
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 nationally and
2 internationally there is growing recognition that child marriage
3 is a human rights violation and a severe impediment to social
4 and economic development, resulting in states and countries
5 considering legislation to end the practice of allowing children
6 to marry. The United Nations Children's Fund describes child
7 marriage as any formal marriage or informal union between a
8 child under the age of eighteen and an adult or another child.
9 United Nations Sustainable Development Goal 5, relating to
10 gender equality, sets the year 2030 as the target for ending
11 child marriage. The Sustainable Development goals were
12 unanimously adopted in 2015 by all one hundred ninety-three
13 United Nations member states including the United States.

14 The concerns about allowing children to marry is that they
15 have not reached the threshold of adulthood that grants certain
16 rights and responsibilities and that a child entering into
17 marriage may have been pressured or coerced into marrying,



1 especially if the child is pregnant, or the marriage may be the
2 result of sex trafficking. According to an analysis conducted
3 by the Public Broadcasting Service's Frontline program, between
4 2000 and 2015 more than two hundred seven thousand individuals
5 under the age of eighteen married in the United States. While
6 most children were sixteen or seventeen years of age at the time
7 of marriage, some were as young as twelve years old. Girls are
8 disproportionately affected by the practice of child marriage,
9 and the vast majority of these marriages were between a minor
10 female and an adult male.

11 Hawaii's laws regularly define "children" as persons who
12 are less than eighteen years of age; they are often also termed
13 "minors". Nonetheless, the law allows children as young as
14 sixteen years of age to marry. State law further authorizes the
15 family court to approve a marriage of a child who is fifteen
16 years of age. Comparatively, sexual assault laws criminalize
17 sexual conduct with a fifteen-year-old, though an exception is
18 made if the fifteen-year-old is legally married to the sexual
19 partner or the sexual partner is not more than five years older
20 than the minor victim. Based on department of health data, at
21 least eight hundred children were married in Hawaii since 2000,



1 with eighty per cent of these marriages being girls marrying
2 adult men.

3 The legislature further finds that in 2018, Delaware and
4 New Jersey became the first and second states, respectively, to
5 require that both parties to the marriage be at least eighteen
6 years of age at time of marriage. Since then, Pennsylvania,
7 Minnesota, Rhode Island, New York, Massachusetts, Vermont,
8 Connecticut, Michigan, Washington, Virginia, and New Hampshire,
9 along with American Samoa and the United States Virgin Islands,
10 have joined them to end child marriage in their jurisdictions.
11 Similar legislation has been introduced in several other states
12 as well as Congress.

13 The purpose of this Act is to:

- 14 (1) End child marriage in Hawaii; and
15 (2) Repeal exemptions for sexual assault of a minor if
16 the prepretrator is married to the minor.

17 SECTION 2. Section 560:5-208, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) A guardian may:

- 20 (1) Apply for and receive money for the support of the
21 ward otherwise payable to the ward's parent, guardian,



1 or custodian under the terms of any statutory system
2 of benefits or insurance or any private contract,
3 devise, trust, conservatorship, or custodianship;

4 (2) If otherwise consistent with the terms of any order by
5 a court of competent jurisdiction relating to custody
6 of the ward, take custody of the ward and establish
7 the ward's place of custodial dwelling; provided that
8 a guardian may only establish or move the ward's
9 custodial dwelling outside the State upon express
10 authorization of the court;

11 (3) If a conservator for the estate of a ward has not been
12 appointed with existing authority, commence a
13 proceeding, including an administrative proceeding, or
14 take other appropriate action to compel a person to
15 support the ward or to pay money for the benefit of
16 the ward;

17 (4) Consent to medical or other care, treatment, or
18 service for the ward;

19 [~~(5) Consent to the marriage of the ward;~~] and



1 [~~6~~] (5) If reasonable under all of the circumstances,
2 delegate to the ward certain responsibilities for
3 decisions affecting the ward's well-being."

