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## Civil LITIGATION

### Changes in New York State law protect minors from child marriage

Under new legislation effective July 20, 2017, New York State has taken steps to protect children under age 18 from being subjected to child marriage against their will. Under Federal Law, the U. S. State Department defines child marriage as “a formal marriage or informal union where one or both of the parties is under the age of 18.” Based upon statistics from the New York State Department of Health, approximately 3,853 minors were married in New York State between the years 2000 and 2010, with more than 84% of them being minor girls wed to adult men.

Studies have shown that child marriage undermines children's health, access to education, and economic opportunities. Child marriage also increases the child's likelihood of experiencing domestic violence.

Prior to July 20, 2017, New York State Domestic Relations Law permitted minors who were 16 and 17 years old to marry with parental consent as the only requirement. Notably, there were no provisions in the law that allowed the 16- or 17-year-old minor to voice his/her consent or lack of consent to being married. As long as his/her parent consented, the town or city clerk processing the application for a marriage license was able to issue the marriage license, even if the minor applicant appeared forced, coerced or visibly upset when applying for the marriage license.

Also prior to the new legislation, New York State law allowed children as young as 14 and 15 years old to marry as long as their parents consented and



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a judge approved of the marriage license application. While judicial approval was required for these young children to marry, the previous law failed to provide guidelines for the courts to consider when determining whether or not to approve an application.

Under the previous law, if a child married before the age of 18, they lacked the rights of a married person over the age of 18 and were unable to apply for divorce or an order of protection on their own. This was a major oversight in the law. While they had the ability to marry, they had no rights to protect themselves thereafter.

The new law passed in July prohibits any child under the age of 17 from being married in New York State. (Domestic Relations Law §15-a) (2017). Pursuant to Domestic Relations Law Section 15, if a child is 17 years old and applies for a marriage license from a town or city clerk, written parental consent, and the written approval of a Supreme Court or Family Court justice or judge is required for them to be married. (Domestic Relations Law §15) (2017).

The new law sets forth specific requirements for the court to follow before approving the application of a 17-year-old to marry. First, the court is required to appoint an attorney for the

child for each minor party immediately upon application for marriage. The attorney must have specific training in domestic violence and forced marriage in order to be appointed.

Second, the court must provide the minor parties notification of his/her rights, including but not limited to rights in relation to termination of the marriage, child and spousal support, domestic violence services, and how to access public benefits and other services. There is a newly created form that specifically lists the minor's rights in language that they can understand. Both the court and the attorney for the child are required to give this form to the minor.

Third, the court is required to do background checks on the parties applying to be married. This includes a review of Family Court Article 10 decisions involving child abuse and neglect for all parties, a review of all warrants issued under the Family Court Act for the parties, a review of whether any orders of protection exist involving the parties, and a check for all parties' names under the Sex Offender Registry. This ensures that the court has important background information about the parties prior to approving the marriage of the minor.

Fourth, prior to approving the minor's application, the court is required to have an in-camera interview separately with each minor party to discuss the application to marry.

Finally, after meeting with the mi-

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nor(s) and before they can approve an application to marry, the court is required to make written affirmative findings that (1) it is the minor's own will that the minor enter into the marriage; (2) that the minor is not being compelled by force, threat, persuasion, fraud, coercion or duress; and (3) that the marriage will not endanger the mental, emotional or physical safety of the minor. If these findings are not made, the court will deny the application.

The new statute provides specific factors for the court to consider when making these findings. These factors include the age difference between the parties intending to marry, whether there is a power imbalance between the parties intending to be married, whether the parties are incapable of

consenting to marriage for want of understanding, whether there is a history of domestic violence between the parties, and whether there is a history of domestic violence between a party and either parties' or legal guardians' family members.

The law specifies that just because the parents of the minor wish for the minor to be married, that shall not be the sole basis for the court's approval of the application. This is significant, because many times it is the minor's own family that is pressuring the minor to marry due to pregnancy or for religious or cultural reasons.

Another important aspect of the new marriage law is that once the court approves the application of the 17-year-old to get married, the 17-year-old is conferred some of the rights of an adult, including the right to enter into a contract and the right to divorce. It

is important to note that this provision does not confer all adult rights on the minor: they are not granted exemptions to specific constitutional and statutory age requirements, such as the right to vote, the use of alcoholic beverages, and other health or safety statutes relative to the minor. For the first time, the law provides minors who are married with rights to terminate the marriage if desired.

Overall, the new law provides judicial oversight that will protect minors from being forced into marriage against their will. It allows for minors to give full consent to marry and to be informed of the law and their rights.

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