Child Marriage in the United States: Past, Present, and Future

by
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Introduction

Child marriage[1] has existed for centuries[2] and affects girls in particular.[3] The United Nations deems its practice to be a human rights violation and a form of forced marriage, given that at least one or both parties have not given their full, free, and informed consent.[4] Nonetheless, child marriage still exists in the United States in 2024, despite significant transformations over the years, in large part because of citizens' continued belief in marriage as a "building block of society."[5] While this belief and support for child marriage are not always synonymous, Americans have historically believed that sex and childbirth belong within the confines of a

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1 The term "child marriage" within this article refers only to civil marriages validly confected under, governed by, and recognized through laws in the states of the United States. The term does not include those who married outside the bounds of codified law but whose marriages were valid nonetheless. Additionally, the term has been deemed problematic by some scholars. As one noted: The "term 'child marriage' itself is dangerous" because it "is not conscientious of youth empowerment." Marie Johnson-Dahl, *Sixteen Candles on My Wedding Cake: Implications of Banning Child Marriage in America*, 2020 U. Ill. L. Rev. 1045, 1089.

2 Hayat Bearat, *Caged by a Marriage: How Child Marriages in the United States Are Enabled by Our Immigration System*, 71 Drake L. Rev. 1, 2 (2024).

3 Nicholas L. Syrett, American Child Bride: A History of Minors and Marriages in the United States 5 (University of North Carolina Press 2016).

4 *Id.*; Khaleda Rahman, *Child Marriage Havens Emerging Across America*, Newsweek, (Jun. 13, 2024, 4:04 AM), https://www.newsweek.com/child-marriage-havens-america-1911325.

5 Syrett, *supra* note 3, at 7.

marital relationship.[6] This evidences a strong (and somewhat misguided) faith in the institution of marriage within the United States.[7] In essence, the American mindset is that marriage transforms "bad" things (for example, premarital sex and illegitimacy) into "good" things (licit sexual intercourse and legitimacy),[8] prompting one scholar to dub this mindset the "marriage cure."[9] But marriage is no magical cure for anything; instead, in the case of child marriage it bestows adulthood onto children,[10] most of whom lack the maturity to navigate it.

Unlike some other countries across the globe, the United States has never legislated the issue of child marriage at the federal level. In fact, attempts to do so have failed on more than one occasion.[11] The U.S. Congress failed to pass the International Protecting Girls by Preventing Child Marriage and has never ratified international treaties that would prohibit child marriage.[12] Instead, each of the fifty individual states govern family law within their own jurisdiction, including the laws on age to marry.[13]

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6 *Id.* at 6.

7 *Id.*

8 *Id*. at 7.

9 Ariela R. Dubler, *Immoral Purposes: Marriage and the Genus of Illicit Sex*, 115 Yale L.J. 756 (2006).

10 Syrett, *supra* note 3, at 7-8.

11 Preventing Child Marriage Act, H.R. 2140 116th Cong. (2019) (failed); Child Marriage Prevention Act, H.R. 4867 115th Cong. (2018) (failed). *See also* End Forced Child Marriages Act, H.R. 1606 117th Cong. (2021) (not attempting to prevent child marriage but implementing a reporting requirement on the Department of Health and Human Services); Jane E. Larson, *"Even a Worm Will Turn at Last:" Rape Reform in Late-Nineteenth Century America*, 9 Yale J.L. & Human. 1, 34-35 (Winter 1997).

12 These include the United Nations Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. As to the former, the United States is one of two countries to have failed to ratify it, *id.* at 16, whereas as to the latter, it is one of only seven. Melanne Verveer & Rangita de Silva de Alwis, *Why Ratifying the Convention on the Elimination of Discrimination against Women (CEDAW) Is Good for America's Domestic Policy*, Georgetown Inst. for Women, Peace & Sec., (Feb. 18, 2021), https://giwps.georgetown.edu/why-ratifying-the-convention-on-the-elimination-of-discrimination-against-women-cedaw-is-good-for-americas-domestic-policy/.

13 Raquel Wildes Genet, *Child Marriage in America: An Interim Solution Pending a Total Ban*, 40 Cardozo L. Rev. 2999, 3011 (2019).

This article will explore how those laws have changed over the years, how they exist currently, and the future of child marriage in the United States. As presented in Part I, child marriage in the United States has evolved greatly over the country's two hundred-plus years history. While the changes were slow and met with much opposition,[14] child marriage went from being perfectly acceptable during the times of English common law to being frowned upon in the early twenty-first century. Despite this, as discussed in Part II, child marriage is currently alive and well in many states, given that only thirteen states have banned it altogether. Of the thirty-seven states allowing it, all require that the child obtain adult authorization—parental approval, judicial approval, or both. Of those requiring adult authorization, thirty-three of these states additionally require that the child be of a certain age, in effect setting a minimum marriage age.

The law of child marriage could soon change drastically, though. On August 1, 2024, Senator Dick Durbin introduced to Congress the Child Marriage Prevention Act of 2024.[15] Characterized by some advocates as "the first concerted effort by the United States Congress to condemn and prevent child marriage domestically,"[16] this multi-faceted piece of legislation provides for the collection and sharing of information on the federal level and incentives for states to study and ban child marriage, bans child marriage on federal property, and amends provisions of U.S. immigration law. This potentially ground-breaking legislation is explored in Part III. As noted therein, the future of child marriage in the United States is still uncertain, but many scholars, practitioners, activists, and survivors anxiously await the legislative developments on the Act.

I. The History of Child Marriage in the United States

The United States has recognized child marriages since its inception. Various contexts influence a person's age at marriage, whether they are structural (e.g., legal, economic, and institutional)

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14 Bearat, *supra* note 2, at 15-16.

15 Child Marriage Prevention Act, S. 4990, 118th Cong. §§ 1-10 (2023-2024) (introduced).

16 *Historic Legislation Introduced to Prevent Child Marriage in the United States*, Tahirih Justice Center (Aug. 2, 2024), https://www.tahirih.org/news/child-marriage-prevention-act-introduction/.

or cultural (e.g., religious tradition and social norms).[17] The U.S. Census Bureau did not collect information about child marriage until 1880,[18] but its statistics that year indicate that 11.7% of fifteen to nineteen-year-old girls were wives.[19] It was also around this time that statutory rape laws were enacted, but they did not apply to protect married girls.[20]

The institution of marriage essentially transformed children into adults, making marriage a singular event that defined people. Marriage was attractive to children for various reasons. One was that is allowed them to leave their nuclear families, some of which were abusive.[21] For others, especially females, marriage was economically advantageous because of their scarce employment and financial opportunities for much of American history.[22] Marriage also allowed girls greater access to inheritance rights.[23]

Historically, judges have been reluctant to annul child marriages.[24] They wanted to honor individuals' choices to marry and preserve marriage, seen as the cornerstone of social order.[25] Even if the marriage violated statutory requirements, it had already been confected. Annulling it would essentially turn "otherwise married women into single girls who were no longer virgins."[26] This, the thought process went, would tarnish the girls, the institution of marriage, and any children of the union (who could be seen as illegitimate upon the marriage's annulment).[27]

Eventually, though, as age consciousness became more prevalent, Americans began to realize that preserving child marriage in

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17 Vivian E. Hamilton, *The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage*, 92 B.U. L. Rev. 1817, 1823 (2012).

18 Anjali Tsui, *Married Young: The Fight over Child Marriage in America,* PBS Frontline (Sept. 14, 2017), https://www.pbs.org/wgbh/frontline/article/married-young-the-fight-over-child-marriage-in-america/; *see also* Syrett, *supra* note 3, at 2.

19 Syrett, *supra* note 3, at 147. Even under the statutory rape law, the age of consent to sex outside of a marriage was merely ten years old. *Id.* at 46.

20 *Id.* at 2, 46.

21 *Id.* at 91.

22 *Id.* at 5.

23 *Id.* at 92.

24 Teri Dobbins Baxter, *Child Marriage as Constitutional Violation*, 19 Nev. L.J. 39, 44 (2018).

25 Syrett *supra* note 3, at 94.

26 *Id.* at 93.

27 *Id.*

the name of social order came at the cost of protecting children.[28] They began to see children as unfit for marriage, recognizing that it deprived them of their childhood and opportunities for education and employment.[29] Over time, studies also revealed the myriad of harms to children who marry, including their high incidences of divorce.[30] Ultimately then, many Americans began to view marriage not as a cure but an ill.

A. *Early America: The Colonial Period*

In colonial America, while the general age of majority was typically twenty-one years,[31] the contract of marriage did not have such an age requirement. Early Americans cared little about age in most contexts, including marriage, focusing instead on things like maturity and financial preparation, and therefore, no universal "appropriate" age for marriage existed.[32] Not surprisingly, then, child marriages were not unusual during this time, particularly in the southern colonies.[33] As for the law in the U.S. colonies at this time, it was "an evolving blend of English common law, statutory rules adopted by colonial assemblies, and domestic common law."[34] This patchwork of legal sources informed marriage law during this time period.

Under English common law, because of the timing of average puberty, the minimum age of marriage for girls was twelve years, and for boys, it was fourteen years.[35] However, in colonial America, children

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28 *Id.* at 97.

29 Child Marriage Prevention Act, S. 4990, 118th Cong. §§ 1-10 (2023-2024) (introduced); *see also* Wendy Ross, *Protecting the Child Bride: Following Texas' Middle-Ground Approach*, 44 U. Ark. Little Rock L. Rev. 99, 111-114 (2021); Rachel L. Schuman, *State Regulations Are Failing Our Children: An Analysis of Child Marriage Laws in the United States*, 60 Wm. & Mary L. Rev. 2337, 2349-55 (2019); Mary Templeton, *Engaged and Underage: Advocating for a Child Marriage Ban in North Carolina*, 10 Wake Forest J.L. & Pol'y 311, 319-20 (2020).

30 Syrett, *supra* note 3, at 130; Alice M. Hetzel & Marlene Cappetta, *Teenagers: Marriages, Divorces, Parenthood, and Mortality,* U.S. Dept. of Health, Educ., & Welfare, Div. of Vital Statistics 1, 15-17 (Aug. 1973).

31 Schuman, *supra* note 29, at 2344.

32 Syrett, *supra* note 3, at 3.

33 Syrett, *supra* note 3, at 16; Genet, *supra* note 13, at 3011-12, n.79.

34 Hamilton, *supra* note 17, at 1829.

35 *Id.* These were considered the "ripe ages" for these children. Tsui, *supra* note 18. Thus, because these children would experience sexual desire, marriage was seen as an appropriate site for sex and reproduction. *Id.*

could actually marry at seven years of age,[36] with Americans believing that such children were capable of sound reason and judgment, though not as much as when they reached later ages.[37] Evidence suggests that many children between eight and ten years old married in early colonial America.[38] These marriages, though, were voidable, meaning that either party could dissolve it upon attaining their respective common law age, provided that it had not been consummated.[39] In essence, they were like "trial runs" for marriage.[40] These early ages were justified at the time by the idea that marriage was a vehicle through which to "transfer property rights, make political alliances, and maintain proper lineage within families."[41] Colonial Americans saw early marriage as a mean to serve and protect and promote the autonomy of girls,[42] who married at much higher rates than boys.[43]

Eventually, most of the early American states enacted statutes requiring a minimum marriageable age.[44] However, most still also allowed child marriages that satisfied the common law ages (twelve for girls and fourteen for boys), as long as the child secured parental consent for their marriage.[45] The focus, then, was on parental control of the child usually for economic reasons rather than protecting the well-being of children.[46] Nevertheless, most of

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36 Baxter, *supra* note 24, at 45. *See also* Syrett, *supra* note 3, at 19.

