
A BILL FOR AN ACT

RELATING TO MARRIAGE OF MINORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that there is growing
2 national and international recognition of child marriage as a
3 human rights violation and a severe impediment to social and
4 economic development. This recognition has led other
5 jurisdictions of the United States, and other nations, to
6 consider legislation that would prohibit the practice of child
7 marriage.

8 The legislature is cognizant that the United Nations
9 Children's Fund, or UNICEF, describes child marriage as a formal
10 marriage or informal union between a child under the age of
11 eighteen and an adult or another child. Further, United Nations
12 Sustainable Development Goal 5, relating to gender equality,
13 sets the year 2030 as the target for ending child marriage. The
14 sustainable development goals were unanimously adopted in 2015
15 by all one hundred ninety-three member states of the United
16 Nations, including the United States. A 2021 United Nations
17 report on the sustainable development goals forecasts that over



1 the next ten years, as many as ten million more girls will be at
2 risk of child marriage as a result of the coronavirus disease
3 2019 pandemic; this figure is in addition to the one hundred
4 million girls who were earlier estimated to become child brides.

5 Child marriage is especially concerning because children
6 have not reached the threshold of adulthood, a status that
7 grants certain rights and responsibilities, including in some
8 states the right to divorce. Additionally, a child entering
9 into a marriage may have been pressured or coerced into
10 marrying, especially if the child is pregnant. A marriage may
11 also be the result of the illegal practice of sex trafficking.
12 According to an analysis conducted by "Frontline", an
13 investigative news program of the Public Broadcasting Service,
14 between 2000 and 2015, more than two hundred seven thousand
15 individuals under the age of eighteen were married in the United
16 States. While most children were sixteen or seventeen years of
17 age at the time of marriage, some were as young as twelve years
18 old. Girls are disproportionately impacted, with the vast
19 majority of child marriages involving a minor female and an
20 adult male.



1 Hawaii's laws regularly define "children" as persons who
2 are less than eighteen years of age, and often refer to children
3 as "minors." Nonetheless, state law currently allows children
4 as young as sixteen years of age to marry. State law further
5 authorizes the family court to approve a marriage of a child who
6 is fifteen years of age. Comparatively, sexual assault laws
7 criminalize sexual conduct with a fifteen-year-old, though an
8 exception is made if the fifteen-year-old is legally married to
9 the sexual partner or if the sexual partner is less than five
10 years older than the minor. Based on data from the department
11 of health, at least eight hundred children were married in
12 Hawaii since 2000, with eighty per cent of these marriages being
13 girls marrying adult men.

14 The legislature further finds that between 2018 and 2021,
15 six states--Delaware, New Jersey, Pennsylvania, Minnesota, Rhode
16 Island, and New York--have enacted laws setting the minimum age
17 for marriage at eighteen, without exception. Additionally, the
18 territories of American Samoa and the United States Virgin
19 Islands also prohibit child marriages. Similar legislation has
20 been introduced in a number of other states and at the
21 congressional level.



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1 The purpose of this Act is to end child marriage in Hawaii
2 by requiring that both parties be eighteen years of age or
3 older.

4 SECTION 2. Section 571-2, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending the definition of "guardianship of a minor"
7 to read:

8 "Guardianship of a minor" means the duty and authority to
9 make important decisions in matters having a permanent effect on
10 the life and development of the minor and to be concerned about
11 the minor's general welfare. It includes[7] but shall not
12 [~~necessarily~~] be limited, in either number or kind, to:

13 (1) The authority to consent [~~to marriage,~~] to enlistment
14 in the armed forces of the United States[7] or to
15 major medical, psychiatric, and surgical treatment; to
16 represent the minor in legal actions; or to make other
17 decisions concerning the minor of substantial legal
18 significance;

19 (2) The authority and duty of reasonable visitation,
20 except to the extent that the right of visitation has
21 been limited by court order;



(3) The rights and responsibilities of legal custody when guardianship is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency, or institution; and

(4) The authority to consent to the adoption of the minor and to make any other decision concerning the minor that the minor's parents could make, when the rights of the minor's parents, or only living parent, have been judicially terminated as provided for in the statutes governing termination of parental rights to facilitate legal adoption, or when both of the minor's legal parents are deceased."

