Submission to Committee on Scope and Program: Proposal for Study
Committee to Explore Feasibility of Uniform Law on the Minimum Age for
Marriage

Submitted By:

The Joint Editorial Board for Uniform Family Law (JEB-UFL).

Description of the Project:

The JEB-UFL recommends the appointment of a study committee to explore the feasibility of a uniform act governing the minimum age of entering marriage. Because the underage marriage issue overlaps with forced marriage issues, we recommend that the study committee also consider measures to ensure that marriage by a person younger than 18, if permitted, be the result of that person’s voluntary consent.

Suitability of Subject and Need for Uniformity in the Subject Matter Area:

In the last few years, the incidence of underage marriage within the United States has been the subject of growing concern. One report stated that between 2000 and 2015, 200,000 people under age 18 were married in this country. Of those individuals who were minors at the time of marriage, 87% were female. Significantly, the vast majority of individuals who were minors at the time of marriage married adults. In 2014, 60,000 minors between the ages of 15 and 17 years of age, nearly five out of every 1000, were in marriages. See *Lawmakers in 10 States Push to Raise Marriage Age*, PBS Newshour, May 13, 2017.

A study conducted in the United States by the Tahirih Justice Center reported that girls as young as 13 who were pregnant were married, often to men decades older. Dozens of children were statutory rape victims marrying their rapist. See Tahirih Justice Center, *Child Marriage in the United States: A Serious Problem with a Simple First-Step Solution* (Oct. 23, 2017). The Tahirih Justice Center emphasizes that statutes that allow a woman to marry if she is underage and pregnant undercut the policies against statutory rape. Also, statistics indicate that girls and women 16-24 experience the highest rate of intimate partner violence; girls 16-19 face victimization at triple the national average. The younger the adolescent, the more likely they have experienced coerced sex and pregnancy. Tahirih Justice Center Report, at 2. According to one international advocacy group, an estimated 14.2 million girls under age 18 are forced into marriage each year around the globe. See “*Marrying Too Young: End Child Marriage*” (UNFPA: New York, 2012), p. 6, available at http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf.

As detailed below and in the attached Chart of State Laws, most states provide that age at marriage without parental consent is eighteen. There are, however, exceptions in most states that allow a judge or parent to consent to an underage marriage. There is no minimum age for marriage in at least twenty-two states. Because the right to marry in a given state typically does not depend on residency, the law in one state on age of marriage can be easily evaded by
traveling to another state. Uniformity is therefore necessary to accomplish the social justice goals underlying age of marriage legislation.

The Conference has approved many uniform or model laws regulating aspects of marriage and divorce law within the United States. Indeed, the Model Marriage and Divorce Act itself contains age of marriage provisions. See Section 203 (requiring parental consent or judicial approval for marriage at age of 16 or 17, and providing bracketed provision for marriage by minor younger than 16 with no absolute floor); Section 205 (providing standards for judicial approval of marriage by minor). The subject is therefore appropriate for consideration by the Conference.

The JEB is not proposing precise terms at this point, but we anticipate that a uniform or model law on this topic would be a short act and would likely set the minimum legal marriage age at 17 or 18 years of age. If the act were to permit marriage by 17-year-olds, it would likely provide safeguards to ensure voluntary consent.

**Summary/Analysis of Existing State Law and Trends Concerning This Subject:**

The states differ significantly on the age at which people can marry. See attached Chart of State Laws. All but two states list 18 as the age of consent to marry without parental or judicial approval (Nebraska is 19 and Mississippi is 21). States, however, differ on the minimum age. New Hampshire allows girls as young as 13 and boys as young as 14 to marry with parental consent and a judge’s approval. Many states allow parental consent if the child is 16 -17. In Mississippi, females age 15-21 and males 17-21 can marry with parental consent. Other states allow a judge to consent to marriage of a minor if the minor is pregnant or if the couple is living together. Twenty two states do not have a legal minimum age of marriage: Arkansas, California, Colorado, Delaware, Idaho, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New Jersey, New Mexico, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Washington, West Virginia and Wyoming. See attached chart of state marriage laws.

The trend is definitely toward setting an absolute minimum marriage age. In 2017, Connecticut, New York, Texas and Virginia changed their marriage laws to adopt stricter age requirements and an absolute minimum age. In the current year, Arizona, Florida and Kentucky have done the same.

**Comparative-Law Perspectives:**

The Tahirih Justice Center estimates that more than 14 million girls in their early teens will marry in the next decade – the majority against their will. See Jonathan Black, *Marital Discord: Advocates are Fighting to Outlaw Adult Marriages to Minors*, ABA J., 16-18 (Jan. 2018). The minimum age for marriage overlaps with the forced marriage issue. Forced marriage is a marriage in which one or both of the parties is married without his or her consent or against his or her will. A forced marriage is one that is performed under duress, where one or both feel subject to physical, emotional, or psychological pressure. While a forced marriage could happen with older brides, the particular vulnerability of young women is the issue.
Several international instruments underscore that there must be free and full consent to marriage. Regardless of whether the United States is a party to these instruments, they reveal accepted international norms. The U.N. Convention on the Rights of the Child, 28 I.L.M. 1448 (Nov. 20, 1989) Preamble recognizes that “the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.” The CRC Article 34 states that “Children should be protected from all forms of sexual exploitation and abuse.”

“Marriage shall be entered into only with the free and full consent of the intending spouses.” Universal Declaration of Human Rights 1948, Art. 16(2). “No Marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law. United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964, Art. 1 (1).


**Impact of Federal Laws and Regulations on this Proposed Subject:**

At this point there are no federal laws and regulations dealing with the age of marriage. Toward the end of the Obama Administration, the State Department joined other agencies in establishing a “Global Strategy to Empower Adolescent Girls,” the components of which included ways of deterring child marriage, early marriage, and forced marriage. See https://www.state.gov/documents/organization/254904.pdf

**Identity of organizations or persons interested in subject area.**

U.S. Department of State, Bureau of Consular Affairs
ABA Commission on Domestic Violence

The ABA House of Delegates in 2014 issued a detailed resolution condemning forced marriage and noting that the age of marriage laws contributed to the problem.

American Academy of Matrimonial Lawyers
National Council of Juvenile and Family Court Judges
Association of Family and Conciliation Courts
Girl Scouts of America
Availability of Existing Research and/or Financial Support:

Two women’s rights organizations, the Tahirih Justice Center and Unchained at Last, are strong advocates for setting minimum age of marriage standards across the United States. See http://www.tahirih.org/ and http://www.unchainedatlast.org/ We believe they would actively support a drafting project through research assistance and observer participation. We do not anticipate financial support.