had no legal rights as a married minor.’ ...As the abuse worsened, she...tried more than once to leave.

‘There were a couple of times when I did go to apartment complexes and try to rent an apartment on my own,’ said Pollard. ‘And the people ... told me ‘no’ because I was not yet 18, and they said I could not legally enter into a contract with them.’”

Barbara Howard, “How Underage Marriage Puts Girls at Risk,” WGBH All Things Considered, May 11, 2017

Also depending on the state, a girl who is being forced into marriage may not be entitled to file on her own for a protective order against her parents or a dating partner.²⁸ Even after marriage, in some states, she will not be automatically given the rights of an adult through emancipation, meaning that she may be unable to file for her own divorce, and must instead rely on an adult to file on her behalf.²⁹

The legal process of emancipation varies from state to state.³⁰ Emancipation may be available only to minors over a certain age, and may grant some or all of the rights of an adult. Emancipation criteria also vary from state to state. Therefore, while conditioning the right to marry on having been emancipated could be one way to ensure that a minor is choosing marriage, is ready for it, and can access protection in the case of harm, without careful consideration of emancipation criteria and procedures, this approach could fall short of true empowerment as well.

The complex legal regimes across and within states leave many minors confused about what they can and cannot do on their own. This is why setting the minimum age of marriage at 18 is the clearest solution to the problem of child marriage in the United States.

STATE LAWS THAT ALLOW CHILD MARRIAGE PUT CHILDREN AT SERIOUS RISK

Currently, most states' laws set the minimum age of marriage at 18 but allow for so many exceptions to the rule that the true minimum age may be much lower in practice.³¹

In fact, about half of states do not set any age "floor"³² whatsoever, meaning that as long as exceptions are met, a child of any age could be issued a marriage license.

In addition, in several states, with the right signatures on a form, a court clerk can approve all underage marriage license applications.³³ Clerks cannot be expected to notice or probe what disturbing dynamics may lurk behind a paper application presented to them at public windows. If exceptions in the law allow children to marry when pregnant or with a parent's consent, for example, a clerk could not possibly know if the pregnancy is the result of rape, or if parental consent is really parental coercion.

"In that courthouse my whole life was stolen. One of the clerks there actually said to me as I stood there crying, 'cheer up, this will be the happiest day of your life, wipe them tears.'"

Quote from anonymous child marriage survivor

Requiring judicial approvals can also offer children little to no real protection. Judges often lack statutory guidance, training, and sensitivity to family violence and coercive control. And, they often have insufficient time or resources to explore such elements. Children may be too afraid or intimidated to disclose to a judge threats they are facing, or too uncertain what will happen to themselves or loved ones if they speak up.³⁴ And even if the marriage is voluntary, the risks of early marriage to a young person's health and welfare are considerable. Yet judges are largely unaware of this objective research, and without other guidance, often make decisions based on their own subjective assumptions. Even in states that require judges to be involved and to consider the best interests of the child, marriages of young children have been judicially approved.³⁵

In 2016, after a legislative campaign led by Tahirih, Virginia became the first state in the nation to enact a bipartisan bill to limit marriage to adults age 18 or older,

with a narrow exception only for 16- and 17-year-olds who have been given the full legal rights of adults.³⁶ Texas and New York also recently signed bipartisan bills into law that limit marriage to legal adults and put in place meaningful safeguards against forced marriage.³⁷ *See Appendix C for details on the minimum marriage age reforms enacted in Virginia, Texas, and New York.*

These reforms are just the beginning. Lax laws around the country still allow for thousands of children to be married and must be changed. A systematic approach

to protection requires that each state examine the features of its laws that impact whether a child can be married before she has achieved a certain maturity and has acquired the necessary legal rights to advocate for herself. The analysis that follows examines those features of state laws closely, and the charts in the appendices provide a detailed evaluation of each state's laws against each category discussed. Regardless, it is clear that when achievable, the simplest route to robust protection is to set the floor for marriage at age 18.



ANALYSIS OF STATE LAWS ON MINIMUM MARRIAGE AGE

To assist advocates and lawmakers, we first analyze general provisions in state laws that impact child marriage, such as statutory age floors, exceptions for parental consent, and whether clerks can alone approve a child marriage. For the reasons described previously, these general provisions may create loopholes that allow children as young as 12 and 13 to be married, with devastating consequences.

We then focus our analysis on provisions that require a judge to approve a minor's request to marry, paying particular attention to the factors the judge must consider. Even in states that require a judicial process, an inadequate list of factors, weak analysis, personal biases, and absence of counsel could lead to the inappropriate approval of such marriages.

For more information about each state's legal provisions, please refer to the 50-state charts at Appendices A and B. For the actual statutory text, please refer to Tahirih's 50-state compilation of state laws.³⁸

I. GENERAL PROVISIONS

The following analysis highlights the key questions that lawmakers and stakeholders should consider when seeking to reform their state's minimum marriage age laws.

a) Does the Statute Set an Age Floor?

Because most state statutes allow parties who are age 18 to marry without parental consent or judicial approval, 18 is often referred to as a state's statutory minimum marriage age. This is misleading, however,

because statutory exceptions can drop a state's true minimum marriage age much lower than 18, or even eliminate it completely.

For example, New Hampshire's laws describe the age of consent to marry as 18 years for both males and females, but then permit judicial approval for males age 14 or older and for females age 13 or older.³⁹ At least as recently as 2013, a 13-year-old girl was married in New Hampshire.⁴⁰ Maryland has a pregnancy exception that applies to children as young as 15, which is younger even than the state's legal age of consent to sex.⁴¹ Since 2000, this exception has enabled the marriages of at least 140 15-year-olds who were pregnant or had already given birth to a child.⁴²

Alarming, 25 states set no age floor by statute, and 8 states set that floor at some age lower than 16.

Lax exceptions and no age floor are a particularly dangerous combination that puts already vulnerable children further at risk. For example:

- Louisiana's statutes allow for either parental consent or judicial approval for 16- and 17-year-olds, and require judicial approval for children under age 16, with no age floor. These exceptions have enabled the marriage of girls as young as 12.⁴³
- Missouri's statutes allow for parental consent for children age 15 or older, and require judicial approval for children under age 15, with no age floor. From 2000 to 2014, these exceptions resulted in the marriage of over 800 children age 15 or younger.⁴⁴

- Florida’s statutes allow for parental consent for children age 16 or older, and require judicial approval for children under age 16, who are only eligible in case of pregnancy or childbirth. These exceptions facilitated the forced marriage of an 11-year-old girl to the 20-year-old who had raped and impregnated her.⁴⁵

b) Does the Statute Set Different Conditions Based on Gender?

In 5 states (Arkansas, Florida, Mississippi, New Hampshire, and Ohio), the law dictates different protections based on the gender of the child.

In some cases, the law defers more to parents and involves judges less often for girls than for boys. For example, judicial approval is required for boys under age 17 in Arkansas and Mississippi, but only for girls under age 16 in Arkansas or under age 15 in Mississippi. In Ohio, judicial approval is always required for boys but only required for girls under age 16.

In other cases, girls may be married at younger ages than boys. For example, in New Hampshire, the statute sets an age floor of 13 for girls, but 14 for boys.

In one state, Florida, the pregnancy exception operates so as to enable a pregnant girl to be married to an adult man without regard to paternity, but only permits a boy to be married to a girl or woman if they are together the parents or expectant parents of a child.⁴⁶

Gender-differentiation in laws on minimum marriage age leaves girls less protected than boys from forced marriages and the harms of early marriage. The fact that early marriage disproportionately affects girls⁴⁷ and can have such devastating consequences is powerful justification to raise every state’s minimum marriage age to 18, without exceptions.

c) Is Official Proof of Age Always Required?

Marriage license data from some states with age floors reveals that impermissibly young children have been married.⁴⁸ While these could be instances in which proof of age was falsified by the parties, they still call into question whether clerks are uniformly diligent in verifying age, particularly when there is no legal requirement that they do so. Requiring official proof of age by law could help to stop child marriages. However, most state statutes are not definitive in this regard, or provide clear workarounds.

Some states only require the parties applying for a license to self-report their ages in response to questions by the clerk or on a form. Some require the parties to affirm the information in an affidavit or under oath, and some require the parties to supply sufficient evidence to satisfy the clerk as to their identity and eligibility for marriage, but do not specify the type of evidence that would be acceptable to prove age. All of these approaches are susceptible to individuals falsely reporting their ages.

Some states specifically require one of several forms of official proof of age, such as birth certificates or drivers’ licenses, but then provide easy alternatives. For example, California requires authentic photo identification but permits alternative proof of age by affidavit by a credible witness.⁴⁹ West Virginia permits proof of age by affidavit by the parents or by other “good and sufficient evidence.”⁵⁰ In particular, parents – who may be pressuring the child – should not be allowed to verbally attest to age.

A number of states (e.g. Arkansas, Georgia, Hawaii, Idaho, Massachusetts, Michigan, Nevada, and North Carolina) only require proof of age in certain circumstances – for example, upon request by the judge or clerk, if the judge or clerk has doubts as to the age of

one of the parties, or if a party has already self-identified as being under age 18.⁵¹ All such approaches are insufficient to verify that all parties are of legal age to marry.

Only 13 states' statutes expressly require some official proof of age, do not provide easy workarounds, and require this proof of all applicants, whether or not they appear underage. These states are Colorado, Louisiana, Mississippi, Montana, Nebraska, New Hampshire, New York, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, and Wisconsin.

In order to ensure that those with authority to grant marriage licenses or adjudicate exceptions are actually complying with minimum marriage age laws, statutes should clearly require official proof of age from both parties at the time of application.

d) Can Clerks or Judges Approve Marriage Licenses for Out-of-State Minors?

There are many reasons why requiring that the minor resides in the jurisdiction of the state issuing the license could help prevent the forced, coerced, or exploitative marriage of a minor.

First, when judges and guardians *ad litem* evaluate an underage marriage petition, it can be revealing to query any social services records on the minor, particularly for past allegations of forced marriage threats. This exercise is complicated or even impossible cross-jurisdictionally. Second, setting a residency requirement can help prevent marriages across state lines that may be designed to avoid more protective laws in the state of residence.

This is not a hypothetical concern. In May 2016 an Idaho father drove many hours and across multiple state lines to reach a courthouse in Missouri to ensure that his young teen daughter would be able to marry the

24-year-old man who had raped and impregnated her.⁵² Idaho requires judicial approval for anyone under age 16, whereas Missouri requires judicial approval only for those age 14 or younger.

