

JAN 22 2021

A BILL FOR AN ACT

RELATING TO MARRIAGE OF MINORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that nationally and
2 internationally there is growing recognition that child marriage
3 is a human rights violation and a severe impediment to social
4 and economic development, resulting in states and countries
5 considering legislation to end the practice of allowing children
6 to marry. UNICEF describes child marriage as any formal
7 marriage or informal union between a child under the age of
8 eighteen and an adult or another child. United Nations
9 Sustainable Development Goal 5, relating to gender equality,
10 sets the year 2030 as the target for ending child marriage. The
11 Sustainable Development goals were unanimously adopted in 2015
12 by all one hundred ninety-three UN Member States including the
13 United States.

14 The concerns about allowing children to marry is that they
15 have not reached the threshold to adulthood that grants certain
16 rights and responsibilities, including in some states the right
17 to divorce, and that a child entering into marriage may have



1 been pressured or coerced into marrying, especially if the child
2 is pregnant, or the marriage may be the result of sex
3 trafficking. According to an analysis conducted by the Public
4 Broadcasting Service's Frontline program, between 2000 and 2014
5 more than two hundred seven thousand individuals under the age
6 of eighteen married in the United States. While most children
7 were sixteen or seventeen years of age at the time of marriage,
8 some were as young as twelve years old. Girls are
9 disproportionately affected by the practice of child marriage
10 and the vast majority of these marriages were between a minor
11 female and an adult male.

12 Hawai'i's laws regularly define "children" as persons who
13 are less than eighteen years of age; they are often also termed
14 "minors." Nonetheless, the law allows children as young as
15 sixteen years of age to marry. State law further authorizes the
16 family court to approve a marriage of a child who is fifteen
17 years of age. Comparatively, sexual assault laws criminalize
18 sexual conduct with a fifteen-year-old, though an exception is
19 made if the fifteen-year-old is legally married to the sexual
20 partner or the sexual partner is no more than five years older
21 than the minor victim. Based on Department of Health data, at



1 least eight hundred children were married in Hawai'i since 2000,
2 with eighty per cent of these marriages being girls marrying
3 adult men.

4 The legislature further finds that in 2018, Delaware and
5 New Jersey became the first and second states, respectively, to
6 require that both parties to the marriage be at least eighteen
7 years of age at time of marriage. Since then, Pennsylvania and
8 Minnesota, along with American Samoa and the U.S. Virgin
9 Islands, have joined them to end child marriage in their
10 jurisdictions. Similar legislation has been introduced in at
11 least thirteen other states as well as Congress.

12 The purpose of this Act is to end child marriage in Hawai'i.

13 SECTION 2. Section 571-2, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending the definition of "guardianship of a minor"
16 to read:

17 "Guardianship of a minor" means the duty and authority to
18 make important decisions in matters having a permanent effect on
19 the life and development of the minor and to be concerned about
20 the minor's general welfare. It includes[7] but shall not
21 [necessarily] be limited, in either number or kind to:



- 1 (1) The authority to consent [~~to marriage,~~] to enlistment
2 in the armed forces of the United States[7] or to
3 major medical, psychiatric, and surgical treatment; to
4 represent the minor in legal actions; or to make other
5 decisions concerning the minor of substantial legal
6 significance;
- 7 (2) The authority and duty of reasonable visitation,
8 except to the extent that the right of visitation has
9 been limited by court order;
- 10 (3) The rights and responsibilities of legal custody when
11 guardianship is exercised by the natural or adoptive
12 parent, except where legal custody has been vested in
13 another individual, agency, or institution; and
- 14 (4) The authority to consent to the adoption of the minor
15 and to make any other decision concerning the minor
16 that the minor's parents could make, when the rights
17 of the minor's parents, or only living parent, have
18 been judicially terminated as provided for in the
19 statutes governing termination of parental rights to
20 facilitate legal adoption, or when both of the minor's
21 legal parents are deceased."



2. By amending the definition of "residual parental rights and responsibilities" to read:

"Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including~~[7]~~ but not ~~[necessarily]~~ limited to~~[7]~~ the right to reasonable visitation, consent to adoption ~~[or marriage]~~, and the responsibility for support."

SECTION 3. Section 571-11, Hawaii Revised Statutes, is amended to read as follows:

"§571-11 Jurisdiction; children. Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings:

- (1) Concerning any person who is alleged to have committed an act prior to achieving eighteen years of age that would constitute a violation or attempted violation of any federal, state, or local law or county ordinance. Regardless of where the violation occurred, jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred;



(2) Concerning any child living or found within the circuit:

(A) Who is neglected as to or deprived of educational services because of the failure of any person or agency to exercise that degree of care for which it is legally responsible;

(B) Who is beyond the control of the child's parent or other custodian or whose behavior is injurious to the child's own or others' welfare;

(C) Who is neither attending school nor receiving educational services required by law whether through the child's own misbehavior or nonattendance or otherwise; or

(D) Who is in violation of curfew;

(3) To determine the custody of any child or appoint a guardian of any child;

(4) For the adoption of a person under chapter 578;

(5) For the termination of parental rights under sections 571-61 through 571-63;



- 1 (6) For judicial consent to the [~~marriage~~,] employment[,]
- 2 or enlistment of a child[,]
- 3 when consent is required
- 4 by law;
- 5 (7) For the treatment or commitment of a mentally
- 6 defective or mentally ill child, or a child with an
- 7 intellectual disability;
- 8 (8) Under the Interstate Compact on Juveniles under
- 9 chapter 582 or the Interstate Compact for Juveniles
- 10 under chapter 582D;
- 11 (9) For the protection of any child under chapter 587A;
- 12 (10) For a change of name as provided in section
- 13 574-5(a)(2)(C); and
- 14 (11) Concerning custody or guardianship of an immigrant
- 15 child pursuant to a motion for special immigrant
- 16 juvenile factual findings requesting a determination
- 17 that the child was abused, neglected, or abandoned
- 18 before the age of eighteen years for the purposes of
- 19 section 101(a)(27)(J) of the federal Immigration and
- 20 Nationality Act. For the purposes of this paragraph,
- 21 "child" means an unmarried individual under the age of
- twenty-one years."



