

Date of Hearing: July 12, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 404 (Wahab) – As Amended June 29, 2023

Policy Committee: Public Safety

Vote: 8 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

SUMMARY:

This bill makes it a misdemeanor for a person to knowingly and willfully sanction or solemnize a marriage or domestic partnership between a minor and another person. This misdemeanor is punishable by a fine of up to \$1,000 and imprisonment in jail for up to one year per incident.

FISCAL EFFECT:

- 1) Annual costs (Trial Court Trust Fund, General Fund) to the courts of an unknown but potentially significant amount to adjudicate misdemeanor cases. Actual costs will depend on the number of violations and the number of prosecutions brought under this provision. A defendant charged with a misdemeanor is entitled to no-cost legal representation and a jury trial. If 10 new misdemeanors are filed annually statewide and proceed to trial resulting in the use of two days of court time each, at an estimated cost of approximately \$8,000 for an eight-hour court day, the approximate cost to the trial courts would be \$160,000. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a need for increased funding for courts from the General Fund. The 2023-24 budget agreement includes \$105.14 million ongoing General Fund to backfill the Trial Court Trust Fund.
- 2) Significant, likely non-reimbursable incarceration costs to counties. A person found guilty of the misdemeanor created by this bill may be incarcerated in county jail for up to one year. County jails are increasingly overcrowded since the enactment of the Public Safety Realignment Act of 2011 (Realignment Act). Jail overcrowding has resulted in additional state funding for new jail space, court-mandated population caps and increased rates of inmate violence and death. Although new crimes are generally not considered reimbursable state mandates, overcrowding in county jails creates cost pressure on the General Fund because the state has historically granted new funding to counties to offset overcrowding caused by the Realignment Act.

COMMENTS:

- 1) **Purpose.** 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.

- 2) **Background.** In California, a person must be 18 years old to get married or establish a domestic partnership unless they obtain a court order authorizing them to do so when they are younger. Under Penal Code section 359, it is a misdemeanor for any person to willfully and knowingly solemnize any marriage “forbidden by law.” If a person knowingly solemnizes a marriage or domestic partnership between a minor and another person without a court order authorizing the union, the person who solemnized the union may be prosecuted under Penal Code section 359. This bill creates a new misdemeanor for knowingly sanctioning or solemnizing an unlawful marriage or domestic partnership between a minor and another person. Arguably, the conduct criminalized by this bill is already a crime under Penal Code section 359.

According to CalMatters, local registrars have reported fewer than 20 authorized child marriages since 2019. (Jetha, Rye. “Child brides: A campaign starts to ban underage marriages in California.” CalMatters, June 23, 2023.) However, in the 2021 U.S. Census report, about 8,800 15- to 17-year-old people in California reported being married in the previous year. This discrepancy may be an indication of a serious, ongoing problem with unauthorized underage marriage in California. But it’s not clear that creating this additional misdemeanor meaningfully addresses the problem.

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