At present, many states' residency requirements are loose and cover only one or the other of the parties, or sometimes just the parents. In total, clerks in 43 states and Washington, DC could conceivably issue marriage licenses to out-of-state minors who have not been emancipated, and some states' statutes actually make clear that residency is not absolutely required.⁵³ Only 7 states actually seem to have firm and un-waivable residency requirements that give judges the authority to grant approval only to a minor who resides in that jurisdiction: Connecticut, Delaware, Hawaii, Maine, Massachusetts, Minnesota, and Wyoming. One more state, Texas, also has a firm residency requirement, though the nature of the judicial approval is to emancipate rather than to marry. But even in 3 of these states (Hawaii, Maine and Wyoming) where judges can only grant approval to marry to resident minors, nothing expressly prevents clerks in those states from issuing marriage licenses to non-resident minors as long as they are age 16-17 and have parental consent.

Especially as more states realize the harms of early and child marriage and legislate to close the legal loopholes that permit it, no state should issue a marriage license to an out-of-state minor.

e) What Role Does Parental Consent Play?

States that make parental consent the gatekeeper to marriages of children pose one of the greatest concerns with respect to forced marriages, since parental consent can so easily equal parental coercion. States that require only one parent's consent – either in general, or in certain circumstances – can provide even less protection for minors.⁵⁴

Yet in the majority of states, if there is consent by at least one custodial parent, that alone is enough to enable most marriage license applications involving minors to be approved by a clerk with no further oversight or inquiry by a judge. In addition, parental consent can sometimes open the door to, and drive the final outcome in, a judicial approval process.

In only 2 states, New York and Virginia, does the statute expressly state that a judge's approval of a marriage involving a minor cannot be based on parental consent alone.⁵⁵ In both states, the minor may also file the petition directly.

The wishes of the minor should be probed and prioritized in any judicial approval process. Parental consent should not be a gatekeeper to an exception nor a necessary or sufficient factor for judicial approval. If anything, parental consent should be only one piece of information a judge may consider as part of a larger, diligent inquiry into the minor's health, safety, and welfare.

“Lyndsy Duet, now a school counselor... was forced into a marriage at 17 after enduring a series of rapes beginning when she was 14... Confused, shamed and helpless, she didn’t speak up — but her rapist did.

‘He asked my parents if he could marry me,’ Duet remembers. ‘My mom was crying, she was so happy.’

Duet felt powerless to resist her parents’ pressure — and it was eight years before she could flee what she says was a violent marriage.”

Nicholas Kristof, “11 Years Old, a Mom, and Pushed to Marry Her Rapist in Florida.” *The New York Times*, May 26, 2017

f) Does the Statute Recognize Linkages Between Rape, Pregnancy, and Forced Marriage?

Pregnancy is often treated by state laws and by judges as definitive proof that marriage would be in the minor's best interests. However, pregnancy is not a reason to green-light or fast-track a marriage license application involving a minor. Instead, pregnancy raises a red flag that the minor may already be at risk of violence and coercion, either:

- From the intended spouse, since a pregnancy can result from a rape (including statutory rape, depending on the ages/age differences of the parties); or
- From the minor's parents, since parents may threaten expecting minors with abuse or punishment unless the parties marry.

Seven states prudently recognize these very real risks by expressly instructing judges that the fact that a minor is pregnant or the putative father of a child does not prove that the best interests of the minor would be served by permitting the marriage.

Such an instruction is critical to ensure that the judge does a more diligent inquiry into the relationship between the parties and between the minor and the minor's parents, and takes a broader view of the minor's best interests. It also guards against a judge's subjective assumption that marriage is always better for teen mothers, since the weight of the research shows the opposite.

But 9 states still make pregnancy the gatekeeper to lowering the legal age to marry below 18, posing sharp concerns with respect to the forced marriages of children and other abuse.⁵⁶

In 6 of these states (Arkansas, Florida, Kentucky, New Mexico, Ohio and Oklahoma), the fact that the female to be married is pregnant (or, depending on the state, has already had a child) will entirely eliminate any age floor. As long as any other statutory criteria are also met, a pregnant child of any age could be approved to marry.

A pregnancy lowers the age floor to 14 in North Carolina, and to 15 in Indiana and Maryland. Maryland also permits a girl age 16 or 17 to marry without parental consent if she is pregnant or has given birth to a child, creating an additional dangerous loophole.⁵⁷ A teen girl could be coerced by an older man who raped and impregnated her to obtain a Maryland marriage license from a clerk without any further inquiries being made or safeguards in place to protect her.

In all such states, the laws governing the minimum age of consent to sex and the minimum marriage age are strikingly inconsistent and suggest, in essence, that at least some of the underage marriages being approved by clerks and judges are between rapists and their victims.⁵⁸ Civil judges hearing underage marriage petitions are put in the position of turning a blind eye to criminal offenses otherwise considered so serious that they can subject the perpetrator to many years in jail and mandatory registration as a sex offender.⁵⁹

“My grandparents were willing to ignore every bruise,’ Nicole said. As for her husband, ‘I think for him he thought it was a way to protect himself from statutory rape charges.’”

Jill Tucker, “Effort to Bar Child Marriage in California Runs into Opposition,” *San Francisco Chronicle*, July 6, 2017

All states should eliminate express pregnancy exceptions in their minimum marriage age laws. Where judges are allowed to grant exceptions, pregnancy alone should not

demonstrate that the marriage is in the best interests of the child, and judges must be trained to see the linkages between rape, pregnancy, and forced marriage as well as the harms of early marriage.

g) Do All Minors Applying for Marriage Licenses Have to Go Before a Judge for Approval?

In Washington, DC and 8 states (Maryland, Nebraska, North Dakota, Oregon, South Carolina, South Dakota, Vermont, and Wisconsin) the law makes *no* provision for judicial approval of any minor, or does not uniformly require judicial approval for any minor.⁶⁰ All of these states except Maryland have a floor of at least age 16.

In most other states with judicial approval processes, they only apply to younger minors. As noted above, an additional serious concern in such states is that judges can be put in the perverse position of approving marriages for minors younger than the state’s legal age to consent to sex.

The following states differentiate the approval protocols for minors based on their age, letting parental consent suffice for older minors:⁶¹

- In 2 states, judges must approve marriages of all minors under age 17 (Indiana and Washington).
- In 19 states, judges must approve marriages of all minors under age 16 (Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maine, Michigan, Nevada, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, Rhode Island, and West Virginia).
- In 1 state, judges must approve marriages of minors under age 15 (Missouri).

This leaves 16- and 17-year-olds, who make up the vast majority of children being married,⁶² without the benefit

of judicial inquiry and vulnerable to parental coercion. In addition, children of this age are still minors and do not have the rights of legal adults. In any state with an age-differentiated structure like this, a clerk can simply sign off on a marriage for a child if the parents wait just long enough.

In North Carolina, for example, the marriage age statute outlines an incredibly detailed process for a judicial approval exception that includes numerous criteria and requires independent investigations by a court-appointed guardian *ad litem*. But it is only triggered for 14- or 15-year-olds in cases of pregnancy or childbirth, many of whom are likely to be statutory rape victims, and all of whom are too young to be married. Moreover, a relative handful of the perhaps hundreds of minors who are married each year across the state may qualify for this stepped-up scrutiny.⁶³ All 16- and 17-year-olds can be issued a marriage license by the register of deeds based on consent from a custodial parent alone.

Therefore, even when a state has strong protection mechanisms built into its judicial approval process, the fact that a judge is only involved for certain younger children weakens the state's minimum marriage age laws as a whole.

Some states additionally or alternatively mandate judicial approvals based on other conditions, such as when a minor lacks parental consent for the marriage (e.g., Alaska, Florida, Illinois, Indiana, Kansas, and West Virginia) and/or in case of pregnancy or the birth of a child (e.g., Arkansas, Florida, Indiana, Kentucky, North Carolina, and Oklahoma).

Also troubling, in some states, approval could be given by a judge or some other designated official, which could limit the formality of the proceedings and the depth of the inquiry into the presence of force or coercion and other indicators of harm to the child.⁶⁴

When judicial approval requirements can be set aside, or are triggered only selectively, the law ignores the universal vulnerabilities of children under age 18 that make them highly susceptible to forced marriages and other harm.

Only 13 states, as of October 2017, will require all minors to seek judicial approval to marry: Alabama, California, Connecticut, Delaware, Georgia, Iowa, Massachusetts, Minnesota, Montana, New Hampshire, New York, Texas,⁶⁵ and Virginia.

And even at that, not all 13 of these states could be said to have any more rigorous child protection measures in place than states with clerk-only approvals – because while it *can* be better to involve judges, they can also be an illusory safeguard, such as when a judge's mandate is merely to perform the same functions as a clerk, or when judges are given little to no guidance for their decision making.

Consider, for example, that:

- In Alabama, Georgia, and Massachusetts, the judge's role seems simply to confirm parental consent; and
- In California, Minnesota, and New Hampshire, judicial approval is permitted when there is parental approval and based on criteria that are starkly bare-minimum – like a finding that the minor “is capable of consenting to and consummating marriage” (California) – or incredibly vague – like requiring only a “careful inquiry into the facts and the surrounding circumstances” (Minnesota) or a showing that “special cause exists rendering desirable the marriage” (New Hampshire).

In addition, some of these 13 states do not statutorily set any age floor, meaning that if the statutory exceptions are met, a judge could conceivably approve the marriage of a child of any age. The judicial approval states with

no statutory age floor are California, Delaware, and Massachusetts. And the age floor in New Hampshire is very low, at 14 for males and 13 for females.⁶⁶

All states should legislate that individuals should be age 18 or older to marry. This approach does not require detailed directives or rely on overtaxed courts and ill-equipped judges to try to discern what serious concerns may lie behind a minor's petition to marry.

If any state permits judicial approvals, then it should institute a floor of age 16⁶⁷ and create a process with meaningful safeguards – including emancipation before marriage – that requires *all minors* to go before a judge for approval to marry.

II. PROVISIONS RELATED ONLY TO JUDICIAL APPROVALS

Thus far, this report has examined general provisions in state marriage age laws, including whether a state:

- Sets an age floor;
- Requires the same approvals for girls and boys;
- Requires official proof of an applicant's age;
- Prevents marriage license issuance to out-of-state minors who have not been emancipated;
- Gives parental consent too much weight, potentially allowing for parental coercion or force;
- Ignores that pregnancy can be a sign of rape and should not result in a green-light for a child to marry; and
- Requires all minors to go before a judge for permission to marry.

Unfortunately, as the preceding discussion and Appendices A and B make very clear, most states' laws utterly fail on these points, allowing for thousands of child marriages to occur.

In particular, simply referring a minor to a judge for

approval is insufficient. The process and criteria for the judge's decision-making also matter, and must provide meaningful safeguards against forced marriages and other harm.

This section looks in greater detail at selected features of states' judicial approval exceptions that, working together with other protective elements, can help prevent forced marriages of children and other harms.

