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Matrimonial Matters

Age of consent changes

When this column addresses New York Domestic Relations Law, it is almost always in the context of divorce. However, a new law became effective on July 20 of this year that raises the required minimum age to marry in New York from 14(!) to 17 and sets specific requirements when a person between 17 and 18 years of age wishes to get married. Included in the requirements are the consent of the 17-year-old's parents and that of the Family or Supreme Court.

The age and consent requirements were instituted because of the reported incidence of forced marriage of young girls. According to the Justification provided in support of the changes in the law:

As highlighted in a New York Times Op-Ed (Fraidy Reiss, "America's Child-Marriage Problem," Oct. 13, 2015), a survey by the Tahirih Justice Center identified 3,000 known or suspected cases of forced marriage in the United States between 2009 to 2011, many of which involved girls under age 18. Parents force their children into marriages, citing reasons such as protecting "family honor," controlling the child's behavior and/or sexuality, and enhancing the family's status. Such reasons are reminiscent of the reasons for allowing girls age 14 and over but under age 16 to marry with court approval in 1929.

The occurrence of child marriage is not limited to a particular culture or religion, but is widespread in the United States (Reiss). Child marriage or forced marriage, or both, occur in families across faiths, including Muslim, Christian, Hindu, Buddhist, Sikh, Orthodox Jew, Mormon and Unification Church (2011 National Survey



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Results, Tahirih Justice Center). Tactics such as threats of ostracism, beatings or death are used to force children to marry against their will.

According to Reiss, data from the State Department of Health reveal that in the period 2000-10, 3,853 children were married in New York. In 2013 alone, there were 80

marriages in New York, outside of New York City, where at least one party was under age 18 (New York State Department of Health Table 46: Marriages by Age of Bride and Age of Groom—New York State Exclusive of New York City).

Based on anecdotal evidence, we have learned that the court approval process under current law for the authorization of marriage of persons under 16 years of age has not provided adequate protections for a child against abuse and fraud on the part of parents or guardians to force a child into marriage. This legislation will strengthen the process as applied to marriage of persons at least 17 but under 18 years of age by requiring, among other things: (i) the appointment of an attorney for the child who must have received training in domestic violence including a component on forced marriage; (ii) the court conducting, with respect to each party, including a minor party, a review of related decisions in court proceedings initiated pursuant to Article 10 of

the Family Court Act, and all warrants issued under the Family Court Act, reports of the orders of protection registry, and reports of the sex offender registry; (iii) the court holding an in-camera interview, separately and alone with each minor party; and (iv) the court making specific written affirmative findings.

We have learned further that marriage at any age before 18 undermines girls' health, education and economic opportunities, and it increases their likelihood of experiencing violence as well. Clinton Foundation & Gates Foundation, No Ceilings: The Full Participation Report: Highlights (Mar.2015), at p. 3, available at <http://noceilings.org/report/highlights.pdf>.

As a matter of public policy, no parent or court should be permitted to bind a child under the age of 17 to a contract where the child lacks the capacity as well as the opportunity to consent.

The changes in the law are significant and provide strict procedures, including a detailed "Notice To 17-Year Olds Who Want To Get Married" that the Family Court or the Supreme Court is required to give to a 17-year-old who has made the statutory application to the court for permission to marry. The entirety of the new law is available at the New York State Assembly's (nyassembly.gov) using the "Bill Search" feature. The bill number is A05524B.

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