37 Syrett, *supra* note 3, at 21.

38 *Id.* at 19.

39 Baxter, *supra* note 24, at 45; *see also* Syrett, *supra* note 3, at 19.

40 Syrett, *supra* note 3, at 19.

41 Pamela E. Beatse, *Marital Rights for Teens: Judicial Intervention That Properly Balances Privacy and Protection*, 11 J. L. & Fam. Stud. 577, 579 (2009).

42 Syrett, *supra* note 3, at 9.

43 *Id.* at 114.

44 *Id.*; *see also* Bearat, *supra* note 2, at 16.

45 Syrett, *supra* note 3, at 16; Baxter, *supra* note 24, at 45.

46 Schuman, *supra* note 29, at 2344. They also reflected concerns about property and inheritance rights. Baxter, *supra* note 24, at 45. As one commentator notes, the child marriage laws varied by region. Syrett, *supra* note 3, at 23. Northern colonies' laws emphasized parental control, while southern colonies' laws centered around property regulation. *Id.* Some southern states barred a girl from inheriting if she married younger than sixteen years without parental approval. Tsui, *supra* note 18. The purpose of such laws, though, was to discourage men from gold-digging by allowing parents to control which male would get access to "a daughter and her fortune." *Id.*

the states did not enforce their own requirements for marriage,[47] instead, upholding the marriages of children contracted without the requisite parental consent.[48] Likewise, most of the states also failed to "expressly repudiate" the English common law ages of marital consent,[49] leading their courts to consistently uphold the validity of marriages of children meeting those age requirements.[50]

B. *Mid-Nineteenth Century: The Antebellum Period*

The antebellum period saw a shift in attitudes toward marriage, with the focus on the mutual desire of the bride and groom.[51] Instead of older practices like arranged marriages, some Americans believed that marriage should be based on love.[52] Nonetheless, child marriage was not unusual during this period, in large part because, like in colonial America, citizens did not consider younger people unfit for marriage.[53] Of course, attitudes toward child marriage varied among the states, based on each's societal norms.[54] Child marriage was least likely in the Northeast and Mid-Atlantic states, a practice scholars attribute to the rise of age consciousness in those areas.[55] Child marriage was more common in the South,[56] with historians noting the commonality of marriage by children at ages fourteen and fifteen.[57]

Existing state marriage laws were not universally enforced during the antebellum period.[58] Nevertheless, they persisted, varying by region. In the Northeast and South, parental consent was

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47 Hamilton, *supra* note 17, at 1828-29.

48 Baxter, *supra* note 24, at 44.

49 Hamilton, *supra* note 17, at 1829.

50 Baxter, *supra* note 24, at 44.

51 *Id.* at 57-58.

52 Geraldine Gudefin, *Nicholas L. Syrett, American Child Bride. A History of Minors and Marriage in the United States, Chapel Hill*, 36 Law & Hist. Rev. 191, 192 (2018).

53 Syrett, *supra* note 3, at 42.

54 As one commentator has noted, that trend has continued to this day. Andrea Jeglum, *The Alignment of U.S. Child Marriage Laws to Data and Consent: Time for a Bright-Line Rule at the Age of Majority*, 36 Wis. J.L. Gender & Soc'y 213, 218 (2021).

55 Syrett, *supra* note 3, at 51.

56 *Id.* at 57.

57 *Id.*

58 *Id.* at 42.

supreme for child marriage—no matter their age. In the West and Midwest, age minimums for child marriage were more common,[59] but parents there could still consent to the marriage of children who had not attained the requisite age.[60] Minimum ages, where they existed, varied from state to state.[61]

These minimum ages also began to trend upward over the antebellum period.[62] Eventually, some states, mostly in the Midwest and West, went further when they lowered the female age of majority from the common law number of twenty-one years down to eighteen years.[63] In other words, no longer was a female between eighteen and twenty-one years of age considered a child; instead, she was an adult who could make all of her own legal decisions, including the decision to marry.[64] The lowering of the female age of majority seemed directly tied to a female's ability to marry at an earlier age anyway.[65] In essence, then, an eighteen year-old girl seamlessly transitioned from dependency on her father to dependency on her husband, but in both circumstances, the man of the household governed her property.[66] Ultimately, during the antebellum period, laws—whether they were general on the age of majority or specific to the marital age—encouraged the early marriage of girls.[67]

Most of the concern regarding child marriage during this period revolved around loss of parental control over the child and the loss of the child's services in the parental home, upon which

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59 *Id.* at 30. Of course, state laws varied, and not all states had a minimum age. *Id.* at 30-33. For example, California mandated only parental consent. *Id.* at 33.

60 *Id. See also* Johnson-Dahl, *supra* note 1, at 1056.

61 Syrett, *supra* note 3, at 33; *see also* Johnson-Dahl, *supra* note 1, at 1056.

62 Syrett, *supra* note 3, at 30.

63 *Id.* at 34; Schuman, *supra* note 29, at 2346 (citing Erin K. Jackson, *Addressing the Inconsistency Between Statutory Rape Laws and Underage Marriage: Abolishing Early Marriage and Removing the Spousal Exemption to Statutory Rape*, 85 UMKC L. Rev. 343, 354 (2017), and noting that the marital age for women was eighteen in 80% of states and 21 for men in 85% of states prior to 1971)).

64 Syrett, *supra* note 3, at 34.

65 *Id.*; Jeglum, *supra* note 54, at 219-20 (noting that throughout history the age of marriage for females has been younger than males); Larson, *supra* note 11, at 8, n.47.

66 Syrett, *supra* note 3, at 34; Bearat, *supra* note 2, at 16; Schuman, *supra* note 29, at 2343.

67 Syrett, *supra* note 3, at 37.

many parents economically relied.[68] The child's marriage was a problem for the parent, not the child,[69] and it led to lawsuits by the parent to recover pecuniary damages for the loss but typically not the annulment of the marriage.[70] In some areas, though, marital attitudes began to shift as age consciousness became more prevalent, and along with it, the notion of age as a meaningful category of identity.[71] Thus, in some areas of the country, Americans began to see some people as unfit for marriage because of their age—whether the problem with age was that one party was either too young or too old, or that there was too much of an age gap.[72]

C. *Late Nineteenth Century to Early Twentieth Century: Early Legal Reform Efforts*

The changing views on child marriage led to significant pushback against it. Some activists opposed the practice, because it deprived children of their childhood. Others believed it would harm the family that the child formed, the institution of marriage, and society at large. Consequently, state legislatures began to act, making it more difficult for children to marry by imposing minimum marital ages or in states already having them, increasing those ages, and by changing the age needed for parental approval.

1. *Activists' Pushback Against Child Marriage*

Early women's rights activists began to push back against the practice of child marriage, referred to by one who had married at age sixteen as "the great life-long mistake."[73] In fact, some of these activists advocated for women's suffrage precisely so that

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68 *Id.* at 87-89; J. Shoshanna Ehrlich, *Too Young for Marriage but not for Abortion: Keeping Teens in the "Driver's Seat of Their Lives" Through the Intended Purpose Approach to the Shifting of Age Boundaries*, 45 Harv. J. L. & Gender 125, 132-33 (2022).

69 Syrett, *supra* note 3, at 89.

70 *Id.*

71 *Id.* at 83.

72 *Id.*; Matthew J. Lindsay, *Reproducing a Fit Citizenry: Dependency, Eugenics, and the Law of Marriage in the United States*, 1860 – 1920, 23 L. & Soc. Inquiry 541, 542 (1998) (noting that during this era many classes of people were considered unfit for marriage including "feebleminded, imbecilic, and epileptic" because the purpose of marriage was to produce healthy offspring).

73 Syrett, *supra* note 3, at 99.

they could revise marriage laws and prevent the oppression of women by the institution.[74]

Early feminists critiqued child marriage in a variety of ways with most focused largely on how this practice deprived girls of their childhood, the time for them to become educated, have fun, and enjoy their innocence.[75] Some described a married female child as "legally dead."[76] As a result, activists criticized parents and culture for convincing girls that marriage should be their sole goal and encouraged the training and employment of them instead.[77] They also believed that early marriage was stunting girls' educational opportunities.[78] By contrast, educated girls with job opportunities had the choice to marry—or not.[79] Thus, some feminists implored mothers to train their daughters on contributing to the economic well-being of their families.[80] Such women, they believed, would seek out opportunities formerly denied to them and avoid marrying too young or for financial reasons.[81] Other activists pointed out the harmful effects that sex and childbirth, practices inherent in child marriages, have on young girls.[82]

Some activists focused instead on the harms that child marriage would cause to the families that these child spouses would form and society as a whole.[83] The idea was that until they were mature, girls could not be successful wives and mothers. In other

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74 *Id.*; *see also* Kimberly Hamlin, *What Raising the Age of Sexual Consent Taught Women About the Vote*, Smithsonian Mag., (Aug. 26, 2020), https://www.smithsonianmag.com/history/what-raising-age-sexual-consent-taught-women-about-vote-180975658/.

75 Syrett, *supra* note 3, at 102. Note that the effect of child marriage on females differed by social class, with upper and middle-class girls more negatively affected, given the privileges they enjoyed by virtue of their class that they would lose upon marriage. *Id.*; *see also* Larson, *supra* note 11, at 9.

76 Syrett, *supra* note 3, at 114; Ehrlich, *supra* note 68, at 138.

77 Syrett, *supra* note 3, at 103.

78 *Id.* at 104; Jeglum, *supra* note 54, at 223.

79 Syrett, *supra* note 3, at 104; s*ee also* Templeton, *supra* note 29, at 314-15 (noting child marriage is associated with lower income levels).

80 Syrett, *supra* note 3, at 104.

81 *Id.*

82 *Id.* at 106; Schuman, *supra* note 29, at 2353; Templeton, *supra* note 29, at 314-15.

83 Syrett, *supra* note 3, at 106-07; *see also* Schuman, *supra* note 29, at 2352 (noting that child marriage harms society at large by increasing the number of children living in poverty and on state assistance).

words, child marriage harmed the institution of marriage itself.[84] Thus, these activists targeted men and encouraged them to marry adult women as opposed to girls.[85] Some even argued that early marriages were uncivilized and that youthful mothers produced offspring lacking in vitality.[86] Thus, the thinking was that these wives, by virtue of their youth, would harm their own children and all of society.[87]

2. *Early Legal Reform Efforts*

As conversations about child marriage became more common among activists and ordinary Americans (probably due to newspaper articles focusing on young brides), views on childhood and marriage began to change. This is evidenced through some of the legal reforms of the time, including those addressing what we now call statutory rape. While these laws did not affect the age of marriage, they indicate the notion of childhood as a protected period of time.[88] That mindset, along with rising divorce rates, led to a legal round of marriage reform, but to be clear, the motivation behind these legal reforms was not protecting children.[89]

In the late 1800s, activists with the Women's Christian Temperance Union effectively succeeded in transforming the law in almost all states to raise the age of consensual sex and to criminalize nonmarital sex between a girl (typically between sixteen and eighteen) and an adult man.[90] While this signifies the earliest legal differentiation between childhood and adulthood, those advocating for reform did so to protect unmarried girls only to the extent of their purity.[91] The idea was that unmarried girls who engaged in premarital sex were destined for a life of prostitution (and possibly sexually transmitted diseases), so these activists sought to keep

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84 Syrett, *supra* note 3, at 115; Jeglum, *supra* note 54, at 224.