It bears repeating, however, that the most effective approach to end child marriage, impede forced marriages of children, and mitigate the risks of early marriage, is to set the minimum marriage age at 18, without exceptions.

a) Does the Judge Who Makes the Decision Have Expertise in Family Violence, Coercive Control, or Other Forms of Abuse?

Some states assign responsibility for approving marriages involving minors to probate, circuit, district, court of record, chancery, or other generalist courts that cannot be expected to be attuned to coercive control or other dynamics of family and intimate partner violence. Such judges are also likely to lack the experience to conduct duly diligent inquiries and the authority to make whatever orders may be necessary to ensure a minor's protection, like ordering an investigation by the local social services department or issuing a protective order. The statutes that do list specialist judges sometimes include them among other officials that are authorized to preside over such marriage petitions. This not only rolls the dice on the quality of judicial review in a particular minor's case, but also complicates efforts to train judges on critical protection issues, such as how to detect forced marriages.

A state's statute should clearly assign responsibility for hearing marriage petitions involving a minor only to a

family, juvenile, or domestic relations court judge or to a judge exercising jurisdiction over such matters.⁶⁸ Only 9 states expressly meet this criteria: Colorado, Delaware, Hawaii, Louisiana, New Hampshire, New Jersey, New Mexico, Rhode Island, and Virginia.

After 2017 reforms, the New York statute continues to permit the decision to be made either by a superior court justice or a family court judge, but at least now requires the court to provide rights-notifications to minors about such matters as marriage termination, child and spousal support, domestic violence services, and access to public benefits and services before granting a judicial approval.⁶⁹

b) Is Input Sought from the Department of Social Services?

Only 3 states seem to authorize or require a judge or guardian *ad litem* to obtain information from the state social services agency that might document past allegations of forced marriage threats or other abuse so as to inform a judge's decision on a minor's marriage petition:

- In North Carolina, the court is charged with, among other inquiries, examining the relationship of the minor party with his or her parents and any evidence the court would find useful in making its determination. The guardian *ad litem* that is appointed also has the "authority to obtain any information or reports, whether or not confidential" that may be relevant to the case;
- In Rhode Island, the court must transmit a copy of the minor's marriage petition, "together with a written request for a complete investigation of and a report upon the advisability of the issuance of the license," to the department of human services before a hearing can be held; and
- In Virginia, the court may "require the local

department of social services or any other agency or person to investigate the allegations in the petition and file a report" with the court.

Yet in only Rhode Island is such information required in all instances and in only Virginia is a judge required in all instances in which a minor seeks to marry.

New York also arguably meets this criteria. After 2017 reforms, the judge must now "conduct a review of related decisions in court proceedings initiated pursuant to article 10 of the Family Court Act" on child abuse and neglect as well as "all warrants under the Family Court Act," "reports of the statewide computerized registry of orders of protection," and "reports of the sex offender registry." All of these searches could yield important information about violence the minor faces at home as well as threats that may be posed to the minor by the intended spouse.⁷⁰

c) Must the Judge Hold a Formal Hearing and Make Written Findings?

If judicial approvals of minor marriages are allowed, statutes must clearly require that a formal evidentiary hearing be held, and require written findings of fact. Only 3 states meet this criteria: New York, North Carolina, and Virginia.

Some states refer simply to a judge hearing a minor's marriage petition (e.g., Kentucky), but it is not clear that a formal evidentiary hearing is required. Other states clearly require an evidentiary hearing (e.g., Connecticut, Indiana, Idaho, and Texas), and may require a written order, but do not also require written findings. Still other states require the judge to produce some kind of written order but do not outline any hearing process or criteria for the judge to follow (e.g., Hawaii, New Jersey). Delaware sets forth a number of substantive criteria for the judge to consider before issuing a written order, but does not clearly require that an evidentiary hearing be

held or that the written order also contain findings that reflect the judge's reasons for the decision.

Requiring that a formal evidentiary hearing be held can also ensure that the court actually sees and questions the minor directly. Appallingly, not even this basic safeguard is assured when petitions for minors to marry are involved. One survivor of a forced child marriage in California recalls that she never even saw a judge, because her grandmother went to court to obtain the order without her.⁷¹

d) Are Minors Always Appointed Counsel to Represent Them?

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 to marry, or in the case of Texas and Virginia, to be emancipated and given the rights of an adult.⁷²

Without appointed counsel, a minor may have to face a daunting court process with no one to advise her other than her parents or an older partner who may actually be forcing the marriage.

An attorney can be a reliable source for critical information about rights and resources, and in particular, can tell minors what help would be available if they are being abused or threatened. Many minors will otherwise not disclose threats they are facing, out of fear or uncertainty of the consequences to themselves or others.

New York's statute is particularly noteworthy in that in order to maximize the protective potential of appointed counsel, it requires such attorneys to have "training in domestic violence including a component on forced marriage."⁷³

e) Are Specific Steps Taken to Protect the Minor's Privacy or to Keep Confidential a Minor's Disclosures About Forced Marriages or Other Threats?

There may be a number of provisions of state law, beyond the scope of this analysis, that require certain privacy protections where minors are concerned, such as the sealing of records, or that permit special procedures in certain circumstances, such as private judicial interviews of children during custody proceedings.

But relatively few state statutes on judicial approvals of minors' marriage petitions specifically mention or mandate these types of important privacy protections. Unless a minor has some opportunity to make a safe disclosure, not only outside of open court but also outside the intimidating presence of abusive or coercive parents or a partner, the minor is likely only to give coached answers.

"Fatima was 15 when she was forced by her strict Muslim parents to marry a 21-year-old cousin. She remembers lying to a judge in New York City, claiming she wanted to get married. 'I was sweating and nervous,' she recalls. 'My mother was hitting me on my knee.' If she'd said no, she says, her father would have beaten her. 'They would have kept me locked up in the house forever.'"

Patricia Smith, *"Too Young to Say 'I Do'?"* *New York Times Upfront*, April 24, 2017

Notably, only New York, after 2017 reforms, seems to require the judge to interview a minor separately, presumably allowing the minor to speak privately and confidentially only to the judge, without either the minor's parents or the other party to be married present. By contrast, in Rhode Island the hearing must be conducted in-chambers, but the statute then authorizes the judge to "summon at the hearing any persons ... deem[ed] advisable."⁷⁴

Louisiana and Utah also allow judicial inquiries to be conducted privately, though this is not required, and various parties may be present. Iowa requires court records relevant to a pregnancy to be sealed and available only to the parties to be married, or to another interested party if they obtain a court order. North Carolina protects confidential reports or information obtained or prepared by the guardian *ad litem* from disclosure to anyone except by order of the court, or unless otherwise provided by law. Some states take steps to ensure the confidentiality of the case files and require written permission by the court in order to access those files, as in Indiana, Mississippi, New York, and Rhode Island.

f) Given Social Science Evidence that Shows Early Marriage Poses Steep Risks to Health, Safety and Welfare, Is There a High Proof Standard for Judicial Approval?

Some states require several criteria to be met before judicial approval may be granted. Whatever the number of criteria, however, they are not the same as the actual legal standard of proof, or the burden the petitioners must meet to make their case.

In nearly all states with judicial approvals processes, the standard of proof is not specified, and so defaults to the preponderance of the evidence, rather than a tougher standard like clear and convincing evidence.

A requirement that minors must be able to rebut the presumption that marriage is not in their best interests would be fair acknowledgement of where the weight of the evidence already lies, based on aggregate social science data discussed above, and could provide powerful protection for minors from not only forced marriages but also from voluntary marriages entered too early.

However, no state has such a proof standard at present. The only state with any kind of presumption against approving a minor's marriage petition is North Carolina. North Carolina's statute presumes that marriage is not in the minor's best interests "when all living parents of the underage party oppose the marriage."

g) Overall, Are the Process and Criteria for Judicial Approvals Meager or Meaningful?

A judicial process is only meaningful if it requires judges to thoroughly consider a range of factors that lead to a conclusion that the marriage is in the best interest of the minor, and is not being forced. There are a number of states in which the judicial approvals process and criteria are not set up to provide meaningful safeguards against the abuse and exploitation of children in the guise of marriage. This is often because the substantive criteria a judge is directed to consider, if any, are incredibly slim, or entirely subjective.

Several states (such as Alabama, Georgia, Hawaii, Kentucky, Massachusetts, New Jersey, Oklahoma, Washington, and Wyoming) fall into this category because a judge's decision may hinge entirely on whether there is parental consent and/or pregnancy.

Some other states problematically require judges to consider parental consent or pregnancy along with one or two further highly subjective or vague criteria for decision making. For example:

- In Arizona, Minnesota, and Ohio, the statute alludes only to a need to consider all of the facts;
- In California and Idaho, the statute references a basic capacity to consent;
- Arkansas' statute mentions the best interest of the parties, which potentially includes an intended adult spouse or the minor's parents;
- Idaho's statute directs a judge to take into account the best interest of society;
- Louisiana, Mississippi, Missouri, New Hampshire, Tennessee, and Washington authorize the judge to grant a petition for good cause or special cause, if the judge deems the marriage advisable or desirable, or some similarly non-specific reason; and
- Florida and West Virginia leave the decision to the judge's discretion.
- Connecticut requires that the minor's consent be based upon an understanding of the nature and consequences of marriage and that the minor have sufficient capacity to make the decision to marry;
- New York requires the court to consider factors such as whether the parties are incapable of consenting to a marriage for want of understanding;
- Texas – where judges are adjudicating whether to emancipate the minor, not whether to approve the minor's marriage as such – requires 16- and 17-year-olds to be self-supporting and managing their own financial affairs, and if the minor is age 16, also to be living on her own;
- Virginia requires the parties to be mature enough to make such a decision to marry; and
- Delaware requires the judge to consider the mental and physical health of the individuals to be married.

Some states laudably require judges to consider the best interests of the minor, but may still fail to offer meaningful protection because their statutes provide little to no other substantive or procedural guidance.

h) Is the Maturity or Capacity of the Minor Always Taken Into Account?

There are 10 states that in some way require the judge to assess the maturity or capacity of the minor: Colorado, Connecticut, Delaware, Illinois, Iowa, Montana, New York, North Carolina, Texas, and Virginia.

- Colorado, Illinois, Iowa, Montana, and North Carolina require the minor to be capable of assuming the responsibilities of marriage. North Carolina also requires that the court-appointed guardian *ad litem* assess and consider the emotional development, maturity, intellect, and understanding of the underage party;

There are a few states that seem to miss the mark in this category despite statutory language alluding to maturity or capacity. For example, California has such a low threshold for capacity – that the minor be “capable of consenting to and consummating marriage” – that it provides no meaningful limitation on when judges may grant approval.⁷⁵

As another example of a state that misses the mark, Idaho requires the minor's petition to show that the minor is “physically and/or mentally so far developed as to assume full marital and parental duties,” and even instructs the judge to secure a physician's expert opinion that the minor is “sufficiently developed mentally and physically to assume full marital duties.” These detailed criteria become illusory, however, because the statute permits the judge to grant the petition *either* if the minor is developmentally mature enough, *or* if the judge determines that it is in the best interest of society that the marriage be permitted.