4 SECTION 3. 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~~] "Guardianship of a minor"
12 includes~~[,]~~ but shall not [~~necessarily~~] be limited~~[, in either~~
13 ~~number or kind]~~ to:

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



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

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

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

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

18 ""Residual parental rights and responsibilities" means
19 those rights and responsibilities remaining with the parent
20 after the transfer of legal custody or guardianship of the
21 person, including[~~r~~] but not [~~necessarily~~] limited to[~~r~~] the



1 right to reasonable visitation, consent to adoption [~~or~~
2 marriage], and the responsibility for support."

3 SECTION 4. Section 571-11, Hawaii Revised Statutes, is
4 amended to read as follows:

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

- 8 (1) Concerning any person who is alleged to have committed
9 an act before achieving eighteen years of age that
10 would constitute a violation or attempted violation of
11 any federal, state, or local law or county ordinance.
12 Regardless of where the violation occurred,
13 jurisdiction may be taken by the court of the circuit
14 where the person resides, is living, or is found, or
15 in which the offense is alleged to have occurred;
- 16 (2) Concerning any child living or found within the
17 circuit who is:
- 18 (A) Neglected as to or deprived of educational
19 services because of the failure of any person or
20 agency to exercise that degree of care for which
21 it is legally responsible;



- 1 (B) Beyond the control of the child's parent or other
- 2 custodian or whose behavior is injurious to the
- 3 child's own or others' welfare;
- 4 (C) 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) 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 574-
6 5(a)(2)(C);
- 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; and
- 16 (12) Concerning emancipation of a minor pursuant to section
17 577-25."

18 SECTION 5. Section 572-1, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§572-1 Requisites of valid marriage contract.** In order
21 to make valid the marriage contract, which shall be permitted



1 between two individuals without regard to gender, it shall be
2 necessary that:

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

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



- 1 (3) Neither party has at the time any lawful [~~wife,~~
2 ~~husband,~~] spouse or civil union partner living, except
3 as provided in section 572-1.7;
- 4 (4) Consent of neither party to the marriage has been
5 obtained by force, duress, or fraud;
- 6 (5) Neither of the parties is a person afflicted with any
7 loathsome disease concealed from, and unknown to, the
8 other party;
- 9 (6) The parties to be married in the State shall have duly
10 obtained a license for that purpose from the agent
11 appointed to grant marriage licenses; and
- 12 (7) The marriage ceremony be performed in the State by a
13 person or society with a valid license to solemnize
14 marriages, and the parties to be married and the
15 person performing the marriage ceremony be all
16 physically present at the same place and time for the
17 marriage ceremony."

18 SECTION 6. Section 572-10, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§572-10 [~~Applicant apparently under age. If~~] Age of the
21 applicant. For any applicant for a license to marry [~~appears to~~



1 ~~any agent to be under the age of eighteen years]~~, the agent
2 shall, before granting a license to marry, require the
3 production of a certificate of birth or other satisfactory proof
4 showing the age of the applicant."

5 SECTION 7. Section 577-25, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending subsection (a) to read:

8 "(a) Any law to the contrary notwithstanding, a minor
9 shall be deemed to be emancipated if the minor has[+
10 ~~(1) Entered into a valid marriage pursuant to chapter 572;~~

11 ~~or~~

12 ~~(2) Received]~~ received a declaration of emancipation
13 issued by the family court pursuant to this section."

14 2. By amending subsection (c) to read:

15 "(c) A minor shall be considered emancipated for the
16 purposes of, but not limited to the right to:

17 (1) Enter into enforceable contracts, including apartment
18 leases;

19 (2) Sue or be sued in the minor's own name;

20 (3) Retain the minor's personal earnings;

21 (4) Establish a separate domicile;



- 1 (5) Act autonomously, and with the rights and
2 responsibilities of an adult, in all business
3 relationships, including property transactions and
4 obtaining accounts for utilities, except for estate or
5 property matters that a court determines may require a
6 conservator or guardian ad litem;
- 7 (6) Earn a living, subject only to the health and safety
8 regulations designed to protect individuals under the
9 age of majority regardless of their legal status;
- 10 (7) File the minor's own tax returns and pay taxes
11 pursuant to applicable personal income tax laws;
- 12 (8) Authorize the minor's own preventive health care,
13 medical care, dental care, mental health care, and
14 substance abuse treatment without knowledge or
15 liability of the minor's parents or guardian;
- 16 (9) Apply for a driver's license or other state licenses
17 for which the minor may be eligible;
- 18 (10) Register for school;
- 19 [~~11~~] ~~Marry;~~



