



BILL NO: Senate Bill 949
TITLE: Family Law – Authorization for a Minor to Marry
COMMITTEE: Senate JPR
HEARING: March 4, 2020
POSITION: **SUPPORT WITH AMENDMENTS**

The Tahirih Justice Center (Tahirih) is a non-profit legal advocacy organization that, since 1997, has served survivors of domestic violence, sexual assault, human trafficking, and other abuse. Through a specialized initiative launched in 2011, Tahirih has worked on several hundred cases involving forced marriage, including many in Maryland. Tahirih galvanized a national movement to tackle forced and child marriage as U.S. problems, and after securing landmark legislation in Virginia in 2016, has helped bring about new laws to end or limit child marriage in a total of 21 states to date.ⁱ

Tahirih strongly supports provisions in SB 949 that eliminate lax pregnancy and parental consent loopholes in Maryland’s current minimum marriage-age laws, and that put in place instead a limited judicial approval process.

However, Tahirih urges amendments to ensure that the judge also evaluates the minor’s maturity and capacity for self-sufficiency, and then, if all criteria and thresholds are met, grants the minor an order of emancipation at the same time as approval to marry. We understand the bill sponsor is amenable to this amendment, for which we are grateful.

The empowerment that emancipation provides is a critical and core component of judicial approval for a minor to marry. Without it, even after enacting SB 949, Maryland would still be permitting an individual who is *legally and practically a child* to be married. Moreover, without the clarity of a court order of emancipation, married minors in Maryland would remain in a “gray space” in terms of their legal rights. For example, a minor may not be able to file for a protective order or petition for divorce on her own, and may instead have to rely on an adult to file on her behalf.ⁱⁱ

SB 949 responds to an alarming problem. Nearly 3,500 minors were married in Maryland from 2000-2018, most of them girls married to adult men, many of whom were significantly older.ⁱⁱⁱ In 2018, for example, a 15 year old was brought from Delaware to Maryland to be married to a 22 year old under the pregnancy exception – yet in both states, sex between individuals at those ages is a crime punishable by substantial jail time.

Maryland’s pregnancy and parental consent exceptions have provided cover-ups for sexual assault and work-arounds for predators, enabled human trafficking to slip by under the guise of marriage, facilitated forced marriages of girls against their will, and trapped vulnerable girls in violent homes without the rights or resources to find safety.

*Protecting Immigrant
Women and Girls
Fleeing Violence*

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Current laws have also failed to protect girls from other serious risks and harms of early marriage. Research shows that girls who marry before age 18 face greater vulnerability to sexual and domestic violence, increased medical and mental health problems, increased high school drop-out rates, a greater risk of future poverty, and up to 80% divorce rates, among other potentially lifelong, irreparable harm.^{iv}

The reforms envisioned in SB 949 – strengthened by amendments to build in an emancipation element – are urgently needed to prevent forced marriages of children; to mitigate the steep risks posed to girls’ health, safety and welfare by marrying before age 18; and to ensure that marriage licenses are only issued to legal adults with the legal and practical ability to protect themselves from abuse.

Among other important safeguards, SB 949 would:

- Set a floor for marriage at age 17, and set a maximum age difference of 4 years when the marriage involves a minor;
- Require judicial approval of all marriage petitions involving a minor, including an inquiry into the minor’s best interests, in order to vet for forced marriages or other abuse or exploitation and to protect the minor’s welfare and wellbeing;
- Require the judge to appoint an attorney for the minor, and also require the judge to interview the minor in private, to provide an opportunity outside of open court for the minor to disclose any threats she may be facing;
- Require the judge to vet the intended spouse – for example, to see if the intended spouse has a violent criminal history, or is/was in a position of authority over the minor;
- Clarify that pregnancy is not sufficient evidence that a marriage is in a minor’s best interests, considering that it can be a red flag that a girl was raped, not a reason to green-light a marriage;
- Give minors a factsheet on resources available to victims of domestic violence, so that they receive accurate and practical information they may need, for example, about seeking a protective order or accessing help from legal aid; and
- Institute a waiting period after judicial approval is granted and before a marriage license is issued.

If the amendments that Tahirih urges are adopted, then SB 949 would also:

- Require the minor to have a degree of demonstrated self-sufficiency and maturity, to better ensure that she is making this decision of her own free will and would have the means to leave if she faces abuse in the marriage, rather than be trapped without resources or options; and
- Make a judge’s grant of permission to marry simultaneously a judge’s decree of emancipation. This ensures that no one who is still a “child” under the law is allowed to marry, and that both parties to the marriage will be on equal legal footing.