Finally, it is worth reiterating that even in the 10 states listed above, in only 7 of the states (Connecticut, Delaware, Iowa, Montana, New York, Texas, and Virginia) are all minors required to obtain judicial approval to marry or emancipate in order to marry. In the remaining 3 states (Colorado, Illinois, and North Carolina), judicial approval is only required for certain ages and circumstances, meaning that there is no assessment of the maturity or capacity of the vast majority of minors who are approved to marry in those states.

i) Is the Likelihood of Coercion, When Any Minor Seeks to Marry, Anticipated and Addressed?

Given strong downward social and numeric trends in child marriage,⁷⁶ those who are marrying now may be particularly vulnerable children with no say in whether, when, or whom they will marry.

Adding to this likelihood are the many documented cases of minors being forced into marriages, and the many legal and practical obstacles they can face if they try to avoid a forced marriage. Therefore, marriages of children under 18 should be prohibited. In states where raising the age floor to 18 is not immediately possible, judicial procedures must ensure that children are not being forced or coerced to marry.

A few states directly speak to concerns about coercion:

- Arizona and Utah require the court to find that the minor “is entering into the marriage voluntarily;”
- Connecticut requires the court to find that the minor consents to the marriage and that the minor’s decision to marry is “made voluntarily and free from coercion;” and
- New York and Virginia require the court to find that “it is the minor’s own will that the minor enter into [the]

marriage” and that the minor is not being compelled “by force, threat[s], persuasion[s],...or duress.”

Other states have vaguer statutory language, but which still seems to place an affirmative obligation on the court to probe the voluntariness of the marriage:

- Delaware requires the court to consider “the wishes of the minor;”
- Indiana and Mississippi require the court to determine that the parties “desire to marry each other;” and
- North Carolina and South Carolina require the court to find that the parties “agree to marry.”

North Carolina also has a provision that prevents a minor whose petition for permission to marry has been denied from bringing a new petition again for a year from the date of judgment. This could protect a minor from ongoing pressure to marry and enable her time and opportunity to seek further help if needed.

Of concern, some states (Arizona, California, Ohio, Montana, and Utah) permit or require pre-marital counseling in certain circumstances before a minor’s marriage petition may be granted. Since such counselors may actually be clergy from the minor’s community who could increase the pressure on the minor to marry, such provisions could unwittingly facilitate forced or abusive marriages, rather than protect minors from them.

j) Are Criminal Records of An Intended Spouse Examined for Violent Offenses?

Only 4 states require that the court examine criminal records, in whole or part:

- Delaware – for both parties, with no limitation on kind of criminal records;

- Maine – only for a party age 18 or older, with no limitation on kind of criminal records;
- New York – for both parties, with the limitation that the court is to consider crimes that would be reflected in reports of the state’s sex offender registry;
- Virginia – for both parties, with no limitation on kind of records that must be submitted with the petition to marry, though the judge is expressly required to consider certain convictions when determining whether the marriage will endanger the safety of the minor.

This means that in 46 other states and Washington, DC (and in Maine for minors age 16-17), no questions are asked to determine if the minor is intending to marry a person with a history of crimes of violence or crimes against children.

k) Are Any Civil Protection Orders Pulled to See If There Is a History of Abuse Between the Parties?

Both New York and Virginia require the court to find that the marriage will not endanger the safety of the minor, and New York specifies “mental, emotional or physical safety” before approving a petition to marry/emancipate in order to marry. The criminal records searches discussed above help inform, but do not satisfy, this criteria. Both states go further:

- New York requires the court to search the statewide computerized protection order registry, and to consider whether there is a history of domestic violence between the parties to be married, or between a party and either party’s family members;
- Virginia requires copies of any protective order between the parties to be married to be submitted with the minor’s petition, and requires the court to

consider whether there is any history of violence between the parties to be married.

l) Does the Judge Look at Age Differences Between the Parties?

Maine requires the court to consider the age of both parties, New York requires the court to consider both age difference and whether there is a power imbalance between the parties, and Virginia requires the court to consider the age differences between the parties when it determines whether the marriage will endanger the safety of the minor. No state’s statute expressly prohibits a specific age difference.⁷⁷

It is important to note, however, that even when the parties are relatively close in age, the marriage can be forced, or the intended spouse may already pose other threats to the minor’s safety, particularly given the well-documented vulnerabilities of teen girls to dating violence and stalking, including cyberstalking. Even a few years’ difference between a 16-year-old and an adult spouse can also make a considerable difference in the relative financial position and security of the parties, an inequality that can be compounded and then exploited for years to come if that spouse is abusive.

Thus, while a large age difference between the parties indicates that the marriage may be forced, the relationship may be coercive, or simply that there may be a vast power imbalance between the parties that could compromise the minor’s best interests and safety, a small age difference offers no automatic reassurance about these concerns.

m) Is the Judge Required to Consider the Best Interests of the Minor, and What Guards Against Subjective Interpretation of this Criteria?

There are 17 states that in one formulation or another require the judge to consider the best interests of the

minor: Alaska, Arizona, Arkansas, Colorado, Delaware, Illinois, Iowa, Kansas, Maine, Montana, Nevada, North Carolina,⁷⁸ Pennsylvania, Texas, Utah, Virginia, and West Virginia.

There are some states that have ostensible best interests language in their statutes, but the particular legislative language could authorize a judge to put other parties' interests (an intended spouse, the minor's parents, or even society) before a minor's own best interests, as follows:

- Ohio judges must consider the best interest of the applicants;
- Indiana judges, for some underage marriage petitions, must consider the best interest of all persons concerned with the issues raised in the petition; and
- Idaho judges may consider the best interest of society – and still more alarming, they are authorized to grant a petition on this basis alone, conceivably even if the judge or, for example, a physician providing an expert opinion, finds that the minor is not sufficiently developed mentally and physically to be married.

Other provisions that suggest but do not specifically mention the best interests of the minor also fall short of the mark. For example, in Connecticut, the judge must find that the marriage would not be detrimental to the minor. In New York, the judge must find that the marriage will not endanger the mental, emotional, or physical safety of the minor. While these provisions are helpful in their own right, they effectively ask whether the marriage will be harmful, not whether the marriage will be helpful, as a true best interest inquiry would.

Finally, as noted above under the discussion of the role of parental consent and how courts handle pregnancy, neither pregnancy nor parental consent, nor a

combination of the two, should be acceptable evidence that the marriage is in the best interest of the minor.

n) Is the Judge Able to Make Other Orders as Appropriate – Not Just to Approve or Deny the Petition to Marry?

When judicial approval is required, the judge should be able to take other steps to protect and empower the minor. For example, before authorizing the marriage of a minor under age 16 in Arizona, the superior court judge is expressly permitted “to require that the minor attend school,” or “to require any other condition that the court determines is reasonable under the circumstances.” Similar language is incorporated into Utah’s statute.

This language is broad in theory, and could be helpful in practice – for example, if the judge requires the appointment of a social services caseworker or guardian *ad litem* to monitor the minor’s welfare. But it could also be fairly limited. If the judge does not actually have jurisdiction over other family law or juvenile justice matters, the judge may not be able to appoint the minor a guardian, issue a protection order, or initiate a child protective services investigation instead of granting the marriage petition. The scope of the judge’s authority to make other orders in these states, effectively, may only extend to placing certain conditions on the marriage itself.

In Rhode Island and Virginia, the powers of the presiding court are inherently broader. In Rhode Island, the underage marriage petition goes before a family court, and the court “shall exercise the authority of a guardian” with respect to the minor throughout the proceedings. In Virginia, the petition goes before a juvenile and domestic relations district court and the court may make any other orders regarding the matter which the court deems appropriate.

o) Does the Law Ensure That Only Court-Emancipated Minors and Other Legal Adults Are Eligible to Marry?

Virginia was the first state to limit marriage to legal adults, meaning individuals age 18 or older, or minors age 16 or 17 who have been legally emancipated after a special court proceeding.⁷⁹ Texas and New York have now followed suit with laws that in different ways have the same result, to limit marriage eligibility to legal adulthood.

Emancipation at age 18 or by a court is critically important to prevent forced marriages and to empower young people entering marriage. Enabling the judge in the same proceeding as a petition to marry to remove the legal disabilities imposed on children due to their status as minors helps put both parties to the prospective marriage on equal legal footing, even before the marriage takes place.

As noted above, rights that are critical to enable individuals to prevent or leave a marriage include:

- The right to seek a protective order or initiate any other legal action on their own;
- The right to live on their own; and
- The right to stay in a shelter without age-based restrictions, or stay with a friend without exposing that friend to the risk of a lawsuit for interference with parental rights or for harboring/contributing to the delinquency of a minor.

Depending on the state, these rights and others may all be denied to minors who have not been emancipated.

In some states, minors are not even automatically emancipated upon marriage, and yet by virtue of the marriage, they may put themselves beyond Child Protective Services' jurisdiction. In these jurisdictions they may fall through the cracks of the authorities' ability

to investigate abuse allegations and to advocate on their behalf. This creates the perverse situation where a minor is the most isolated and least protected precisely when she is at the greatest risk of harm. Setting legal adulthood as a pre-requisite to be able to marry in the first place would also eliminate this gap in protection.

The reality is that even the most robust judicial approval process may not succeed in detecting a forced marriage or other threats the minor is facing, including because the minor may not reveal them. A provision ensuring that any minor approved to marry is by that same grant emancipated – declared by the court to be a legal adult – can give the individual a full range of self-help options to protect themselves. Being legally empowered to seek help is useful, but entirely preventing the harms of early and forced marriage is the ideal.

III. ADDITIONAL MEASURES TO PROTECT THE MINOR

Waiting periods between application and issuance of a license, or between issuance of a license and the first day thereafter that the marriage can actually be solemnized, can help prevent the forced or coerced marriage of minors. Waiting periods build in critical time and opportunities for a young person to collect her thoughts, identify alternatives and escape routes, and to try to connect with service providers for assistance. Building in a delay before a marriage license can issue or be effective can be especially instrumental after a judge's order granting a minor permission to marry and/or to be emancipated, because it enables the newly empowered minor to seek confidential legal advice and to take other protective steps that may have been foreclosed to them before.

At present, only 2 states prescribe a firm and un-waivable waiting period after an application for a marriage license involving a minor is filed and before it

can be issued: Arkansas (5 days) and Oklahoma (not less than 72 hours).

Some states may prescribe a short waiting period between license application and issuance, or between license issuance and solemnization, either in general (Florida, Pennsylvania and Texas) or specifically for minors (Tennessee and West Virginia), but they then provide exceptions that enable that waiting period to be waived. For example, the waiting period can be waived

based on consent by both parents in Tennessee, or based on emergency or extraordinary circumstances in West Virginia.

