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

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

**Date:** March 3, 2020

**Subject:** **Senate Bill 949**:
Family Law – Authorization for a Minor To Marry

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

The Maryland State Bar Association (MSBA) FJLSC **supports with amendments Senate Bill 949 – Family Law – Authorization for a Minor To Marry.**

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 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.

**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.

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**Need for Change:**
From the public policy perspective, marriage of minor children can be used to disguise human trafficking and to conceal abuse, domestic violence, neglect, and rape of the minor either by the spouse or parents.

This testimony focuses on the many legal problems with the current law on married minors and why SB949 should receive a favorable report.

**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.

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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.

SB 949 creates a procedure for Judges to follow in weighing important factors before authorizing a 17 year old to marry, which will serve as a safeguard to protect those minors from abuse. The MSBA FJLSC approves of the appointment of "a Lawyer" for said minors. Although, we believe it will be incumbent on the Judge and the lawyer to make the fluid determination if the lawyer shall act as a "Best Interest" Attorney or an "Advocate Attorney" for the child as the case progresses. See Rule 9-205.1.

In order for SB 949 to more comprehensively address both the authorization for minors to marry as well as the emancipation issues, we would respectfully suggest amendments to SB 949 to include language that requires evidence that the minor has demonstrated a capacity for self-sufficiency and self-support, independent of the minor's parents or intended spouse and also indicates that those minors authorized to marry shall also be considered emancipated.

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For the reason(s) stated above, the MSBA **supports Senate Bill 949 and urges a favorable committee report with amendments**.

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