Similar protective elements were incorporated in new laws enacted in Georgia (2019), Ohio (2019), Kentucky (2018), Texas (2017), and Virginia (2016), among other states.

Tahirih strongly believes that the best way to protect girls from forced marriages and other risks of marrying young is to set the legal marriage age at 18, without exception. However, we believe that SB 949, as amended will help accomplish these objectives.

Together, SB 949's safeguards would help ensure that if a minor is marrying, she is making that decision for herself rather than being coerced, and that, if necessary, she will be able to escape an abusive home. They also help mitigate the other steep risks, both individual and intergenerational, that are posed by early marriage.

As more states in the region and nationwide strengthen their laws, those seeking to abuse and exploit girls under the guise of marriage will increasingly gravitate to Maryland for its weaker laws. Maryland must act *this year* to eliminate these marriage-age loopholes, and to put in place meaningful safeguards.

The Tahirih Justice Center respectfully urges a favorable report on SB 949, with amendments as outlined.

Attachments:

Map: Child Marriage Laws in Maryland and the Region, and Measurable Outcomes

Summary: The National Movement to End Child Marriage

Backgrounder: Child Marriage Poses Serious Risks to Children

ⁱ For a 50-state report that Tahirih has prepared analyzing minimum marriage age laws and how they can either increase protections or instead ratchet up risks of forced marriages and other harm, as well as other resources, please visit www.tahirih.org/childmarriage.

ⁱⁱ See <https://mdcourts.gov/sites/default/files/import/courtforms/joint/ccdcvpo001br.pdf> and <https://www.womenslaw.org/laws/md/restraining-orders/domestic-violence-protective-orders/who-can-get-protective-order#node-31346>. Attaining majority or being court-emancipated can make a pivotal difference to the rights and options a minor has available to her. In Maryland, un-emancipated minors are disabled from advocating to protect themselves from forced or abusive marriages in numerous ways. For example, runaway youth can be taken into custody without a warrant; shelters may have to request a parent's consent within 24 hours of a minor's arrival or petition for legal custody of the minor themselves; relatives or friends who might offer a runaway a place to stay risk being sued by the parents for interfering with parental rights or charged by police for harboring a runaway; un-emancipated minors cannot enter binding legal contracts, and as a result, adults (from lawyers to landlords) tend to avoid entering contracts with minors; and the marriage of a minor relieves the minor's parents of support obligations, but it does not clearly grant the minor the rights of an adult. See, e.g., Md. Code, Family Law § 9-304 (prohibiting a relative from "harboring" a child under age 16) and *Khalifa v. Shannon*, 404 Md. 107, 123, 945 A.2d 1244, 1253 (2008); COMAR 14.31.07.09 (shelter regulations re: minors); Md. Commercial Law Code Ann. § 1-103 (c)(1) ("The age of majority as it pertains to the capacity to contract is 18 years of age"); Md. Code, General Provisions § 1-401 (defining age 18 as the age of majority, and at subpart "b," relieving parents of support obligations upon the marriage of a child).

ⁱⁱⁱ Marriage license records obtained from the Maryland Department of Public Health, Vital Statistics Administration, and analyzed by the Tahirih Justice Center. On file with Tahirih.

^{iv} See specific statistics and sources cited in Tahirih Justice Center's backgrounder, "Child Marriage Poses Serious Risks to Children."

Child Marriage Laws in Maryland and the Region

Age “floor” is given for each state in parentheses. The floor is the age below which no child can be married, regardless of parental consent or judicial approval.

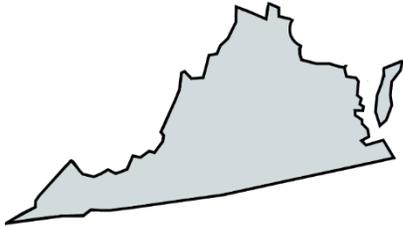
In addition to an age floor, New York, Ohio, Kentucky and Virginia also have several additional safeguards, including a requirement that a minor be court-emancipated (given the rights of a legal adult) before marriage.



