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PROTECTING THE CHILD BRIDE: FOLLOWING TEXAS' MIDDLE-GROUND APPROACH

*Wendy Ross**

I. INTRODUCTION

A. Scenario Number One—Julie's Story

Ronald and Julie are high school sweethearts who want to marry. The two are expecting their first child. Although they know it will not be easy, they hope to start their own family and raise the new baby together. However, the law in the State of Texas prevents them from legally having their own family because they are both under the age of eighteen. In order to marry and start their family, both teenagers must first be emancipated. Yet, neither the teen couple nor their families can afford the legal expense to obtain an order of emancipation. The couple consider eloping in another state. However, that also takes money they do not have. When one thinks about young love, situations like that of Ronald and Julie often come to mind. However, just like Ronald and Julie, these relationships are complex and do not always have a happily-ever-after ending.

B. Scenario Number Two—Lyndsy's Story

At the age of seventeen, Lyndsy's parents forced her to marry the man who had statutorily raped her repeatedly for three years. Lyndsy originally met this man after her Christian family took him in. He later asked her family's permission to marry her, and the parents consented to the marriage. The marriage ended after eight years of abuse.¹

Although commonly thought to be a problem in developing countries, child marriage is a huge problem in the United States.² In fact, "characterizing child marriage as foreign (whether nationally or religiously or both) . . . allows

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1. Sarah Ruiz-Grossman, *Texas Just Banned Child Marriage*, HUFFINGTON POST (June 16, 2017, 1:58 PM), https://www.huffpost.com/entry/texas-bans-child-marriage-law_n_594402a4e4b06bb7d272b673.

2. Shanika Gunaratna, *The "Ugly" Reality of Child Marriage in the U.S.*, CBS NEWS (May 5, 2017, 3:47 PM), <https://www.cbsnews.com/news/child-marriage-in-the-u-s-surprisingly-widespread/>. "When it comes to child marriage laws, the U.S. [is] comparable to countries like Iran, Saudi Arabia and Yemen." *Id.*

Americans to ignore [child] marriage in their midst.”³ Child marriage is a marriage where at least one of the parties is under the age of eighteen.⁴ Child marriage “happens across countries, cultures, [and] religions.”⁵ Child marriage was initially commonplace in the early history of the United States; however, the U.S. Census Bureau did not keep track of the ages of children marrying until 1880.⁶ At this time, the child marriage rate was at 11.7%.⁷ Moreover, statistics show that the marriage rate for children who marry in the United States is not much lower today than it was during early American history.⁸ A recent study in 2011 reveals that an estimate of about 9% of women who would have married around the 1950s or 1960s, married before they were eighteen.⁹ It is estimated that youth today still marry in the United States at a rate of 6% for women and 2% for men.¹⁰ Therefore, child marriage is not a matter of the past in the United States but is still one that the United States—as a nation—has yet to conquer.

Child marriages historically affect girls more so than boys. In fact, in 2010, the Center for Disease Control reported that for the preceding five-year period, 4% of teen girls and 1% of teen boys married before age eighteen.¹¹ As a result, feminists have traditionally fought to police girls’ chastity throughout time.¹² However, further discussion of this is outside of the discussion of this paper. This paper will focus on the concern of “child brides,” or minors under the age of eighteen.¹³

At the heart of this child marriage problem are two concerns: 1) protection of the underage and immature minor who voluntarily chooses to marry another minor—an adult decision (although he or she may not yet be ready); and 2) protection of minors, particularly girls, from forced or coerced marriages—those marriages characterized as “legalized rape,”¹⁴ where the child

3. NICHOLAS L. SYRETT, *AMERICAN CHILD BRIDE: A HISTORY OF MINORS AND MARRIAGE IN THE UNITED STATES* 6 (2016). “Americans have represented youthful marriage as something practiced only by backward people who live elsewhere or deliberately flout the law if they live here.” *Id.*

4. *About Child Marriage*, <https://www.girlsnotbrides.org/about-child-marriage/> (last visited June 24, 2021).

5. *Id.*

6. SYRETT, *supra* note 3, at 2.

7. *Id.*

8. *Id.* at 2–3.

9. *Id.* This study was published in the journal of the American Academy of Pediatrics. *Id.*

10. *Id.* at 3. The Centers for Disease Control provided this estimate. *Id.*

11. *Id.* at 253.

12. SYRETT, *supra* note 3, at 178–79.

13. *Child Marriage*, <https://www.unicef.org/protection/child-marriage> (last updated June 2021). UNICEF refers to child brides on its website concerning child marriages. *Id.*

14. Joe Sonka, *Bill to Outlaw Child Marriage in Kentucky Passes Senate Committee*, INSIDER LOUISVILLE (Mar. 6, 2018), <https://louisvilleinsight.com/archived-news/bill-to->

is married to a significantly older adult.¹⁵ Each of these two scenarios above reveals the dilemma faced by state legislatures. As the debate continues around the country, each state must reach its own conclusion as to how to resolve the child marriage problem within its borders.¹⁶ This Article acknowledges that the second scenario is most likely the more egregious problem produced by underage marriages laws and must be dealt with by the states. Child brides must be protected from “legalized rape,”¹⁷ while mature brides, such as in the first scenario, should be allowed the freedom to marry men close to their age as long as it is an independent and educated decision. Therefore, Texas’ 2017 law—with its two-step procedure—is the best policy for states to follow because it is the middle-ground approach and ensures that the child is protected.

Prior to 2017, Texas had a particularly large number of minors marrying before the age of eighteen.¹⁸ This Article examines how Texas resolved the child marriage epidemic in its state and argues that Texas’ middle-ground approach is the best model to fix the nation’s child marriage problem. Because Texas requires that child brides be emancipated before marriage—mature brides who have been previously determined to be ready to be adults—it should be a model that other states and, maybe the nation adopt with the addition of some minor changes.¹⁹ These changes should include restricting the age difference between the underage bride and her groom to be in compliance with local statutes. This Article contends that because the Texas emancipation process protects the child bride from legalized rape and provides the child

outlaw-child marriage-in-kentucky-passes-senate-committee/. This article quotes Eileen Recktenwald, Executive Director of the Kentucky Association of Sexual Assault Programs, on her statement regarding Kentucky’s vote in the Senate Judiciary Committee on the Child Marriage Bill. Recktenwald refers to these marriages involving children marrying men who are much older as “legalized rape of children.” *Id.*

15. Rainesford Stauffer, *Why Are Some States Quietly Trying to Make it Easier to Marry Young Girls?*, INSTYLE (Oct. 25, 2019, 11:00 AM), <https://www.instyle.com/news/child-marriage-laws-by-state>. “The United States considers child bride to be a human rights abuse in other countries, but adult men marrying 13- and 14-year-old girls is legal right on our shores, and laws to change that keep getting shot down.” *Id.*

16. See ROBERT E. OLIPHANT & NANCY VER STEEGH, *WORK OF THE FAMILY LAWYER* 83 (3rd ed. 2012). “State power to regulate marriage has been viewed, absent constitutional considerations, as a matter solely within the province of the state legislature.” *Id.* Thus, there is no national or federal law that mandates the age of marriage. Therefore, because the right to marry and the age at which a person may apply to be married has been established to be solely in the realm of the State and its police power, each State decides at what age citizens within its borders may marry and the policy for the State to recognize the marriage as legal. *Id.* See also Stauffer, *supra* note 15.

17. Sonka, *supra* note 14.

18. On September 1, 2017, the new S.B. 1705 enacted by the Texas Legislature took effect. The new law banned marriages involving minors below the age of eighteen, unless the minor was already emancipated. TEX. FAM. CODE § 2.101 (LEXIS 2017).

19. *Id.*

with a voice in the marriage, it is a solution to the child bride problem. Section II defines the legality of child marriages in the United States. Section III discusses child marriages today. Section IV reviews state legislation regarding child marriage. Section V examines public reactions to the child marriage problem. Section VI looks at a case study: Texas' approach to child marriages. Section VII considers Texas' approach as a model for other states. Section VIII concludes the Article.

Both of the above scenarios (the voluntary immature and the involuntary coerced child bride) illustrate the divergent issues faced by the legislatures of each state and the difficult problem state legislators who draft child marriage laws must solve. The following Section will provide a history of child marriage laws and review how society has chosen to deal with them.

II. REFORMATION OF CHILD MARRIAGE LAWS—A HISTORICAL REVIEW

The attempt to reform child marriage laws is not new in the United States. In the 1920s, activists for child marriage reform sought to eliminate child marriage laws.²⁰ At this time in the nation's history, many of the younger members of society were intentionally sexually rebellious and intentionally challenged traditional notions of sexuality in marriage.²¹ While many reformers saw child marriage as a way to protect children, "even [reformers'] best child-protectionist ambitions were tinged with fears about societal woes and class and ethnic prejudice."²² Many critics of child marriage in the 1950s and 1960s worried that teens, particularly white teens, "might be squandering their own life through early marriage."²³ These reformers questioned whether marriage was best for children and believed that childhood was a "stage of life" that should be protected.²⁴ "The difficulty for reformers was that young people were behaving in ways that were out of [the norm in] keeping with their chronological age, whose growing importance was making these age-inappropriate behaviors that [were] much more glaring."²⁵ In fact, the young population during the 1920s era underwent a major shift in paradigm as to the acceptance and expressions of sexuality.²⁶ "To the horror of social workers

20. SYRETT, *supra* note 3, at 166–68. These activists included social workers, reformists, and feminists of the time. *Id.*

21. *Id.* at 166.

22. *Id.* at 168.

