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**To:** Members of The House Judiciary Committee

**From:** Family & Juvenile Law Section Council (FJLSC)  
by Ilene Glickman, Esquire and Daniel Renart, Esquire

**Date:** February 25, 2020

**Subject:** **Senate Bill 680:**  
Family Law – Minors - Emancipation

**Position:** **SUPPORT WITH AMMENDMENTS**

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This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section (“Section”) of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

The FJLSC urges the House Judiciary Committee to issue a favorable report on SB 680 with amendments as it is an opportunity to bring about necessary change for minors as well as for minors who wish to become married.

**Legal Background:**

Currently, Maryland Family Law Article §2-301 allows minors to marry under the following circumstances:

- At 16 or 17 years of age, either:
  - With the parents’ or guardians’ consenting and swearing that the minor is aged 16 or older; or,

- Without the consent of said adults, but with a medical certificate that the bride is pregnant or has given birth.
- A 15 year old if s/he has the consent of a parent or guardian and provides the marriage licensing clerk a medical certificate that the bride is pregnant or has given birth.

A person under the age of 15 years may not marry.

### **Need for Change:**

From the public policy perspective, it is important to create an emancipation procedure which establishes a clearly defined set of factors for a judicial decision as to whether emancipation is appropriate and in the best interests of the minor. In addition, we suggest that this analysis should also be the prerequisite for authorizing the marriage of minor children so as to avoid nefarious efforts to disguise human trafficking and to conceal abuse, domestic violence, neglect, and rape of the minor either by the spouse or parents.

### **Emancipation and Legal Capacity:**

Marriage is not an emancipation event. Maryland lacks a formal emancipation procedure or statute for minors. A minor does not attain all the capacity, rights, powers, privileges, duties, liabilities, and responsibilities of an adult until reaching the age of majority, which is 18 years old in Maryland (General Provisions §1-401). Until then, as it pertains to legal age and capacity, a minor is a person under the age of 18 (General Provisions §1-103). Age, not marriage, is the triggering event.

Marriage may confer certain rights on a minor if provided by statute. For example, a married minor can consent to medical treatment (Health General II §20-102(a)), and a married minor has expanded rights with respect to driver's license applications (Transportation §16-107(a)) and ownership of real property (Estates and Trusts §13-503(a)). Marriage is an emancipating event for child support purposes if the child has reached the age of 18 but not yet graduated high school (General Provisions §1-401).

Because marriage is not an emancipating event, a minor lacks capacity to enter into contracts. This could impact a married minor's ability to open a bank account, apply for credit, apply for a job, or establish an estate plan (including without limitation power of attorney and healthcare directive).

### **Access to Justice and Due Process:**

According to the Maryland Rules of Civil Procedure, a married minor lacks legal capacity to file a petition for protection from domestic violence or suit for divorce on his/her own behalf.

Maryland Rule 2-202 on "capacity" requires an "individual under disability" to file or defend a suit through a guardian, other fiduciary, next friend, by a parent if in the parent's custody,



or by other interested person. Rule 1-202 defines, in part, an “individual under disability” as an individual under the age of 18 years. There is no exception for married minors.

Interestingly, “guardian” is defined as a natural or legal guardian (Rule 1-202) and pursuant to Family Law §5-203, the parents are the joint natural guardians of their minor child. This begs the question of whether a married minor is in the custody of his/her parent(s) for purposes of Rule 2-202. If so, the custodial parent has one year following accrual of the cause of action to institute suit on behalf of the minor and if suit is not filed within one year, then any “person interested in the minor” has the right to sue on behalf of the minor as a next friend.

With some exceptions, Rule 2-202 requires the next friend to settle the case, which may require parent approval if the next friend is not the parent.

*Picarella v. Picarella*, 20 Md. App. 499 (1974), is an example of a married minor seeking an annulment through a next friend.

Without legal capacity to contract, a married minor may encounter problems retaining an attorney for representation without parental or spousal consent (which may be unlikely, if not impossible or dangerous to obtain).

#### **Emancipation from Parental Control:**

To further confuse the issue, certain sources speak of “emancipation from parental control” upon marriage. Specifically:

*Pumphrey v. Pumphrey*, 11 Md. App. 287 (1971), states: “While [the child’s] marriage may have emancipated him from parental control (see 8 Md. L. Rev. 71), it did not make him “self-supporting” within the ordinary sense of that term... Marriage, majority, and self-support may come at nearly the same time but each differs fundamentally from the others.”

Likewise, an informal opinion of the Attorney General dated July 3, 1997 states: “Emancipation by marriage frees the child from the control of the parents... Emancipation by marriage does not, however, free the child from legal disabilities imposed on minors, unless specifically provided by statute.”

But, saying that marriage is an emancipating event does not make it legally so.

It is worth noting that per Family Law §9-103, a child aged 16 or older and subject to a custody order may file a petition to change custody, proceeding in his/her own name without guardian or next friend. It is perplexing why the law does not provide the same, clear right to married minors in the situations discussed above.

In order for SB 680 to more comprehensively address both the authorization for minors to marry as well as the emancipation issues, we would respectfully suggest amendments to SB 680 to include language that amends §2-301 and §2-405 requiring that those minors applying to marry prove that they were emancipated under this subsection at least 14 days prior to the application and that the intended spouse is not more than 4 years older than the minor. In addition we would suggest that 5-2A-05 be amended to state that emancipated minors shall have the right to marry, subject to the requirements of §2-301. We would also suggest that any final amendments to SB 680 be reviewed in the context of related proposed bills such as SB 949, HB 458 and HB 1231.

**Conclusion:**

For the foregoing reasons, the FJLSC urges a favorable report with amendments on SB 680.

Should you have any questions, please contact Ilene Glickman by e-mail at [ilene@lawhj.com](mailto:ilene@lawhj.com) or by telephone at (410) 821-8718.