
THIRD READING

Bill No: SB 404
Author: Wahab (D)
Amended: 5/18/23
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-0, 4/25/23

AYES: Wahab, Ochoa Bogh, Bradford, Skinner, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/18/23

AYES: Portantino, Jones, Ashby, Bradford, Seyarto, Wahab, Wiener

SUBJECT: Prohibiting underage, unauthorized marriages

SOURCE: Author

DIGEST: This bill prohibits any person from sanctioning or arranging a nonlegally recognized marriage or domestic partnership between a minor and another person.

ANALYSIS:

Existing law:

- 1) States that unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a “minor” is a person under the age of 18 years and an “adult” is a person who is at least 18 years of age. This crime is also known as statutory rape. (Pen. Code, § 261.5, subd. (a).)
- 2) Punishes statutory rape as either a misdemeanor or felony depending on the age difference with the minor. (Pen. Code, § 261.5, subds. (b)-(d).)
- 3) States that it is unlawful for every person having a spouse living, who marries or enters into a registered domestic partnership with any other person, except as specified, and is punishable by a fine not exceeding \$10,000 and imprisonment

in the county jail for up to one year or in the state prison. (Pen. Code, §§ 281-283.)

- 4) States that every person who takes any other person unlawfully, and against his or her will, and by force, menace, or duress, compels him or her to live with such person in an illicit relation, against his or her consent, or to so live with any other person, is guilty of a felony punishable by imprisonment in the county jail. (Pen. Code, § 266b.)
- 5) States that every person who knowingly and willfully marries or enters into a registered domestic partnership with the spouse of another is guilty of an alternate felony-misdemeanor, punishable by a fine not less than \$5,000, or by imprisonment in the county jail for up to one year, or 16 months, or two or three years. (Pen. Code, § 284.)
- 6) 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. Requires that 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. (Fam. Code, § 302.)
- 7) Provides that a minor may make a valid premarital agreement or other marital property agreement if the minor is emancipated or is otherwise capable of contracting a marriage. (Fam. Code, § 1501.)

This bill:

- 1) Makes it a misdemeanor, punishable by a fine of not less than \$5,000 and imprisonment in county jail for up to one year, for any person to knowingly and willfully sanction or arrange a religious union or other secular nonlegally recognized marriage or domestic partnership between a minor and another person.
- 2) States that the prohibition does not apply to a marriage or domestic partnership of a minor that has been authorized by a court, as specified.

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. (Family Code Section 302.) Additionally, any

emancipated minor is authorized to marry. (Fam. Code, § 1501.) Once an unemancipated minor is married, the minor becomes emancipated. (Fam. Code, § 7002.)

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. (Fam. Code, §§ 304 and 7002.)

This bill makes it a crime for a person to solemnize, sanction, or arrange a nonlegally recognized marriage or domestic partnership 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, 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).

SUPPORT: (Verified 5/18/23)

Child USAdvocacy

OPPOSITION: (Verified 5/18/23)

Tahirih Justice Center

ARGUMENTS IN SUPPORT: According to Child USAdvocacy:

This legislation, if passed, would strengthen California's ability to protect its children from the trauma of child marriage. Currently, nearly every state in the United States permits child marriage in some form. While many states set a marriage age floor at age 18, their laws, like California's, still include an array of exceptions that "can in effect drop the true minimum marriage age much lower." These loopholes—most commonly including parental consent, judicial approval, the lack of official proof of age requirements, and pregnancy exceptions—endanger children.

Child Marriage is Pervasive in the U.S. with Devastating Domestic Consequences.

The above-mentioned legal loopholes may seem trivial on paper, but they result in tragic, life-altering consequences for children in the United States.

- Between 2000 and 2018, almost 300,000 adolescent minors were legally married in the U.S.—this is an average of 45 child marriages per day.
- An estimated 30,000–60,000 marriages occurred “at an age or spousal age difference that should have been considered a sex crime.”
- The majority of U.S. states permit marriage as a defense to statutory rape.
- Between 70% and 80% of marriages involving a child in the United States end in divorce, and child marriage followed by divorce doubles the likelihood that child mothers will descend into poverty.
- Girls in the United States who marry before the age of 19 are also 50% more likely to drop out of high school and four times less likely to graduate from college.
- Victims of child marriage in the United States are acutely vulnerable to higher rates of psychiatric disorders as well as physical, emotional, or verbal abuse.

California does not escape these consequences. As evidenced in the graph above, California has some of the weakest child marriage laws in the nation. To protect children and secure their futures, the practice of child marriage must be prohibited under the law. In the absence of a federal prohibition against child marriage, it falls to each state to establish marriage laws that close these loopholes and effectively ban child marriage.

ARGUMENTS IN OPPOSITION: According to Tahirih Justice Center, who is opposed unless amended:

As-introduced, SB 404 would have addressed California’s current status as one of only 6 states with no minimum marriage age and made it a leader in

the movement to protect children, mostly girls, from the known harms of child marriage.

As amended, however, SB 404 will not prevent these harms. Instead, it may further harm the very children it was introduced to protect by criminalizing their families and communities. The survivors of forced marriage that we serve often have complicated relationships with the parents or communities who pressure them to marry. In many cases, even after facing significant abuse, they still love and value these social bonds and hope for reconciliation. These survivors do not typically want to see their families or communities criminalized, and those who face the intersecting harms that come from being a person of color or immigrant may be especially hesitant to involve law enforcement. For those clients who do want to call on law enforcement, they can generally do so based on existing criminal law addressing crimes like child abuse, family violence, trafficking, or kidnapping.

We hope to see SB 404 amended or re-introduced next session in a form that reverts back to [the] original approach of ending child marriage.

Prepared by: Stella Choe / PUB. S. /
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