23. *Id.* at 257.

24. *Id.* at 148.

25. *Id.* at 177.

26. SYRETT, *supra* note 3, at 166.

and reformers, many working-class girls were well aware of their sexuality and were unafraid to act on it.”²⁷

Marriage was the vehicle that children used to liberate themselves from their parental control and societal restrictions as a child.²⁸ It allowed them freedom of sexual relations within marriage.²⁹ Thus, many children saw marriage as a means to contest their status as a child and the traditional restrictions that came along with it.³⁰

As a result of the child marriage epidemic in the 1920s, many activists sought to reform child marriage laws. Proponents for child marriage reform in the nineteenth century had been informally divided into two groups: 1) feminists who wanted to end child marriages to protect children from the evils of marriage; and 2) those who wanted to protect the institution of marriage from future divorces—the 1920s saw reformers banding together, apparently to protect children.³¹ But their perspective was not as focused as it may seem at first blush: these reformists also believed that “allowing children to marry would ‘weaken and cheapen the institution of marriage itself.’”³² Thus, advocates sought to enact laws to prevent child marriages to further these goals.³³ These efforts included attempts to raise the minimum age requirements and raise the age when parental consent was required.³⁴ In 1920, twelve states raised their minimum age limits for marriage as a result of the work of these activists.³⁵ Additionally, marriage reformers were successful in persuading states to require documentation for proof of the child’s age for marriage licensure.³⁶

Marriage had different meanings in the early 1900s than it does today. Historically, marriage in the United States was based on English common law³⁷ and eighteenth century laws—“when it was marital status (not age or

27. *Id.* at 166.

28. *Id.* at 153–54.

29. *Id.* at 154.

30. *Id.* at 162.

31. *Id.* at 168. This included the belief that child marriage had connections to “exploitation, prostitution, and disorderly houses.” *Id.* at 178. Marriage was seen as the “building block of society.” *Id.* at 7.

32. SYRETT, *supra* note 3, at 7.

33. See Lynn D. Wardle, *Rethinking Marital Age Restrictions*, 22 J. FAM. L. 1, 26 (1983). This article discusses the New York Case of *Moe v. Dinkins*, marriage age restrictions, and the court’s goal of “preventing unstable marriages.” *Id.* at 4.

34. SYRETT, *supra* note 3, at 181.

35. *Id.* These states included Arizona, California, Connecticut, Delaware, Minnesota, New Mexico, New York, North Carolina, Pennsylvania, and Vermont. New Hampshire, Nebraska, and Ohio changed the age when the child needed parental consent. *Id.*

36. *Id.*

37. *Legal Definition of Husband and Wife*, THE FREE DICTIONARY, <https://legal-dictionary.thefreedictionary.com/Husband+and+Wife> (last visited June 11, 2021). See also Wardle, *supra* note 33, at 5–6. At common law children under seven could not marry. *Id.* From ages

consent) that determined whether sexual activity was legal or illegal.”³⁸ In fact, the early records on marriage did not record the exact age of children who married.³⁹ It was not until around 1910 that the Census Bureau recorded the specific age of the child entering marriage.⁴⁰ Public policy strongly pushed towards marriage,⁴¹ and society pushed notions of “purity” as a whole for teens in society.⁴² Marriage was seen as the proper place for sexual activity.⁴³ So, any girl with a bad reputation who was in violation of these purity laws was forced to marry instead of going to reform school or jail.⁴⁴ Additionally, marriage was the antidote to statutory rape and forced rape.⁴⁵ Thus, marriage was the solution parents chose to rescue their daughters from scandals and rumors.⁴⁶

Early American history set age limits for children marrying according to religious canon laws.⁴⁷ English law dictated the minimum age a person was eligible to marry.⁴⁸ These age limits were seven, twelve, and fourteen.⁴⁹ Seventeenth-century English theorist Swinburne, in his *Treaty of Spousal's or Matrimonial Contracts*, recognized that children before these ages demonstrated a “lack of intellectual capacity with tender years: infants below seven were not old enough to make sound decisions.⁵⁰ Above that age they were capable of sound reason and judgment, though not as much as when they reached the ages of twelve, fourteen, or indeed twenty-one.”⁵¹ Swinburne

seven to fourteen (twelve for girls), which was the “age of discretion,” marriage was possible, but remained avoidable by either party until both reached the “age of discretion.” *Id.* at 6.

38. Charlotte Alter, *Why It's Still Legal for Underage Girls to Marry in the U.S.*, TIME (June 1, 2017, 5:39 AM), <https://time.com/4800808/why-its-still-legal-for-underage-girls-to-marry-in-the-u-s/>.

39. SYRETT, *supra* note 3, at 146–47.

40. *Id.* at 147.

41. *See Legal Definition of Husband and Wife, supra* note 37.

42. Ashley Belanger, *Child Marriage in the United States, Explained*, TEEN VOGUE (Sept. 5, 2017), <https://www.teenvogue.com/story/child-marriage-in-the-united-states-explained?verso=true>.

43. SYRETT, *supra* note 3, at 166–68, 177.

44. *See* Belanger, *supra* note 42.

45. *Id.* *See also* Editors of FindLaw, *Statutory Rape*, FINDLAW, <https://www.findlaw.com/criminal/criminal-charges/statutory-rape.html> (last updated Apr. 5, 2019). Statutory rape is defined as “sexual relations involving someone below the ‘age of consent.’ People who are underage cannot legally consent to having sex, so any form of sexual activity with them violates the law. . . . In the eyes of the law, people below this age are simply too immature to make a decision that could have consequences Society protects them by making it a criminal offense to have sex with them.” *Id.*

46. SYRETT, *supra* note 3, at 177.

47. *Id.* at 21.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

thought “twelve and fourteen—were indicative of the age when young people were ‘presumed to be of discretion, and able to discern betwixt good and evil, and what is for their profit and disprofit.’”⁵² Furthermore, Swinburne believed these ages appropriate as the earliest girls and boys had the ability to perform the biological and sexual responsibilities of marriage.⁵³ One hundred years later, American reformers would argue that “[t]o permit marriage to be entered into casually by immature young people who have no sense of its social responsibilities, its obligations, and but little training in the ideals of family life, is to weaken and cheapen the institution of marriage itself.”⁵⁴

To date, there is no national law or federal law concerning child marriages domestically. Each state individually determines the age requirements and terms for those desiring to marry within its borders as an exercise of its police powers.⁵⁵ In 2010, Congress failed to pass legislation for child marriages under the United Nations Convention on the Rights of the Child (UNCRC)⁵⁶ and the International Protecting Girls by Preventing Marriage Act⁵⁷—the first of which would have put national limitations on the age a child could marry.⁵⁸ In 2012, Congress passed legislation to limit child marriage internationally in the International Protection of Girls by Preventing Child Marriage Act of 2012, which prevents child marriages for those under eighteen but limited its application to developing countries (except in those

52. SYRETT, *supra* note 3, at 21–22.

53. *Id.* at 195.

54. *Id.* at 22.

55. OLIPHANT & VER STEEGH, *supra* note 16, at 83.

56. *Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org/child-rights-convention/convention-text> (last visited Aug. 29, 2021). The United Nations Convention on the Rights of the Child is a treaty adopted by several countries that recognizes that “children are not just objects who belong to their parents and for whom decisions are made, or adults in training. Rather, they are human beings and individuals with their own rights.” *What is the Convention on the Rights of the Child?*, UNICEF, <https://www.unicef.org/child-rights-convention/what-is-the-convention> (last visited Aug. 29, 2021). Invoking “principles of self-government and federalism,” Senate Resolution 99 in the 112th Congressional Session recommended the President not submit the Convention on the Rights of the Child to the Senate. S. Res. 99, 112th Cong. (2011). “[T]he primary safeguard for the well-being and protection of children is the family, and . . . the primary safeguards for the legal rights of children in the United States are the Constitutions of the United States and the several States” *Id.* See generally Lida Minasyan, *The United States Has Not Ratified the UN Convention on the Rights of the Child*, ATLAS CORPS (Sept. 30, 2018), <https://atlascorps.org/the-united-states-has-not-ratified-the-un-convention-on-the-rights-of-the-child/>.

57. S. 987, 111th Cong. (2010); see Amanda Terkel, *House Republicans Block Child Marriage Prevention Act*, THE HUFFINGTON POST, www.huffpost.com/entry/house-republicans-block-child-marriage-prevention-act_n_798382 (updated May 25, 2011); see generally Sarah Carlson, *End Child Marriage. Pass the International Protecting Girls by Preventing Child Marriage Act.*, <https://www.change.org/p/end-child-marriage-pass-the-international-protecting-girls-by-preventing-child-marriage-act?redirect=false> (last visited Aug. 29, 2021).