85 Syrett, *supra* note 3, at 106-07.

86 *Id.* at 108.

87 *Id.* at 109; Templeton, *supra* note 29, at 315-16 (noting that child marriage is associated with lower birth weights, and higher rates of infant homicide, child abuse and neglect, and academic and behavioral problems).

88 Schuman, *supra* note 29, at 2345 (citing Hamilton, *supra* note 17, at 1830).

89 Syrett, *supra* note 3, at 119.

90 *Id.* at 124-25; Larson, *supra* note 11, at 36-37.

91 Syrett, *supra* note 3, at 125; Larson, *supra* note 11, at 28-29.

sex within the confines of marriage.[92] Further, when assessing the new laws of consent, it is important to note the lack of connection between the age to consent to sex and the age to consent to marriage; also statutory rape laws did not apply to marital sex.[93] Thus, it seems safe to say that these laws were actually about sex outside of marriage and prostitution, not child marriage.

However, another set of reformers were very concerned with child marriage—those focused on curbing rising divorce rates in the United States.[94] While divorce had been an option since colonial times, its availability had greatly expanded by the late nineteenth to mirror Americans' changing views on marriage.[95] In particular, many people believed that unhappy spouses should be allowed to terminate their marriages.[96] For these Americans, marriages were based in love, not religion, and falling out of love should be grounds to leave a marriage.[97] But marriage proponents feared divorce. To prevent it, they sought to bar—or at least make it harder for—the "wrong people" to get married in the first place; this "protecting the alter" mentality, they surmised, would decrease divorce rates.[98]

One such group of "wrong people" were those thought to be too young. Thus, marriage proponents believed that increasing the age requirements for marriage, along with other measures,[99] would prevent divorce. After all, children who became spouses were more likely to divorce.[100] One major obstacle to reform was that marriage and divorce were governed by state law, so the National Conference of Commissioners on Uniform State Laws suggested uniformity in that eighteen years (for boys) and fifteen (for girls)

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92 Syrett, *supra* note 3, at 125. *See also* Hamilton, *supra* note 17, at 1830; Larson, *supra* note 11, at 29, 31.

93 Syrett, *supra* note 3, at 125; Amber Plumlee, *Don't Put a Ring on It: Abolishing the Marital Defense to Statutory Rape*, 41 Women's Rts. L. Rep. 95, 108 (Fall/Winter 2019).

94 Ehrlich, *supra* note 68, at 137; Syrett, *supra* note 3, at 127.

95 Syrett, *supra* note 3, at 127.

96 *Id.*

97 *Id.*

98 *Id.*; Ross, *supra* note 29, at 103 (noting that others while some activists wanted to end child marriage to protect children, others wanted to protect the institution of marriage from divorce).

99 Other measures included waiting periods between applying for a marriage license and the ceremony and alerting parents that their children might be planning to marry. Syrett, *supra* note 3, at 128-29.

100 *Id.* at 130; *See also* Hetzel & Cappetta, *supra* note 30, at 15-17.

should be the minimum marriageable age.[101] Other activists suggested other (older) uniform ages.[102] That did not come to fruition at the federal or state level.

However, over the course of the late nineteenth century, many states gradually made the requirements to marry more stringent by instituting minimum ages to marry, slightly raising those ages in states already having them, or changing the age at which parental approval to marry was required.[103] Parents, in efforts to prevent their children from marrying, began to notify local officials of their opposition in order to prevent clerks from issuing marriage licenses to those children.[104] Despite this trend, marriage between minor girls and adult men was still common.[105]

3. *Response to Early Reform Efforts*

Many children rejected the states' more stringent requirements for marriage, as did some parents, some of whom procured marriages for their underage daughters for economic reasons.[106] In fact, in the early 1900s, child marriage was prevalent and on the rise.[107] Additionally, courts during this time held firm to their disinclination to nullify a marriage once it had been confected.[108] Consequently, many children entered disallowable marriages, but those marriages were consistently upheld.[109] Likewise, men who married children who failed to meet the marital requirements were absolved of statutory rape.[110] In actuality, it went even further than that. Some parents (and judges) conspired to "right the ruin" of their minor daughters' out-of-wedlock pregnancies and loss of virginity by allowing statutory rapists to marry their victim-daughters.[111] In other instances, the children used marriage

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101 Syrett, *supra* note 3, at 129.

102 *Id.*

103 *Id.* at 130.

104 *Id.* at 136-41.

105 Johnson-Dahl, *supra* note 1, at 1056.

106 Syrett, *supra* note 3, at 156; Jeglum, *supra* note 54, at 231.

107 Syrett, *supra* note 3, at 148.

108 *Id.*

109 *Id.*; Jeglum, *supra* note 54, at 232-33.

110 Syrett, *supra* note 3, at 155.

111 *Id.* at 161; Caylin Jones, *Saying "I Don't" to Child Marriage: Creating a Federal Minimum Marital Age Requirement Through the Treaty Power*, 26 Sw. J. Int'l L. 396, 403 (2020).

to evade parental oversight.[112] Many such children did not subscribe to the notion of childhood as a protected life stage; they wanted adulthood.[113]

D. *The 1920s: The New Marriage Reform*

By the 1920s, attitudes towards marriage had further evolved. During this era, Americans began to not only believe that marriage should be based on love and companionship but also sexual fulfillment.[114] As a result, Americans began to openly discuss marital sex, with particular focus on the satisfaction of women.[115] But discussing the sex lives of minor girls was uncomfortable, especially those married to much older men.[116] Their marriages contradicted the view of marriage as an institution based on compatibility.[117] At the same time, Americans began to learn more about psychiatric disorders, including pedophilia.[118] Some reformers began to question child marriage as sexually exploitative.[119] Marriage reform efforts ramped up, with the focus, for the first time, on the implications of child marriage on children.[120]

1. *Anti-Child-Marriage Reformers' Efforts*

Anti-child-marriage reformers, shocked at the behavior of teenagers of the time (like smoking, drinking, dancing, and sexual activity),[121]

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112 Syrett, *supra* note 3, at 162.

113 *Id* at 162-63; Jackson, *supra* note 63, at 369; Ross, *supra* note 29, at 103; *see also* Moe v. Dinkins, 635 F. 2d 1045 (2d Cir. 1980).

114 Syrett, *supra* note 3, at 168; Livia Gershon, *A Threat to "Traditional Marriage" in the 1920s*, JSTOR Daily (Mar. 2, 2015) https://daily.jstor.org/a-threat-to-traditional-marriage-in-the-1920s/.

115 Syrett, *supra* note 3, at 168; Hamlin, *supra* note 74 (noting that a "respectable woman was not supposed to talk about sex").

116 Syrett, *supra* note 3, at 168; Genet, *supra* note 13, at 3012.

117 Syrett, *supra* note 3, at 168.

118 *Id.* at 170.

119 *Id.* at 172; Kim Hai Pearson, *Children Are Human*, 8 Tex. A&M L. Rev. 495, 511 (2021); Lara Roetzel, Tifanie Petro, & Erica Ramstad, *Beyond the Cages: Sex Trafficking in South Dakota*, 64 S.D. L. Rev. 346, 347-48 (2019) (noting that child marriage is a type of sexual exploitation similar to human trafficking).

120 Becky Little, *When a Millionaire Married a Teen and Sparked Opposition to U.S. Child Marriage*, History (Aug. 30, 2018), https://www.history.com/news/child-marriage-scandal-millionaire-married-teenager [https://perma.cc/EPP6-SYUT].

121 Syrett, *supra* note 3, at 166.

sought to eradicate the "epidemic of child marriage."[122] In their view, marriage did not operate as a protection for girls but instead exploited them.[123] Because divorce was so accessible, they reasoned, men (some older who may be child predators) could marry girls to secure sex with them that would not be allowed under the law.[124] They also believed that marriages based in sex could be miserable or abusive.[125] Thus, while earlier generations had seen marriage as a cure for social ills, these reformers questioned how transformative the institution of marriage really was.[126]

Against this backdrop, for the first time, the messaging surrounding child marriage was that it was bad for children.[127] Reformers claimed that their focus was not legislating sexual morality or promoting religious views on marriage but instead was on helping individual children.[128] However, some historians note that reformers also sought to protect the institution of marriage, which they allegedly still believed to be a building block of society, by barring children (and those otherwise unqualified) from entering it.[129] The reformers' efforts were seen in several legal goals, including waiting periods between the application and issuance of marriage licenses, documentary proof of ages, appealing to ministers and clerks to follow the laws, and raising the minimum marriageable age and the age under which parental consent was required for marriage.[130] Their efforts were at least partially successful,[131] as some states implemented waiting periods, and legislatures in at least twelve states raised their age of marital capacity during the 1920s.[132] Efforts to amend the U.S. Constitution and enact a federal law failed.[133]

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122 *Id.*

123 *Id.* at 168. *See also* Gudefin, *supra* note 52, at 192.

124 Syrett, *supra* note 3, at 168.

125 *Id.* at 176.

126 *Id.* at 177.

127 *Id.* at 168.

128 *Id.* at 173.

129 *Id.* at 175.

130 *Id.* at 178-79.

131 Some scholars attribute this success more to national outrage over certain "celebrity couples" with large age gaps. Tsui, *supra* note 18.

132 Syrett, *supra* note 3, at 178-83; Ross, *supra* note 29, at 102-03; *see also* Hetzel & Cappetta, *supra* note 30 ("Table A" showing the percentage of fifteen to nineteen-year-old teenagers married in the 1920s).

133 Syrett, *supra* note 3, at 183-86; Ross, *supra* note 29, at 103.

2. *Feminist Reformers' Efforts*

At the same time, some feminist reformers focused their efforts on fighting discrimination against females.[134] Among the state laws they attacked were those allowing women to marry before men and those that set a lower age of majority for women.[135] Their focus was less on child protection and more on equality between males and females.[136] In their view, equalizing marital ages would make marriage a more egalitarian endeavor, shrinking the odds that one spouse entered the union dependent on the other.[137] These reformers generally failed to equalize the ages of marriage for boys and girls.[138] However, all was not lost. Several states changed their ages of majority to align those for boys and girls.[139]

E. *The 1930s—World War II: The Continuation of Child Marriage*

Despite the efforts of reformers in the 1920s, child marriage continued. While child marriage did slightly decrease from the nineteenth century, so did all marriages in the United States because of the Great Depression.[140] By 1930, 10% of all seventeen-year-old girls were wives.[141] The South saw the greatest persistence of child marriage, and some of the couples (like nine-year-old Eunice Winstead Johns and twenty-two-year-old Charlie Johns in Tennessee) caught the attention of the national and international media, triggering a wider conversation about the institution.[142] Many Americans declared those states that allowed extremely young children to marry

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134 Syrett, *supra* note 3, at 195-96. Not all feminist reformers were on the same page. Those described in the text above were the National Woman's Party reformers. Others, like The League of Women Voters did not seek equality between the sexes; they recognized differences between females and males, and their focus was more on protection of the former. *Id.* at 198-200.

135 *Id.* at 196.

136 *Id.*; *see also* Larson, *supra* note 11, at 5-6; Robert A. Kutcher, *If at First You Don't Succeed…*, 67 La. B.J. 318, 318 (Feb./Mar. 2020) (noting that activists took issue with inequality in marriage, voting rights, and lack of education).

137 Syrett, *supra* note 3, at 196.

138 *Id.* at 198.