Ideally, states would actually build in waiting periods at a few points in the process before any marriage involving a minor can actually be solemnized. However, no state currently does this. To the contrary, some state laws expedite solemnization by setting deadlines within which the marriage must take place or the license expires.



CONCLUSION

There is a simple, straightforward, and powerful solution that all U.S. states can adopt to end child marriage in America: to set the legal marriage age at 18, without exceptions. This approach is easy to legislate – it requires a single sentence to pronounce the new bar – and even easier to administer, requiring clerks merely to verify the age of all applicants for marriage licenses.

It is also possible to substantially mitigate the risks of early and forced marriage by limiting eligibility to legal adults. But any alternative that requires judicial proceedings will necessarily be more complex, and will likely still permit some forced marriages to evade detection and some voluntary marriages to be approved that threaten young people with other harm.

Tahirih is committed to ending child marriage in America. Join us.

Learn more at tahirih.org/childmarriagepolicy.

Trevicia Williams was married at age 14 to a 26-year-old ex-convict and current registered sex offender.

She puts her position on child marriage simply: “It shouldn’t hurt to be a child, and child marriages hurt children.”

Heather Leighton, “[Former child bride in Texas aims to change marriage laws.](#)” *Houston Chronicle*, April 23, 2017



ENDNOTES

¹ See statistics cited in Anjali Tsui, Dan Nolan and Chris Amico, “Child Marriage in America: By the Numbers” (PBS Frontline, July 6, 2017), available at <http://apps.frontline.org/child-marriage-by-the-numbers/>.

² This diversity is multifaceted. Children from rural and urban, poor and well-off, white and non-white, multigenerational U.S. citizen and recent immigrant, and religious and non-religious families have been married at young ages in the United States.

³ Child marriages involve at least one party who is under the age of legal adulthood, which is known as the “age of majority.” Most U.S. states set the natural age of majority at 18. Early marriages include child marriages, but also can include any young person who marries before having the level of physical and emotional development to give full, free, and informed consent to a marriage, or to establish and maintain a healthy marriage. Forced marriage is used to describe a marriage that lacks the full and free consent of one or both parties, and involves force, fraud, or coercion. Both adults and children can be forced into a marriage. Children can be especially vulnerable for a range of reasons, including because they lack legal and practical options open to adults to protect themselves.

⁴ See “Understanding State Statutes on Minimum Marriage Age and Exceptions,” Tahirih Justice Center (last updated July 11, 2017), available at <http://www.tahirih.org/wp-content/uploads/2016/11/07.11.17-State-Marriage-Age-Requirements-Statutory-Compilation-Word-doc.pdf> (hereinafter, “Tahirih’s 50-State Compilation”).

⁵ See statistics from 38 states that provided records on the marriages of minors from 2000 to 2010, cited in Nicholas Kristof, “11 Years Old, A Mom, and Pushed to Marry Her Rapist in Florida” (*The New York Times*, Op-Ed, May 26, 2017), available at https://www.nytimes.com/2017/05/26/opinion/sunday/it-was-forced-on-me-child-marriage-in-the-us.html?_r=0. Unchained At Last led this effort to collect state marriage license data from all 50 states, with contributions by Tahirih on several states (assisted *pro bono* by the law firm of Hogan Lovells).

⁶ See further state statistics on marriages of minors cited in Anjali Tsui, Dan Nolan and Chris Amico, “Child Marriage in America: By the Numbers” (PBS Frontline, July 6, 2017), available at <http://apps.frontline.org/child-marriage-by-the-numbers/>.

⁷ This recent revelation adds to a 2011 retrospective study by public health researchers based on earlier national epidemiological survey data. The researchers estimated that 9.4 million U.S. women had married at age 16 or younger, and nearly 1.7 million had married at age 15 or younger. (See Yann Le Strat, Caroline Dubertet & Bernard Le Foll, “Child Marriage in the United States and Its Association with Mental Health in Women,” 128 *Pediatrics* 524 (September 2011), available at <http://pediatrics.aappublications.org/content/pediatrics/early/2011/08/24/peds.2011-0961.full.pdf>.)

Also in 2011, a groundbreaking Tahirih report identified thousands of forced marriage cases across the country, many involving girls under age 18. See Tahirih Justice Center, “Forced Marriage in Immigrant Communities in the United States” (September 2011), available at <http://www.tahirih.org/wp-content/uploads/2015/03/REPORT-Tahirih-Survey-on-Forced-Marriage-in-Immigrant-Communities-in-the-United-States.pdf>. This finding adds disturbing dimension to America’s child marriage problem.

⁸ See Statistical Reports and Tables of the Virginia Department of Health, Division of Health Statistics, “Recorded Marriages by Age of Bride by Age of Groom,” available at <http://www.vdh.virginia.gov/HealthStats/stats.htm>.

⁹ Statistics on youngest age at marriage were obtained by Tahirih directly from the Virginia Department of Health. For more information, see Tahirih Justice Center, “Child Marriage in America: Current Laws Are Failing to Protect Vulnerable Children and Teens” (February 20, 2016), available at <http://www.tahirih.org/news/child-marriage-happens-in-the-u-s-too/>; see also Tahirih Justice Center, “Support SB 415/HB 703 to Raise the Minimum Marriage Age and to Protect Children from Abuse and Coercion” (2016), available at <https://www.tahirih.org/wp-content/uploads/2016/02/Pass-SB-415-HB-703-to-Protect-Children.pdf>.

¹⁰ See Tables on Marriages by Age of Spouses in “Maryland Vital Statistics: Annual Reports” of the Maryland Department of Health, available at <https://health.maryland.gov/vsa/Pages/reports.aspx>.

¹¹ See Tahirih Justice Center, “Child Marriage in America: Current Laws Are Failing to Protect Vulnerable Children and Teens,” *supra* n. 7; see also Tahirih Justice Center, “Support HB 799 & SB 861 to End Child Marriage in Maryland” (2017), available at <http://www.tahirih.org/wp-content/uploads/2017/08/March-2017-Tahirih-Backgrounder-on-Child-Marriage-in-MD.pdf>.

¹² Statistics on youngest age at marriage, and marriages of minors generally, were obtained by Tahirih directly from the Texas Department of State Health Services, Center for Health Statistics.

¹³ For more information, see Tahirih Justice Center, “SB 1705/HB 3932” (February 13, 2017), available at <http://www.tahirih.org/wp-content/uploads/2017/02/FINAL-Backgrounder-on-Forced-Child-Marriage-in-TX.pdf>. While Texas’ Penal Code does provide some exceptions to a statutory rape charge if the parties are close in age and/or were married at the time of sexual intercourse, there is no exception if one party is under age 14.

¹⁴ Child marriage statistics based only on civil marriage license data like these figures, moreover, does not even capture the full extent of America’s child marriage problem. In some cases, families work around marriage laws, giving girls away to an adult men without legally binding the two. See, e.g., Rachel Polansky, “Child Brides: Young Girls Forced to Marry Men” (NBC News, February 18, 2017), available at <http://www.nbc-2.com/story/34538939/child-brides-young-girls-forced-to-marry-men>; see also Justine McDaniel, “Mother, father accused of ‘gifting’ teen daughter to Lee Kaplan enter guilty, no-contest pleas” (*Philly.com*, April 6, 2017), available at <http://www.philly.com/philly/news/pennsylvania/Lee-Kaplan-Stoltzfus-Amish-Feasterville-gifting-guilty-plea.html>. Other child marriages may begin with a religious ceremony, recognized as binding in that community but not legally valid until the parties obtain a civil marriage license, which may not happen until both parties are 18 or older. Families may also take children abroad to be married. Regardless, it is imperative for states to take

a strong stand against child marriage in their civil marriage license laws in order to demonstrate a commitment to combat all the ways in which child marriages may happen.

¹⁵ See, e.g., studies cited by the global partnership Girls, Not Brides and by UNICEF, and factsheets and reports available at <http://www.girlsnotbrides.org/what-is-the-impact/> and <http://data.unicef.org/resources/ending-child-marriage-progress-and-prospects/>.

¹⁶ See research cited by College of William & Mary Law School Professor Vivian E. Hamilton, in “The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage” (*Boston University Law Review*: December 2012) 92 B. U. L. Rev. 1817, 1820 and at n. 10, 11, and 15, available at <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2467&context=facpubs>.

¹⁷ See Gordon B. Dahl, “Early Teen Marriage and Future Poverty,” *Demography* (August 2010: 47(3): 689-718), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3000061/>; Naomi Seiler, “Is Teen Marriage a Solution?” (Center for Law and Social Policy, April 2002), at pp. 7-9, available at <http://www.clasp.org/resources-and-publications/archive/0087.pdf>.

¹⁸ See Yann Le Strat et al, *supra*, n. 5.

¹⁹ See Matthew E. Dupre and Sarah O. Meadows, “Disaggregating the Effects of Marital Trajectories on Health,” *Journal of Family Issues* (Vol. 28, No. 5, May 2007, 623-652), at pp. 646-647 (“Results show that females who marry before age 19 years or experience one or more divorces are at an increased risk of developing a serious health condition.”), available at <http://journals.sagepub.com/doi/pdf/10.1177/0192513X06296296>; see also Bridget M. Kuehn, “Early Marriage Has Lasting Consequences on Women’s Mental Health,” *news@JAMA* (August 29, 2011), medical news posts by *The Journal of the American Medical Association* (“research has linked such early marriages to a higher risk of HIV or other sexually transmitted infections, cervical cancer, unintended pregnancy, maternal death during childbirth, and abortion; early marriage is also associated with malnutrition among offspring”), available at <http://newsatjama.jama.com/2011/08/29/early-marriage-has-lasting-consequences-on-women%e2%80%99s-mental-health/>.

²⁰ See information about the “Adverse Childhood Experiences” (“ACEs”) Study at <http://www.cdc.gov/NCCDPHP/ACE>, <http://www.cdc.gov/violenceprevention/acestudy/about.html>, and <http://www.cdc.gov/violenceprevention/acestudy/findings.html>. These findings suggest that not only individuals who themselves marry as children, but also the children produced of such marriages, may be more susceptible to lifelong health problems.

²¹ See Centers for Disease Control and Prevention, “Teen Dating Violence” (August 3, 2017), available at http://www.cdc.gov/violenceprevention/intimatepartnerviolence/teen_dating_violence.html.

²² See Loveisrespect, “Dating Abuse Statistics” and sources cited therein, available at http://www.loveisrespect.org/pdf/Dating_Abuse_Statistics.pdf.