1 ~~(12)~~ (11) Apply to medical and other public assistance
2 programs administered by the State or its political
3 subdivisions;

4 ~~(13)~~ (12) If the minor is a parent, make decisions and
5 give authority in caring for the minor's child; and

6 ~~(14)~~ (13) Execute a will and other estate planning
7 documents, including trust documents, durable power of
8 attorney, and an advance health care directive."

9 SECTION 8. Section 580-22, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§580-22 Nonage.** An action to annul a marriage on the
12 ground that one of the parties was under legal age[7] may be
13 brought by the parent or guardian entitled to the custody of the
14 minor, or by any person admitted by the court to prosecute as
15 the friend of the minor. In no case shall the marriage be
16 annulled on the application of a party who was of legal age at
17 the time it was contracted[; ~~nor when it appears that the~~
18 ~~parties, after they attained the legal age, had for any time~~
19 ~~freely cohabited as a married couple]."~~

20 SECTION 9. Section 587A-15, Hawaii Revised Statutes, is
21 amended by amending subsections (c) and (d) to read as follows:



1 "(c) Unless otherwise provided in this section or as
2 otherwise ordered by the court, a child's family shall retain
3 the following rights and responsibilities after a transfer of
4 temporary foster custody or foster custody, to the extent that
5 the family possessed the rights and responsibilities [~~prior to~~
6 before the transfer of temporary foster custody or foster
7 custody:

- 8 (1) The right of reasonable supervised or unsupervised
9 visitation at the discretion of the authorized agency
10 or the court;
- 11 (2) The right to consent to adoption[~~, to marriage,~~] or to
12 major medical or psychological care or treatment; and
- 13 (3) The continuing responsibility to support the child,
14 including repayment for the cost of any care,
15 treatment, or other service provided by the authorized
16 agency or the court for the child's benefit.
- 17 (d) If an authorized agency has permanent custody, it has
18 the following duties and rights:
- 19 (1) Assuming the parental and custodial duties and rights
20 of a legal custodian and family member;



- 1 (2) Determining where and with whom the child shall live;
2 provided that the child shall not be placed outside
3 the State without prior order of the court;
- 4 (3) Ensuring that the child is provided with adequate
5 food, clothing, shelter, psychological care, physical
6 care, medical care, supervision, and other necessities
7 in a timely manner;
- 8 (4) Monitoring whether the child is being provided with an
9 appropriate education;
- 10 (5) Providing all required consents for the child's
11 physical or psychological health or welfare, including
12 medical, dental, psychiatric, psychological,
13 educational, employment, recreational, and social
14 needs;
- 15 (6) Providing consent for the child's application for a
16 driver's instructional permit, provisional driver's
17 license, or driver's license;
- 18 (7) Providing consent to adoption[~~7~~] and change of name[~~7~~
19 and marriage]; and
- 20 (8) Submitting a written report to the court if the child
21 leaves the home of the permanent custodian for a



1 period of seven consecutive days or more. The report
 2 shall state the child's current situation and shall be
 3 submitted on or before the tenth day, excluding
 4 Saturdays, Sundays, and holidays, after the child
 5 leaves the home."

6 SECTION 10. Section 707-730, Hawaii Revised Statutes, is
 7 amended by amending subsection (1) to read as follows:

8 "(1) A person commits the offense of sexual assault in the
 9 first degree if the person:

10 (a) Knowingly subjects another person to an act of sexual
 11 penetration by strong compulsion;

12 (b) Knowingly engages in sexual penetration with a person
 13 who is less than fourteen years old;

14 (c) Knowingly engages in sexual penetration with a person
 15 who is at least fourteen years old but less than
 16 sixteen years old; provided that the actor is[+
 17 ~~(i)~~ ~~no~~] no less than five years older than the
 18 minor[+~~and~~

19 ~~(ii) Not legally married to the minor];~~

20 (d) Knowingly subjects to sexual penetration a person who
 21 is mentally defective; provided that the actor is



1 negligent in not knowing of the mental defect of the
2 victim; or

3 (e) Knowingly subjects to sexual penetration a person who
4 is mentally incapacitated or physically helpless as a
5 result of the influence of a substance that the actor
6 knowingly caused to be administered to the other
7 person without the other person's consent.