139 *Id.*

140 Syrett, *supra* note 3, at 2; Bearat, *supra* note 2, at 18-19.

141 Tsui, *supra* note 18.

142 Syrett, *supra* note 3, at 203-04; Bearat, *supra* note 2, at 18-19.

to be "uncivilized," perceiving them as backward[143] and comparing them to other countries labeled "dark" or "heathen."[144]

But, as reporters began to dig, it seemed that child marriage was not just something that happened in far-away places or in rural areas of the South. They found plenty of young, married girls across the United States.[145] Although all of the couples featured in their stories were white, child marriage was more prevalent for black girls and Mexican Americans.[146] Regardless of demographics, though, reporters accurately noted that "child marriage in America, is, after all, an established institution."[147] With all of the attention and conversation surrounding the topic, some Americans considered the 1930s a "child marriage scare."[148] As a result, several states implemented stricter regulations on it, raising the marriageable age and instituting waiting periods and fines on officials.[149] This time period in the late 1930s was a turning point in regulating child marriage across the United States.[150] It was then that most Americans began to believe that the institution of marriage could not protect young girls who were actually sexually vulnerable due to their age.[151]

Even though there was increasing recognition that marriage laws did not protect young girls, the rural areas of the South still lagged behind in recognizing age as a cultural marker.[152] Youth was not as significant there as it was in urban areas.[153] After all, states there did not prioritize the documentation of births, people did not regularly engage with the health care system to learn about childhood development, and age-graded schooling was not the norm.[154] Many children's school attendance was secondary to the

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143 Syrett, *supra* note 3, at 204-05; Bearat, *supra* note 2, at 18-19.

144 Syrett, *supra* note 3, at 208.

145 *Id.* at 207-08.

146 Syrett, *supra* note 3, at 207-08; Jeglum, *supra* note 54, at 219-20.

147 Syrett, *supra* note 3, at 209.

148 Syrett, *supra* note 3, at 204; Bearat, *supra* note 2, at 19 (noting that child marriage was still a prevalent issue in the 1930s despite states changing their age of marriage laws).

149 Syrett, *supra* note 3, at 216; Ross, *supra* note 29 at 107-08.

150 Syrett, *supra* note 3, at 216.

151 *Id.* at 218; Larson, *supra* note 11, at 21.

152 Syrett, *supra* note 3, at 218; Bearat, *supra* note 2, at 19.

153 Syrett, *supra* note 3, at 219; Bearat, *supra* note 2, at 19.

154 Robert A. Margo, Race and Schooling in the South, 1880-1950: An

labor they could provide.[155] Many of the people living in the area were also isolated, missing out on tools that might have allowed for more education about childhood.[156] Ultimately, children were not seen as all that different from the older people with whom they lived and alongside whom they worked.[157] Consequently, there was not a great divide between childhood and adulthood there,[158] with children doing adult things—like getting married.[159]

F. *The Post-WWII Period: The Teenage Marriage Scare*

The early 1940s saw an increase in the number of marriages and a decline in the age of those entering first marriages.[160] Because Congress lowered the draft age during World War II, other legal restrictions on minors came under scrutiny, including marital age requirements.[161] Also, because of the war, many people, including young people, wanted to legalize their relationships.[162] These factors contributed to the wave of teenagers getting married in the United States, a practice which continued into the 1950s.[163] Most of the child marriages during this time involved older children—sixteen years and above.[164] Marriage was attractive to them because of the exaltation of the nuclear family, the acceptance of premarital sex (leading to more teen pregnancies), and the teenagers' desire for the independence of adulthood.[165] Other contributing

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Economic History 1, 21-22 (1990); Syrett, *supra* note 3, at 218-219.

155 Margo, *supra* note 154, at 9-10 (showing the percentage of children enrolled in school in the 1930s); Syrett, *supra* note 3, at 220.

156 Syrett, *supra* note 3, at 221.

157 *Id.* at 220.

158 *Id.* at 218.

159 *Id.*

160 *Id.* at 230; Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 Tul. L. Rev. 55, 64 (2016); Eliza K. Pavalko & Glen H. Elder, *World War II and Divorce: A Life-Course Perspective*, 95 Am. J. Sociology 1213, 1215 (1990).

161 Hamilton, *supra* note 17, at 1831.

162 Syrett, *supra* note 3, at 230.

163 *Id.* at 227.

164 Hetzel & Cappetta, *supra* note 30, at 2-3 (showing percentages of married teens 15 and older throughout the 1900s).

165 Syrett, *supra* note 3, at 228-29; *see also* Megan Weinstein, *The Teenage Pregnancy "Problem:" Welfare Reform and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, 13 Berkeley Women's L.J. 117, 120 (1998) (noting high teen pregnancy rates in the 1950s through the 1970s).

factors included the affluence of the 1950s, allowing working-class boys and men to support their wives (unlike in previous eras), and the seeking of security in the Cold War era.[166] Teenagers wanting to marry used several machinations to do so—they lied to their parents and government officials (which sometimes their parents did, as well), forged documents, crossed state lines to meet or pass for meeting the age requirements (referred to as "marriage migration"), and married in secret (and some in foreign countries).[167]

With the wave of teenage marriages during this period came more attention on them.[168] The alarming part of teen marriage for most Americans of this time period was the fact that middle-class white girls in cities and suburbs were the ones doing it.[169] The percentage of married white girls in urban areas rose from 2.6% in 1940 to 6.3% in 1960.[170] The concern about these marriages was triggered by worries about the school dropout rates, early pregnancies, and the increase in the incidence of divorce.[171] Those concerns were precipitated in the 1950s by the changing attitudes about teenagers. Many Americans believed that teenagers should not be marrying but should be in school instead.[172] Most adults wanted to extend the period for childhood and adolescence, finding teenagers too young to be married.[173] Some journalists and academics blamed the parents (typically mothers) for pressuring children to date, go steady, and get married before they were ready.[174] Again, though, the reporters' focus was on urban, white, middle-class children; this ignored the marriage rates of rural

166 Syrett, *supra* note 3, at 239.

167 *Id.* at 241-43; *see also* Gordon B. Dahl, *Early Teen Marriage and Future Poverty*, 47 Demography, 689, 702 (2010); Jeglum, *supra* note 54, at 220-21.

168 Syrett, *supra* note 3, at 228.

169 *Id.* at 229; Hetzel & Cappetta, *supra* note 30, at 7 (noting about 90% of teenage brides and grooms in the 1960s where white).

170 Hetzel & Cappetta, *supra* note 30, at 6 ("Table E" showing percentage of fifteen to nineteen-year old teenagers married in the 1960s); Syrett, *supra* note 3, at 247.

171 Syrett, *supra* note 3, at 229; Kevin Lang & Russel Weinstein, *The Consequences of Teenage Childbearing before* Roe v. Wade, 7 Am. Econ. J.: Applied Econ. 169, 174 (Oct. 2015).

172 Syrett, *supra* note 3, at 233.

173 *Id.* at 234.

174 *Id.* at 238.

teenagers and those of color, many of whom were poor and continued to marry at higher rates.[175]

During this time, legislators began to attempt to transform the law of child marriage to make it more difficult for children to marry, but the public did not seem interested in legal reform.[176] Sociologists focused more on why young people got married, not on the legality of how.[177] Even the director of the U.S. Women's Bureau at the Department of Labor implied that marrying at a younger age was actually an advantage for women and girls.[178] Meanwhile, schools began to suspend or expel married students as dangerous to and bad influences on their fellow classmates; in some schools, those married children allowed to remain were barred from participating in extracurricular activities.[179] But on the other side of the equation, marriage allowed some children to escape punishment from the juvenile justice system where judges tended to release or dismiss married girls from their courts.[180]

G. *The Late Twentieth Century: Child Marriage as a Rural Phenomenon*

While the post-World War II era saw the highest marriage rates for non-rural teenagers, beginning in the 1960s the age at which people marry began to increase and has continued to do so.[181] By 1970, teenage marriage rates had subsided overall,[182] but poor and rural children, particularly in the South, continued to marry into the late twentieth century.[183] In many circumstances, they did so because of their sex lives—they were either already having sex, wanting to marry in order to legitimate the sex they wanted to have,

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175 *Id.* at 247, 251; *see also* Deborah L. Rhode, *Politics and Pregnancy: Adolescent Mothers and Public Policy*, S. Cal. Rev. L. & Women's Stud. 99, 103-05 (Winter 1991).

176 Syrett, *supra* note 3, at 243-44.

177 *Id.* at 244.

178 *Id.*

179 *Id.* at 245-46; Lang & Weinstein, *supra* note 171, at 174.

180 Syrett, *supra* note 3, at 246.

181 *Id.* at 254; Jeglum, *supra* note 54, at 216.

182 Syrett, *supra* note 3, at 255; Wayne R. Barnes, *Arrested Development: Rethinking the Contract Age of Majority for the Twenty-First Century Adolescent*, 76 Md. L. Rev. 405, 423 (2017).

183 Syrett, *supra* note 3, at 251; Jeglum, *supra* note 54, at 220.

or were pregnant.[184] Child marriage in the poverty-stricken rural areas of America continued to be common because the parties saw no reason to wait, especially in places where the education system was poor, sex education was scarce, and girls had few opportunities with which marriage would interfere.[185] Other contributing factors were the mentality of certain religions in these areas—that marriage and parenting are a woman's destiny—and that marriage resolves issues of statutory rape.[186] Even the feminists were mostly quiet on the topic in the 1960s and early 1970s.[187]

During the 1970s, though, the issue of child marriage again garnered the attention of the National Conference of Commissioners on Uniform State Laws, and it enacted and revised the Model Marriage and Divorce Act (previously called the "Uniform Marriage and Divorce Act").[188] This revised model act provided that one must be at least eighteen years of age to marry as a general rule, but it also allowed children to marry by obtaining requisite approval from certain adults and/or the judiciary.[189] However, only six states adopted these provisions.[190]

The women's rights movements also began to address the issue of child marriage during the 1970s. Prior to that time, the marital consent ages were eighteen for women and twenty-one for men, but the movement challenged such distinctions based on gender,[191] prompting many state legislatures to act. They did so by equalizing the age of marriage[192] and sometimes the age of majority for boys and girls.[193] Most of those same states also equalized the ages requiring parental consent for marriage, and some

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184 Syrett, *supra* note 3, at 252; Ehrlich, *supra* note 68, at 168.

185 Syrett, *supra* note 3, at 253.

186 *Id.* at 253-54; Jeglum, *supra* note 54, at 220; Plumlee, *supra* note 93, at 108.

187 Syrett, *supra* note 3, at 257-58.

188 Uniform Marriage and Divorce Act of 1973 §§ 101-506 (Amended 1971 and 1973), https://www.uniformlaws.org/viewdocument/final-act-89?CommunityKey=c5a9ecec-095f-4e07-a106-2e6df459d0af&tab=librarydocuments.

189 *Id.*

190 *See Marriage and Divorce Act: Map*, Unif. L. Comm'n, https://www.uniformlaws.org/committees/community-home?CommunityKey=c5a9ecec-095f-4e07-a106-2e6df459d0af (last visited Sept. 18, 2024). Those states include Arizona, Colorado, Georgia, Minnesota, Montana, and Washington.