58. See *Convention on the Rights of the Child*, *supra* note 56.

countries that have provided otherwise in their laws).⁵⁹ Additionally, in its foreign policy, the United States has enacted provisions specifically directed at preventing and eliminating forced marriages as a part of its Violence Against Women Act, (hereinafter referred to as VAWA).⁶⁰ Through the VAWA, the United States acknowledges that children “deserve to grow up free of abuse.”⁶¹ However, Congress failed to pass legislation to deal with child marriage in the United States domestically by refusing to pass the 2018 Child Marriage Prevention Act.⁶² This Act specifically would have nullified child marriages in the states.⁶³

Although, historically, this nation has refused to ban child marriages altogether, there is a strong push for states to tighten up their marriage laws by various organizations on behalf of girls who are believed to be exploited and harmed by the system.⁶⁴ Because there is no standardized national or federal law on child marriages in the United States, marriage laws for minors have undergone a number of reforms over the years from our early historical roots.⁶⁵ One major reform involved raising the minimum age for minors to marry and changing the law to require parental consent to marry.⁶⁶ In New York, reformers were able to successfully push to require that all minors provide proof of their age in order to obtain a marriage license.⁶⁷ Finally, advocacy groups were able to push for minimum waiting periods—the period between the marriage application and the performance of the wedding ceremony—for marriages.⁶⁸ These waiting periods were thought to discourage hasty or impulsive incidents of marriages.⁶⁹ They were also designed to provide parents with the ability to intervene or prevent these impulsive or hasty types of marriages of their children since the applications were published in

59. H.R. 6087, 112th Cong. (2012).

60. Violence Against Women Reauthorization Act of 2013, PL 113-4, 127 Stat. 54 (Mar. 7, 2013).

61. In 2013, the U.S. Congress reauthorized the VAWA, in the Immigration and Nationality Act (INA). *See also Child Marriage is Violence Against Women and Girls*, INT’L WOMEN’S HEALTH COALITION, <https://iwhc.org/2014/12/child-marriage-violence-women-girls/> (Dec. 8, 2014). Under this provision, the State Department is required to develop strategies and policies to “end child marriage by directing U.S. foreign assistance to programs in countries where child marriage is prevalent.” *Id.*

62. H.R. 4867, 115th Cong. (2018), <https://www.congress.gov/bill/115th-congress/house-bill/4867/text/>.

63. *See id.*

64. *See SYRETT, supra* note 3, at 11.

65. *See id.* at 2–12.

66. *Id.* at 181.

67. *Id.* Before this, birth certificates were not required as proof of age. In 1927, New York was the first state to impose such a requirement.

68. *Id.* at 182.

69. *Id.*

the paper.⁷⁰ “These legislative efforts reveal a tension between reformers’ commitment to seeing young girls as victims and their sometime recognition that many of these marriages could not occur without the willing participation of both parties.”⁷¹

III. CHILD MARRIAGES TODAY

Although overall the number of marriages in the nation is on the decline, child marriages are still high.⁷²

Fewer Americans overall are getting married, according to the U.S. Census, and those who do are more likely to wait until their 20s or 30s. Still, advocates argue that gaps in state laws are failing to protect minors from being forced or coerced into marriages where they may face violence and sexual assault. . . . Almost 90 percent of minors who married between 2000 and 2015 were girls. . . . While some minors married other minors, these cases were less common. Most married adults who were 18, 19 or in their early 20s.⁷³

In the study by the Tahirih Justice Center and Unchained at Last, the statistics are alarming. It was found that almost 500 children were permitted to marry adults in their 40s, 50s, and over 60.⁷⁴ In 2010, there were 9,247 marriages performed with minors.⁷⁵ This is down from 23,582 marriages in 2000.⁷⁶ Although in most states a person must be at least eighteen years old to marry, just about every state allows for an exception to this rule.⁷⁷ Most of these minors who were married were sixteen or seventeen years old.⁷⁸ A small percentage were under the age of sixteen.⁷⁹ State laws vary; however, in most states, children under eighteen must have parental or judicial consent in order

70. SYRETT, *supra* note 3, at 183.

71. *Id.* at 185.

72. Anjali Tsui, Dan Nolan & Chris Amico, *Child Marriage in America By the Numbers*, FRONTLINE (July 6, 2017), <http://apps.frontline.org/child-marriage-by-the-numbers/>.

73. *Id.* See also Anjali Tsui, *Married Young: The Fight Over Child Marriage in America*, FRONTLINE (Sept. 14, 2017) <https://www.pbs.org/wgbh/frontline/article/married-young-the-fight-over-child-marriage-in-america/> [hereinafter “*Married Young*”].

74. Tsui et al., *supra* note 72.

75. *Id.*

76. *Id.*

77. *United States’ Child Marriage Problem*, UNCHAINED AT LAST (Apr. 2021), <https://www.unchainedatlast.org/united-states-child-marriage-problem-study-findings-april-2021/>.

78. *Id.* The data showed that sixty-seven percent involved minors who were seventeen years old; twenty-nine percent of these cases involved minors who were sixteen years old. Five percent involved minors under sixteen. The youngest children were ten years old. *Id.*

79. *Id.*

to marry.⁸⁰ In eleven states, there is no minimum marriageable age.⁸¹ Ten states require judicial approval for those minors who wish to marry under sixteen.⁸² Thus, child marriages are still performed at a high rate.

A. Texas Statistics

In Texas, the statistics were equally alarming. From the period of 2000-2014, Texas had 40,260 children married within its borders.⁸³ Texas led the nation in child marriages for this period, compared to Alabama at 8,657 and Tennessee at 8,413, the two states with the next highest rates of child marriage.⁸⁴ In 2016, Texas had a rate of seven per 1,000 children marrying between the ages of fifteen and seventeen,⁸⁵ and in 2017, Texas was second in the nation for child marriages.⁸⁶ The causes for these high statistics vary, and there are myriad reasons for the high numbers of child marriages in Texas, as well as in other states, which this Article will address below. About 4,500 children married in the United States in the year 2000 alone, and in recent years, Texas averaged about 2,000 girls marrying each year.⁸⁷ These statistics were not a source of pride for the Texas Legislature.⁸⁸ Finally, previous attempts at modifying the law proved to be unsuccessful in discouraging child marriages.⁸⁹

80. *Id.*

81. *Id.*

82. *See State-by-State Marriage "Age of Consent" Laws*, FINDLAW (last updated Sept. 15, 2020), <https://www.findlaw.com/family/marriage/state-by-state-marriage-age-of-consent-laws.html>.

83. Tsui et al., *supra* note 72.

84. *Id.*

85. Meagan Flynn, *Texas Legislature Passes Bill Aimed to End Its Forced Child Marriages Problem*, HOUSTON PRESS (May 22, 2017, 6:00 AM), <https://www.houstonpress.com/news/bill-passed-in-texas-lege-may-end-its-forced-child-marriages-problem-9454791>.

86. Jan Ross P. Sakian, *Texas Has the Second-Highest Rate of Youth Marriage in the U.S.*, TEXAS PUBLIC RADIO (June 14, 2017, 5:47 PM), <https://www.tpr.org/show/the-source/2017-06-14/texas-has-the-second-highest-rate-of-youth-marriage-in-the-u-s>. This article cites Pew Research Center and states Texas is second to West Virginia for the highest child marriages.

Id.

87. *Protecting Children in Texas from Forced Marriage and Other Harms of Child Marriage: Proposed Legislative Reforms*, TAHIRIH JUST. CTR. FORCED MARRIAGE INITIATIVE, <http://www.tahirih.org/wp-content/uploads/2017/02/Updated-Memo-on-Current-Laws-and-Leg-Reforms-Needed-in-TX.pdf> (last visited July 25, 2021) [hereinafter *Protecting Children in Texas*].

88. *See* Alex Samuels, *New State Law Seeks to Reduce the Number of Child Brides in Texas*, THE TEXAS TRIBUNE (Sept. 26, 2017), <https://www.texastribune.org/2017/09/26/new-law-seeks-reduce-number-child-brides-texas/>.

89. *See id.*

Prior to the passage of the new law, many child advocates in Texas—like in other states—maintained that the pre-2017 law exposed girls to the forced marriages as in the example mentioned above, and, in particular, forced children to grow up prematurely; in response to these concerns, the purpose of the new law was to “not forc[e] women into marriage before their time.”⁹⁰ Some of these child marriages were believed to consist of “heavy parental involvement in whether, when, and whom a child marries.”⁹¹ Activists for the new law were particularly concerned for girls under eighteen who were being forced or coerced against their wishes into marriages either with people who are much older or someone similar in age.⁹² Some believe that because, prior to the new law, Texas had a high rate of human trafficking, that it may have accounted for some child marriages in the state,⁹³ and that parents “[were] exploiting [their own] children for financial gain.”⁹⁴ Some advocates were concerned that many parents married their children off to be rid of their children or to escape financial responsibility for them, particularly in poor families or families where the parents are often abusive or neglectful.⁹⁵ Thus, child brides in Texas, before the passage of the new law, were being forced to enter into an adult world for which they may not have been physically or mentally ready. The following Section will look at both the pros and cons of Texas’ current law and argue that Texas’ current statute is a model for other states to follow.

B. Child Marriage and the Rural Problem

Texas was one of eight states with high child marriage numbers and a rural population.⁹⁶ Teen marriages are more prevalent in rural areas versus urban areas in the United States.⁹⁷ Furthermore, these marriages are likely to involve minors from lower socio-economical backgrounds.⁹⁸ “Almost all the evidence indicates that girls in cities don’t get married young, that girls from middle class or wealthy families, don’t get married young This is a rural phenomenon, and it is a phenomenon of poverty.”⁹⁹ Specifically, teen marriages are much more socially acceptable amongst the teen population in rural

90. *Id.*

91. *Id.* Moreover, the Tahirih Center Organization claims that most of these marriages involved girls married to adult men. *Protecting Children in Texas*, *supra* note 87.

92. Samuels, *supra* note 88.

93. *Id.*

94. *Id.*

95. *Id.*

96. Gunaratna, *supra* note 2.

97. Tsui et al., *supra* note 72.

98. *Id.*

99. *Id.*

communities.¹⁰⁰ This trend is even stronger in the Southern part of the United States.¹⁰¹ Child marriages are particularly prevalent in conservative and religious regions of the South.¹⁰² Moreover, in rural areas, minors from poor backgrounds tend to lack the desire and vision to see their lives outside of marriage and raising children.¹⁰³ (However, by contrast, minors from urban areas tend to see their futures as involving more education or professional careers.)¹⁰⁴ Thus, because Texas has a high rural population, it saw an increase in child marriages before the 2017 change in its Child Marriage Law. The next Section will discuss the different reactions to the child marriage problem across the nation.

