

Date of Hearing: June 27, 2023

Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 404 (Wahab) – As Amended May 18, 2023

As Proposed to Be Amended in Committee

SUMMARY: Creates a new misdemeanor of solemnizing a marriage or domestic partnership between a minor and another person, unless the marriage or domestic partnership has been approved by a court order. Specifically, **this bill**:

- 1) Provides that any person 18 or older who knowingly or willfully solemnizes a marriage or domestic partnership between a minor and another person is guilty of a misdemeanor.
- 2) Punishes the offense by imprisonment in the county jail for up to six months, a fine of \$1,000, or by both.
- 3) Specifies that this new crime does not apply to the solemnization of a marriage or domestic partnership entered into after receiving a court order allowing the minor to marry or enter into a domestic partnership.
- 4) Provides that “solemnizes” has the same meaning as defined in the Family Code.

EXISTING LAW:

- 1) Defines “marriage” as a personal relation arising out of a civil contract between two persons, 18 years of age or older, to which the consent of the parties capable of making that contract is necessary. Consent alone does not constitute marriage. Consent must be followed by the issuance of a license and solemnization. (Fam. Code, §§ 300 & 301.)
- 2) Defines “domestic partners” as two adults who have chosen to share one another’s lives in an intimate and committed relationship of mutual caring. A domestic partnership is established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State. (Fam. Code, § 297.)
- 3) Allows a person under 18 years of age to be issued a marriage license or to establish a domestic partnership upon obtaining a court order granting permission to the underage person or persons to marry or establish a domestic partnership, and with written consent of the parents of each person under 18 years of age, unless it appears to the satisfaction of the court that the minor has no parent or guardian, or has no parent or guardian capable of consenting. (Fam. Code, §§ 297.1 & 301-304.)
- 4) Provides that a marriage may be solemnized by a priest, minister, rabbi, or authorized person of any religious denomination who is 18 years of age or older. (Fam. Code, § 400.)

- 5) Sets forth the requirements of solemnization, including but not limited to, before solemnizing a marriage, the person solemnizing the marriage shall require the presentation of the marriage license. If the person solemnizing the marriage has reason to doubt the correctness of the statement of facts in the marriage license, the person must be satisfied as to the correctness of the statement of facts before solemnizing the marriage. (Fam. Code, §§ 420-426.)
- 6) States that every person authorized to solemnize marriage, who willfully and knowingly solemnizes any marriage forbidden by law, is guilty of a misdemeanor, punishable by fine of not less than \$100 and not more than \$1,000, or by imprisonment in not less than three months and no more than one year the county jail. (Pen. Code, § 359.)
- 7) States that every person authorized to solemnize any marriage, who solemnizes a marriage without first being presented with the marriage license, or who solemnizes a marriage without the authorization, or who willfully makes a false return of any marriage or pretended marriage to the recorder or clerk, or who willfully makes a false record of any marriage return, is guilty of a misdemeanor. (Pen. Code, § 360.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “I firmly believe that the state of California should make every effort to protect children from opportunities for abuse and coercion. SB 404 takes a step in the right direction by ensuring that the individuals responsible for officiating and arranging minor marriages occurring outside of the legal bounds of the law, and its associated guardrails, are halted. In a state that believes we should put ‘children on a path to a healthier future by focusing on their minds, bodies, and environments,’ we all have a responsibility to ensure children maintain their rights to bodily and intellectual autonomy for healthy development.”
- 2) **Legal Marriages and Domestic Partnerships Involving Minors:** In California, existing law authorizes a person under 18 years of age, upon obtaining a court order granting permission, to get married or to establish a domestic partnership. (Fam. Code, §§ 297.1 & 301-304). The law requires, among other things, a court order and written consent of at least one parent or guardian of each underage person. (*Ibid.*) The court order must be presented to the county clerk at the time the marriage license is issued. (*Ibid.*) It is a misdemeanor to solemnize a marriage without first being presented a marriage license. (Pen. Code, §§ 359, 360.)

According to the Pew Research Center, approximately 5.5 of every 1,000 15- to 17-year-olds are married in California, based on census data from 2014. (Pew Research Center, *Child Marriage Is Rare in the U.S., Though This Varies by State* (Nov. 2016) <<https://www.pewresearch.org/short-reads/2016/11/01/child-marriage-is-rare-in-the-u-s-though-this-varies-by-state/>> [June 13, 2023].) This is above the national average of 4.6. (*Ibid.*)

- 3) **This Bill Would Create a New Misdemeanor:** This bill would create a new misdemeanor of solemnizing a marriage or domestic partnership of a minor that has not been approved by a court order. The penalty for this new offense would be up to six months imprisonment in a county jail or by a fine of \$1,000 or by both.

Increasing criminal penalties is often ineffective at deterring crime. Research shows clearly that the chance of being caught is a vastly more effective deterrent than even draconian punishment. (National Institute of Justice, *Five Things about Deterrence* (May 2016) <<https://www.ojp.gov/pdffiles1/nij/247350.pdf>> [June 12, 2023].)

In addition to jail, this bill allows a fine of \$1,000, per each incident. Criminal fines and fees will contribute to the cycle of debt for underprivileged families most likely to be criminalized by this measure. (Brennan Center for Justice, *The Steep Costs of Criminal Justice Fees and Fines* (Nov. 21, 2019) <<https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>> [June 12, 2023].) Cases of child marriage exist in every racial or ethnic demographic, but are more prevalent among Latinos, Native Americans and immigrants. (*Child Marriage in the United States: How Common Is the Practice, And Which Children Are at Greatest Risk?* (June 2018) <https://i4y.berkeley.edu/sites/default/files/koski_and_heyman_2017_-_child_marriage_in_the_states_how_common_is_the_practice_and_which_children_are_at_greatest_risk.pdf> [June 18, 2023].) Consequently, this bill could have an unintended consequence of disproportionately criminalizing immigrants, religious and cultural minorities.

Rather than fines and incarceration, the Legislature could explore more effective means of deterring coercive and abusive child marriage practices, such as empowering communities and strengthen the systems that act as a safeguard against child marriage including education, legal aid, housing, financial support. (See, e.g. UNICEF, *Preventing Child Marriage* <<https://www.unicef.org/eca/what-we-do/child-marriage>> [June 12, 2023].)

- 4) **Argument in Support:** Argument in support is no longer applicable.
- 5) **Arguments in Opposition:** Arguments in opposition are no longer applicable.
- 6) **Related Legislation:** ACA 5 (Low) would repeal language in the California Constitution stating marriage is only between a man and woman and to include the fundamental right to marry. ACA 5 is pending in the Assembly Appropriations Committee.
- 7) **Prior Legislation:** SB 273 (Hill), Chapter 660, Statutes of 2018, created additional requirements and court oversight before a minor can legally marry or establish a domestic partnership in California.

REGISTERED SUPPORT / OPPOSITION:

Support

Child Usadvocacy

Oppose

Global Hope 365
Tahirih Justice Center

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