191 Schuman, *supra* note 29, at 2346.

192 *Id.*

193 Syrett, *supra* note 3, at 258.

raised the minimum age to marry.[194] More states though also enacted exceptions to their laws, especially in cases of pregnancy.[195] Ultimately, Americans still believed in marriage as the solution to premarital sex, as did some judges who could grant permission for child marriages.[196]

By the early 1970s, nearly half of all states reduced the marriageable age to eighteen years old without the need for parental consent,[197] likely due to the Twenty-Sixth Amendment to the U.S. Constitution lowering the voting age to eighteen years,[198] and by the end of the twentieth century, most states had enacted legislation that both raised the age of marital consent and ended common law marriages (in effect, displacing the common law presumptive ages of consent).[199]

Because child marriage reverted back to a rural phenomenon, journalists and academics did not pay it much attention.[200] Instead, their focus was on teenage pregnancies outside of marriage, something that had become more prevalent in the black community.[201] For various reasons, the stigma of premarital pregnancy waned, and black girls tended not to marry.[202] During the 1980s, politicians on both sides of the aisle began to blame black teenagers for the welfare system in the United States.[203] But because these children tended not to marry and the practice was also on the decline among white, middle-class, urban girls, the topic of teenage marriage took a back seat.[204]

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194 *Id.*

195 *Id.*

196 *Id.* However, the trend of child marriage due to pregnancy has declined over the years, as some pregnant girls choose abortion, adoption, or single motherhood instead. *Id.* at 263-64.

197 Hamilton, *supra* note 17, at 1831.

198 Schuman, *supra* note 29, at 2347.

199 Hamilton, *supra* note 17, at 1830-31.

200 Syrett, *supra* note 3, at 255.

201 *Id.*

202 *Id.* at 256.

203 *Id.* at 257. The focus on teenage pregnancy continued through the 1990s, when births to teenage mothers comprised about a third of all of those outside of marriage. *Id.*

204 *Id.*

H. *The Early Twenty-First Century: New Efforts to Eradicate Child Marriage*

In the early twenty-first century, activists breathed new life into the efforts to eradicate child marriage. Prior to 2017, child marriage was legal in all fifty U.S. states.[205] Since that time, organizations and legislators have been working to change that. They point to four main grounds: (1) the ease with which child marriage can be forced marriage; (2) the negative effects of child marriage on children; (3) the use of child marriage to undermine statutory rape laws; and (4) the potential for trafficking of children.[206] In the past decade, a majority of U.S. states enacted new laws to address the issue of child marriage.[207] It was also a topic of bills in numerous states in recent legislative sessions.[208]

II. The Current Status of Child Marriage in the United States

While many Americans would prefer to believe that child marriage is a thing of the past or a phenomenon happening in other countries or only engaged in by certain types of people and religious sects in the United States, this is not the case. The statistics on child marriage vary, depending on the source, but all are telling. Admittedly, the number of minors marrying fell by 61% from 2000 to 2010,[209] but one organization whose focus is

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205 *Child Marriage in the U.S.*, Unchained at Last, https://www.unchainedatlast.org/child-marriage-in-the-u-s/ (last visited Oct. 15, 2024).

206 *Id.*

207 Olivia Luongo, Hema Gharia, Mell Chhoy, Hattie Phelps, & Jessica Flynn, *Marriage and Divorce*, 25 Geo. J. Gender & L. 767, 786 (2024).

208 For example, in Missouri, Senate Bill 767 that would have increased the marital age to eighteen died in the state house. Clara Bates, *Legislation Enacting Total Ban on Child Marriage in Missouri Dies in the House,* Missouri Independent (May 17, 2024) 11:57 AM), https://missouriindependent.com/briefs/legislation-enacting-total-ban-on-child-marriage-in-missouri-dies-in-the-house/. In California, a similar bill, Assembly Bill 2924, failed, as well. *Summary of Current Child Marriage Laws Nationwide*, California Coalition to End Child Marriage (June 2024), https://cacoalitiontoendchildmarriage.org/facts/.

209 Tsui, *supra* note 18. Note, also, that the typical age gap between heterosexual spouses has decreased in the last twenty years and as of 2022, was 2.2 years. Richard Fry, *A Growing Share of U.S. Husbands and Wives Are Roughly the Same Age*, Pew Research Center (Aug. 15, 2024), https://www.pewresearch.org/short-reads/2024/08/15/a-growing-share-of-us-husbands-and-wives-are-roughly-the-same-age/.

on child marriage indicates that between 2000 and 2018, nearly 300,000 children were married in the United States.[210] Another source's numbers show that between 2000 and 2015, at least 207,459 minors were married in the United States.[211] While most incidents of child marriage today happen among the poor in rural areas,[212] child marriage is not a vestige of the distant past.[213]

Although the United States has seemingly supported efforts to end child marriage internationally, it has "failed to take meaningful steps to address this issue in our own backyard."[214] The U.S. Congress enacted the International Protection of Girls by Preventing Child Marriage Act, legislation that would ban child marriage, but it only applies to developing countries abroad.[215] Additionally, the United States has offered financial support for anti-child marriage efforts abroad, but it has historically remained silent about it domestically, essentially overlooking the issue.[216]

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210 *United States' Child-Marriage Problem*, Unchained at Last (Apr. 2021), https://www.unchainedatlast.org/united-states-child-marriage-problem-study-findings-april-2021/. Most of these children were sixteen or seventeen years old, but some were girls as young as ten and some were married to men many years older. *Durbin, Schatz, Gillibrand Introduce Child Marriage Prevention Act*, Dick Durban United States Senator Illinois (Aug. 2, 2024), https://www.durbin.senate.gov/newsroom/press-releases/durbin-schatz-gillibrand-introduce-child-marriage-prevention-act. Also, in a ten-year period from 2007 and 2017, the U.S. Citizenship and Immigration Services approved approximately 8,500 visa petitions involving at least one child, most of whom had married an American man overseas. *Id.*

211 Tsui, *supra* note 18. *See also* Vijayasri G. Aryama, *"I Don't": The Need for a Solution to the Child Marriage Problem in the United States*, 39 Women's Rts. L. Rep. 386, 386 (2018) (noting that about 57,800 U.S. children, ages fifteen to seventeen, were married as of 2014, which constitutes five of every 1,000 in that age group).

212 Templeton, *supra* note 29, at 311.

213 Ross, *supra* note 29, at 99-100; Tsui, *supra* note 18.

214 *Historic Legislation Introduced to Prevent Child Marriage in the United States*, *supra* note 16 (quoting Casey Carter Swegman, Director of Public Policy at the Tahirih Justice Center and Senator Dick Durbin).

215 Ross, *supra* note 29, at 105-06. Other foreign-directed legislation includes International Protecting Girls by Preventing Child Marriage Act of 2010, S. 987 111th Cong. (2010); International Protecting Girls by Preventing Child Marriage Act of 2009, H.R. 2103 111th Cong. (2009); International Protecting Girls by Preventing Child Marriage Act of 2011, S. 414 112th Cong. (2011); International Protecting Girls by Preventing Child Marriage Act of 2007, H.R. 3175 110th Cong. (2007).

216 Genet, *supra* note 13, at 3003.

In fact, Congress has failed on more than one occasion to enact proposed legislation to end child marriage.[217]

While thirteen states require a participant to be eighteen years of age to marry, this is not a universal rule.[218] The vast majority of U.S. states allow children to marry with adult permission, and most of them have no laws explicitly forbidding forced marriage.[219] Among states allowing child marriage with adult permission, several differences emerge. These issues are explored below.

A. *Child Marriage Prohibited Without Exception*

In 2018, Delaware became the first state to outlaw child marriage,[220] and since that time, twelve more have followed suit. Currently, then, only thirteen states in the United States completely ban child marriage.[221] In these states, one must be eighteen years of age to marry, and unlike many other states, no exceptions exist. That is, neither parents nor judges may grant permission to children to marry. In these states, even a seventeen-year-old with parental consent cannot marry, and judicial approval is not an

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217 Larson, *supra* note 11, at 34-35; Ross, *supra* note 29, at 106. *See also* Preventing Child Marriage Act, H.R. 2140 116th Cong. (2019) (failed); Child Marriage Prevention Act, H.R. 4867 115th Cong. (2018) (failed); End Forced Child Marriages Act, H.R. 1606 117th Cong. (2021) (not attempting to prevent child marriage but implementing a reporting requirement on the Department of Health and Human Services).

218 Schuman, *supra* note 29, at 2346.

219 *United States' Child-Marriage Problem*, *supra* note 210. Only nine states in the United States have criminal statutes expressly addressing forced marriage. *Criminal Laws Addressing Forced Marriage in the United States*, Tahirih Justice Center (Sept. 2017), https://www.tahirih.org/wp-content/uploads/2017/09/UPDATED-2017-Tahirih-Memo-on-State-Criminal-Laws-on-Forced-Marriage.pdf. Several states' statutes, however, base the criminalization of forced marriage in the idea of seduction or defilement, concepts that are over 100 years old, and rarely used by prosecutors. *Id.* In 2017, the Tahirih Justice Center noted that it had no knowledge of any recent prosecutions brought under forced marriage criminal statutes. *Id.*

220 Del. Code Ann. tit. 13, § 123(a) (West 2018).

221 Conn. Gen. Stat. Ann. § 46b-20a (West 2023); Del. Code Ann. tit. 13, § 123; Mass. Gen. Laws Ann. ch. 207, § 7 (West 2022); Mich. Comp. Laws Ann. § 551.51; Minn. Stat. Ann. § 517.02 (West 2020); N.H. Rev. Stat. Ann. § 457:4 (West 2025); N.J. Stat. Ann. § 37:1-6 (West 2018); N.Y. Dom. Rel. Law § 15-a (West 2021); 23 Pa. Stat. & Cons. Stat. Ann. § 1304(1) (West 2020); 15 R.I. Gen. Laws Ann. § 15-2-14 (West 2021); Vt. Stat. Ann. tit. 18, § 5142 (West 2023); Va. Code Ann. § 20-48 (West 2024); Wash. Rev. Code Ann. § 26.04.010 (West 2024).

available option. Some of the thirteen states specifically provide that a marriage violating the rules is void.[222]

B. *Child Marriage Allowed in Certain Scenarios*

Even though states have begun to prohibit child marriage, migratory marriage is still a viable option because such bans are not the norm. Consequently, minors may simply travel to wed in states allowing them to do so—many of which have no residency requirements.[223] In fact, thirty-seven states and the District of Columbia allow children to marry under certain circumstances. In a handful of states, a child may marry only if they are emancipated.[224] In most states, the child must obtain permission to marry from an adult. In some of those states, the child must have also attained a minimum age, and in some, there is also an age gap restriction between the minor and the prospective spouse. Of course, not all states govern the approval of child marriage in the same way, as explored below.

1. *Permission Alone*

While all of the jurisdictions allowing child marriage require adult permission, there are distinctions among them regarding whether parents or a judge may provide the authorization for the child to marry. There are several combinations, because states may require parental consent alone, judicial consent alone, either parental or judicial consent, or both parental and judicial approval. The idea, of course, is that these adults would only act to protect the child's best interest. However, scholars have noted that these adults have their personal views, particularly when it comes to premarital pregnancy, such that they may feel compelled, based on their own biases, to consent to the child's marriage.[225]

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222 *See, e.g.,* Mich. Comp. Laws Ann. § 551.51; Wash. Rev. Code Ann. § 26.04.010.

223 Rahman, *supra* note 4.

224 *See* Ariz. Rev. Stat. Ann. § 25-102 (West 2018) (also requires an age gap no greater than three years); Ga. Code Ann. § 19-3-2 (West 2019); Ky. Rev. Stat. Ann. § 402.210(2)-(3) (West 2018); Tex. Fam. Code Ann. § 2.101 (West 2017); Wyo. Stat. Ann. § 20-1-102 (West 2023). In Texas and Georgia, emancipation is the only way a minor may marry.

