

MARRIAGE

[The excerpt from an article on Judicial Consent to Marry appearing below was taken from the December 1969 issue of the Family Law Quarterly, a law periodical published by the American Bar Association.]

Judicial Consent to Marry— Its Complex Demands†

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As early as 1926, social scientists were concluding that the risk of failure in marriages involving parties under age twenty was appreciably higher than those involving more mature partners.¹

In 1953, Professor William G. Monahan of the University of Iowa published the results of an extensive investigation into the 52,722 marriages and the 8,040 divorces occurring in Iowa between 1945 and 1947.² His study revealed that 8.4% of the marriages under consideration involved males below age twenty and 33.3% involved females below twenty. In comparison, however, 15.1% of the divorces involved husbands under twenty and 50.9% of the divorces involved wives under twenty. Furthermore, Monahan found that where both parties

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† The authors are indebted to Mr. David S. Murray, B.S.C. 1965, J.D. 1969, University of Santa Clara, for research assistance in the preparation of this paper.

1. Hart and Shields, *Happiness in Relation to Age at Marriage*, 12 J. Soc. Hygiene 403 (1926), reported that "Marriage in which either party is 19 or younger are from 10 to 100 times risky as the marriages at the ideal (24 to 29) age."

2. Monahan, *Does Age at Marriage Matter in Divorce?* 32 SOCIAL FORCES 18 (1953).

were sixteen years or under the divorce rate rose to four times that experienced by partners wed at the mean age, that is where the groom was twenty-five and the bride twenty-two. These statistics dramatically illustrate the disproportionate representation of youthful marriage in divorce actions.

More recent studies corroborate the earlier findings. In the first half of the present decade, the highest divorce rate involves parties married between the ages of fifteen and nineteen. The incidence of divorce appears two to three times higher among couples married in their teens than among those married at later ages.³

If we accept the seemingly inescapable premise that youthful marriages are particularly susceptible to divorce we must conclude that the state's interest in fostering the stability and permanence of a marriage is more than casually threatened by the youthful marriage.

This being the case, it is not surprising that many states have exercised their regulatory power over marriage with more proclivity in situations where minors are involved. Most states condition the issuance of a marriage license to minors on the written consent of their parents. If the minor is more than two years below majority, many states require that a member of the local judiciary give his approval to the proposed marriage. The latter procedure is normally referred to as requiring "judicial consent" to the marriage.

In considering the complex factors that must be dealt with in trying to determine whether a proposed marriage has the attributes of success or failure, it becomes apparent that a judge, sitting alone, is not equipped to do a complete and effective job. If state legislatures are sincerely concerned about stemming the ill-fated tide of the youthful marriage, they should seriously consider the Rhode Island plan which provides that a petitioner seeking judicial consent must make his application to

3. J. LANDIS AND M. LANDIS, PERSONAL ADJUSTMENT, MARRIAGE AND FAMILY LIVING 151 (11th ed. 1966); see also, Health, Education and Welfare Indicators, Trends in Divorce and Family Disruption (Aug. 1963).

the Juvenile Court. The court is then required by statute⁴ to request from the Social Welfare Department a complete investigation of and a report upon the advisability of the marriage. Subsequently, a hearing is held at which time the report and other evidence is heard. Upon a consideration of all the evidence, the judge will determine whether to grant or deny consent. A well-rounded staff of social workers and family counselors is placed at the judge's disposal. The court is thereby transformed from a rather ineffective team of one, forced to grant or deny consent on the basis of a highly subjective reaction, into a highly skilled decision making mechanism fully equipped to do a professional job.

Although Rhode Island is the only state that has codified such procedures, some states have enacted enabling statutes whereby their individual county courts can develop similar programs utilizing county social agencies if they desire. California, for example, has given its counties such power and one county in particular, Santa Clara County, has developed a very practical and effective plan to aid the judge in his decision to grant or deny consent.