IV. THE STATES' LEGISLATION REGARDING THE CHILD MARRIAGE PROBLEM

Texas is not the only state to grapple with child marriages. In fact, in recent years, many states have considered this very issue. These reactions vary from outright prohibition of child marriages to setting a floor on the minimum marriageable age,¹⁰⁵ and some have simply chosen not to do anything about the problem.¹⁰⁶ In 2016, Virginia was the first state to officially limit “marriages to adults” only, with the exception of only teenagers who were legally emancipated.¹⁰⁷ Initially, in 2017, New Jersey was one of the first states to consider outlawing child marriages.¹⁰⁸ Although this 2017 Bill was passed through the New Jersey House of Representatives and Senate

100. SYRETT, *supra* note 3, at 253. West Virginia, Texas, Oklahoma, Arkansas, Tennessee, North Carolina, Nevada, and California lead the nation in child marriages. These areas tend to advocate for sexual abstinence, or for teen marriage “as a good-faith attempt to have sex only in sanctioned ways. . . . Studies show that those who take virginity pledges, themselves linked to conservative religiosity, are more likely to marry early, even if they have already broken the pledges.” *Id.* at 265.

101. *Id.* at 264.

102. *Id.*

103. *Id.* at 253.

104. *Id.*

105. Bethany Blankley, *Analysis: Child marriage is Legal in 49 U.S. States*, THE CENTER SQUARE (May 25, 2018), https://www.thecentersquare.com/national/analysis-child-marriage-is-legal-in-49-u-s-states/article_fbefbf04-5d0e-11e8-b6e6-cb9d5643bc13.html.

106. *Id.*

107. *Understanding State Statutes on Minimum Marriage Age and Exceptions*, TAHIRIH JUSTICE CTR. FORCED MARRIAGE INITIATIVE 1, 2, 50 (last updated July 1, 2019), <https://1t1ts613brj137btck4eg60v-wpengine.netdna-ssl.com/wp-content/uploads/2016/11/FINAL-August-2020-State-Statutory-Compilation.pdf> [hereinafter *Understanding State Statutes*].

108. Andrew Buncombe, *New Jersey Governor Refuses to Ban Child Marriage Because 'It Would Conflict With Religious Customs'*, THE INDEPENDENT (May 14, 2017, 5:06 PM) <https://www.independent.co.uk/news/world/americas/new-jersey-chris-christie-child-marriage-ban-fails-religious-custom-a7735616.html>.

Legislatures, the bill was later vetoed by then-Governor Chris Christie.¹⁰⁹ Governor Christie cited the fact that the bill interfered with religious practices as the main reason for his veto.¹¹⁰ Subsequently, under its new governor, Phil Murphy, the State of New Jersey passed a law banning child marriages and became the second state, behind Delaware, to totally prohibit minors from marrying.¹¹¹

New York also considered prohibiting child marriages. However, unlike the State of New Jersey, New York decided to raise the minimum marriage age from fourteen to seventeen.¹¹² Additionally, the state required that those minors who are seventeen and eighteen must have either parental approval or court approval.¹¹³ Thus, although New York did not eliminate child marriages, it departed from its previous practices and imposed new restrictions for those minors seeking to marry.

Although in recent years states have considered banning child marriages, two states, Delaware and New Jersey, have succeeded in completely prohibiting child marriages for those under eighteen.¹¹⁴ Many of these legislative changes have been the direct result of advocacy for and against child marriage law reforms. The following Section will discuss the concerns of advocates on each side of the child marriage debate.

V. PUBLIC REACTIONS TO CHILD MARRIAGE PROBLEM

A number of advocacy groups in the United States have called for the complete prohibition of child marriages, such as UNICEF, Tahirih Justice Center, and Unchained At Last.¹¹⁵ They contend that child marriages occur because children are vulnerable and have “limited options to prevent or

109. *Id.*

110. *Id.* Governor Christie said, “An exclusion without exceptions would violate the cultures and traditions of some communities in New Jersey based on religious traditions.” *Id.*

111. Susan K. Livio, *New Jersey Bans Child Marriages. New Law Raises Minimum Age to 18*, NJ ADVANCE MEDIA (updated Jan. 30, 2019), https://www.nj.com/politics/2018/06/no_more_child_brides_in_nj_new_law_says_they_must.html.

112. *New York Ends Child Marriage, Raising Age of Consent From 14 to 18*, CBS NEWS (June 21, 2017, 11:58 PM), <https://www.cbsnews.com/news/new-york-ends-child-marriage-raising-age-of-consent-from-14-to-18/>. [hereinafter *New York ends child marriage*]. The new law raises the age of consent from age fourteen to seventeen. *Id.*

113. *Id.* Assembly woman Amy Paulin, sponsor of the bill, said, “[C]hildren have no escape from forced marriages because minors have limited access to legal services and domestic violence shelters.” *Id.*

114. Sarah Ferguson, *What You Need To Know About Child Marriage In The U.S.*, UNICEF USA (Oct. 29, 2018, 4:35 PM), <https://www.unicefusa.org/stories/what-you-need-know-about-child-marriage-us/35059>; see *Understanding State Statutes*, *supra* note 107, at 2.

115. Ferguson, *supra* note 114.

escape marriages they don't want."¹¹⁶ These advocacy groups are non-profit organizations whose mission is either to help women and girls flee forced (and sometimes abusive) marriage or to prevent child marriages.¹¹⁷ They have been instrumental in persuading state legislatures to change individual state laws to ban child marriages.¹¹⁸

These advocates argue there are several reasons to outlaw child marriages. The primary reason they believe that child marriages should be banned is that child marriages are a human rights abuse.¹¹⁹ These groups contend that although the United States has stated in its international policy it does not condone child marriages on a global basis, it has refused to ban child marriages domestically.¹²⁰ Thus, advocates believe that child marriage laws in the United States are hypocritical and perpetuate the cycle of girls being forced into marriage.

Supporters of child marriage prohibition laws contend that, by permitting child marriages to continue in the United States, children will experience the impact for the rest of their lives.¹²¹ These negative impacts include problems to children's health and education.¹²² These groups maintain that permitting child marriages "forces girls into adulthood and, frequently, motherhood

116. Ruiz-Grossman, *supra* note 1. Unchained at Last's mission is to "help women . . . in the U.S. to escape arranged/forced marriages." *Unchained at a Glance*, UNCHAINED AT LAST, <https://www.unchainedatlast.org/unchained-at-a-glance/> (last visited Sept. 1, 2021). It is an organization that provides legal services and other assistance to girls fleeing forced marriages or those who are at risk of being forced into marriage, advocates for change in the public policy, and provides educational programs for the protection of immigrant women and girls in the United States from gender-based violence. *Id.*

117. Ferguson, *supra* note 114.

118. See *Child Marriage Legislation: Progress Map*, UNCHAINED AT LAST, <https://www.unchainedatlast.org/child-marriage-progress/> (last visited Sept. 1, 2021); *New Texas Law Will Limit Marriage to Legal Adults and Protect Vulnerable Children*, TAHIRIH JUST. CTR. FORCED MARRIAGE INITIATIVE (June 16, 2017), <https://www.tahirih.org/news/new-texas-law-will-limit-marriage-to-legal-adults-and-protect-vulnerable-children/>. Under its Forced Marriage Initiative, Tahirih Justice Center has been instrumental in successfully advocating change in child marriage laws throughout the nation. *Id.* Texas is among the states where advocacy groups like Tahirih Center were successful in lobbying the legislature to change its existing marriage laws regarding children. *Id.*

119. See, e.g., *Child Marriage*, *supra* note 13.

120. See *Forced Marriage*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/forced-marriage> (last updated Jan. 31, 2018). According to the U.S. Citizenship and Immigration Services website, "The U.S. government is opposed to forced marriage and considers it to be a serious human rights abuse. If the victim of forced marriage is a child, forced marriage is also a form of child abuse." *Id.*

121. Ferguson, *supra* note 114.

122. *Id.*; Tsui et al., *supra* note 72. "The State Department considers formal and informal unions where at least one person is under the age of eighteen a "harmful practice with negative health, education, and economic repercussions for girls, families and communities." *Id.*

before they are physically and emotionally mature.”¹²³ These groups insist that women who marry before the age of eighteen have a twenty-three percent higher probability of a heart attack, diabetes, cancer, and stroke because of the added stress put upon the majority of these girls and because these girls lack education.¹²⁴ Advocates of laws banning child marriage argue that child marriage also relegates child brides to a cycle of poverty.¹²⁵ A girl who marries young is “[fifty] percent more likely [than her unmarried peers] to drop out of high school, and four times less likely to graduate from college.”¹²⁶ “Girls between the ages of 15 and 19 are twice as likely to die in childbirth as women in their 20s, and newborn children of younger mothers face greater risks of dying as well.”¹²⁷ Moreover, these girls are more likely to have at least five children.¹²⁸ Proponents argue that, in addition to the medical problems underage marriages tend to cause, women who marry as girls also face increased exposure to domestic and sexual violence, are more at risk to drop out of high school, are subject to poverty, and are more likely to divorce.¹²⁹ One Texas survey found that women and girls who were forced into marriage faced an increased risk of domestic violence in the marriage.¹³⁰ Thus, proponents for child brides contend that these children’s lives are worse than those of teens who did not marry early in life.¹³¹

Furthermore, proponents of laws that ban child marriages argue that allowing a minor to marry may contribute to mental problems later in life.¹³² Many of the child marriages performed in the United States fail to consider the wishes of the child.¹³³ “American women who married before the age of eighteen are more likely to face psychiatric disorders like clinical depression,

123. Quentin Wodon, *Eliminating Child Marriage to Boost Girls’ Education*, WORLD BANK (May 14, 2014), <https://blogs.worldbank.org/education/eliminating-child-marriage-boost-girls-education>.