FAST FACTS:

- *Maryland's current laws on minimum marriage age are weaker than 7 of the other 9 states plus DC in this region. And a bill with dozens of bipartisan co-sponsors that would set the age at 18, no exceptions, is expected to become law soon in Pennsylvania.*
- *Six states and DC set a higher age floor than Maryland and/or require that individuals must be legal adults before marrying.*
- *Maryland is the only state in the region that still has a pregnancy exception, and is only one of 6 such states nationwide. Most states now recognize that a pregnant underage girl may need a protection order, not a marriage license.*

Measurable Outcomes in States Leading the Movement to End Child Marriage



Virginia was the first state to limit marriage to legal adults, with a 2016 law that set a minimum marriage age of 18 with an exception for court-emancipated minors.

The year before Virginia's new law went into effect, 182 children married in the state. The year after, that number fell to just 13 – over a 90% decline.

Most married a spouse within 4-6 years of their age (compared with decades of age difference in some cases before the new law).



Texas also set a minimum marriage age of 18, with an exception for court-emancipated minors with a new law that went into effect in September 2017.

Preliminary data shows a decline in children marrying of about 90% following the law's effective date.

From September 2016 to February 2017, 175 children married in Texas. Over the same six-month period immediately following the law's effective date, that number fell to just 18.

Those same comparison periods also saw a decline in age differences in marriages involving a spouse under age 18, with the maximum age gap falling from 14 years to 7 years.

A total of 21 states have enacted some reforms to limit child marriage. In addition to **Virginia** and **Texas**, six more have limited marriage to legal adults since 2016: **Delaware and New Jersey** (age 18, no exceptions); **New York, Kentucky, Ohio and Georgia** (age 18, or age 17 and emancipated).

In states that set the bar for marriage at legal adulthood, we can see the greatest impact on the child marriage problem.

In states that adopted some reforms but did not set the bar for marriage at legal adulthood – for example, Florida, which simply raised the age floor to 17 and limited age differences – measurable outcomes are far lower.

Learn more about child marriage in the United States: tahirih.org/childmarriage.

The National Movement to End Child Marriage

To Ensure Full and Free Consent to Marriage, and To Protect Children from Irreparable Harm

What are states doing to address child marriage?

Prior to 2015, the public and policymakers had no idea what the nature and scope of America's child marriage problem really was. At that time, investigative reporters and advocates serving child marriage survivors began to pull and analyze state marriage license records, leading to the startling realization that over 200,000 minors (children under age 18) were married from 2000-2015 alone.¹

The overwhelming majority were girls, most married adult men, and many times, those men were significantly older. Increasing media coverage over the last few years has called attention to the horrific experiences of many former "child brides" who were abused and exploited under the guise of marriage.²

In response, twenty-one U.S. states have strengthened their minimum marriage age laws since 2016, and there has been significant growth, year over year, in the number of states taking up reforms.

Eight of those states have effectively ended child marriage – either by setting the minimum marriage age at 18 without exception, or by prohibiting marriage licenses from being issued to minors unless they have been court-emancipated³.

New laws were enacted in Delaware and New Jersey which entirely ban marriage under age 18⁴:

State	Marriage-Age Requirements <u>Before</u> Reform	Marriage-Age Requirements <u>After</u> Reform	Effective:
Delaware	No age floor; judicial approval required for all minors, based on several criteria	Minimum marriage age set ⁵ at 18, no exceptions	2018
New Jersey	No age floor; for age 16-17, only parental consent required; under age 16, judicial approval required, with little to no guidance for judges' decisions	Minimum marriage age set at 18, no exceptions	2018

Other states that have recently enacted new marriage-age laws are:

State	Marriage-Age Requirements <u>After</u> Reform	Effective:
Virginia	Minor must be court-emancipated (eligible at age 16); attorney appointed to minor; if emancipating to marry, several criteria apply (e.g., judge must find minor is not being coerced and examine criminal record/protective order history of intended spouse); "best interests" inquiry	2016

¹ Stats are from *Frontline*, "Child Marriage in America: By the Numbers" (July 6, 2017).

² See, e.g., "Child Brides Call on U.S. States to End 'Legal Rape,'" *Reuters* (October 24, 2018); "She Was Forced into Child Marriage in Texas. Now She Wants to End the Pain for Others," *Dallas News* (July 11, 2018); "Sherry Johnson Was Raped, Pregnant, and Married by 11. Now She's Fighting to End Child Marriage in America," *CNN* (January 30, 2018); "Grown Men Are Exploiting Loopholes in State Laws to Marry Children," *Huffington Post* (August 30, 2017).