225 Templeton, *supra* note 29, at 324-25.

Parental Consent[226] *Alone*

Many states allow for child marriage with parental consent alone.[227] In many of them, parental consent is provided via a boilerplate consent waiver,[228] and the parent's refusal to consent to the marriage cannot be overturned.[229] Of course, the parental consent requirement differs among these states. One difference is who qualifies as the parent allowed to provide the requisite consent. In some states, if the parents are separated or divorced, either may consent to their child's marriage, even one who is not a custodial parent;[230] in others, only the parent with custody may decide.[231] Another difference is the need for parental agreement

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226 Most states recognize that situations arise in which the child has no parent or the parent is incapable of consenting. In such scenarios, most of those states allow a guardian or some other specified adult to consent instead. *See, e.g.,* ARIZ. REV. STAT. ANN. § 25-102; CAL. FAM. CODE §§ 302-303 (West 2019); FLA. STAT. ANN. § 741.04 (West 2018); HAW. REV. STAT. ANN. § 572-2 (West 2024). This article will use the term "parental consent" and like synonyms to broadly include situations where another enumerated adult consents instead.

227 ALA. CODE § 30-1-5 (West 2019) (as long as the child had not been married before); ARIZ. REV. STAT. ANN.§ 25-102; ARK. CODE ANN. §§ 9-11-102 to 105 (West 2021); COLO. REV. STAT. ANN. §§ 14-2-106(1)(a)(I) to 108(1) (West 2023); D.C. CODE ANN. § 46-411 (West 2001); IDAHO CODE ANN. § 32-202 (West 2020); MO. ANN. STAT. § 451.090 (West 2018); NEB. REV. STAT. ANN. § 42-105 (West 2024); N.D. CENT. CODE ANN. § 14-03-02 (West 2023); OKLA. STAT. ANN. tit. 43, § 3 (West 2024); OR. REV. STAT. § 106.060 (West 2024); S.C. CODE ANN. § 20-1-250 (West 1976); TENN. CODE ANN. § 36-3-106 (West 2019); W. VA. CODE ANN. § 48-2-301 (West 2023).

228 Genet, *supra* note 13, at 3018.

229 Thomas R. Young, *Marriage*, 1 LEG. RTS. CHILD. REV. 3D § 11:3 (3d ed. 2023). In a few states, a court may allow a child to marry over the objection of the parents. *See, e.g.,* ALASKA STAT. ANN. § 25.05.171 (West 2022) (permitting judicial approval if the parents are "arbitrarily and capriciously withholding consent"); ARK. CODE ANN. §§ 9-11-102 to -105 (allowing judicial approval if a parent is "not fit to make decisions concerning the" minor; and the marriage is in the minor's best interest); IOWA CODE ANN. § 595.2 (West 2024) (permitting judicial approval if parental consent is "unreasonably withheld"); NEV. REV. STAT. ANN. § 122.025 (West 2019) (allowing court approval in extraordinary circumstances); OKLA. STAT. ANN. tit. 43, § 3 (allowing parents to be heard but overruled).

230 Young, *supra* note 229, at 592.

231 *See, e.g.,* 247 Ala. Op. Att. Gen. 30 (Ala. A.G.), 1997 WL 1054014; AZ. REV. STAT. ANN. § 25-102; IOWA CODE ANN. § 595.2; MO. STAT. ANN. § 451.090 (West 2018); MONT. CODE ANN. §§ 40-1-203, 40-1-213 (West 2021); NEB. REV. STAT. ANN. §§ 42-102, 42-105 ; N.C. GEN. STAT. ANN. §§ 51-2, 51-2.1 (West 2021); UTAH CODE ANN. §§ 81-2-304, 81-2-403 (West 2024); W. VA. CODE ANN. § 48-2-301; WIS. STAT. ANN. § 765.02 (West 2007); WYO. STAT. ANN. § 20-1-102.

on the consent. In most states, the law requires both parents to consent,[232] but in several, only one parent must do so,[233] even over the objection of the other parent.[234] A final difference is how the authorizing parent manifests the requisite consent. In most states, the consent must be in a specific form, usually a verified writing,[235] but in some, form requirements are not mentioned or in-person consent is also an option.[236] In one state, the parents must join the application,[237] and at least one court has held that a parent's attendance at and witness of an incapable child's wedding without objection constitutes consent even in the absence of a parental signature on the marriage license.[238]

Critics of parental approval note that in cases of a minor's forced marriage, these parents are typically the ones doing the forcing, yet many states lack oversight ensure that the child is marrying willingly.[239] As one advocate aptly observed, "[O]ne person's 'parental consent' can be another's 'parental coercion.'"[240] Thus, while parental consent is supposed to safeguard

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232 Fla. Stat. Ann. § 741.04; Haw. Rev Stat. Ann. §§ 572-2-(2), 572-2 (West 2024); 750 Ill. Comp. Stat. Ann. 5/203, 5/208 (West 2011); Iowa Code Ann. § 595.2; La. Child. Code Ann. §1545 (West 2019); Me. Rev. Stat. Ann. tit. 19-A, § 652 (West 2023); Md. Code Ann., Fam. Law § 2-301 (West 2022); Mont. Code Ann. §§ 40-1-202, 40-1-213; N.M. Stat. Ann. § 40-1-6 (West 2013); N.D. Cent. Code Ann. § 14-03-02; Tenn. Code Ann. §§ 36-3-105 to 36-3-106 (West 2019).

233 Cal. Fam. Code §§ 302-303; D.C. Code Ann. § 46-403, 46-411 (West 2008); Idaho Code Ann. § 32-202 ; Kan. Stat. Ann. § 23-2505 (West 2024); Miss. Code Ann. § 93-1-5 (West 2021); Mo. Ann. Stat. § 451.090 ; Nev. Rev. Stat. Ann. § 122.025 (West 2019); S.C. Code Ann. § 20-1-250; S.D. Codified Laws § 25-1-9 (West 2019); Utah Code Ann. §§ 81-2-304, 81-2-403.

234 Young, *supra* note 229, at 592.

235 *See, e.g.,* Ala. Code § 30-1-5 (requiring a notarized affidavit); Fla. Stat. Ann. § 741.04 (requiring acknowledged consent); Idaho Code Ann. § 32-202 (same); Miss. Code Ann. § 93-1-5; Neb. Rev. Stat. Ann. § 42-102; S.C. Code Ann. § 20-1-250; S.D. Codified Laws § 25-1-9; W. Va. Code Ann. § 48-2-301.

236 *See, e.g.,* Kan. Stat. Ann. § 23-2505); Okla. Stat. Ann. tit. 43, § 3; Wis. Stat. Ann. § 765.02; Wyo. Stat. Ann. § 20-1-102.

237 Tenn. Code Ann. §§ 36-3-105, 36-3-106 (West 2018).

238 Young, *supra* note 230, at 592 (citing Stiles v. Estate of Stiles, 496 So. 2d 856 (Fla. Dist. Ct. App. 1986)).

239 Johnson-Dahl, *supra* note 1, at 1070. *See also United States' Child-Marriage Problem*, *supra* note 210.

240 *United States' Child-Marriage Problem, supra* note 210.

against forced and coerced marriage, it "realistically serves to do just the opposite."[241]

Judicial Consent Alone

Some states allow child marriage on judicial consent alone.[242] In some of them, in instances of parental opposition, a presumption exists that the marriage is not in the child's best interest,[243] but in others, judicial consent is an option to overturn a parent's denial. For example, in Alaska, a judge may order the issuance of a marriage license to a child who has attained at least sixteen years of age if the parents have arbitrarily and capriciously withheld their consent or if the parent is "unfit to decide."[244]

Most states allowing judicial consent employ the "best interests of the minor" standard,[245] sometimes with a list of factors to assist the judge in making the decision.[246] One notable factor is a child's premarital pregnancy or childbirth. In some states, this

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241 Johnson-Dahl, *supra* note 1, at 1072.

242 Ark. Code Ann. §§ 9-11-103 to 105 (only in cases of people who are at least sixteen years of age where the teenager is pregnant); Alaska Stat. Ann. § 25.05.171; Colo. Rev. Stat. Ann. § 14-2-108; Ind. Code Ann. § 31-11-1-5 (West 2020); Kan. Stat. Ann. § 23-2505 (only in cases of people who are at least fifteen years old); Ky. Rev. Stat. Ann. § 402.210; Nev. Rev. Stat. Ann. § 122.025 (only in "extraordinary circumstances); N.M. Stat. Ann. § 40-1-6 (for children under sixteen years old); Ohio Rev. Code Ann. §§ 3101.02, 3101.04-.042 (West 2019); Okla. Stat. Ann. tit. 43, § 3 (West 2024) (if the child is under sixteen years of age); Wyo. Stat. Ann. § 20-1-102 (West 2023).

243 Ind. Code Ann. § 31-11-1-5 ; N.C. Gen. Stat. Ann. §§ 51-2 to 51-2.1.

244 Alaska Stat. Ann. § 25.05.171. *See also* Ark. Code Ann. §§ 9-11-102 to 105 (if the parent "not fit to make decisions concerning the" minor; and the marriage is not in the minor's best interest.); Nev. Rev. Stat. Ann. § 122.025 (extraordinary circumstances); Okla. Stat. Ann. tit. 43, § 3 (allowing parents to be heard but overruled); Iowa Code Ann. § 595.2 (if parental consent is "unreasonably withheld").

245 Ark. Code Ann. § 9-11-103 to 105; Alaska Stat. Ann. § 25.05.171; Colo. Rev. Stat. Ann. § 14-2-108; 750 Ill. Comp. Stat. Ann. 5/208; Iowa Code Ann. § 595.2; Kan. Stat. Ann. § 23-2505 (for 15-year-old teenagers); La. Child. Code Ann. § 1547 (West 2019); Mont. Code Ann. §§ 40-1-202, 213; Nev. Rev. Stat. Ann. § 122.025; N.C. Gen. Stat. Ann. §§ 51-2, 51-2.1; Ohio Rev. Code Ann. §§ 3101.02, 3101.04-.042; Utah Code Ann. §§ 81-2-403, 81-2-304.

246 *See, e.g.,* Colo. Rev. Stat. Ann, § 14-2-108; La. Child. Code Ann. § 1547; Nev. Rev. Stat. Ann. § 122.025; N.C. Gen. Stat. Ann. § 51-2.1. Some states allowing this judicial discretion do not list factors for consideration. *See* Alaska Stat. Ann. § 25.05.171; 750 Ill. Comp. Stat. Ann. 5/208; Iowa Code Ann. § 595.2; Kan. Stat. Ann. § 23-2505; Mont. Code Ann. §§ 40-1-202, 213.

is a relevant inquiry into the minor's best interest.[247] Other state laws specify that "pregnancy alone does not establish that the best interests of the party would be served."[248] In a few states, judges must conduct interviews[249] or appoint a guardian ad litem for the child.[250] In several states, the couple must participate in premarital counseling.[251]

Just like the critics of parental approval, those assessing judicial approval for child marriage question whether judges are sufficient gatekeepers. After all, judicial discretion opens the door for personal bias, which could lead to the imposition of the judge's views on the child.[252] In some states, the judges are not even the ones issuing the marriage license; court clerks are.[253] Even in cases where the judges issue the license, in most scenarios, the judge often is not privy to the full picture behind the request to marry.[254] A minor may feel pressured, or even forced, to say they want to marry even if they do not.[255] Nevertheless, in camera interviews of the prospective spouses (and other interested persons) are not required in many states,[256] and judges rarely appoint a guardian ad litem for the child.[257] In some states, judges lack the proper training and foundation to discern which marriages are coerced,[258] a major problem in cases where a child's "'yes' does not really mean 'yes.'"[259]

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247 Ark. Code Ann. § 9-11-103; La. Child. Code Ann.§ 1547; Okla. Stat. Ann. tit. 43, § 3.

