
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

SB 404 (Wahab) - Prohibiting underage, unauthorized marriages

Version: March 22, 2023
Urgency: No
Hearing Date: May 8, 2023

Policy Vote: PUB. S. 5 - 0
Mandate: Yes
Consultant: Matthew Fleming

Bill Summary: SB 404 would prohibit any person from solemnizing, sanctioning, or arranging a nonlegally recognized marriage between a minor and another person, and punish a violation as a misdemeanor.

Fiscal Impact: Unknown, potentially significant court workload cost pressures to the judicial branch in order to prosecute misdemeanor violations of this bill's prohibition (Trial Court Trust Fund, General Fund).

Background: In California, existing law authorizes an unmarried person under 18 years of age, who is capable of consenting to and consummating marriage, upon obtaining a court order granting permission, to marry. The law requires the court order and written consent of at least one parent or guardian of each underage person be filed with the clerk of the court. Additionally, any emancipated minor is authorized to marry. Once an unemancipated minor is married, the minor becomes emancipated.

While there are legal avenues for a minor to be married, some minors get married through spiritual ceremonies that are not authorized by law. These nonlegally recognized marriages do not have the same protections as existing court-authorized marriages, such as the automatic emancipation of the minor or the assessment of whether potential force, threat, persuasion, fraud, coercion, or duress by either of the parties or their family members or any known or suspected child abuse.

According to a national advocacy group dedicated to ending child marriage, nearly 300,000 minors, under age 18, were legally married in the U.S. between 2000 and 2018. In that same time period 23,588 child marriages took place in California. It is unknown how many child marriages took place outside of the legal process. This bill would make it a crime for a person to solemnize, sanction, or arrange a nonlegally recognized marriage between a minor and another person. This crime would be a misdemeanor, punishable by a fine of not less than \$5,000 and imprisonment in the county jail for up to one year per incident.

Proposed Law:

- Makes it a misdemeanor, punishable by a fine of not less than \$5000 and imprisonment in county jail for up to one year, for any person to knowingly and willfully solemnize, sanction, or arrange a religious union or other secular nonlegally recognized marriage between a minor and another person.
- Provides that the prohibition does not apply to a marriage or domestic partnership of a minor that has been authorized by a court, as specified.

Related Legislation: AB 1286 (Petrie-Norris, 2022) would have required an annual report produced by the State Registrar, regarding the number of marriage certificates issued in which one or both of the parties were minors, to be provided the Legislature. AB 1286 was held on the Assembly Appropriations Suspense File.

Staff Comments: SB 404 would create a new misdemeanor offense, but it is unknown how many additional prosecutions will be brought under its provisions. Misdemeanor charges carry the potential for incarceration, therefore certain defendants' rights are attached to the proceedings. These include the right to a jury trial and the right to counsel (at public expense if the defendants are unable to afford the costs of representation) which could lead to lengthier and more complex court proceedings. It generally costs about \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased demand on staff time and resources may create a need for increased funding for courts from the General Fund (GF) to perform existing duties. Numerous trial court operations are funded through the imposition and collection of criminal fines and fees. However, the Legislature has reduced and eliminated criminal fines and fees over the past decade. As a result, the 2023-24 proposed budget anticipates an ongoing annual allocation of \$109.3 million from the GF to backfill declining revenue to the Trial Court Trust Fund.

-- END --