²³ See “Statutory Rape: A Guide to State Laws and Reporting Requirements,” prepared by The Lewin Group for the U.S. Dept. of Health and Human Services, December 15, 2004, p. 1, available at <http://aspe.hhs.gov/hsp/08/sr/statelaws/report.pdf>, citing research findings that almost three-quarters of women who had intercourse before age 14, and 60 percent who did so before age 15, reported having a forced sexual experience.

²⁴ See factsheet *supra*, n. 21.

²⁵ Of additional concern, spousal abuse suffered by married minors can fall outside of the mandate of “Child Protective Services” (CPS) in states where the agency’s jurisdiction extends only to parental abuse. In any event, across the country, when Tahirih’s Forced Marriage Initiative staff report that a minor is being threatened with a forced marriage, they are often told by the state’s CPS that such a case falls outside the agency’s mandate.

²⁶ It is true that in some states minors may acquire some rights at earlier ages than the age of majority, but it is not until majority that the full complement of legal rights of an adult are granted. In Tahirih’s experience, some of the most critical rights that could empower an individual to avoid a forced marriage – such as to leave home and to decide to live elsewhere than with one’s parents – are denied to minors. This has the effect, too, of boxing minors into a corner where their only option to avoid the marriage may be to pursue formal legal action against their own parents – to try to file for a protective order, or to make a report to the police or to Child Protective Services. Even assuming that a minor could get over serious threshold obstacles like finding a lawyer willing to help with these actions, and other likely hurdles like an inadequate response from the authorities, few children are willing to take such steps against their own parents, and to risk permanent rifts in the family.

²⁷ See National Law Center on Homelessness & Poverty and National Network for Youth, “Alone Without a Home: A State-by-State Review of Laws Affecting Unaccompanied Youth” (September 2012), available at http://www.nlchp.org/Alone_Without_A_Home.

²⁸ See Lisa V. Martin, Assistant Professor, University of South Carolina School of Law, “Restraining Forced Marriage” (forthcoming, work-in-progress 50-state analysis of states’ civil protection order laws and minors’ access thereto to prevent forced marriages).

²⁹ See “Alone Without a Home,” *supra*, n. 26, chapters on “Definitions Pertinent to Unaccompanied Youth” and “Emancipation.”

³⁰ See *id.*, chapter on “Emancipation.”

³¹ See Tahirih’s 50-State Compilation, *supra*, n.2. Throughout this report, unless otherwise noted, Tahirih’s analysis of general statutory trends or specific state statutes on marriage requirements is based on, and refers to, that compilation.

³² In this report, the term age “floor” is used to refer to the lower limit below which a child cannot be married under any circumstances.

³³ “Clerk” is not the term that is uniformly used. Some state statutes refer to “clerks” as such; others reference other types of clearly non-judicial government officials such as a “licensing officer,” “recorder,” or “register of deeds.” For the purposes of this report, we refer to all such officials as “clerks.”

³⁴ Research underscores how reticent minors are to reveal abuse. A recent poll of individuals using the confidential “live chat” service of the National Domestic Violence Hotline found that nearly half of those under age 18 had not asked anyone else for help for fear that the person would be legally required to report what was shared (e.g., to Child Protective Services or law enforcement). See Lippy, C., Burk, C., & Hobart, M. (2016). *There’s no one I can trust: The impact of mandatory reporting on the help-seeking and well-being of domestic violence survivors*. A report of the National LGBTQ DV Capacity Building Learning Center, Seattle, WA.

³⁵ Cf. Texas statistics cited *supra*, n. 10. Prior to 2017 reforms, a judge had to approve all marriages of minors under 16 in Texas, and marriage license

data shows that girls as young as 12 have been married. Especially if any such girl under age 16 was pregnant, she could have been a statutory rape victim, since the state defines a “child” for sexual assault offenses as an individual younger than age 17, and only provides an affirmative defense if the younger party is at least 14 and the parties are already married, or no more than 3 years’ apart in age. See Tex. Penal Code Ann. § 22.011(a) (2), (c)(1), and (e)(2). A number of judge-approved marriages in Texas, therefore, have effectively amounted to judge-sanctioned rape.

As another example: North Carolina sets forth a detailed judicial approval process that includes independent investigations by a court-appointed guardian *ad litem*. Yet only 14- and 15-year-old girls who are pregnant or have given birth to a child (or 14- and 15-year-old boys who are the “putative father of a child, either born or unborn”) get the benefit of this due diligence before being issued a marriage license. Any child in those circumstances is very likely to be a statutory rape victim, since sexual intercourse with anyone under age 16, if the actor is at least 4 years older, is defined as a felony sex offense in North Carolina (see N.C. Gen. Stat. Ann. § 14-27.30), and since child marriage statistics in the U.S. reveal that the majority of the time, children are marrying adults age 18 or older, and sometimes significantly older (see Nicholas Kristoff, *supra*, n. 3, and Anjali Tsui et al, *supra*, n. 4; see also Tahirih Justice Center, “Child Marriage in America: Current Laws Are Failing to Protect Vulnerable Children and Teens,” *supra*, n. 7).

Legal regimes like these seem to reflect centuries-old “honor codes” and misguided ideas about marriage as the cure-all for premarital sex and out-of-wedlock pregnancy, rather than modern evidence about what actually best promotes girls’ safety and security.

³⁶ See commentary on this historic Virginia bill (HB 703/SB 415) by Tahirih Justice Center available at <https://allianceinaction.org/2016/06/27/new-marriage-age-law-equals-better-protections-for-thousands/>, and codification at Va. Code §§20-45.1, 20-48, and 16.1-331 to 334, available at <http://law.lis.virginia.gov/vacode>.

³⁷ See SB 1705/HB 3932 (Texas) and A 5524B/S 4407B (New York) and codification of the latter at N.Y. Dom. Rel. Law §15 (2017), available at <https://www.nysenate.gov/legislation/laws/DOM/15>. Connecticut also passed a new law, but it stops short of the strides made in these other states.

³⁸ Please note: this analysis presumes the laws as they will be effective as of October 2017, in order to take into account 3 states’ newly enacted reforms. For this reason, and due to further analysis, the information in this final report may differ slightly from the information provided by PBS *Frontline* that cites to Tahirih’s “forthcoming” report, at Anjali Tsui et al, *supra*, n. 7.

³⁹ See N.H. Rev. Stat. § 457:4-8.

⁴⁰ Youngest age-at-marriage statistics obtained directly by Tahirih from the New Hampshire Department of State, Division of Vital Records Administration, current through 2014 and as compiled December 15, 2015.

⁴¹ See Md. Code Ann. §2-301; see also “Table Four, Age-Based Sex Crimes,” prepared by the Maryland Coalition Against Sexual Assault and the Sexual Assault Legal Institute, available at http://www.mcasa.org/_mcasaWeb/wp-content/uploads/2011/10/Table-Four-Final-2011.pdf.

⁴² See Tahirih Justice Center, “Child Marriage in America: Current Laws Are Failing to Protect Vulnerable Children and Teens,” *supra*, n. 7.

⁴³ See La. Child. Code §§1545-1549 and Nicholas Kristof, *supra* n. 3.

⁴⁴ See Mo. Rev. Stat §451.020 and § 451.090. 2000-2014 statistics were obtained and analyzed by Tahirih from the Missouri Department of Health & Senior Services, Vital Records. Original datasets are available at: <http://health.mo.gov/data/vitalstatistics/data.php>.

⁴⁵ See Fla. Stat. §§741.04 and 741.0405 and Nicholas Kristof, *supra* n. 3.

⁴⁶ While we know in actuality that most minors being married are girls, on their face the express pregnancy/childbirth exceptions in 8 other states’ laws leave children of both genders equally unprotected by exposing them both to the risk of a forced marriage after a rape or statutory rape results in a pregnancy. Generally speaking, provisions like these are structured so that the female who is the mother/expectant mother could be either the minor party to the marriage or instead an adult party; or the male who is the father/expectant father could be the minor party or instead an adult party. That said, since the public policy priority clearly expressed through such provisions is to avoid unwed mothers of whatever age, these 8 other states’ laws are, in that sense, all gender-discriminatory.

⁴⁷ See Anjali Tsui et al, *supra*, n. 4. In addition, as underscored above, there is extensive research documenting the heightened vulnerability of girls and young women to physical and sexual abuse and the lifelong detriments to girls’ safety, health, and welfare that can come from early marriage.

⁴⁸ Marriage data in annual statistical reports of the Maryland Dept. of Health and Mental Hygiene, available at <http://dhmh.maryland.gov/vsa/Pages/reports.aspx>, indicates that at least 6 children under age 15 were married after 2000, for example, even though a law instituting an age floor of 15 was enacted in 1999. And cases of 12-year-old girls being married were reflected in marriage license data obtained from Alaska and South Carolina, despite age floors in those states of 14 and 16, respectively. See Nicholas Kristof, *supra*, n. 3.

⁴⁹ See Cal. Fam. Code §354(a).

⁵⁰ See W. Va. Code §48-2-106.

⁵¹ Georgia, for example, only requires official proof of age *after* a minor has already been referred to a judge for approval, and it is only if the judge “does not know of his or her own knowledge the age of a party” that the judge must then require documentary evidence of proof of age. See Ga. Code Ann. §19-3-36.

⁵² See *CNN Wire*, “Dad admits he took pregnant 14-year-old daughter to marry her 24-year-old rapist” (May 26, 2016), available at <http://fox43.com/2016/05/26/dad-admits-he-took-pregnant-14-year-old-daughter-to-marry-her-24-year-old-rapist/> and David Boroff, “Idaho father takes daughter to Missouri to marry her rapist,” *New York Daily News* (May 25, 2016), available at <http://www.nydailynews.com/news/crime/idaho-father-takes-daughter-missouri-marry-rapist-article-1.2649752>. It seems the girl had just turned 15, when only one parent’s consent would have been required for a Missouri clerk to issue the marriage license.

As another example, apparently to gain advantage in a custody dispute with her ex-husband, an ex-wife drove their 13-year-old daughter from Alabama to Georgia, pregnancy test in hand, to take advantage of a then-existing pregnancy exception in Georgia’s minimum marriage age laws. The girl was then married to her 14-year-old boyfriend, and thereby “emancipated”, terminating the ex-husband’s parental rights. See *The Associated Press*, “House tries to tie knot on marriage loophole” (February 23, 2006), available at <http://accesswdun.com/article/2006/2/129780>.

⁵³ For example, Oregon (a “clerk-approval only” state) permits an applicant under 18 years of age to assert that there are no parents or guardians who are state residents, and as long as *either* party to be married has resided in

the county for the preceding six months, parental consent is not required.