248 Colo. Rev. Stat. Ann. § 14-2-108; 750 Ill. Comp. Stat. Ann. 5/208; Iowa Code Ann. § 595.2; Mont. Code Ann. § 40-1-213; Nev. Rev. Stat. Ann. § 122.025; N.C. Gen. Stat. Ann. § 51-2.1.

249 *See, e.g.,* Cal. Fam. Code §§ 302-303; La. Child. Code Ann. § 1547.

250 *See, e.g.,* Colo. Rev. Stat. Ann. § 14-2-108 (West 2021); N.C. Gen. Stat. Ann. §§ 51-2, 51-2.1; Ohio Rev. Code Ann. §§ 3101.02, 3101.04-.042.

251 *See, e.g.,* Mont. Code Ann. §§ 40-1-202, 213; Utah Code Ann. § 81-2-304.

252 Jones, *supra* note 111, at 414.

253 Genet, *supra* note 13, at 3017-18.

254 Ross, *supra* note 29, at 114.

255 Jones, *supra* note 111, at 414.

256 Only a couple of states require the judge to conduct interviews. *See, e.g.*, Cal. Fam. Code §§ 302-303; La. Child. Code Ann. 1547.

257 Johnson-Dahl, *supra* note 1, at 1071. Only handful of states utilize guardian ad litem. *See, e.g.,* Colo. Rev. Stat. Ann. § 14-2-108 (West 2021); N.C. Gen. Stat. Ann. §§ 51-2, 51-2.1; Ohio Rev. Code Ann. §§ 3101.02, 3101.04-.042.

258 Genet, *supra* note 13, at 3017; Ross, *supra* note 29, at 114; Templeton, *supra* note 29, at 324.

259 Johnson-Dahl, *supra* note 1, at 1071.

Consequently, some statistics indicate that judges in some states approve child marriages at higher rates than one might expect.[260]

Consent of Either or Both

A few states allow a child to marry by obtaining *either* parental *or* judicial approval. These include Illinois, Kansas, Maine, North Carolina, and Wisconsin.[261] In those states, a child may marry with one or the other of the requisite approval. In many states, though, *both* parental and judicial approval must be obtained.[262] In these states, a judge must authorize the marriage, but in most instances, will not do so without parental consent.

2. *Permission Plus*

In some states, obtaining the requisite permission is only the beginning for a minor seeking to marry. Among those states, some also require the child to be of a certain age. Some require that the age gap between the child and their prospective spouse not be too wide.

Permission Plus Minimum Age Requirement

In four states, a child of any age may marry with the requisite permission, essentially meaning that in these states, there is no minimum age at which a child may marry. These states include California, Mississippi, New Mexico, and Oklahoma.[263] Theoretically, then, a nine-year-old like Eunice Winstead Johns (the

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260 *See United States' Child-Marriage Problem*, *supra* note 210.

261 750 ILL. COMP. STAT. ANN. 5/203, 5/208); KAN. STAT. ANN. § 23-2505 ((judicial approval only for sixteen- to seventeen-year old teenagers); ME. REV. STAT. ANN. tit. 19-A, § 652(7)-(8) (judicial approval only in instances of no parents); N.C. GEN. STAT. ANN. §§ 51-2-2.1 (West 2021); WIS. STAT. ANN. § 765.02 (judicial approval only in instances of no parents).

262 CAL. FAM. CODE §§ 302-303 (unless there are no parents or the parents are incapable); FLA. STAT. ANN. § 741.04; HAW. REV. STAT. ANN. §§ 572-1(2), 572-2; IOWA CODE ANN. § 595.2(4); LA. CHILD. CODE ANN. § 1545; MD. CODE ANN., FAM. LAW § 2-301 (only if the child is pregnant or has given birth); MISS. CODE ANN. § 93-1-5; MONT. CODE ANN. §§ 40-1-202, 213 (unless there are no parents or the parents are incapable); NEV. REV. STAT. ANN. § 122.025(1)-(2) (absent extraordinary circumstances in which case the court alone grants permission); N.M. STAT. ANN. § 40-1-6 (for sixteen- and seventeen-year-old teenagers); S.C. CODE ANN. § 20-1-250; UTAH CODE ANN. §§ 8-2-304, 8-2-403.

263 CAL. FAM. CODE § 302-03); MISS. CODE ANN. § 93-1-5; N.M. STAT. ANN. § 40-1-6(B); OKLA. STAT. ANN. tit. 43, § 3.

child mentioned earlier who married an adult man in Tennessee in the 1930s)[264] could, in 2025, still marry in those four states if the appropriate adult allows it. By contrast, in other states, the child must not only obtain the requisite permission but also be of a minimum age. Of course, like many other rules pertaining to child marriage, this minimum age varies among those states. Of the states allowing child marriage with requisite permission, several mandate that the child also have reached seventeen years of age.[265] Most require the child to be at least sixteen years-old.[266] Kansas and Hawaii require a minimum age of fifteen years to marry with permission.[267]

Permission Plus Age Gap Restriction

To attempt to minimize the potential exploitation of children, some states require that the age gap between the child and their prospective spouse not be too large. Again, variety exists among these states as to how large the age gap must be in order to bar the marriage. Florida's law is the strictest, allowing only a two-year age gap,[268] so a seventeen-year-old could only marry someone younger than nineteen years of age. Utah's law is the most lenient, allowing seven years to separate the couple,[269] so a seventeen-year-old could marry someone up to twenty-four years-old. Most states

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264 *See supra* text at note 142.

265 Ark. Code Ann. § 9-11-102; Fla. Stat. Ann. § 741.04; Ky. Rev. Stat. Ann. § 402.210; Me. Rev. Stat. Ann. tit. 19-A § 652; Md. Code Ann., Fam. Law § 2-301(b); Neb. Rev. Stat. Ann. § 42-102; Nev. Rev. Stat. Ann. § 122.025; Ohio Rev. Code Ann. §§ 3101.02, 3101.04-.042; Or. Rev. Stat. Ann. §§ 106.010, 106.0; Tenn. Code Ann. §§ 36-3-105, 36-3-106.

266 Ala. Code § 30-1-4 & 5; Ark. Code Ann. § 9-11-103 (applicable only in the case of pregnancy or having given birth); Alaska Stat. Ann. § 25-05.171; Ariz. Rev. Stat. Ann. § 25-102; Colo. Rev. Stat. Ann. § 14-2-108; Idaho Code Ann. §§ 32-202 to 203; 750 Ill. Comp. Stat. Ann. 5/203, 5/208; Ind. Code Ann. § 31-11-1-5; Iowa Code Ann. § 595.2; La. Civ. Code Ann. art. 90.1 (West 2019); Mo. Ann. Stat. §§ 451, 451.090; N.C. Gen. Stat. Ann. §§ 51-2, 51-2.1; N.D. Cent. Code Ann. § 14-02-02; Ohio Rev. Code Ann. §§ 3101.02, 2101.04-.042; S.C. Code Ann. §§ 20-1-100, 20-1-250; S.D. Codified Laws § 25-1-9; Tex. Fam. Code Ann. §§ 2.101, 2.003; Utah Code Ann. §§ 81-2-304, 81-2-403; W. Va. Code Ann. § 48-2-301; Wis. Stat. Ann. § 765.02; Wyo. Stat. Ann. § 201-1-102.

267 Haw. Rev. Stat. Ann. §§ 572-1 to 572-2; Kan. Stat. Ann. § 23-2505.

268 Fla. Stat. Ann. § 741.04.

269 Utah Code Ann. §§ 81-2-304, 81-2-403.

addressing the age issue have included restricted gaps of three[270] or four years.[271]

III. The Future of Child Marriage in the United States

The future of child marriage in the United States is in question. Historically, the institution of marriage has been considered vitally important, with William Blackstone referring to it as "the most important contract of any."[272] This is, in part, because marriage is—at least in theory—a "lifelong union" and therefore, also a long-term contract.[273] As important as many deem it and despite Americans' historical faith in the institution, the popularity of marriage is trending downward. In 2024, the U.S. Census Bureau released estimates indicating that married-couple households made up 47% of all U.S. households in 2022, down from 71% in 1970.[274] Additionally, a recent survey indicates that a majority of registered American voters say that society is "just as well off if people have priorities other than marriage and children."[275] Furthermore, most parents no longer consider their children getting married as "important," and children no longer feel pressured by their parents to do so.[276] This is because the parents no longer inextricably link marriage, i.e., the piece of paper evidencing the union's legality, to financial security; in fact, some see marriage as contrary to

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270 Alaska Stat. Ann. § 25.05.171; Ariz. Rev. Stat. Ann. § 25-102; Idaho Code Ann. § 32-202 ; La. Civ. Code Ann. art. 90.1; Mo. Ann. Stat. § 451.090.

271 Ga. Code Ann. § 19-3-2; Ind. Code Ann. § 31-11-1-5); N.C. Gen. Stat. Ann. §§ 51-2, 51-2.1; Ohio Rev. Code Ann. §§ 3101.02, 3101.04-.042 (if one prospective spouse is a major); S.D. Codified Laws § 25-1-9; W. Va. Code Ann. § 48-2-301.

272 Templeton, *supra* note 29, at 321.

273 *Id.*

274 *Census Bureau Releases New Estimates on Families and Living Arrangements*, U.S. Census Bureau, (May 30, 2024), https://www.census.gov/newsroom/press-releases/2024/families-living-arrangements.html.

275 Stephanie H. Murray, *Why Parents Don't Mind If Their Kids Don't Marry*, The Atlantic (Jul. 15, 2024), https://www.theatlantic.com/family/archive/2024/07/parents-grown-kids-marriage-pressure/678989/?utm_source=substack&utm_medium=email.

276 *Id.*

economic stability.[277] Many modern parents want their children to find romantic partners without economic considerations.[278]

In addition to the evolving attitude toward marriage as an institution, the negative effects of child marriage have been well-established. Statistics indicate that a disproportionate number of minors who marry, compared with those who do not, struggle to complete their education, live in poverty, and suffer health problems and abuse.[279] They also see higher rates of divorce and in some states, an inability to protect themselves.[280] Nevertheless, in the majority of U.S. states, minors are allowed to legally marry before they can vote, drink, or buy lottery tickets.[281]

Consequently, the United Nations Sustainable Development Goals has called for the end of child marriage by 2030; it is projected that, without more progress globally, that more than "120 million girls will be married before the age of 18 by 2030."[282] Most legal scholars in the United States support a total ban on child marriage.[283] Yet it has continued to persist, albeit in declining numbers.[284] While some legislators and scholars still support a child's right to marry, those seeking to eradicate child marriage have seen some success over recent years with many states considering the issue.[285]

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277 *Id.* Parents are concerned with their children's economic welfare, a concern that has not wavered. However, in the past, parents viewed marriage as the means by which their children could achieve financial stability, and that is what has changed. *Id.* Thus, many parents now view marriage and child-rearing as optional. *Id.* This does not mean that parents are unconcerned with their children's personal relationships; they desire fulfilling relationships for their children. They just do not prioritize the legal union as they once did. *Id. See also* June Carbone & Naomi Cahn, Marriage Markets: How Inequality Is Remaking the American Family (2014).

