Raise the Minimum Age of Marriage in New York State
NOW New York and Women’s Justice NOW

- As the United Nations Children’s Fund reports, more than 700 million women alive today worldwide were married before their 18th birthday.¹ However, child marriage is not an issue confined to distant shores. According to data obtained from the New York State Health Department, 3,853 minors were married in New York State between 2000 and 2010.² Most of these children were wed to adults, including 16- and 17-year olds who were wed to individuals age “45-49.”³

- Under current New York State law, the minimum age of consent for marriage is 18. However, exceptions allow for 16- and 17-year olds to be married with “parental consent” and for children as young as 14 to be married with both parental and judicial consent.⁴

- Child marriage harms both boys and girls, but disproportionately affects girls who are much more likely to be married before age 18. Marriage at any age before 18, including at 16 or 17, undermines girls’ health, education and economic opportunities, and increases their likelihood of experiencing violence.⁵
  - Child marriage is associated with higher rates of sexually transmitted infections (including HIV) and early pregnancies because child brides are often unable to negotiate access to safe sex and medical care.⁶ Women who were married as children have also been found to be at higher risk of a wide range of psychiatric disorders.⁷
  - Married minors are more likely to drop out of high school than unmarried minors, and teenage mothers who marry before childbirth are less likely to return to school compared to teenage mothers who do not marry.⁸ Overall, teenage mothers who marry are more likely to end up living in poverty, while teenage mothers who stay single have better long-term financial outcomes.⁹ Young

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³ See Appendix.
⁴ N.Y. Domestic Relations Law §§ 15, 15-a.
⁶ UNICEF, supra note 1.
⁹ Id.
women who married in their teens are often unable to access education and work opportunities, in part because they tend to have more children, earlier and more closely spaced.10

➢ Women who married before 18 are three times more likely to have been beaten by their spouses than women who married at 21 or older.11

- **Child marriage almost always ends in failure.** Age at marriage has long been the single most accurate predictor of marital failure. A child who marries before age 18 has a stunning 70 to 80 percent chance of getting divorced, and that percentage drops steadily as the age at marriage increases.12

- **Children under 18 can easily be forced into marriage under the current law, just at the age when they are at heightened risk of forced marriage.** Parents often force their children to marry before they graduate from high school and enroll in college,13 where they would have more freedom to make their own decisions regarding education, career, and relationships. As the upper age limit for compulsory education in New York State is 16 or 17,14 parents may even pull their children from school to force them into marriage, distancing them from school staff who are obligated to report child abuse to child protective services. Currently, a 16- or 17-year-old can be wed with only their parents’ signatures on their marriage license application, with no process in place to ensure that “parental consent” is not actually “parental coercion.” Even when a 16- or 17-year-old sobs openly while her parents sign her marriage license application, the clerk has no authority to intervene.

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• Under a loophole in criminal law, adults may sexually abuse children under the guise of marriage to avoid statutory rape laws. The U.S. State Department itself notes that it “considers a forced marriage of a minor child to be a form of child abuse, since the child will presumably be subjected to non-consensual sex.” In some cases, children are even coerced by their relatives to wed their rapists in order to maintain family “honor” and avoid shame associated with premarital sex. New York struck down its general marital exemption to rape as unconstitutional in 1984, noting that marriage does not give license to a husband to rape his wife with impunity. Nonetheless, New York maintains a marital exemption in the context of statutory rape. As a result, even though an adult would face criminal charges for having sex with a 16-year old under normal circumstances, he could avoid liability if he were married to that 16-year old. While our statutory rape law intends to protect children from sexual abuse, laws permitting child marriage provide a backdoor to adults to exploit their victims—and to do so repeatedly over a long period of time while living under the same roof.

• Children under 18 can easily end up trapped in marriage due to legal barriers to obtaining divorce or annulment. In New York State, children are generally foreclosed from independently initiating legal proceedings, including divorce actions, and must act through a parent or guardian—who may have coerced the child into the marriage in the first place—or a guardian ad litem appointed by the court. Emancipation does not impact a minor’s inability to bring legal actions on their own behalf. While an exception to this general rule allows children to bring annulment proceedings in their own names, there is no right to counsel in matrimonial actions and the state will not cover attorney fees. While retaining a private attorney is burdensome enough for adults, it can be nearly impossible for a child—with little to no financial resources apart from those of their parents, guardians, or spouses—to do so. Moreover, unlike divorce proceedings, annulment does not allow for property distribution or spousal maintenance, placing the child at further risk of poverty even if she is able to void the marriage. While 16- and 17-year olds may easily be wed with only their parents’ signatures, they face onerous administrative hurdles to dissolving that marriage.