⁵⁴ A related concern arises in states that enable a parental consent requirement to be wholly set aside in certain circumstances, but have little to no other safeguards in place to assess whether the minor is being forced or coerced to marry by a “partner” or even a predator, instead of by the minor’s parents. For example, in Oregon, as noted *supra*, n. 52, a marriage license applicant under age 18 who asserts that they have no parent or guardian resident in the state can potentially avoid the parental consent requirement. Through this loophole, a teen girl could be lured out of her home state by an older man residing in Oregon and they could obtain an Oregon marriage license from a clerk.

⁵⁵ Delaware comes close to this standard, but the statute does not expressly instruct the judge that approval cannot be based on parental consent alone. In Delaware, the judge’s decision must be “in accordance with...the wishes of the minor and such minor’s parents,” among other considerations. See Del. Code tit. 13 §123(b). North Carolina also establishes extensive criteria and a lengthy investigative process for both the judge and an appointed guardian ad litem to complete, and so it can be inferred that a judge’s decision could not rest on the fact that the parents consent.

⁵⁶ South Carolina maintains an old pregnancy exception on the books, at S.C. Code §20-1-300, but in practice, it no longer affects how young a minor may be married because a law passed in 1997 superseded the pregnancy exception when it established a firm floor of age 16. See footnote 8 in Tahirih’s 50-State Compilation, *supra*, n. 2.

⁵⁷ Of additional concern, pregnancy exceptions can encourage rash behavior on the part of headstrong or lovelorn teens who wish to marry against their parents’ wishes. Tahirih has learned of a number of cases occurring in states where pregnancy can lower the legal age to marry below age 18 regardless of parental consent, in which a couple deliberately got pregnant in order to circumvent age restrictions and parental objections.

⁵⁸ State laws on statutory sex offenses differ and some states carve out exceptions to age-based sex offenses where the parties are close in age or where both parties are minors, for example. Tahirih acknowledges, therefore, that not all of the pregnant teens approved to marry under exceptions to a legal marriage age of 18 are statutory rape victims, depending on how a particular state defines such offenses. Still, there is a stunning lack of vigilance in states that recognize pregnancy as an express exception to a legal marriage age of 18, in that none of these 9 states also expressly require the ages/age differences of the parties to be examined to determine if that pregnancy is evidence of a statutory rape as that state defines the offense, or to provide for an offending party to be referred for prosecution or for the minor to be referred to Child Protective Services, rather than for a marriage license to issue.

⁵⁹ Consider, for example, that in Arkansas, while a pregnant child of any age could be approved to marry, that same girl can only legally have sex with someone her age or older after she turns 16. Thus, depending on how young the minor is and how old the other party is, the pregnancy could be evidence of a range of felony sexual assault offenses (See, e.g., Ark. Code Ann §§5-14-125 to 127). As another example, as noted *supra* n. 34, in North Carolina sexual intercourse with anyone under age 16, if the actor is at least four years older, is defined as a felony sex offense. See N.C. Gen. Stat. Ann. §14-27.30. Yet children falling in these vulnerable age categories for sex offenses are, perversely, the only ones eligible to marry that young if they are pregnant.

⁶⁰ In some of these states, the statute makes passing reference to a judge if the court must act *in loco parentis* (e.g., when parents are absentee or the minor is a ward of the state). In South Carolina, the statute does outline a

judicial approval process in case of pregnancy, but this older provision has been superseded by a 1997 law that effectively makes judicial approval optional (or obsolete) because the same age floor and parental consent requirement applies both to clerk-issued licenses and to the judicial approval process.

⁶¹ Note that some states do also have age floors (for example, 15 in Indiana, or 14 in North Carolina) that put a lower limit on how young a child under this “breakpoint” age may be approved by a judge to marry.

⁶² See Anjali Tsui et al, *supra*, n. 4.

⁶³ Authoritative statewide statistics about how many minors marry each year and the ages of the minors and their spouses are not available for North Carolina. This characterization that minors subject to judicial approval in North Carolina would make up a very small percentage of all minors married each year is based on national data-trends, and on a sample comparison of statewide statistics in recent years in Virginia, Maryland, Florida and Texas (on file with the Tahirih Justice Center).

⁶⁴ In Tennessee, for example, not only a “judge of the probate, juvenile, circuit or chancery court” is empowered to remove the age restriction and instruct a county clerk to issue a marriage license to a minor, but also a “county mayor.” See Tenn. Code Ann. §36-3-107. In Utah, too, approval for a 15-year-old to marry may be given *either* by a “judge of the court exercising juvenile jurisdiction in the county where either party to the marriage resides” or by a “court commissioner” (court officers appointed by judges). See Utah Code §30-1-9(2)(b). Because these obscure provisions may rarely be invoked and we expect that the vast majority of the time, clerks approve licenses for older minors and judges approve licenses for younger minors, for the purposes of this report, Tahirih has treated these as states that differentiate between when clerks and judges are involved, rather than as states in which the default is to have clerks approve all licenses.

⁶⁵ As noted above, after 2017 reforms in Texas, the nature of the judicial approval is to emancipate rather than to marry as such, but only court-emancipated minors may marry.

⁶⁶ While Massachusetts does not prescribe an age floor by statute, case law requires a male to be at least 14 years old and a female to be at least 12 years old. See *Parton v. Hervey*, 67 Mass. (1 Gray) 119 (1854).

⁶⁷ While an age floor of 18 is most protective, there is some basis for an age floor of 16 or higher. International legal guidance states that even when exceptions are allowed in truly exceptional circumstances to a minimum legal marriage age of 18, a judge must evaluate evidence of maturity without deference to culture or tradition, and the “absolute minimum age must not be below 16 years.” See 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 14, 2014)(CEDAW/C/GC/31-CRC/C/GC/18).

Some other kinds of rights and responsibilities can change in the United States at age 16 as well. For example, some labor laws treat those under age 16 differently, and many states permit 16-year-olds to apply for drivers’ licenses. In addition, no state’s compulsory education age is less than 16. See National Center for Education Statistics, “Table 5.1. Compulsory school attendance laws, minimum and maximum age limits for required free education, by state: 2015,” available at https://nces.ed.gov/programs/statereform/tab5_1.asp. Then, too, most states that have formal processes for a minor to petition a court for emancipation also set the minimum eligibility age at 16, since that is the likely earliest age at which a particularly mature minor could demonstrate a capacity for self-sufficiency

and an ability to navigate the world as an adult.

⁶⁸ Depending on the state, in practice it is possible that petitions by a minor to marry may be routed to a “family division” of a generalist court, or that most minors in the state will go before a family court judge, except for those living in the few counties without such courts. Then, too, “probate” courts often do handle other proceedings involving vulnerable persons, like guardianship petitions.

⁶⁹ See N.Y. Dom. Rel. Law §15 (2017), available at <https://www.nysenate.gov/legislation/laws/DOM/15>.

⁷⁰ See *id.* All these information sources to be considered by New York judges could conceivably be helpful. But because they all reflect official court actions, they will not capture initial reports of abuse or neglect or of a threatened forced marriage that were made to CPS but were not pursued through to court action. In Tahirih’s experience, unfortunately, most forced marriage threats that are reported to CPS are not even investigated, or the case is closed far short of court action.

⁷¹ See Aditi Wahi-Singh, “The U.S. Still Has a Child Bride Problem,” *We Are Your Voice Magazine* (2017), available at <https://wearyourvoicemag.com/issues/u-s-still-child-bride-problem>.

⁷² It is unclear in North Carolina and Virginia who bears the cost, and it may routinely be written off by the state. It is possible, but beyond the scope of this analysis, that there may be general provisions in additional states’ laws for the appointment of counsel, at state cost if indigent, for either a child or the child’s parents in *any* proceedings arising in family or juvenile/domestic relations courts. But unless such general provisions are incorporated in the specific statutes concerning judicial approvals of underage marriages, they are no guarantee that counsel will be appointed in such proceedings, or appointed specifically to the minor, including because the petitions may be heard by a court of *general* jurisdiction rather than family/juvenile courts.

⁷³ See N.Y. Dom. Rel. Law §15 (2017), *supra* n. 69.

⁷⁴ See *id.*; see also R.I. Gen. Stat. §15-2-11(b)(2).

⁷⁵ Contrast, too, this concept of “capacity to consent” with Cal. Penal Code § 261.5 that sets the legal age of consent to sex at 18.

⁷⁶ Based on a sample comparison of statewide statistics in recent years in Virginia, Maryland, Florida and Texas, the number of individuals who marry under age 18 has significantly decreased, in some states, falling by more than half over a decade’s time (on file with the Tahirih Justice Center).

⁷⁷ One other state makes a vague reference that may have meant to encompass age differences: Delaware requires that the judge consider “whether the proposed marriage would violate any Delaware laws.” To the extent that Delaware’s statutory rape laws might apply to some underage marriage petitions (e.g., where the minor is under age 16 and the intended adult spouse is 30 years old or older), a proposed marriage *might* be construed to violate Delaware laws and so the age difference between the parties might compel a judge to deny the petition. However, Delaware’s statute does not explicitly require judges to consider age differences, and could have simply intended to speak to other types of prohibited unions like bigamous or incestuous marriages.

⁷⁸ As noted above, North Carolina is the only state that also provides for “a rebuttable presumption that the marriage will not serve the best interest of the underage party when all living parents of the underage party oppose the marriage.”

⁷⁹ Some states – among other exceptions to a legal marriage age of 18 – already permit minors who have been legally emancipated by a court to marry as if they were adults, without obtaining the parental consent or judicial approval that otherwise apply to un-emancipated minors. Others permit minors who have been married before, to get remarried without obtaining parental consent or judicial approval (because in some states, those minors were automatically emancipated upon that first marriage).

Whatever a state’s approach to emancipation, Tahirih’s position is clear: we urge that the legal marriage age be 18, no exceptions, but if there is an exception, it should be limited only to a mature minor age 16 or older who has been emancipated by court order and who is legally and practically able to advocate for herself in case of abuse.

