



SB0949 - Family Law – Authorization for a Minor to Marry

Presented to the Hon. Will Smith and Members of the Senate Judicial Proceedings Committee
March 4, 2020 12:00 p.m.

POSITION: OPPOSE

NARAL Pro-Choice Maryland **urges the Senate Judicial Proceedings Committee an unfavorable report on SB0949 - Family Law – Authorization for a Minor to Marry**, sponsored by Senator Sarah Elfreth.

Our organization is an advocate for reproductive health, rights, and justice. As part of our efforts to protect reproductive freedom for all Marylanders, we work to ensure every child-bearing individual has the right to decide if, when, and how many children to have. We honor pregnancy in all its complexity. In doing so, we support pregnant and parenting youth as they navigate the challenges of building their families in good health, in safety, and with dignity.

Based on statistics from 2014 to 2018, approximately 800 babies are born in Maryland to those ages 15 to 17. Some in a consensual, loving relationship may freely choose to marry to more effectively co-parent with their partners. Youth seek legal marriage for a variety of reasons, such as accessing a partner's health insurance coverage, gaining priority for housing assistance for married couples, solidifying custody rights, receiving military spousal benefits, or adhering to one's cultural and religious norms. The U. S. Supreme Court has recognized the many benefits associated with legal marriage, including but not limited to health insurance, taxation, property rights, spousal privilege, hospital access, and medical decision-making authority.

However, minors who marry in Maryland are not automatically legally emancipated. The ability to seek a legal emancipation order is an important option for minors seeking to build homes separate from parents and legal guardians and control their own finances as they form their own families. As advocates for youth, we are aware that minors may seek emancipation orders authorizing the same rights as adults for a variety of reasons, and removing what is known as the “disability of minority”. If a 16 or 17-year-old can prove to a court of law the ability to be able to manage one’s own affairs without parental involvement and meet basic needs, that person should have the right to contract, and should include the constitutional right to committing to a legal, consensual marriage. For pregnant youth, there should be as little delay as possible as when securing these rights, as areas such as access to healthcare and stable housing are paramount to promoting healthy pregnancy outcomes.

16 is the age to consent to sex in Maryland, and youth 16 and 17 years-old who decide to form their own families should have access to medical services and legal rights to adequately care for themselves throughout pregnancy and for any children they might have. The legal benefits of marriage can help those seeking positive pregnancy outcomes and the ability to raise their children in safety and good health. We cannot say to a 16-year-old who has made an 18-year commitment to raise a child that she has the capacity and agency to make such a mature decision and take on such responsibilities, but not mature enough to determine whether to act in her best interests by marrying her partner to help build her family.

SB0949 attempts to address two important reproductive justice issues: reducing incidences of forced marriage and ensuring the right to marry as it figures into pregnancy decision-making. However, we believe it fails to do both. The legislation seeks to reduce the number of marriages under the age of 17 by creating a legal mechanism requiring a judicial review of the minor seeking a marriage license, and on broad grounds that leave open the opportunity for discrimination against the youth if a judge feels no person under 18 should be afforded the right to marry. The judicial review requires extensive documentation including any child abuse, protective orders, or criminal records affecting either party – as if the presumption is that any minor seeking to engage in the legal proceeding is a potential abuse victim and anyone that is a minor is potential perpetrator – coloring the dynamic of the legal proceeding. The standards appear to be what is “appropriate” or “necessary”, rather than what is in the best interests of the petitioner. A judge who thinks that anyone under 17 is too immature to marry can deny all petitions.

SB0949 seeks to create a separate legal mechanism that does not include emancipation, which is different from the one detailed in pending legislation also introduced this session, SB0680, Family Law - Minors - Emancipation (Emancipation of Minors Act). We want to ensure that all 16 and 17-year-olds who are pregnant or newly parenting have access to the legal benefits of marriage or other benefits and resources which can be secured through the right to contract. SB0949 seeks to stop forced marriage – which is a domestic violence issue affecting victims of any age - by simply denying the applicant under the age of 18 a marriage license unless someone at least 17 years of age has successfully be granted permission through the judicial review process, which appears to have no set timeline for convening a hearing after the petition has been filed. SB0949 does not address forced marriage through a system’s advocacy framework, but instead seeks to eliminate the constitutional right to marry for minors in Maryland.

It is important to note that SB0949 seeks to remove the current laws authorizing certain minors to marry. Stripping young people of the human right of marriage should not be taken lightly. Advocates have cautioned legislators to not pass a law that will discriminate against youth who seek to marry according to their personal belief systems or remove themselves from families where abuse, neglect or criminal activity may exist. The desire to form a new family is stronger when parents are missing, incarcerated or deceased. Also, an unexpected pregnancy can bring out the worst in families, triggering acts of violence, humiliation and rejection. Banning marriage without any legal exception interferes with autonomous pregnancy and parenting decision-making as it blocks the option of marrying for those who fear unhealthy parental interference. No one has an interest in subjecting youth to reproductive coercion. Faced with abusive parents, a young person may choose to terminate a pregnancy for fear of being unable to provide her baby a safe home or be forced to surrender her child to adoption as a condition of her remaining in her home. Again, the right to marry figures into pregnancy decision-making, and the state shall not interfere with pregnancy-decision making.

We urge the Maryland General Assembly to not ignore that youth have agency and the right to act in their best interests. Maturity evolves from facing life challenges, resolving conflicts, and increasing one’s responsibilities. Maturity is not suddenly granted by achieving the numerical age of 18. We need to strike the balance and agree on a systems advocacy approach against forced marriage that will also respect the different maturity levels, familial support, cultural norms and individual circumstances of young people choosing legal marriage. We must try harder to suspend old notions of how all youth should act and meet youth where they really are. For these reasons, **NARAL Pro-Choice Maryland urges an unfavorable report on SB0949**, and urges the committee to concentrate its efforts on the passage of SB0680, which will give the legal rights of 16 and 17-year-olds to decide for themselves whether to consensual marry when forming their own families. Thank you for your time and consideration.