124. Luke Parsnow, *Cuomo Signs Bill Banning Child Marriage*, CNY CENTRAL (June 20, 2017), <https://cnycentral.com/news/local/cuomo-signs-legislation-ending-child-marriage-in-new-york>.

125. Phineas Rueckert, *Child Marriage in the United States is Not as Rare as You’d Think*, GLOBAL CITIZEN (Nov. 1, 2016), <https://www.globalcitizen.org/en/content/child-marriage-in-the-us/>.

126. Parsnow, *supra* note 124.

127. Ferguson, *supra* note 114.

128. Terrence McCoy, *‘You Shouldn’t Be Doing This’*, THE WASHINGTON POST (Oct. 5, 2018), <https://www.globalcitizen.org/en/content/child-marriage-in-the-us/>.

129. *Married Young*, *supra* note 73.

130. *Id.*

131. *See* Belanger, *supra* note 42.

132. *Married Young*, *supra* note 73.

133. Anjali Tsui, *In Fight Over Child Marriage Laws, States Resist Calls for a Total Ban*, FRONTLINE (July 6, 2017), <https://www.pbs.org/wgbh/frontline/article/in-fight-over-child-marriage-laws-states-resist-calls-for-a-total-ban/> [hereinafter *States Resist*].

according to a nationwide study published by the American Academy of Pediatrics.”¹³⁴

Advocates for child marriage bans argue that child marriages are perpetuated in part because judges are not properly trained and do not scrutinize these child marriages.¹³⁵ Judges lack the proper training to be able to determine whether these children are entering into these marriages on their own accord or at the coercion of their parents.¹³⁶ Opponents contend that judges “don’t see the 3-D image of all the kinds of threats that a girl might be facing outside that courtroom.”¹³⁷ Additionally, there is no real assurance that the approval of the judges will protect the child.¹³⁸ They are not able to see the complete story behind the request to marry in order to determine whether or not the marriage would be good for the child.¹³⁹ Thus, even in cases where there must be judicial approval for a child marriage and where the judge is expected to act as the gatekeeper, there is no real safeguard provided for the child.¹⁴⁰

Finally, proponents of child marriage prohibition point out that child marriage laws have other collateral consequences that create huge barriers that prevent minors from leaving a bad marriage, such as: being legally incapable of filing for a divorce, seeking support services independently, seeking or obtaining legal representation, or renting or buying a home without help.¹⁴¹ Because the child is not legally an adult, the child is disabled and cannot obtain legal rights and services afforded to most adults.¹⁴² Thus, the child is forced to continue in an abusive or unhealthy relationship because he or she is not an adult and cannot access services typically afforded to adults in the same situation.

On the other side of the child marriage argument, opponents of child marriage reform argue that reducing the availability of child marriages could have harmful effects for those adolescents who may want to pursue marriage.¹⁴³ They claim that the new law wrongfully denies access to marriage to

134. *Id.*

135. TAHIRIH JUST. CTR., FALLING THROUGH THE CRACKS 6 (Aug. 2017), <https://www.tahirih.org/wp-content/uploads/2017/08/TahirihChildMarriageReport-1.pdf>.

136. *States Resist*, *supra* note 133.

137. *Id.*

138. Belanger, *supra* note 42.

139. *See States Resist*, *supra* note 133.

140. Belanger, *supra* note 42.

141. *United States’ Child Marriage Problem*, *supra* note 77; *see also States Resist*, *supra* note 133.

142. *See United States’ Child Marriage Problem*, *supra* note 77.

143. *See* Torey Van Oot, ‘We Don’t Want Our Girls to Get Married’: Push to Raise Wedding Age to 18, STAR TRIB. (Feb. 18, 2020, 9:19 AM), <https://www.startribune.com/we-don-t-want-our-girls-to-get-married-push-to-raise-wedding-age-to-18/567952632/>.

adolescents who are not being forced into marriage.¹⁴⁴ Some opponents of the new law are concerned for the sixteen- and seventeen-year-olds who become pregnant and do not want their children born outside of marriage.¹⁴⁵ Opponents argue that the denial of marriage may force the child into having an abortion out of fear that she has no other choice,¹⁴⁶ or they argue that there will be more children born out of wedlock.¹⁴⁷ Thus, they see a new child marriage law not as one that protects the children but as one that hurts them.

Some opponents believe that a child marriage restriction or prohibition “unnecessarily and unduly intrudes on the fundamental rights of marriage.”¹⁴⁸ They argue that it is harmful to those who “have a legitimate desire to get married.”¹⁴⁹ Thus, it wrongfully denies those who are not being forced to marry but who are seeking marriage out of their own volition. Other opponents of child marriage bans argue that soldiers will be prevented from marrying their fiancés before deployment.¹⁵⁰ They maintain that it discourages those couples who intend to marry their partners before the soldier leaves for deployment or enters the military.¹⁵¹ This would prevent their partners from receiving military spousal benefits. Thus, it wrongfully impacts those who marry with the good intention to establish a family.

Finally, opponents believe that child marriage bans fail to consider religious freedom. Many adolescents marry because of the religious practices of their families.¹⁵² Many of these religious traditions require or suggest that the children marry early in life.¹⁵³ Opponents believe that because there has been no exception written in these laws, it has a way of chilling religious freedom and does not allow the child and their families to practice their religion freely.¹⁵⁴ Thus, laws that promote child marriage bans violate traditional notions of exercising religious freedom.

The next Section will focus on the history and current law in Texas on child marriages and its efforts to resolve its child marriage dilemma.

144. See Dartunorro Clark, *End Child Marriage in the U.S.? You Might Be Surprised at Who's Opposed*, NBC NEWS (Sept. 8, 2019, 7:00 AM), <https://www.nbcnews.com/politics/politics-news/end-child-marriage-u-s-you-might-be-surprised-who-n1050471>.

145. *Id.* These groups argue that it is for the “sanctity of family” that these marriages be allowed. *Id.*

146. *States Resist*, *supra* note 133.

147. *Id.*

148. Clark, *supra* note 144.

149. Van Oot, *supra* note 143.

150. Clark, *supra* note 144.

151. *Id.*; see also *States Resist*, *supra* note 133.

152. See Buncombe, *supra* note 108. In New Jersey in 2017, then Governor Christie claimed to have vetoed a child marriage reform bill to ban child marriages because it failed to take religion into consideration. *Id.*

153. See Samuels, *supra* note 88.

154. See Buncombe, *supra* note 108.

VI. CASE STUDY: TEXAS' APPROACH TO CHILD MARRIAGE

Before September 1, 2005, Texas' laws were quite lenient for teens who sought to marry before their eighteenth birthday. Under the Texas Family Code (hereinafter T.F.C.), minors between the ages of fourteen and eighteen were able to marry with parental consent.¹⁵⁵ This meant that as long as the minor's parents signed the marriage license—evidence of the parent's consent to the marriage—the minor could marry.¹⁵⁶ If the parents were separated or divorced, the minor would have to obtain consent from the parent who was designated with this right to consent to marriage in the divorce or custody orders.¹⁵⁷ Those minors below the age of sixteen or minors who did not have parental consent could marry only with the permission of a judge.¹⁵⁸

After 2005, the Legislature tightened the loophole for those minors who would be eligible to marry under the age of eighteen. Under T.F.C. § 6.205, the Legislature raised the age of eligibility from fourteen to sixteen and declared that those marriages involving children under the age of sixteen would be void.¹⁵⁹ Thus, the Legislature completely banned marriages for children under the age of sixteen (with only a few exceptions) but stopped short of banning marriage for all children in Texas. Furthermore, in 2007, Texas law made it a criminal violation to consent to allow a child under the age of sixteen to marry: under T.F.C. § 2.102, any parent who provided consent for a minor under the age of sixteen faced prosecution of a third-degree felony.¹⁶⁰ Thus, from 2005–2017, parents could be jailed for signing a marriage license to permit their children to marry.

The other loophole for children desiring to marry was to seek permission from a judge. The child could petition the court for permission to marry if he or she either was unable to obtain parental consent or was younger than

155. Act of 1997, ch. 7, § 2.102, 1997 Tex. Sess. Law Serv. (West).

156. *Id.*

157. *Id.* In Texas, the Family Code requires that in the event the parents are not together, the Court provide in the Final Custody Order or Final Decree of Divorce, whether a particular parent or both parents are delegated as the parent to give permission to marry. These rights may be shared individually with each parent possessing the right to give permission, with only one parent designated as the parent with the exclusive right to give permission, or with both parents making the decision together.