The Santa Clara County Plan

Because no criteria are set forth under California law, presumably if one judge refused to give his consent to an underage marriage, another and more liberal judge could be sought by the couple. In 1966 the nineteen judges of the Superior Court of Santa Clara County established one department as a Family Court in 1966. By creating a Family Court, the policy making for consent was allocated to the Family Court Judge. This eliminated the *ex parte* applications to any judge. While this was an improvement, the Family Court Judge felt that he was not competent to alone determine the future success of such marriages. Knowing that most teen-age marriages fail and that those which take place when the girl is pregnant often are more

4. See, Laws of R.I. § 15-2-11 (1956).

ill-fated than any others, the Judge felt the need for appropriate professional help. Many states which allow and encourage judicial consent on the basis of pregnancy⁵ fail to consider the effects of such a marriage. Merely giving the child a name may solve one problem, but socially and emotionally it gives rise to many others, not the least of which is the misery of marital failure with multiple children, the need for public assistance and the emotional destruction generated and perpetuated by the parties on all concerned.

Note: Underscoring added.

MEMORANDUM

TO: Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Representative William J. Moran
Chairman, House Judiciary Committee
All Legislators
Chief Justice of Alaska Supreme Court
Administrative Director of Courts
Judges of the Superior Court

Date: February 3, 1971

Subject: Recommended
Changes in Alaska
Marriage Code

FROM: Harold J. Butcher
Superior Court Judge
Family Court Division



Enclosed with this memorandum is a draft of a proposed change in the Alaska Marriage Code, Title 25, Alaska Statutes.

Our purpose in recommending the change was formed from the alarming incidence of divorce occurring amongst teenage couples who enter into marriages.

Divorce amongst couples who marry while teenagers (under 21 years of age) occurs with far greater frequency than those amongst couples who marry between 21 and 25. There is an even greater increase in divorce amongst couples who marry under 18 years of age, and where the marriage occurred at 16 or under, the failures are four times greater than in cases where the couples were between 21 and 25.

Many states have provided judicial consent to marry, especially where premarital counseling by professional marriage counselors in court settings, or welfare agency investigation is available, and where recommendations as to the advisability of consenting to teenage marriages may be made to and considered by the court prior to judicial consent.

It has been the personal experience of this writer, after three years on the bench of the Family Court, that marriages contracted by high school students invariably fail. The parties appear in the divorce court for dissolution of marriages contracted while in high school, and unfortunately, in many cases, the children born to such marriages, and the mothers, end up on welfare rolls at a cost of several hundred dollars per month per family.

We have caused to be copied, for the benefit of your committee and other legislators, some excerpts from an article published in the Family Law Quarterly, a law periodical published by the American Bar Association, furnishing statistical data as to the frequency of divorce in the age groups mentioned and containing also other persuasive material supporting judicial consent to teenage marriage, which I hope will be read by all persons, and particularly the legislators who are concerned with the increase in divorce. It is not only the failure of the marriage that is

Page Two
Memo to Senator Ziegler, et al
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a cause of public concern, but it is the children born to such marriages who end up on welfare, that causes even greater concern. When teenage marriages occur, there is rarely present the financial responsibility essential to a successful marriage. Married teenagers have not had an opportunity to complete educational goals looking toward future financial responsibility, and such young couples, in appreciable numbers, handicapped by unsurmountable marriage problems and children, never attain either future financial responsibility or worthwhile career goals. The possibilities of a marriage surviving without a solid financial base and a high degree of responsibility is indeed remote.

Our marriage code, as it presently stands, permits males under 21 and over 18, and females under 18 and over 16, to marry with parental consent, however, if one or both such persons seek to marry and have no parents or other person capable of consent, the decision as to whether to waive consent and permit the marriage is left to the discretion of a marriage clerk in the Vital Statistics section who, in our opinion, has not the competency or special training to make far-reaching decisions as to whether or not a proposed marriage would be in the best interest of the teenage applicants, or of society. The present statute permits males under 18 and over 16 and females under 16 to marry if they have parental consent, but only if the female is pregnant and a certificate of a competent physician is presented to the licensing officer certifying to such pregnancy.

