



## Testimony for the House Judiciary Committee

February 20, 2020

### HB 1231 Family Law – Authorization for a Minor to Marry

#### Oppose unless Amended

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The ACLU of Maryland respectfully opposes HB 1231 as it's currently written. As introduced, this bill bans all marriages for people under the age of 17.

While we appreciate and support the sponsors' intention to prevent the forced marriage of young girls, banning marriage for a group of people because there is a trend of abuse within those marriages is a non-sequitur. If the bill aims to prevent trafficking of young girls, the legislature should address the underlying causes of trafficking. Further, there may be several other demographics for whom abusive marriages may be a problem, but it would, likewise, not make sense to ban marriage within that group as well.

As the Supreme Court has recently reminded us in the same-sex marriage cases, marriage is a fundamental right protected under the Due Process Clause of the Fourteenth Amendment as one of the foundational personal choices central to individual dignity and autonomy. "Like choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution, decisions concerning marriage are among the most intimate that an individual can make."<sup>1</sup>

Of course, like coercion of other personal choices protected by the Constitution, forced marriage is inherently wrong, and we would be supportive of efforts to prevent coercion in the marriage decision. The problem with HB 1231 as currently drafted is that it is predicated on the notion that every marriage involving a person under 17 is coerced. We know of no evidence that this is true. Indeed, some youth can appropriately make this decision for themselves.

Moreover, the contrary is also true – coerced marriage may take place after 17 years of age. Substantially burdening marriage under 17 therefore prohibits the exercise of a fundamental personal right by those who may choose it freely, and does not solve the problem of forced marriage. Rather, effectively banning these marriages is likely to simply drive the problem of forced relationships

<sup>1</sup> *Obergefell v. Hodges*, 576 U.S. ---, 135 S. Ct. 2584 (2015).



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underground by postponing forced marriage until after 17, or arranging for the marriage to take place in another state or country without judicial oversight.

The right to marry may be limited if there is an overriding governmental purpose, the means of doing so are narrowly tailored to advance that interest, and there is no less-restrictive alternative.<sup>2</sup> While protecting against forced marriage may very well be a state interest, imposing an effective ban against marriage under 17 sweeps too broadly to achieve that objective, while also failing to include forced marriages over the age of 17.

Under Maryland law, the age of consent is 16, so it's incongruous that we allow 16 year-olds to engage in sexual activity, have children, but disallow them from planning for their families, which may include marriage.

HB 1231 would be more appropriate if it allowed an option for judicial review to grant exceptions for minors who are determined mature enough to marry and for whom marriage makes sense.

For the aforementioned reasons, we respectfully oppose HB 1231 as written.

<sup>2</sup> See, e.g., *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), vacated on standing grounds sub nom, *Hollingsworth v. Perry*, 570 U.S. --- (2013). See also *Committee to Defend Reproductive Rights v. Myers*, 29 Cal. 3d 252 (1981)(imposition of conditions on the exercise of fundamental privacy rights).