2. By amending the definition of "residual parental rights and responsibilities" to read:

"Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including[7] but not [~~necessarily~~] limited to[7] the right to reasonable visitation, consent to adoption [~~or marriage~~], and the responsibility for support."



1 SECTION 3. Section 571-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§571-11 Jurisdiction; children.** Except as otherwise
4 provided in this chapter, the court shall have exclusive
5 original jurisdiction in proceedings:

6 (1) Concerning any person who is alleged to have committed
7 an act prior to achieving eighteen years of age that
8 would constitute a violation or attempted violation of
9 any federal, state, or local law or county ordinance.
10 Regardless of where the violation occurred,
11 jurisdiction may be taken by the court of the circuit
12 where the person resides, is living, or is found, or
13 in which the offense is alleged to have occurred;

14 (2) Concerning any child living or found within the
15 circuit:

16 (A) Who is neglected as to or deprived of educational
17 services because of the failure of any person or
18 agency to exercise that degree of care for which
19 it is legally responsible;



- 1 (B) Who is beyond the control of the child's parent
2 or other custodian or whose behavior is injurious
3 to the child's own or others' welfare;
- 4 (C) Who is neither attending school nor receiving
5 educational services required by law whether
6 through the child's own misbehavior or
7 nonattendance or otherwise; or
- 8 (D) Who is in violation of curfew;
- 9 (3) To determine the custody of any child or appoint a
10 guardian of any child;
- 11 (4) For the adoption of a person under chapter 578;
- 12 (5) For the termination of parental rights under sections
13 571-61 through 571-63;
- 14 (6) For judicial consent to the [~~marriage~~] employment[~~7~~]
15 or enlistment of a child[~~7~~] when consent is required
16 by law;
- 17 (7) For the treatment or commitment of a mentally
18 defective or mentally ill child, or a child with an
19 intellectual disability;



- 1 (8) Under the Interstate Compact on Juveniles under
2 chapter 582 or the Interstate Compact for Juveniles
3 under chapter 582D;
4 (9) For the protection of any child under chapter 587A;
5 (10) For a change of name as provided in section
6 574-5(a)(2)(C); and
7 (11) Concerning custody or guardianship of an immigrant
8 child pursuant to a motion for special immigrant
9 juvenile factual findings requesting a determination
10 that the child was abused, neglected, or abandoned
11 before the age of eighteen years for purposes of
12 section 101(a)(27)(J) of the federal Immigration and
13 Nationality Act. For the purposes of this paragraph,
14 "child" means an unmarried individual under the age of
15 twenty-one years."

16 SECTION 4. Section 572-1, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§572-1 Requisites of valid marriage contract.** In order
19 to make valid the marriage contract, which shall be permitted
20 between two individuals without regard to gender, it shall be
21 necessary that:



1 (1) The respective parties do not stand in relation to
2 each other of ancestor and descendant of any degree
3 whatsoever, two siblings of the half as well as to the
4 whole blood, uncle and niece, uncle and nephew, aunt
5 and nephew, or aunt and niece, whether the
6 relationship is the result of the issue of parents
7 married or not married to each other or parents who
8 are partners in a civil union or not partners in a
9 civil union;

10 (2) Each of the parties at the time of contracting the
11 marriage is at least ~~[sixteen]~~ eighteen years of age;
12 ~~[provided that with the written approval of the family~~
13 ~~court of the circuit within which the minor resides,~~
14 ~~it shall be lawful for a person under the age of~~
15 ~~sixteen years, but in no event under the age of~~
16 ~~fifteen years, to marry, subject to section 572-2,]~~

17 (3) Neither party has at the time any lawful wife,
18 husband, or civil union partner living, except as
19 provided in section 572-1.7;

20 (4) Consent of neither party to the marriage has been
21 obtained by force, duress, or fraud;



1 (5) Neither of the parties is a person afflicted with any
2 loathsome disease concealed from, and unknown to, the
3 other party;

4 (6) The parties to be married in the State shall have duly
5 obtained a license for that purpose from the agent
6 appointed to grant marriage licenses; and

7 (7) The marriage ceremony be performed in the State by a
8 person or society with a valid license to solemnize
9 marriages and the parties to be married and the person
10 performing the marriage ceremony be all physically
11 present at the same place and time for the marriage
12 ceremony."