278 Murray, *supra* note 275.

279 Child Marriage Prevention Act, S. 4990, 118th Cong. §§ 1-10 (2023-2024) (introduced); *see also* Ross, *supra* note 29, at 111-14; Schuman, *supra* note 29, at 2349-55; Templeton, *supra* note 29, at 312-20.

280 Child Marriage Prevention Act, S. 4990, 118th Cong. §§ 1-10 (2023-2024) (introduced); Ross, *supra* note 29, at 111-14; Templeton, *supra* note 29, at 312-20.

281 Aliana Demopoulos, "*I Was Handed to a Complete Stranger": the Survivors Fighting to End Child Marriage in 37 US States – and the People Who Want to Keep It Legal*, The Guardian (Jul. 9, 2024, 8:00), https://www.theguardian.com/society/article/2024/jul/09/child-marriage-laws.

282 Bearat, *supra* note 2, at 3.

283 *Id.* at 4.

284 *Id.* at 6.

285 Luongo, et al., *supra* note 207, at 786. Several bills failed. *See supra* text

The issue is gaining traction at the federal level, too. On August 1, 2024, Senate Majority Whip, Dick Durbin, on behalf of himself and two other passionate senators, introduced the Child Marriage Prevention Act of 2024 (hereinafter "Act")[286] in the U.S. Senate. All three legislators have decried the ills of child marriage.[287] The sections below summarize the Act, along with the views of its supporters and those expected to oppose it.

A. *Summary of the Child Marriage Prevention Act of 2024*

The Child Marriage Prevention Act of 2024 is a multi-faceted piece of legislation, attacking child marriage on numerous fronts. First, the Act contains an educational component, under which governmental agencies will collect and share information about the practice. Second, it provides incentives for states to study and ban child marriage within their borders. Finally, it affirmatively bans child marriage from occurring on federal property and amends provisions of the U.S. immigration law to combat the international practice of child marriage.

To collect and share information, the Act establishes the National Commission to Combat Child Marriage within the Department of Health and Human Services, tasked with studying, evaluating, and reporting on eradicating the practice in the United States.[288] The commission must include a child marriage survivor and representatives of nonprofit entities with expertise

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in note 208.

286 Child Marriage Prevention Act, S. 4990, 118th Cong. §§ 1-10 (2023-2024) (introduced).

287 As Senator Durbin, noted: "Child marriage is a significant problem domestically, and it overwhelmingly affects underage girls who are married to adult men, often with dire consequences for their life outcomes. This loss of dignity and independence is unacceptable." *Durbin, Schatz, Gillibrand Introduce Child Marriage Prevention Act*, *supra* note 210. Senator Brian Schatz commented: "It's absurd and unacceptable that despite everything we know about the horrific outcomes of child marriage, hundreds of thousands of young girls are still forced into unions they want no part of." *Id.* Senator Kirsten Gillibrand, echoed: "Child marriage leaves girls vulnerable to abuse and exploitation. It is a wildly outdated practice that has no place in 21st century American society." *Id.*

288 Child Marriage Prevention Act, S. 4990, 118th Cong. §§ 1-10 (2023-2024) (introduced); *see also Historic Legislation Introduced to Prevent Child Marriage in the United States, supra* note 16.

in working with survivors and state governments on the issue.[289] More specifically the commission must examine existing laws on child marriage (along with the lack thereof), the frequency and circumstances of child marriages, and the impact of the practice on children.[290] Under the Act, this commission is directed to (1) review the existing governmental findings and recommendations on child marriage and build upon them, (2) hold hearings, request information from existing entities, and conduct listening sessions on child marriage with pertinent stakeholders (i.e., child marriage survivors, advocates, and experts), and (3) report to various government officials on the issue.[291] Additionally, it mandates that the Government Accountability Office examine child marriage in the United States and prepare a report (mostly targeted towards immigration matters on the issue).[292]

The Act also incentivizes the U.S. states to study and act on this issue through a few avenues. First, it allows the Health and Human Services Secretary to award grants for states that develop task forces to examine child marriage.[293] The Act also sets forth the duties of the task forces, along with the qualifications of its members.[294] Second, the Act increases grant funding for states banning child marriage.[295] In fact, assuming the commission mentioned above timely submits its mandated report, the Act allocates $5 million for 2027 through 2032.[296] Additionally, the Act requires the U.S. Attorney General to create a Department of Justice

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289 Child Marriage Prevention Act, S. 4990, 118th Cong. §§ 1-10 (2023-2024) (introduced); *see also* Dick Durbin, Brian Schatz, & Kirsten Gillibrand, *Child Marriage Prevention Act of 2024 Section-by-Section Summary*, Tahirih Justice Center (Aug. 2024), https://www.tahirih.org/wp-content/uploads/2024/08/Child-Marriage-Prevention-Act-of-2024-Updated-Final-Section-by-Section_8.7.24.pdf.

290 *Id.*

291 *Id.*

292 Child Marriage Prevention Act, S. 4990, 118th Cong. §§ 1-10 (2023-2024) (introduced); *see also* Durbin, Schatz, & Gillibrand, *supra* note 289; *Durbin, Schatz, Gillibrand Introduce Child Marriage Prevention Act*, *supra* note 210.

293 Child Marriage Prevention Act, S. 4990, 118th Cong. §§ 1-10 (2023-2024) (introduced).

294 *Id.*

295 *Id.*

296 *Id.*

working group to promulgate a model state statute prohibiting child marriage.[297]

Finally, the Act attacks child marriage on the federal level by taking two approaches—one focused on domestic child marriage and one focused on child marriage through immigration. On the domestic front, the Act completely bans child marriage on property owned, leased, used, or funded by the federal government.[298] This provision sends a strong message about the federal government's views on the seriousness of child marriage. On the immigration issue, the Act sets a minimum age for spouse and fiancée visas, amends the definition of proxy marriage, requires educational materials on the changes to immigration law to be produced in multiple languages, and tasks several government departments with promoting information on the harms of child marriage and resources for support.[299]

B. *Expected Responses to the Act (and Child Marriage Generally)*

Obviously, the Act is supported by its sponsors, who have characterized it as a tool to "protect our kids"[300] by taking "meaningful steps toward finally ending"[301] child marriage in the United States. As Senator Durbin stated, the Act is "a powerful statement of our priorities as a nation and something that will change the futures of hundreds of thousands of young girls if enacted."[302] Advocacy groups also endorse this legislation.[303] As one remarked: "Girls everywhere

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297 *Id.*

298 *Id.*

299 *Id.* The Act allows the Secretary of Homeland Security to waive this requirement for those who are at least 16 years of age for "compelling humanitarian reasons arising from a risk of individualized and targeted harm to such noncitizen." Durbin, Schatz, & Gillibrand, *supra* note 289.

300 *Durbin, Schatz, Gillibrand Introduce Child Marriage Prevention Act*, *supra* note 210 (quoting Senator Gillibrand).

301 *Id.* (quoting Senator Schatz).

302 *Id.* (quoting Senator Durbin).

303 *Id.* These organizations include Tahirih Justice Center; National Alliance to End Sexual Violence; Jewish Women International; Esperanza United; Resiliency Foundation; Global Hope 365; Ujima, the National Center on Violence Against Women in the Black Community; Womankind; The Person Center; Indiana Youth Services Association; Naila Amin Foundation; SK Sultana LLC; ASISTA; Raksha; National Resource Center on Domestic Violence; Catholic Charities Fort Wayne South Bend; Daya Houston; Too Young to Wed; and Legal Momentum.

are only as safe as the weakest law allows, and this bill acknowledges the many ways current U.S. law fails to protect girls here and abroad from this human rights abuse."[304] Meanwhile, many survivors echo this sentiment, with one explaining: "I envision a United States without child marriage, visa exploitation, abandonment, and abuse. This is precisely why Congress needs to act fast and pass The Child Marriage Prevention Act to protect girls."[305]

Of course, the Act is not without opposition. After all, the U.S. Supreme Court has generally left matters of domestic relations to the states, and therefore, the Act may implicate federalism concerns.[306] That is not the sole concern, as the cohort of those opposing child marriage bans raises several arguments to support its practice. This group consists of many conservative lawmakers and some left-leaning organizations, prompting some to describe it as "odd."[307] Nevertheless, they are on the same page that banning child marriage could harm minors in other ways.

The group on the right, appropriating the notion of "choice," is seemingly clinging to the idea of marriage as a cure. According to them, such a choice by a child is reasonable in certain scenarios. For example, "[W]hat about a pregnant teen who wants to marry the baby's father? Or a girl whose slightly older boyfriend is about to deploy overseas?"[308] They also frame child marriage as a matter of religious freedom.[309] These legislators have likewise latched on to the idea that allowing child marriage will decrease the frequency of abortions.[310] As one state representative asked: "Are we not in fact making abortion a much more desirable alternative, when marriage might be the right solution for some freedom-loving couple?"[311] This group of opponents has also been accused of at-

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304 *Durbin, Schatz, Gillibrand Introduce Child Marriage Prevention Act*, *supra* note 210 (quoting Casey Carter Swegman, Director of Policy at the Tahirih Justice Center).

305 *Historic Legislation Introduced to Prevent Child Marriage in the United States, supra* note 16 (quoting Sasha Taylor, a woman who was forced to marry when she was 15 years old).

306 Aryama, *supra* note 211, at 424.

307 Demopoulos, *supra* note 281.

308 *Id.*

309 Johnson-Dahl, *supra* note 1, at 1073.

310 *Id.* The National Right to Life movement employs this rationale. Jonathan Black, *Marital Discord*, 104 A.B.A. J. 16, 17 (Jan. 2018).

311 *Id.*

tempting to use child marriage as a tool in today's culture wars, evidenced by some state senators' actions and statements. As one remarked: "The same people who put [trans issues] in elementary schools and libraries are suddenly hyper-moralistic about 17 year old [*sic*] High School Sweethearts getting married, I don't get it."[312]

Meanwhile, some left-leaning organizations also oppose child marriage bans but for very different reasons. This group of opponents purports to defend the rights of children, arguing that the retention of child marriage is necessary to do so. Some opponents maintain that marriage is a fundamental right for everyone, including minors.[313] Some opponents are concerned that limiting a child's right to marry could weaken other rights of children, especially their reproductive rights.[314] Others fear that a child marriage ban will deprive minors of the ability to leave foster care via emancipation.[315] Some of these and similar arguments have been made previously to oppose child marriage bans on the state level. For example, in California in 2023, local chapters of the American Civil Liberties Union and Planned Parenthood opposed a law that would have banned child marriage in the state.[316]

Conclusion

Child marriage has had a long history in the United States. Over the years, it has morphed from a common, accepted practice to being prohibited in thirteen U.S. states. Its future is uncertain. The current trend of new legislation banning or restricting its practice seems to signal that this issue has become an important one to many state legislatures around the country. Whether it is one important enough to the federal government remains to be seen. Tracking the Child Marriage Prevention Act of 2024 work its way through Congress will tell.

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312 Anna Liz Nichols, *Child Marriage Is Now Banned in Michigan*, Mich. Advance (July 11, 2023, 3:28 PM), https://michiganadvance.com/2023/07/11/child-marriage-is-now-banned-in-michigan/.

313 Young, *supra* note 229. *See also* Tsui, *supra* note 18 (stating that the ACLU of California argues a complete ban on minors marrying intrudes on the fundamental right to marry). Courts have held that restricting marriage by age is constitutional. *See* Moe v. Dinkins, 669 F.2d 67 (2d Cir. 1982).

314 Elrich, *supra* note 68, at 162.

315 Black, *supra* note 310, at 17.

316 *Id.*; Demopoulos, *supra* note 281.