1 SECTION 4. Section 572-1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§572-1 Requisites of valid marriage contract.** In order
4 to make valid the marriage contract, which shall be permitted
5 between two individuals without regard to gender, it shall be
6 necessary that:

7 (1) The respective parties do not stand in relation to
8 each other of ancestor and descendant of any degree
9 whatsoever, two siblings of the half as well as to the
10 whole blood, uncle and niece, uncle and nephew, aunt
11 and nephew, or aunt and niece, whether the
12 relationship is the result of the issue of parents
13 married or not married to each other or parents who
14 are partners in a civil union or not partners in a
15 civil union;

16 (2) Each of the parties at the time of contracting the
17 marriage is at least ~~[sixteen]~~ eighteen years of age;
18 ~~[provided that with the written approval of the family~~
19 ~~court of the circuit within which the minor resides,~~
20 ~~it shall be lawful for a person under the age of~~



~~sixteen years, but in no event under the age of
fifteen years, to marry, subject to section 572-2,]~~

(3) Neither party has at the time any lawful wife,
husband, or civil union partner living, except as
provided in section 572-1.7;

(4) Consent of neither party to the marriage has been
obtained by force, duress, or fraud;

(5) Neither of the parties is a person afflicted with any
loathsome disease concealed from, and unknown to, the
other party;

(6) The parties to be married in the State shall have duly
obtained a license for that purpose from the agent
appointed to grant marriage licenses; and

(7) The marriage ceremony be performed in the State by a
person or society with a valid license to solemnize
marriages and the parties to be married and the person
performing the marriage ceremony be all physically
present at the same place and time for the marriage
ceremony."

SECTION 5. Section 572-10, Hawaii Revised Statutes, is
amended to read as follows:



1 "§572-10 ~~[Applicant apparently under age.]~~ Age of
2 applicant. ~~[If]~~ For any applicant for a license to marry
3 ~~[appears to any agent to be under the age of eighteen years],~~
4 the agent shall, before granting a license to marry, require the
5 production of a certificate of birth or other satisfactory proof
6 showing the age of the applicant."

7 SECTION 6. Section 580-22, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§580-22 **Nonage.** An action to annul a marriage on the
10 ground that one of the parties was under legal age, may be
11 brought by the parent or guardian entitled to the custody of the
12 minor, or by any person admitted by the court to prosecute as
13 the friend of the minor. In no case shall the marriage be
14 annulled on the application of a party who was of legal age at
15 the time it was contracted~~[; nor when it appears that the~~
16 ~~parties, after they attained the legal age, had for any time~~
17 ~~freely cohabited as man and wife]~~."

18 SECTION 7. Section 572-2, Hawaii Revised Statutes, is
19 repealed.

20 ~~["§572-2 **Consent of parent or guardian.** Whenever any~~
21 ~~person who is under the age of eighteen is to be married, the~~



1 ~~written consent of his or her parents, or guardian or other~~
2 ~~person in whose care and custody he or she may be, shall~~
3 ~~accompany the application for a license to marry. No license~~
4 ~~shall be issued to any minor who is under the jurisdiction of~~
5 ~~the family court without the written consent of a judge of such~~
6 ~~court."]~~

7 SECTION 8. Section 572-9, Hawaii Revised Statutes, is
8 repealed.

9 ~~["§572-9 Persons under age. Whenever any person who is~~
10 ~~under the age of eighteen, whose parents are dead, or who is a~~
11 ~~ward of a family court, applies for a license to marry, he or~~
12 ~~she shall set forth in the statement accompanying the~~
13 ~~application, the name of his or her guardian or of any other~~
14 ~~person in whose care and custody he or she may be."]~~

15 SECTION 9. Section 577-25, Hawaii Revised Statutes, is
16 repealed.

17 ~~["[§577-25] Emancipation of certain minors. Any law to~~
18 ~~the contrary notwithstanding, a minor who has been married~~
19 ~~pursuant to chapter 572 shall be deemed to be emancipated and~~
20 ~~shall be regarded as though he or she were of legal age and~~
21 ~~shall have all the rights, duties, privileges, and~~



1 ~~responsibilities provided by the civil law to a person who has~~
2 ~~reached the age of majority under civil law; provided that:~~

3 ~~(1) Nothing in this section shall be deemed to confer upon~~
4 ~~such person the right to vote in any federal, state,~~
5 ~~or county election or the right to purchase, possess,~~
6 ~~or sell alcoholic beverages; and~~

7 ~~(2) Nothing in this section shall change the status of~~
8 ~~such persons as minors in connection with any criminal~~
9 ~~law, nor affect the exclusive original jurisdiction of~~
10 ~~the family court over such persons under section 571-~~
11 ~~11(1).~~

12 ~~For purposes of this section, "minor" means a person under~~
13 ~~the age of majority."]~~

14 SECTION 10. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 11. This Act shall take effect upon its approval.

17
INTRODUCED BY: Karl Rhoad



S.B. NO. 279

Report Title:

Marriage; Legal Age

Description:

Raises the minimum age requirement to enter into marriage from sixteen to eighteen years of age. Removes the parental consent and written approval by the family court requirements for a minor to marry. Removes spousal cohabitation after the parties attain legal age as an exception for an annulment based on nonage. Makes conforming amendments.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