13 SECTION 5. Section 572-10, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~§572-10 [Applicant apparently under age. If]~~ Age of
16 applicant. For any applicant for a license to marry [~~appears to~~
17 ~~any agent to be under the age of eighteen years]~~, the agent
18 shall, before granting a license to marry, require the
19 production of a certificate of birth or other satisfactory proof
20 showing the age of the applicant."



1 SECTION 6. Section 577-25, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[§]§577-25[§]~~ **Emancipation of certain minors.** (a) Any
4 law to the contrary notwithstanding, a minor who has ~~[been~~
5 ~~married pursuant to chapter 572]~~ received a complete or partial
6 emancipation order from a court pursuant to this section shall
7 be deemed to be emancipated and shall be regarded as though he
8 or she were of legal age and shall have all the rights, duties,
9 privileges, and responsibilities provided by the civil law to a
10 person who has reached the age of majority under civil law;
11 provided that:

- 12 (1) Nothing in this section shall be deemed to confer upon
13 ~~[such]~~ the emancipated person the right to vote in any
14 federal, state, or county election or the right to
15 purchase, possess, or sell alcoholic beverages; ~~[and]~~
16 (2) Nothing in this section shall change the status of
17 ~~[such]~~ emancipated persons as minors in connection
18 with any criminal law, nor affect the exclusive
19 original jurisdiction of the family court over ~~[such]~~
20 these persons under section 571-11(1) ~~[→]~~; and



1 (3) Nothing in this section shall be deemed to confer upon
2 a partially emancipated minor any rights and
3 responsibilities aside from those specified in the
4 order of the court.

5 (b) For purposes of this section[7]:

6 "Guardian" has the same meaning as in section 327-2.

7 "Mature minor" means a person over sixteen years of age but
8 under eighteen years of age who has demonstrated the ability and
9 capacity to manage the minor's own affairs and to live wholly or
10 partially independently of the minor's parents, guardians, or
11 custodians.

12 ~~["minor"]~~ "Minor" means a person under the age of
13 majority[7] but not less than sixteen years old.

14 "Parent" has the same meaning as in section 327-2.

15 (c) Upon the filing of a petition by the minor, and after
16 any hearing or notice to all persons as set forth in subsections
17 (f), (g), and (h), the circuit court in the county where the
18 minor resides, is found, owns property, or in which a court
19 action affecting the interests of the minor is pending, may
20 enter a finding that the minor is a mature minor and order
21 complete or partial emancipation of the minor.



1 (d) The court shall retain continuing jurisdiction over
2 the proceedings until the emancipated minor reaches the age of
3 eighteen and may modify or terminate its previous emancipation
4 orders; provided that any subsequent modification or termination
5 of a previous order shall be effective only prospectively and
6 shall not affect any rights, duties, obligations, or causes of
7 action existing prior to the modification or termination of any
8 order.

9 (e) The petition for emancipation shall be verified and
10 shall include:

11 (1) The age of the minor;

12 (2) Confirmation that the minor is a resident of, owns
13 real estate in, or is a party in any case pending in
14 the State;

15 (3) A description of the cause for which the minor seeks
16 to obtain partial or complete emancipation;

17 (4) The names of the minor's parents and their address or
18 addresses, if living;

19 (5) The names and addresses of any guardians or custodians
20 appointed for the minor;



1 (6) Documentation supporting a finding that the minor is a
2 mature minor who has demonstrated the ability and
3 capacity to manage the minor's own affairs; and

4 (7) Documentation confirming that the minor has lived
5 wholly or partially independently of the minor's
6 parents, guardian, or custodian.