158. TEX. FAM. CODE ANN. § 2.103 (West 2005). "A minor may petition the court in the minor's own name for an order granting permission to marry." *Id.*

159. TEX. FAM. CODE ANN. § 6.205 (West 2005).

160. TEX. FAM. CODE ANN. § 2.102 (West 2005) (repealed 2017).

sixteen.¹⁶¹ At this time, courts could consider additional factors, such as the fact that the child was pregnant, as a basis to grant the right to marry.¹⁶²

On September 1, 2017, the Texas Legislature changed the existing child marriage law to require that minors first be emancipated before they are allowed to marry.¹⁶³ Under T.F.C. § 2.003, a person under eighteen may not obtain a marriage license unless a judge first signs an order of emancipation “removing the disabilities of minority . . . for general purposes.”¹⁶⁴ The purpose of the 2017 revision of the child marriage law was to reduce the number of child marriages.¹⁶⁵ The new law also sought to enable “full and free consent” of minors seeking to marry¹⁶⁶ and to ensure that these marriages “will promote the health and wellbeing of Texas’s [sic] children, and enable marriages to be built on stronger foundations.”¹⁶⁷

The 2017 Texas Child Marriage Act was implemented by the Legislature due to the high volume of child marriages in the state.¹⁶⁸ The Legislature provided a myriad of reasons for modifying the Texas law for its underage citizens seeking to marry. Most of these reasons involved issues around protecting these minors. One reason the Legislature provided for changing the child marriage laws was that the pre-2017 law disadvantaged children by leaving them without the same legal rights as adults.¹⁶⁹ These legal rights involve such things as the right to pursue legal advice or legal representation before the marriage or being able to sign legally binding contracts, such as premarital agreements, due to his or her minority.¹⁷⁰ However, by obtaining a court order granting the child’s rights of majority first, the child is put on equal footing as any other person seeking to marry. Furthermore, the child is made independent before the marriage. Therefore, the child can seek legal representation on his or her own and enter into legally binding contracts because he or she has been determined by a court to merit an order of majority. Thus, the new law levels the playing field for the child, and the child is not subject to

161. TEX. FAM. CODE ANN. § 2.103 (West 2005).

162. Sarah Ochieng, *Child Marriage in the U.S.: Loopholes in State Marriage Laws Perpetuate Child Marriage*, 2 IMMIGR. AND HUM. RTS. L. REV. 1, 8–9 (2020).

163. TEX. FAM. CODE ANN. § 2.003 (West 2017).

164. *Id.*

165. *See id.*

166. Flynn, *supra* note 85.

167. *Protect Children from Forced Marriage, and from Lifelong, Irreparable Harm*, TAHIRIH JUST. CTR. FORCED MARRIAGE INITIATIVE [hereinafter *Protect Children*], <https://1tts613brj137btck4eg60v-wpengine.netdna-ssl.com/wp-content/uploads/2017/02/FINAL-Backgrounder-on-Forced-Child-marriage-in-TX.pdf>.

168. Samuels, *supra* note 88; *see also Protect Children*, *supra* note 167. (“[C]hildren are uniquely vulnerable to coercion and [are] especially disabled—both legally and practically—from preventing or leaving a marriage that threatens them with harm.”).

169. *Protect Children*, *supra* note 167.

170. *See United States’ Child Marriage Problem*, *supra* note 77.

the mercy of the soon-to-be spouse. The following paragraphs will discuss the legal definition and effect of emancipation.

“Emancipation invests a minor with the legal capacity and responsibility of an adult and ends the liabilities and legal duties of support owed by parents or guardians . . . Emancipation marks the point at which a minor sheds the legal protections and disabilities of childhood and attains the legal status and capacities of adulthood.”¹⁷¹ A court may, by order, deem a minor to be an adult for certain limited purposes, or it may declare that the child is an adult for all general purposes without any restrictions.¹⁷² If the court orders emancipation for a limited purpose, the court order shall state the limitations and specific purpose for which the child is to be treated as an adult.¹⁷³ This allows the rest of the protections normally in place for the child to remain in place.¹⁷⁴ However, for those obtaining full and complete emancipation, the child is considered to be an adult for all intents and purposes, and the child will lose the normal protections of minority.

The purpose of emancipation is to shield the child from making major decisions for themselves based on the premise that minors lack the proper ability and judgment to make major decisions for themselves.¹⁷⁵ In fact, “minors lack independent legal authority to earn and control their own wages, transact in their own property, assert their own interests through legal action, or control choice concerning their domicile, health care, education, and other weighty matters.”¹⁷⁶ These decisions are left to the parents of the child, who are presumed to know what is best for the child and to act accordingly.¹⁷⁷

The effect of emancipation is that the child is considered to be an adult and capable of making his or her own decisions. No longer is the child afforded the protections and benefits of minority. It is the age of adulthood. “In the vast majority of states, [the age of majority is] when a person can sign a lease for an apartment, open a bank account, serve on a jury and enlist in the military without a parent’s permission.”¹⁷⁸ Thus, the impact of removing the child’s minority is significant because it exposes the child to the responsibilities and duties of adulthood.

The emancipation process in Texas involves a series of steps. To be eligible for emancipation, a child must either have reached the age of seventeen

171. RESTATEMENT OF THE LAW, CHILDREN AND THE LAW (AM. L. INST., Tentative Draft No. 4, 2017).

172. *Id.*

173. *See, e.g.*, TEX. FAM. CODE ANN. § 31.005 (West).

174. *See id.*

175. This points back to the seventeenth-century English theory rooting much of child marriage in America. *See supra* notes 47–52 and accompanying text.

176. RESTATEMENT OF THE LAW, CHILDREN AND THE LAW § 24.30, cmt. a (AM. L. INST., Tentative Draft No. 4, 2017).

177. *Id.*

178. *Married Young, supra* note 73.

or be at least sixteen and living apart from his or her parents.¹⁷⁹ The child must show that he or she can support himself or herself and handle his or her own finances.¹⁸⁰ Additionally, a child may petition the court for emancipation on his or her own behalf.¹⁸¹ Once a petition for emancipation is filed, a minor must be appointed an amicus attorney or attorney ad litem to represent the minor in court.¹⁸² A part of the amicus attorney's duties is to investigate the child's living environment, interview the child, report to the court any findings, and recommend whether or not emancipation is in the best interest of the child.¹⁸³ However, the final determination of whether or not to grant the petition for emancipation lies solely within the court's authority.¹⁸⁴ If the court grants the emancipation, the order must state whether the child's disability is removed for limited or for all general purposes.¹⁸⁵ However, if the child is to marry, he or she must obtain an order of removal disability for general purposes from a court of law.¹⁸⁶

VII. ANALYSIS

The Section below will discuss whether or not the 2017 Texas Child Marriage Law is one that other states should use as a model. The Child Marriage Law may be a tool to prevent forced marriages or a tool that blocks sincere young couples—those who are legitimately wishing to create a legitimate marriage union and/or family—from marrying. The discussion below takes into consideration these two legitimate concerns and perspectives and will determine whether the law is an effective tool in solving the child marriage problem.

A. Pros of Texas' Law

There are several benefits to Texas' current law and its prerequisite that a child under the age of eighteen must be emancipated before entering marriage. Texas takes the middle-ground approach. It does not take the extreme position of ignoring the child marriage problem nor the extreme approach of total prohibition of child marriages. Thus, the 2017 amendment to the law

179. TEX. FAM. CODE ANN. § 31.001(a)(2) (West).

180. *Id.* § 31.001(a)(3).

181. *Id.* § 31.001(b).

182. *Id.* § 31.004.

183. *See id.*

184. *Id.* § 31.005 (West).

185. TEX. FAM. CODE ANN. § 31.005 (West). If the order provides that the child's disability is removed for general purposes, the child is in essence treated as an adult and does not have any limitations.

186. *Id.* §2.003.

provides added protections and benefits for the minor child while not banning marriages for the mature child.

Texas' marriage process is unique because it is a two-step process for the minor who intends to marry: First, the child must receive an Order to Remove Disabilities for general purposes,¹⁸⁷ and second, once the court grants that order, the child may apply for a marriage license and marry.¹⁸⁸ This system provides added protections for the child. In order to obtain the order of emancipation, the child must show that he or she is already mature and acting maturely, and thus it is in his or her own best interest to be legally emancipated.¹⁸⁹ The child has to demonstrate to the court that he or she is acting as an adult and taking care of himself or herself.¹⁹⁰ Furthermore, the child must be able to demonstrate to the court that he or she is already working or has some type of income to support themselves.¹⁹¹ Many of these minors are also living independently of their parents and on their own. Finally, he or she must persuade the court that it is in his or her best interest to be granted the emancipation order and that it will not likely result in detrimental consequences for the child.¹⁹²

Texas is the second state, after Virginia, to require individuals under the age of eighteen to be emancipated in order to marry.¹⁹³ This resolves the primary concern of most advocates for child marriage bans—that minors are pressured or forced by their parents and families into unwanted marriages.¹⁹⁴ Unlike Virginia's child marriage law, which allows the court to simultaneously consider the emancipation with the request to marry, Texas' courts assess the maturity and needs of the child in the emancipation process before marriage.¹⁹⁵ At this emancipation stage, the Texas court is not clouded with assessing the child marriage issue simultaneously and can make an independent determination, and it does not muddy the waters of whether or not the child is going to immediately be able to marry. This Texas two-step process allows the court to determine if the child is mature enough to marry to ensure that children, who are not ready to take on adult responsibilities, are not allowed to proceed with marriage too early. Thus, the post-2017 law provides a shield for children because of the added protections of the process itself. It will relieve the concern of many advocates who believe that child brides are

187. *Id.*

188. *Id.*

189. *Id.* §§ 2.003, 31.001, 31.005.

190. *Id.* § 2.003 (West 2017).

191. TEX. FAM. CODE ANN. § 2.003 (West 2017).

192. *Id.*

193. *See* Belanger, *supra* note 42.