8 Paragraphs (b) and (c) shall not be construed to prohibit
9 practitioners licensed under chapter 453 or 455 from performing
10 any act within their respective practices."

11 SECTION 11. Section 707-731, Hawaii Revised Statutes, is
12 amended by amending subsection (1) to read as follows:

13 "(1) A person commits the offense of sexual assault in the
14 second degree if the person:

15 (a) Knowingly subjects another person to an act of sexual
16 penetration by compulsion;

17 (b) Knowingly subjects to sexual penetration a person who
18 is mentally incapacitated or physically helpless;

19 (c) While employed:

20 (i) In a state correctional facility;



- 1 (ii) By a private company providing services at a
- 2 correctional facility;
- 3 (iii) By a private company providing community-based
- 4 residential services to persons committed to the
- 5 director of corrections and rehabilitation and
- 6 having received notice of this statute;
- 7 (iv) By a private correctional facility operating in
- 8 the State; or
- 9 (v) As a law enforcement officer as defined in
- 10 section 710-1000,
- 11 knowingly subjects to sexual penetration: an
- 12 imprisoned person; a person confined to a detention
- 13 facility; a person committed to the director of
- 14 corrections and rehabilitation; a person residing in a
- 15 private correctional facility operating in the State;
- 16 a person in custody; a person who is stopped by a law
- 17 enforcement officer; or a person who is being
- 18 accompanied by a law enforcement officer for official
- 19 purposes; provided that this paragraph shall not be
- 20 construed to prohibit a law enforcement officer from



1 performing a lawful search pursuant to a warrant or
2 exception to the warrant clause; or
3 (d) Knowingly subjects to sexual penetration a person who
4 is at least sixteen years old and the actor is
5 contemporaneously acting in a professional capacity to
6 instruct, advise, or supervise such a person; provided
7 that the actor is[+
8 ~~(i) No~~] no less than five years older than the
9 minor[+and
10 ~~(ii) Not legally married to the minor]~~.

11 Paragraphs (b) and (c) shall not be construed to prohibit
12 practitioners licensed under chapter 453 or 455 from performing
13 any act within their respective practices."

14 SECTION 12. Section 707-732, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

16 "(1) A person commits the offense of sexual assault in the
17 third degree if the person:

18 (a) Recklessly subjects another person to an act of sexual
19 penetration by compulsion;



- 1 (b) Knowingly subjects to sexual contact a person who is
- 2 less than fourteen years old or causes such a person
- 3 to have sexual contact with the actor;
- 4 (c) Knowingly engages in sexual contact with a person who
- 5 is at least fourteen years old but less than sixteen
- 6 years old or causes such a person to have sexual
- 7 contact with the actor; provided that the actor is[+]
- 8 ~~(i) No~~ no less than five years older than the
- 9 minor[+~~and~~
- 10 ~~(ii) Not legally married to the minor~~];
- 11 (d) Knowingly subjects to sexual contact a person who is
- 12 mentally incapacitated or physically helpless, or
- 13 causes such a person to have sexual contact with the
- 14 actor;
- 15 (e) Knowingly subjects to sexual contact a person who is
- 16 mentally defective, or causes such a person to have
- 17 sexual contact with the actor; provided that the actor
- 18 is negligent in not knowing of the mental defect of
- 19 the victim;
- 20 (f) While employed:
- 21 (i) In a state correctional facility;