16 People v. Liberta, 64 N.Y.2d 651 (N.Y. 1984).
17 Under N.Y. Penal Law § 130.05(3), “[a] person is deemed incapable of consent when he or she is…less than seventeen years old.” However, under N.Y. Penal Law § 130.10(4), “it shall be a defense that the defendant was married to the victim.”
18 N.Y. C.P.L.R. § 1201 (noting a child must generally initiate or appear in court proceedings through the guardian of her property, her parent, her legal guardian, or her adult spouse with whom she is residing if she is married, unless the court appoints a guardian ad litem); see, e.g., Wood v. Wood, 1830 WL 2724, 2 Paige Ch. 108, 109 (N.Y. Ch. 1830) (noting that the child appeared in divorce proceedings with an attorney, instead of a guardian as required, “when she was legally incompetent to understand and defend her own right.”
20 Any individual who was married before the age of 18 may bring an action on their own behalf to have that marriage annulled on the grounds of “nonage.” N.Y. Dom. Rel. Law §§ 7, 140(b). That a minor’s parents consented to the marriage does not preclude them from obtaining an annulment. Kruger v. Kruger, 122 N.Y.S. 23, 24 (1st Dep’t 1910).
21 In re Smiley, 36 N.Y.2d 433 (N.Y. 1975).
Married children are precluded from Special Juvenile Immigrant (SIJ) Status, a humanitarian immigration remedy for children in the United States who have been abused, neglected, or abandoned by a parent. Under U.S. immigration law, foreign-born children present in the United States may be eligible for Special Immigrant Juvenile (SIJ) status, an immediate pathway to lawful permanent resident status, if they have been abused, abandoned, or neglected by a parent, as determined by a court with jurisdiction under state law to make decisions about the custody and care of children. However, while forced marriage of a minor is a form of child abuse as noted earlier, a child must be unmarried in order to qualify for SIJ. As a result, children who were forced into a marriage in New York State by a parent cannot avail themselves of SIJ. Without immigration status, children often fear reporting abuse to law enforcement and remain dependent on their abusive parent or spouse.

Children under 18 cannot access confidential shelters that are available to adults escaping from an impending forced marriage or escaping from domestic violence during marriage. Women must be 18 or older in New York City to enter a confidential domestic violence shelter as a single or as a head of household with children. While a handful of youth crisis shelters in New York City provide temporary housing to runaway and homeless youth, their addresses are accessible to the public and do not provide the confidentiality or support services that forced marriage and domestic violence victims need to remain safe from their abusers and cope with their trauma.

New York State deters individuals from entering into other contracts with children under 18, but allows marriage contracts with children despite serious ramifications for their well-being. Contracts with children are voidable under New York State law, even if the children are emancipated. For that reason, most banks do not permit minors to open accounts in their names alone, many landlords will not enter leases with minors alone, and car rental agencies will not rent to drivers under the age of 18. When children are in practicality precluded from maintaining independent financial accounts, leasing housing in their own names, and renting means of transportation, but may be married off by their parents to adults with greater rights and resources, they find themselves in dependent positions with limited mobility that are easily exploited by their adult abusers.

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23 Id.
25 See, e.g., In re Farley, 213 N.Y. 15 (1914) (noting that a minor is regarded as “not having sufficient capacity to understand and pass upon questions involving contractual rights, and, therefore, a person dealing with him does so at his peril, and subject to the right of the infant to avoid his contract when he becomes of age”).
New York State bars children under 18 from engaging in actions much less serious than entering a marriage. For example, regardless of parental consent, it is against the law to tattoo any minor under the age of 18, and minors must be at least 18 years old in order to purchase tobacco products. Moreover, children under the age of 16 are not permitted to drive in New York State, and those under 18 are issued a junior driver license. In Upstate New York and Long Island, children with junior licenses face restrictions on driving without a supervisor to any location other than their place of employment and certain approved educational programs, particularly at night. In New York City, children with junior licenses are altogether banned from driving within the city under any circumstances. As a result, children under 18 facing an impending forced marriage or domestic violence are severely restricted in their ability to leave an abuser’s home compared to adults in similar situations. How can New York allow children to enter into marriage, a legal contract with possible lifelong ramifications for their well-being, before allowing them to get a tattoo, buy a cigarette, or even drive within their own city?

29 17-year olds may be eligible for senior driver licenses only if they have taken a state-approved driver education course. However, if a 17-year old fails to return her junior license to a DMV office, she will continue to be subject to junior license restrictions until she is 18, even with a certificate of completion of the requisite course. N.Y. Department of Motor Vehicles, Get a Driver License, http://dmv.ny.gov/driver-license/get-driver-license.