194. *See* Flynn, *supra* note 85; *Protect Children*, *supra* note 167.

195. *See* TEX. FAM. CODE ANN. § 31.001 (West 2021). Under Virginia's law, the court shall appoint an ad litem during the emancipation process, VA. CODE ANN. § 16.1-332 (2002), and must find that the child is not being coerced or forced into marriage, *id.* § 16.1-333 (2016).

not able to provide real or genuine consent.¹⁹⁶ Because the Texas statute requires that minors be emancipated prior to applying for a marriage license, it eliminates the concern of “genuine consent.” It is independent of marriage, and therefore, will discourage “abusive or neglectful” parents and parents who may seek to exploit their children by pressuring them into an unwanted marriage that is not in their best interest.¹⁹⁷ Thus, the process inherently discourages parents who have wrong intentions by forcing their children into marriage.

Additionally, because Texas requires the appointment of an attorney ad litem or amicus attorney for every child who seeks emancipation,¹⁹⁸ it provides another layer of protection. This neutral advocate for the child is required by statute to provide a recommendation to the court as to whether emancipation is in the best interest of the child after a proper investigation of the child’s environment and circumstances.¹⁹⁹ This investigation should—at a minimum—involve speaking to the child without the presence of the parents to determine the true desire of the child, determine the child’s true reasons for seeking emancipation, and an investigation into the child’s home life. The attorney ad litem or amicus attorney acts as the extra pair of eyes and ears for the court to assess whether this is something that is voluntarily sought by the child or something the child is forced into doing. Thus, the child is afforded the extra protection of a neutral advocate to investigate whether this is something that is truly desired by the child.

Another advantage of the new law is that it provides children a voice in the marriage process.²⁰⁰ Child rights advocates and child marriage prohibitionists insist that laws for children, globally and domestically, should “assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”²⁰¹ They argue that the child be given an “opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly,

196. *Protect Children*, *supra* note 167; *see also* Samuels, *supra* note 88. Many of these advocates believe that children are being forced into these marriages by their families. One of the main advocates for this Texas legislation contends that this was her story and that her main impetus for pushing for this legislation was to prevent this from happening to others. *Id.*

197. Samuels, *supra* note 88.

198. *O’Connor v. O’Connor*, 245 S.W.3d 511, 515 (Tex. Ct. App. 2007) (“Under the Family Code, an amicus attorney and an attorney ad litem appointed to represent a child have the same duties. However, there is one important distinction. The attorney ad litem represents the child. The amicus attorney is appointed specifically to assist the court.”).

199. TEX. FAM. CODE ANN. § 2.003 (West 2017).

200. Samuels, *supra* note 88.

201. *Convention on the Rights of the Child*, *supra* note 56, at art. 12.

or through [representation.]”²⁰² Because child marriages in general, even in America, are often prearranged and forced by the parents—because of religious traditions or culture—the child is often not consulted in the process.²⁰³ Thus, the new Texas law provides a process by which the child will have a say in whether to marry or not. In making this determination, the child can present evidence and testimony as to why he or she is seeking emancipation. Thus, the child is able to speak to whether or not the petition for emancipation is voluntary or involuntary and is afforded the opportunity to speak directly to the court. Consequently, if the child does not truly want to be emancipated or is found emotionally or developmentally not ready for emancipation, the process protects the child, and the court should deny the child’s petition. However, it also provides access to marriage for those minors who do really want to marry and are seeking marriage of their own volition. Our nation’s history has shown that oftentimes children rebel against society and parents by eloping or illegally marrying when they believe they should possess the autonomy to make decisions for themselves.²⁰⁴ Texas’ law affords the teenager with the ability to make his or her case to the judge concerning his or her maturity and readiness for adulthood.

The new law recognizes the child has fundamental rights. Many advocates for child marriage reform claim that child marriage is a human rights problem.²⁰⁵ Texas’ 2017 child marriage reformation provides a platform for the child to express his or her wishes as to becoming independent from his or her parents. It provides the child with individual rights and autonomy—normally provided only to adults or the parents—that the court should consider in rendering its decision on whether to grant the order of emancipation. It is in line with other laws that enable the mature teen child to make his or her own decisions. For example, in this modern age, some states have a “Mature Minor Exception” law that allows mature children with the right to make certain medical decisions regarding their lives without the consent or knowledge of their parents (such as whether or not to have an abortion, to take birth control, and other rights).²⁰⁶ The basis of this exception is the notion that these adolescents are “cognitively mature” enough to make those decisions.²⁰⁷ This approach recognizes the fact that some adolescents have the requisite maturity

202. *Id.* Activists often insist that the U.S. domestic laws on child marriage conflict with its official international policy on child marriages. See *Married Young*, *supra* note 73.

203. Samuels, *supra* note 88.

204. See Linton Weeks, *The Mystery of ‘Elopement Epidemics’*, NPR HIST. DEP’T (Sept. 8, 2015), <https://www.npr.org/sections/npr-history-dept/2015/09/08/433551894/the-mystery-of-elopement-epidemics>.

205. Ochieng, *supra* note 162, at 2–5.

206. Doriane Lambelet Coleman & Philip M. Rosoff, *The Legal Authority of Mature Minors to Consent to General Medical Treatment*, 131 PEDIATRICS 786, 787 (Mar. 2013).

207. *Id.*

to make sound decisions for themselves, and those who are in fact “cognitively mature” and “socially mature” may consent to their own general medical treatment. It allows adolescents who are considered to be “cognitively mature” and those who are “socially mature” to consent to their own general medical treatment.²⁰⁸ Under the “Mature Minor Doctrine” exception, an adolescent is thought to have the same cognitive ability as a young adult.²⁰⁹ Many states require that, in order to meet this standard, a minor must be able to pass the “informed consent” standard.²¹⁰ Thus, mature adolescents are well able to make marriage decisions on their own behalf just like they are able to make mature medical decisions for themselves. The court, before it renders its decision, will have the opportunity to determine whether the child has the cognitive capacity and social maturity to be declared an adult and recognize the rights of the child. Moreover, Texas’ law recognizes that there is not a “one size-fits-all” solution, and there should be a rule that applies to exceptionally mature children who are capable of making the legal decision to marry. Furthermore, just as indicated in our national history, one cannot presume that all sixteen to seventeen-year-olds have the same mental and emotional capacity. Our nation’s history has revealed that such practices have been ineffective.²¹¹ Early American laws and their reformers both tried to stop child marriage “because it was bad for women.”²¹² However, where the law and society have refused to acknowledge the maturity of adolescents and have placed restrictions on child marriages, a number of adolescents have consistently rebelled and acted out against society and its attempt to restrict child marriage.²¹³ Texas’ law, in its middle-ground approach, “gives girls [and boys] the privilege to grow up and make the decision that they want to get married,”²¹⁴ which is in line with the objective of both sides of the dispute: protecting the child from forced and/or exploitative marriages while recognizing those minors that are mature enough to make the decision to marry.

Another added benefit is that the new law no longer financially or legally disadvantages minors who marry before the age of eighteen. One of the stated

208. *Id.* at 788.

209. *Id.* at 787.

210. *Id.* at 789. The informed consent standard is the standard that recognizes that “a minor may have the cognitive capacity to understand the risks and benefits of particular treatment and the necessary will to decide voluntarily to accept or forgo the intervention.” *Id.*

211. See generally SYRETT, *supra* note 3, at 168.

212. *Id.*

213. Samuels, *supra* note 88; see Weeks, *supra* note 204 (“Elopements of youngsters were drawing the ire of editorial writers. On July 18, [1899,] the Gaffney *Ledger* in South Carolina—joining in a chorus with another state newspaper—railed against ‘ministers, magistrates, notaries public and other officers [who] [sic] degrade their positions by joining mere children in the holy bonds of matrimony’ Angry parents and guardians, the writer argued, should be able to sue.”).

214. Samuels, *supra* note 88.

bases of the new law was to provide children with financial benefits and access to the services and rights of an adult before they married.²¹⁵ The old law in Texas prevented minors who wished to leave a bad marriage from filing for divorce, seeking support services for themselves and their children, and establishing a home.²¹⁶ Under a regime like Texas' pre-2017 law, before marriage, children had various limitations imposed upon them because of their status as a child. For example, because they were minors, they were not able to vote, sign a contract or lease, buy a car, buy a house, or open a bank account on their own.²¹⁷ This restriction included the right to enter and obtain legal representation for a prenuptial contract.²¹⁸ It also prevented them from obtaining resources and services basic to adulthood prior to marriage.²¹⁹ The 2017 change in the law eliminated this factor as one that further disabled the marrying child. It enabled the minor to reach a footing equal to that of the prospective adult spouse, and it allowed the child, who was about to enter marriage, the legal rights of an adult.²²⁰

Today, the new Texas law requires that minors first show financial independence for emancipation.²²¹ In Texas, children must be at least sixteen and financially able to provide for themselves, or seventeen and living apart from their parents.²²² Minors must show themselves either financially or physically independent from their parents in order to obtain an order of emancipation for general purposes.²²³ This means teenagers either have to be living on their own already or they must persuade the court that they are financially able to take care of themselves and, thus, are prepared to start living on their own and provide for their own needs. The law intends to ensure the child is prepared to become an adult and is equipped to start living as an adult, as one would expect of someone who is about to marry.

Finally, the new Texas law provides a platform for parental consent. One argument against complete bans on child marriage is that it takes away the

215. *Protect Children*, *supra* note 167 (“Forced and child marriage in Texas is a serious problem with a simple, first-step solution—ensuring that only legal adults empowered to advocate for themselves can enter the legal contract and potentially lifelong commitment that marriage entails.”).