- 1 (ii) By a private company providing services at a
- 2 correctional facility;
- 3 (iii) By a private company providing community-based
- 4 residential services to persons committed to the
- 5 director of corrections and rehabilitation and
- 6 having received notice of this statute;
- 7 (iv) By a private correctional facility operating in
- 8 the State; or
- 9 (v) As a law enforcement officer as defined in
- 10 section 710-1000,
- 11 knowingly subjects to sexual contact, or causes to
- 12 have sexual contact: an imprisoned person; a person
- 13 confined to a detention facility; a person committed
- 14 to the director of corrections and rehabilitation; a
- 15 person residing in a private correctional facility
- 16 operating in the State; a person in custody; a person
- 17 who is stopped by a law enforcement officer; or a
- 18 person who is being accompanied by a law enforcement
- 19 officer for official purposes; provided that this
- 20 paragraph shall not be construed to prohibit a law
- 21 enforcement officer from performing a lawful search



1 pursuant to a warrant or an exception to the warrant
2 clause; or

3 (g) Knowingly, by strong compulsion, has sexual contact
4 with another person or causes another person to have
5 sexual contact with the actor.

6 Paragraphs (b), (c), (d), (e), and (f) shall not be
7 construed to prohibit practitioners licensed under chapter 453
8 or 455 from performing any act within their respective
9 practices."

10 SECTION 13. Section 707-733, Hawaii Revised Statutes, is
11 amended by amending subsection (1) to read as follows:

12 "(1) A person commits the offense of sexual assault in the
13 fourth degree if:

14 (a) The person knowingly subjects another person, not
15 married to the actor, to sexual contact by compulsion
16 or causes another person, not married to the actor, to
17 have sexual contact with the actor by compulsion;

18 (b) The person knowingly exposes the person's genitals to
19 another person under circumstances in which the
20 actor's conduct is likely to alarm the other person or
21 put the other person in fear of bodily injury;



1 (c) The person knowingly trespasses on property for the
2 purpose of subjecting another person to surreptitious
3 surveillance for the sexual gratification of the
4 actor; or

5 (d) The person knowingly engages in or causes sexual
6 contact with a minor who is at least sixteen years old
7 and the person is contemporaneously acting in a
8 professional capacity to instruct, advise, or
9 supervise the minor; provided that[+]

10 ~~(i) The] the person is [~~not~~] no less than five years
11 older than the minor[; and~~

12 ~~(ii) The person is not legally married to the minor]."~~

13 SECTION 14. Section 572-2, Hawaii Revised Statutes, is
14 repealed.

15 [~~"§572-2 Consent of parent or guardian. Whenever any~~
16 ~~person who is under the age of eighteen is to be married, the~~
17 ~~written consent of his or her parents, or guardian or other~~
18 ~~person in whose care and custody he or she may be, shall~~
19 ~~accompany the application for a license to marry. No license~~
20 ~~shall be issued to any minor who is under the jurisdiction of~~



1 ~~the family court without the written consent of a judge of such~~
2 ~~court."]~~

3 SECTION 15. Section 572-9, Hawaii Revised Statutes, is
4 repealed.

5 [~~§572-9 Persons under age. Whenever any person who is~~
6 ~~under the age of eighteen, whose parents are dead, or who is a~~
7 ~~ward of a family court, applies for a license to marry, he or~~
8 ~~she shall set forth in the statement accompanying the~~
9 ~~application, the name of his or her guardian or of any other~~
10 ~~person in whose care and custody he or she may be."]~~

11 SECTION 16. This Act does not affect rights and duties
12 that matured, penalties that were incurred, and proceedings that
13 were begun before its effective date.

14 SECTION 17. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 18. This Act shall take effect on July 1, 3000.



H.B. NO. 729 H.D. 2

Report Title:

Marriage; Legal Age; Family Court; Guardianship; Penal Code

Description:

Raises the minimum age to enter into marriage from sixteen to eighteen years of age. Repeals the authority of parents and the family court to consent to a minor's marriage. Repeals spousal cohabitation after the parties attain legal age as an exception for an annulment based on nonage. Repeals exemptions for sexual assault of a minor if the perpetrator is married to the minor. Makes conforming amendments. Effective 7/1/3000. (HD2)

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