In our opinion, this particular provision of the law, i.e. that the female under 16 must be pregnant, is often an invitation to parents and the couples, themselves, to arrange marriages where pregnancy occurs, when the fact of pregnancy is, perhaps the least reason why a girl under 16 should marry, considering our rather broad and liberal statutes with respect to legitimacy.

Where the pregnancy prompted marriage occurs for the sake of the child's legitimacy, the couples may stay together for a few years, and nature being what it is, additional children may be born, adding substantially to the problem. Such marriages seem doomed from the beginning.

The article from the Family Law Quarterly attached hereto will show that pregnancy as a reason for marriage generally increases the hazards and does not contribute to a life-long union.

The present pregnancy requirement has other basic defects. As it now stands, for instance, if the pregnant condition is deemed a ground for marriage, it fails to provide for the girl who, while not pregnant at the time of the application, has just been pregnant and has recently given birth to a child whom the other applicant has fathered. The marriage

Page Three
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in the last case would seem as justifiable, if any marriage of that kind is justifiable, as in the case of a present pregnancy.

The proposals made in the attached draft will eliminate altogether the pregnancy feature of the law as a reason to marry, and put teenage marriage, i.e. males under 18 years of age and females under 16, under the authority of the Superior Court where either through a Court attached marriage counselor or a family counselor from the Welfare Division there could be a premarital study made with, perhaps, recommendations to the Court as to the chances for marriage success if a teenage marriage is to be permitted. In the absence of such premarital counseling, the Court, upon a proper showing, could make a far more intelligent decision as to whether a marriage should or should not occur, than the procedure now in effect.

Since dictating the foregoing, I had occasion to talk by long distance telephone with Warren W. Weiss, co-author of the Family Law Quarterly article, and he advised me that a majority of the states have statutes providing for judicial consent to marriages where the male is under 18 and the female under 16. He further advised me that the California Legislature, in 1970, amended the California judicial consent law to cover all teenage marriages where the applicants were under the age of 18 years. This amendment was prompted by the simple proposition that teenage persons, male and female, are not equipped from the point of view of maturity or economics to make the adjustments necessary to a permanent and harmonious marriage.

I had used the California Statute, as it stood prior to 1970, as a model for the proposed amendment to the Alaska Marriage Code, thus in the amendment we propose, judicial consent is required for the male under 18 and the female under 16, patterned after the former California law, and it now appears, as a result of the California experience with marriage and divorce in that age group, that that State has seen fit to provide judicial consent for all marriages where the parties are under 18 years. The Alaska Legislature might, therefore, consider changing the Alaska law to correspond with the 1970 California amendment covering the age group under 18 years and not make a differentiation, age-wise, between male and female.

Bvb
attach 2

cc Board of Governors
Judicial Council
Alaska Bar Association

Anchorage Bar Association
Fairbanks Bar Association
Juneau Bar Association
Ketchikan Bar Association

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Josephson by Report file

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THIS BILL RESOLUTION

has been prepared by the staff of the Legislative Council in response to the request and at the direction of the sponsor. The staff has attempted to place it in proper legal and clerical form subject to any special limitations or instructions of the sponsor. Member requests are kept confidential by the staff and any announcement of intent to have a document drafted or introduced remains the prerogative and responsibility of the sponsoring member in dealing with colleagues and other persons. The Council or its staff may not endorse or comment on policy matters involved in a bill or resolution. The substance and merits of a bill or resolution are the responsibility of the sponsor.

Delivered to sponsor: 2-15-71

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

February 19, 1971

The Honorable Harold J. Butcher
Superior Court Judge
941 West Fourth Avenue
Anchorage, Alaska 99501

Dear Judge:

I enclose a copy of a house bill which I propose to introduce pursuant to your recent request.

Please review the text and advise me whether it is acceptable and meets your requirements.

Best personal wishes

Sincerely yours,

Representative William J. Moran

Enclosure

WJM:mm