216. *Id.* (“[Under the prior law] a girl under age 18 who is granted permission to marry is still a minor; she is not emancipated (considered a legal adult) until after the marriage. This means that she will only gain the full legal rights she would need to prevent a marriage that is being forced on her, *after the marriage has already happened.*” (emphasis in original)).

217. *See States Resist*, *supra* note 133.

218. *See id.*

219. *See id.*

220. *See* Texas Bill Analysis, S.B. 1705, 5/24/2017.

221. TEX. FAM. CODE ANN. § 2.003 (West 2017); *id.* § 31.001 (West 1995).

222. *Id.* § 31.001 (West 1995).

223. *See id.*

parent's fundamental right to a family under the privacy clause.²²⁴ Thus, the parent's right to make decisions on behalf of the child, which they believe is in their best interest, is stripped from the parents.²²⁵ On the contrary, it is probably an overgeneralization to presume that all parents who support allowing their child to marry are exploiting their children.²²⁶ It wrongfully assumes that all parents who are in favor of marriage for the child are not doing what is in the best interest of the child. In Texas, during the emancipation phase, parents are allowed to sign the Petition to consent to the emancipation and are permitted to attend the emancipation hearing.²²⁷ At the emancipation hearing, parents are allowed to speak whether or not as to whether or not they believe emancipation is in the best interest of the child.²²⁸ The parents do not make the decision; however, they can express their wishes to the court.²²⁹ Thus, the new Texas law allows the parents to be involved in the process and exercise their fundamental right to raise their child.

B. Negatives of the Texas Approach

The flip side of the coin to this law is that there are negatives to the Texas approach. One downside of the new law is that it will limit access to the courthouse. As the law in Texas now stands, it would limit access for the poor teenage population and minority population in Texas. Children who marry under the age of eighteen primarily live in rural areas and come from lower socioeconomic backgrounds.²³⁰ These are areas where access to legal professionals and the courthouse is the most problematic. Statistics show that there are typically not enough attorneys to represent the poor and represent the poor and rural adult population, let alone adolescents in these areas.²³¹ Thus, many

224. Rosanne Piatt, *Overcorrecting the Purported Problem of Taking Child Brides in Polygamist Marriages: The Texas Legislature Unconstitutionally Voids All Marriages By Texans Younger Than Sixteen and Criminalizes Parental Consent*, 37 ST. MARY'S L.J. 753, 781–82 (2006); see U.S. CONST. amend. XIV, § 1.

225. See *id.* at 787–88.

226. See generally, e.g., Sebastian Murdock, *Kentucky Bill to Outlaw Child Marriage Stalled Amid Conservative Concerns*, THE HUFFINGTON POST (updated Mar. 3, 2018), https://www.huffpost.com/entry/kentucky-bill-child-marriage_n_5a9acca4e4b0a0ba4ad3d03f.

227. TEX. FAM. CODE ANN. § 31.002(b) (West 2005).

228. *Id.*

229. *Id.* § 31.005 (West 1999).

230. SYRETT, *supra* note 3, at 253.

231. Carol L. Cannon & Kevin J. Priestner, *Statistical Profile of the State Bar of Texas Membership (2000-01)*, STATE BAR OF TEX. (June 2001), <https://www.texas-bar.com/AM/Template.cfm?Section=Archives&Template=/CM/ContentDisplay.cfm&ContentID=11533> (From 2000–01, there was a “ratio of one attorney for every 327 people compared with the 1980 ratio of one attorney for every 455 Texans.”); see Roy S. Ginsburg, *Be a Small-town Lawyer: Many Rural Areas Have a Shortage of Attorneys*, ATTORNEYATWORK,

children from these demographics will lack access to the court system, whether it be because of the financial constraints of hiring an attorney or the limited access to pro bono attorneys, and therefore these children will face a needlessly uphill battle in order to marry.

Furthermore, the law disproportionately disadvantages poor teenagers seeking to marry in that many would not be able to afford to pay the costs of an emancipation. As the law stands, those seeking to marry would encounter additional fees for filing, the cost of retaining an attorney to represent them in the petition for emancipation, and also the attorney's fees for the required attorney ad litem.²³² Additional incidental costs may be associated with the suit.²³³ Thus, unless the court allows the child to qualify for a waiver of court fees and court costs if he or she can show that he or she is indigent, the child would be challenged financially to obtain an order of emancipation. Even if the child is able to show that he or she is indigent, the extra cost requirement of the emancipation process would mean added cost to the county coffers.

A major criticism of Texas' current child marriage law is that it restricts a judge's discretion to determine when and if the child should marry.²³⁴ This is an argument that can be made of both the old law and the new law. Under the pre-2017 law, a child could petition the judge directly to allow them to marry, and then the judge, in determining whether to grant the request to marry, could take into consideration the child's pregnancy.²³⁵ The present law removes both the child's right to request that the court allow him or her to marry and the right of the judge to consider the minor's direct request for marriage regardless of a pregnancy.²³⁶ Under the new law, the judge may not know at the time of filing that the child wishes to be married following emancipation. Therefore, the judge is determining whether the emancipation, standing alone, is in the best interest of the child because the court is forced only to deal with the emancipation petition of the child.

<https://www.attorneyatwork.com/be-a-small-town-lawyer>. This article discusses not having enough attorneys in many small rural towns. According to the National Association of Counties, only two percent of attorneys practice in rural areas even though twenty percent of the U.S. population lives there. *Id.*

232. See TEX. FAM. CODE ANN. § 31.004 (West 2005).

233. *Id.* § 31.002(b) (West 2005). For example, petitioners might have to pay service fees because the law requires that either the parents' consent by signing the petition or upon being served with the petition, or perhaps pay the attorney ad litem for costs incurred while conducting the investigation when filing a report with the court. *See id.*

234. See Tsui et al., *supra* note 72.

235. TEX. FAM. CODE ANN. § 2.103 (West 1997), *repealed by* TEX. FAM. CODE ANN. § 2.003 (West 2017).

236. TEX. FAM. CODE ANN. § 2.003 (West 2017).

C. Unintended Consequences

There may be several unintended consequences of Texas' new law. The following are some of the consequences the Legislature failed to consider when it enacted the Child Marriage Law. Because marriage is a two-step process for the child bride, it may discourage teenagers who believe the process is too onerous from pursuing marriage and, in the alternative, decide to settle for informal partnership relationships. Typically, because of the costs of first obtaining an emancipation order and the misconception that the courthouse is not accessible to the poor, the lower socioeconomic class might become more entrenched. Thus, it may cause poor teenagers to settle for living in informal relationships and begin their family without ever formalizing their relationship. Since the relationship is not a formal marriage, many teenagers are left even more vulnerable because they do not have the added protections and benefits of a spouse typified by marriage laws.²³⁷

Another consequence of the new law is that it discourages young couples seeking to marry before either of them enters the military or goes off for deployment.²³⁸ Oftentimes, such partners do not have much time before they must report to boot camp or receive their orders for deployment. So, the extra requirement of emancipation may serve as an impediment to marriage or may even cause a marriage not to happen at all, especially when time is of the essence. The mature minor seeking to marry may be prevented from obtaining a marriage to an enlisted military member and prevented from obtaining benefits as a military spouse that he or she may otherwise have obtained but for the 2017 change in the law.

D. Need for A Few Changes

Although Texas' law is the best approach to take when it comes to child marriages, it too can be improved upon to ensure even more protections for the child bride. The Amicus Attorney/Attorney ad Litem should receive uniform training and specific guidelines for their investigations and representations to the court.²³⁹ It is their recommendation or advocacy that will be essential in advising the court whether marriage is in the best interest of the child, in addition to whether or not the child is ready for adulthood. As the ears and the eyes of the court, the Amicus Attorney/Attorney ad Litem should be given specific guidelines to consider in making their recommendations. This ensures that the proper metrics are used and that these cases are handled consistently throughout the state.

237. See Texas Bill Analysis, S.B. 1705, 5/24/2017.

238. See generally Clark, *supra* note 144.

239. See TEX. FAM. CODE ANN. § 31.004 (West 2005).

IX. CONCLUSION

On September 1, 2017, Texas passed a new law to reduce the number of child marriages in its state.²⁴⁰ The Texas Legislature sought to protect children by making it more difficult to marry before the age of eighteen. Texas is only the second state to take such a drastic step to require those minors who wish to marry to first be emancipated by court order. Under the new law, only minors who have shown themselves to be independent and mature and who have had a court previously determine that the child is ready and mature to be considered an adult at a previous court hearing may be permitted to marry in the state.²⁴¹ On balance, the new law seems to have more positives than negatives. It satisfies the tension between preserving minors' safety and enhancing minors' freedom. The new Texas law will be a good model for the rest of the country once a few changes are added. Although Texas has drastically modified its child marriage, this Article contends that Texas and other states can carry the ball further and protect child brides even more fully. Future child marriage laws should reduce the permitted age disparity between the child and prospective spouse. This would help eliminate concerns of older adults' seeking to circumvent child molestation or rape laws or prey on children significantly younger than they. This would also close the gap in those cases not covered by the law. Additionally, the law should waive court costs and provide pro bono attorneys for those minors who cannot afford an attorney. These changes would ensure that child brides are protected. It prevents forced marriages, while it allows the mature child to make a mature decision without stripping the child totally of the decision to wed. Thus, it achieves the objectives of those on both sides of the child marriage argument.

240. See Texas Bill Analysis, S.B. 1705, 5/24/2017.

241. See *id.*