7 (f) All persons named in the petition shall be given
8 written notice within twenty-one days after the filing of the
9 petition for emancipation. Those persons shall have a right to
10 be present at any hearing and to be represented by counsel. All
11 notices shall be served on the persons named in the petition
12 either by personal service or by certified mail.

13 (g) Before proceeding to a hearing on the petition for
14 emancipation of a mature minor, the court shall advise all
15 persons present of the nature of the proceedings and of their
16 rights and responsibilities if an order of emancipation should
17 be entered.

18 (h) If, after the hearing, the court determines that the
19 minor is a mature minor who is of sound mind and has the
20 capacity and maturity to manage the minor's own affairs,
21 including financial affairs, and that the best interests of the



1 minor and the minor's family will be promoted by declaring the
2 minor an emancipated minor, the court shall enter a finding that
3 the minor is an emancipated minor within the meaning of this
4 section, or that the mature minor is partially emancipated with
5 any limitations the court deems appropriate.

6 (i) No order of complete or partial emancipation shall be
7 entered under this section if there is any objection by the
8 minor. An order of complete or partial emancipation may be
9 entered under this section if there is an objection by the
10 minor's parents or guardian only if the court finds, after a
11 hearing and in writing, that emancipation would be in the best
12 interests of the minor.

13 (j) Any judgment or order allowing or denying a complete
14 or partial emancipation is a final order for purposes of
15 appeal."

16 SECTION 7. Section 580-22, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§580-22 Nonage.** An action to annul a marriage on the
19 ground that one of the parties was under legal age, may be
20 brought by the parent or guardian entitled to the custody of the
21 minor, or by any person admitted by the court to prosecute as



1 the friend of the minor. In no case shall the marriage be
2 annulled on the application of a party who was of legal age at
3 the time it was contracted[; ~~nor when it appears that the~~
4 ~~parties, after they attained the legal age, had for any time~~
5 ~~freely cohabited as man and wife]."~~

6 SECTION 8. Section 572-2, Hawaii Revised Statutes, is
7 repealed.

8 [~~"§572-2 Consent of parent or guardian. Whenever any~~
9 ~~person who is under the age of eighteen is to be married, the~~
10 ~~written consent of his or her parents, or guardian or other~~
11 ~~person in whose care and custody he or she may be, shall~~
12 ~~accompany the application for a license to marry. No license~~
13 ~~shall be issued to any minor who is under the jurisdiction of~~
14 ~~the family court without the written consent of a judge of such~~
15 ~~court."~~]

16 SECTION 9. Section 572-9, Hawaii Revised Statutes, is
17 repealed.

18 [~~"§572-9 Persons under age. Whenever any person who is~~
19 ~~under the age of eighteen, whose parents are dead, or who is a~~
20 ~~ward of a family court, applies for a license to marry, he or~~
21 ~~she shall set forth in the statement accompanying the~~



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1 ~~application, the name of his or her guardian or of any other~~
2 ~~person in whose care and custody he or she may be."]~~

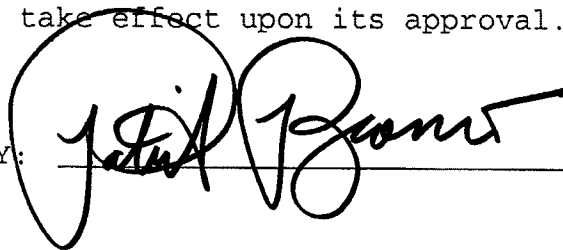
3 SECTION 10. This Act does not affect rights and duties
4 that matured, penalties that were incurred, and proceedings that
5 were begun before its effective date.

6 SECTION 11. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 12. This Act shall take effect upon its approval.

9

INTRODUCED BY:

A large, stylized handwritten signature in black ink, appearing to read "J. P. Jones", is written over a horizontal line.

JAN 25 2022



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Report Title:

Marriage; Minimum Age Requirement

Description:

Raises the minimum age for marriage from 16 to 18 years of age. Removes the requirements of parental consent and written approval by the family court for a minor to marry. Removes spousal cohabitation after the parties attain legal age as an exception for an annulment based on nonage. Makes conforming amendments.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