APPENDIX A

ANALYSIS OF STATE LAWS ON MINIMUM MARRIAGE AGE AND EXCEPTIONS THAT PERMIT INDIVIDUALS UNDER AGE 18 TO MARRY

(assessment as of October 2017, the last effective date of 3 states' new laws)

Selected Provisions That Can Make Forced or Coerced Marriages of Children Easier and More Likely

State	No Age Floor Set by Statute, or Low Floor (Below Age 16)	Statute Sets Different Conditions Based on Gender	Official Proof of Age Is Not Required Up-Front, in All Instances	Nothing Expressly Prohibits Clerks From Issuing Marriage Licenses to Out-of-State, Unemancipated Minors	Parental Consent (Alone, or Combined With Judicial Approval) Can Lower the Legal Age to Marry Below Age 18	Pregnancy Can Lower the Legal Age to Marry Below Age 18	When Parental Consent is Required, the Consent of Only One Parent May Be Required	Clerks, Not Judges, Approve All Under-age Marriage Licenses	Older Minors (Typically, Age 16+) Can Be Approved to Marry Without Ever Going Before a Judge	When Judicial Approval Is Required, the Judge Doesn't Specialize in Family Law or Juvenile or Domestic Relations	When Judicial Approval Is Required, the Judge is Given Little to No Guidance for Making Decisions
Alabama			x	x	x					x	x
Alaska	(14)		x	x	x		x		x	x	x
Arizona	x		x	x	x		x		x	x	
Arkansas	x	x	x	x	x	x	x		x	x	x
California	x		x	x	x		x			x	x
Colorado	x			x	x		x		x		
Connecticut			x		x		x			x	
Delaware	x		x				x				
Florida	x	x	x	x	x	x			x	x	x
Georgia			x	x	x		x			x	x
Hawaii	(15)		x	x	x				x		x
Idaho	x		x	x	x		x		x	x	x
Illinois			x	x	x				x	x	
Indiana	(15)		x	x	x	x	x		x	x	x
Iowa			x	x	x		x			x	
Kansas	(15)		x	x	x		x		x	x	x
Kentucky	x		x	x	x	x	x		x	x	x
Louisiana	x			x	x		x		x		x
Maine	x		x	x	x		x		x	x	
Maryland	(15)		x	x	x	x	x	x	x	N/A*	N/A
Massachusetts	x		x		x		x			x	x
Michigan	x		x	x	x		x		x	x	x
Minnesota			x		x		x			x	x
Mississippi	x	x		x	x				x	x	x

Missouri	✗		✗	✗	✗		✗		✗	✗	✗
Montana				✗	✗		✗			✗	
Nebraska				✗	✗		✗	✗	✗	N/A	N/A
Nevada	✗		✗	✗	✗		✗		✗	✗	
New Hampshire	(13 (female); 14 (male))	✗		✗	✗		✗				✗
New Jersey	✗		✗	✗	✗				✗		✗
New Mexico	✗		✗	✗	✗	✗	✗		✗		✗
New York										✗	
North Carolina	(14)		✗	✗	✗	✗	✗		✗	✗	
North Dakota				✗	✗		✗	✗	✗	N/A	N/A
Ohio	✗	✗	✗	✗	✗	✗	✗		✗	✗	✗
Oklahoma	✗			✗	✗	✗	✗		✗	✗	✗
Oregon			✗	✗	✗		✗	✗	✗	N/A	N/A
Pennsylvania	✗		✗	✗	✗		✗		✗	✗	✗
Rhode Island	✗		✗	✗	✗		✗		✗		
South Carolina				✗	✗		✗	✗	✗	✗	✗
South Dakota				✗	✗		✗	✗	✗	N/A	N/A
Tennessee	✗		✗	✗	✗				✗	✗	✗
Texas										✗	
Utah	(15)		✗	✗	✗		✗		✗	✗	
Vermont			✗	✗	✗		✗	✗	✗	N/A	N/A
Virginia			✗								
Washington	✗		✗	✗	✗		✗		✗	✗	✗
West Virginia	✗		✗	✗	✗		✗		✗	✗	✗
Wisconsin				✗	✗		✗	✗	✗	N/A	N/A
Wyoming	✗		✗	✗	✗		✗		✗	✗	✗
District of Columbia			✗	✗	✗		✗	✗	✗	N/A	N/A
Total jurisdictions (states + D.C.)	25: <u>no</u> age floor 8: <u>low</u> age floor	5	38	44	47	9	41	9	37	34	28

***Note on how to interpret this table:** “N/A” in the table above means simply that Tahirih’s specific critiques of states’ judicial approval processes do not apply to that jurisdiction because all marriage license applications involving minors can be approved by a clerk. Put another way, “N/A” states are still problematic with respect to judicial approval processes — insofar as they have no such processes at all. Likewise, states with no “✗” in the last two columns may still be problematic with respect to judicial approvals processes because those processes only apply anyway to younger minors, leaving older minors without the benefit of any judicial inquiry whatsoever, or because judges have no statutory limit on how young a child they can approve to marry, or for other reasons. In this way, all columns of the above table must be read and evaluated together, and in conjunction with Tahirih’s other statutory analyses, in order to fully understand the true nature of negligence vs. vigilance in that state’s minimum marriage age regime.

APPENDIX B

ANALYSIS OF STATE LAWS ON MINIMUM MARRIAGE AGE AND EXCEPTIONS THAT PERMIT INDIVIDUALS UNDER AGE 18 TO MARRY

(assessment as of October 2017, the last effective date of 3 states' new laws)

Selected Procedural Safeguards and Substantive Criteria That, Working Together, Can Make Forced or Coerced Marriages of Children Harder and Less Likely																														
State	General provisions:					When judicial approval is required***, PROCEDURAL SAFEGUARDS are followed, such as...					When judicial approval is required, the judge must consider specific SUBSTANTIVE CRITERIA, such as...					When judicial approval is required, the statute expressly states that the judge CANNOT APPROVE THE MARRIAGE solely because of...					When judicial approval is required, the judge can take OTHER STEPS TO PROTECT AND EMPOWER THE MINOR, such as...					If/after approval to marry is granted, OTHER MEASURES STILL APPLY TO PROTECT THE MINOR, such as...				
	Parties Must Be At Least Age 16 (No Statutory Floor/Low Floor Noted)	Parties Must Be At Least Age 17	Official Proof of Age is Expressly Required, Up-Front and In All Instances	Statute Makes Clear that Only In-State Minors Can Go Before a Judge for Approval to Marry	All Minors Must Go Before a Judge for Approval to Marry (No Judge/ Ages Noted if Judicial Approval is Limited/ Lacking)		A Specialized Judge (from Family, Juvenile, or Domestic Relations Court) Must Make the Decision	Information/Report from the Department of Social Services Is Authorized or Required	The Judge Must Hold a Hearing and Issue Written Findings	The Minor Is Appointed Counsel	Measures Apply to Protect the Minor's Privacy/Confidentiality of Disclosures	There is a Rebuttable Presumption Against Approval	Maturity/ Capacity of the Minor	Whether the Marriage is Voluntary	Criminal Records	Protection Orders/History of Abuse Between the Parties	Age Difference Between the Parties	Best Interests of the Minor	Pregnancy/ Birth of a Child	Parental Consent	Judge Is Expressly Authorized to Make Other Orders as Appropriate	Judicial Approval to Marry is Also an Order of Emancipation (Declaring the Minor to be a Legal Adult)	A Waiting Period Is Required Before a Marriage License Can Actually Be Issued to a Minor							
Alabama	✓				✓																									
Alaska	14				if >14 and <16																									
Arizona	no floor				if <16									✓							✓									
Arkansas	no floor				if <16 female; or if <17 male (female to be married must also be pregnant)													✓												
California	no floor				✓																									
Colorado	no floor		✓		if <16	✓							✓	✓					✓	✓										
Connecticut	✓			✓	✓								✓	✓																
Delaware	no floor			✓	✓	✓							✓	✓	✓				✓											
Florida	no floor				if either party is <16 or if no parental consent (female to be married must also be pregnant/have given birth to a child). If <18 female is pregnant, male must be >18; or both parties must be parents/ expectant parents of a child																									
Georgia	✓				✓																									
Hawaii	15			✓	if 15	✓																								
Idaho	no floor				if <16																									
Illinois	✓				judge only if no parental consent								✓					✓	✓											
When judicial approval is required, the judge CAN NOT APPROVE THE MARRIAGE solely because of...														When judicial approval is required, the judge can take OTHER STEPS TO PROTECT AND EMPOWER THE MINOR, such as...					If/after approval to marry is granted, OTHER MEASURES STILL APPLY TO PROTECT THE MINOR, such as...											

APPENDIX C

COMPARISON OF SELECTED ELEMENTS OF REFORM BILLS ENACTED OVER 2016-2017

(in order of enactment)

State*	Before Reforms	After Reforms
Virginia 6,775 minors married from 2000-2010	<ul style="list-style-type: none"> • No age floor • Ages 16-17: only parental consent required • < Age 16: pregnancy + parental consent required • Clerks issued all licenses – no judge • Minor was a legal child both before and after marriage 	<ul style="list-style-type: none"> • Floor is legal adulthood • Ages 16-17: requires judicial approval of minor's petition to emancipate; attorney is appointed • New grounds for emancipation (intent to marry) added to <i>prior</i> grounds (already married; active-duty military; or lives independently, self-supporting and managing own financial affairs) • If petition is based on intent to marry, judge must find that minor is not being coerced, that marriage will not endanger minor, and that emancipation is in minor's best interests, among several other criteria • Neither pregnancy nor parental consent (nor both) is enough to show best interests • Only court-emancipated minors may marry
Texas 34,793 minors married from 2000-2010	<ul style="list-style-type: none"> • No age floor • Ages 16-17: only parental consent required • < Age 16: judicial approval required (sole criteria: if marriage in minor's best interest) • Minor was a legal child before marriage 	<ul style="list-style-type: none"> • Floor is legal adulthood • Ages 16-17: requires judicial approval of minor's petition to emancipate; attorney is appointed • If age 16, minor must already live apart from parents; judge must evaluate emancipation criteria that relate not to marriage, but to whether minor is self-supporting and managing own financial affairs, and must find that emancipation is in minor's best interest • Only court-emancipated minors may marry
New York 3,850 minors married from 2000-2010	<ul style="list-style-type: none"> • Low age floor (14) • Ages 16-17: only parental consent required • < Age 16: judicial approval required (sole criteria: hearing to be held at chambers) • Minor was a legal child before (and depending on the circumstances, also after) marriage 	<ul style="list-style-type: none"> • Age floor of 17 • Age 17: requires judicial approval of minor's petition to marry; attorney with training on domestic violence and forced marriage is appointed • Judge must determine that minor is not being coerced and that marriage will not endanger minor's safety, among several other criteria • Parents' wishes cannot be sole basis for judicial approval • Court order of permission to marry also simultaneously emancipates minor
Connecticut 982 minors married from 2000-2010	<ul style="list-style-type: none"> • No age floor • Ages 16-17: only parental consent required • < Age 16: judicial approval required (no criteria) • Minor was a legal child both before and after marriage 	<ul style="list-style-type: none"> • Age floor of 16 • Ages 16-17: requires judicial approval of minor's petition to marry; no attorney appointed • Judge must find that a parent consents; minor voluntarily consents, understands nature/consequences of marriage and has sufficient decision-making capacity; and marriage would not be detrimental to minor • Minor remains a legal child both before and after marriage

*All statistics in this table on the numbers of minors married are based on data provided by Unchained At Last and published in Nicholas Kristof, "11 Years Old, a Mom, and Pushed to Marry Her Rapist in Florida," *New York Times* Op-Ed (May 26, 2017), available at https://www.nytimes.com/2017/05/26/opinion/sunday/it-was-forced-on-me-child-marriage-in-the-us.html?_r=0.