³ A petition for emancipation seeks a court order granting a mature and self-sufficient minor the legal rights and status of an adult. States that have enacted new laws with a limited exception permitting court-emancipated minors to marry are Virginia, Texas, New York, Kentucky, Ohio, and Georgia (see reverse).

⁴ As of January 2020, bills are pending in several additional states that would entirely ban marriage under age 18.

⁵ As used in these charts, "set" refers to states that previously had *no age floor* (no lower limit to how young a child could be married, if the statutory criteria for an exception were met), and that through legislative reforms, instituted a firm age floor for the first time. "Raised" refers to states that previously had a lower age floor, and that through legislative reforms, instituted a new, higher age floor.

State	Marriage-Age Requirements After Reform	Effective:
Connecticut	Age floor set at 16; age 16-17 now requires judicial approval; judge must consider factors including whether there is coercion	2017
New York	Age floor raised to 17; minor must be court-emancipated; attorney must be appointed to minor and judge must interview privately; judge must consider several factors to vet the intended marriage including whether there is coercion or a history of violence or power imbalance between the parties; rights/resources info must be provided to minor	2017
Texas	Minor must be court-emancipated (eligible at age 16); attorney appointed to minor; "best interests" inquiry	2017
Arizona	Age floor set at 16; parties' age difference limited to 3 years	2018
Florida	Age floor set at 17; parties' age difference limited to 2 years	2018
Kentucky	Age floor set at 17 and other party cannot be more than 4 years older; minor must be court-emancipated; attorney may be appointed to minor and judge must interview privately; court must consider several factors (e.g., judge must find minor is not being coerced and examine criminal record/protective order history of intended spouse); "best interests" inquiry; 15-day waiting period between emancipation order and marriage license; rights/resources factsheet given to minor	2018
Missouri	Age floor set at 16; no one age 21 or older can marry a minor	2018
Tennessee	Age floor set at 17; parties' age difference limited to 4 years; rights/resources factsheet given to minor	2018
Arkansas	Age floor set at 16 (in case of pregnancy); girls now subject to the same rules at the same ages as boys (previously, exceptions were gender-differentiated); judicial approval required only for age 16	2019
California	No age floor; exception based on judicial approval; reforms improved judicial approval process, including by requiring private interviews with both a Family Court Services officer and the judge	2019
Colorado	Age floor set at 16; judicial approval now required; guardian ad litem appointed for the minor to investigate "best interests" and to file a report with the court addressing several factors, including the independent ability of the minor to manage the minor's own financial, personal, educational, and other affairs; certain rights of married minors clarified	2019
Georgia	Age floor raised to 17 and other party cannot be more than 4 years older; minor must be court-emancipated; attorney must be appointed to minor; if emancipating to marry, additional criteria apply (e.g., judge must find minor is not being coerced and examine criminal record/protective order history of intended spouse); "best interests" inquiry; 15-day waiting period between emancipation order and marriage license; minor must complete premarital education and receive rights/resources factsheet	2019
Louisiana	Age floor set at 17; age 16-17 now requires judicial approval; judge must consider several factors including whether parties are mature and self-sufficient and whether there is evidence of coercion or violence; parties' age difference limited to 3 years	2019
Nevada	Age floor set at 17; age 17 now requires judicial approval; judge must consider factors including maturity of minor and age differences of parties, must be "extraordinary circumstances" and "clear and convincing evidence" including that marriage is in the minor's best interests	2019
New Hampshire	Age floor raised to 16; judicial approval required; improved judicial approval process, including by requiring "clear and convincing evidence" that marriage is in the minor's best interests	2019
Ohio	Age floor set at 17; parties' age difference limited to 4 years; minor must be court-emancipated; attorney must be appointed to minor; court must consider several factors including whether there is coercion; 14-day waiting period between emancipation order and marriage license	2019
Utah	Age floor raised to 16; parties' age difference limited to 7 years; age 16-17 now requires judicial approval; court must find that the marriage is voluntary and in the best interest of the minor; allows court to make other orders (e.g., continuing schooling, getting premarital counseling)	2019
Maine	Age floor set at 16; parties' age difference limited to 3 years	2020

For more information, please contact Jeanne Smoot, Senior Counsel for Public Policy and Strategy, jeanne@tahirih.org, or visit tahirih.org/childmarriage.

Child Marriage Poses Serious Risks to Children



PHYSICAL IMPACT

- Women who marry before age 19 have a 23% greater risk of developing a serious health condition including diabetes, cancer, heart attack, or stroke.¹
- Teen girls who marry tend to have more children, earlier, and more closely spaced.² They are:
 - » Much more (130%) likely to get pregnant than unmarried teens who live with a partner³
 - » More likely to have their first child before age 18⁴
 - » 40% more likely to have a second birth within 24 months of their first⁵
 - » Nearly 3x more likely to have at least 5 children⁶
- Young women and girls aged 16-19 face intimate partner violence victimization rates almost 3x the national average.⁷
- Overall, women who marry as children are more likely to seek and access health services, compared to women who married in adulthood.⁸



ECONOMIC IMPACT

- Child brides tend to come from poverty and remain in poverty.⁹
 - » Girls who marry underage are up to 31 percentage points more likely to live in future poverty.¹⁰
 - » For teen mothers, getting married and later divorcing can more than double the likelihood of poverty.¹¹
- Earning potential and work opportunities are limited by interrupted education and low education levels. Girls who marry under age 19 are:
 - » 50% more likely to drop out of high school
 - » 4x less likely to graduate college¹²



SOCIAL IMPACT

- Child brides tend to be isolated from support networks including school, friends, and family.
- The majority (70-80%) of marriages entered into when at least one person is under age 18 ultimately end in divorce.¹³
 - » According to one study based on census data, 23% of children who marry are already separated or divorced by the time they turn 18¹⁴
- These negative outcomes, combined with the economic impacts of child marriage which limit a woman's ability to become financially independent, increase vulnerability to multiple victimization and often result in consequences becoming cyclical and intergenerational.



MENTAL IMPACT

- Women who marry before age 18 are more likely to report stressful life events.
- Women who marry before age 18 are also present with significantly more psychiatric disorders, including:
 - » mood and anxiety disorders including major depressive disorder
 - » antisocial personality disorder (prevalence nearly 3x higher)¹⁵
- Social isolation and feeling a lack of control over their lives can contribute to a "child bride's" poor mental health. In fact, agencies working with girls facing or trying to escape forced marriages report that nearly all have contemplated or attempted suicide.¹⁶

ENDNOTES

- ¹ Compared with a study cohort of those who married between age 19 and 25. 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. 630-636, and 646-647; see also Bridget M. Kuehn, “[Early Marriage Has Lasting Consequences on Women’s Mental Health](#),” news@JAMA (August 29, 2011), 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”).
- ² See Naomi Seiler, “[Is Teen Marriage a Solution?](#)” (Center for Law and Social Policy, April 2002), at p. 8; see also *infra*, n. 3.
- ³ See Wendy D. Manning and Jessica A. Cohen, “[Teenage Cohabitation, Marriage, and Childbearing](#),” *Population Research and Policy Review* (April 2015), 34(2): 161-177.
- ⁴ *Id.*
- ⁵ See Gordon B. Dahl, “Early Teen Marriage and Future Poverty,” *Demography* (August 2010: 47(3): 689-718), at 691, n. 2.
- ⁶ *Id.*
- ⁷ See [loveisrespect.org](#) factsheet.
- ⁸ 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).
- ⁹ See *supra*, n. 8; see also “[Poverty](#),” Girls Not Brides factsheet, and Abby Phillip, *The Washington Post* (WorldViews: July 23, 2014), “[Here’s proof that child marriage and poverty go hand in hand](#)”.
- ¹⁰ See *supra*, n. 5, at 714. The author defined “early teen marriage” as marrying before age 16. *Id.*, at 693.
- ¹¹ 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. 15.
- ¹² See *supra*, n. 5, at 691.
- ¹³ See *supra*, n. 11, at 1820.
- ¹⁴ See Alissa Koski and Jody Heymann, “Child Marriage in the United States: How Common Is the Practice, And Which Children Are at Greatest Risk?” *Perspectives on Sexual and Reproductive Health* (June 2018: 50 (2), 59-65), at 61.
- ¹⁵ See *supra*, n. 8.
- ¹⁶ As observed by the Tahiri Justice Center’s Forced Marriage Initiative and other legal and social service-providers in the national Forced Marriage Working Group that Tahiri chairs.

