

Age of Consent is irrelevant if a child is married

2019: Child Marriage in MA is a Serious Issue

What we have learned about the Child Marriage in MA

MA Legislators have - once again - filed a bill in the House and Senate to establish a MINIMUM AGE for marriage in MA. Last year this bill died in the Joint Judiciary Committee, it was ever voted out of committee and sent to the floor for a vote. As of now MA has no minimum age for marriage.

In the MA Senate: [S.24](#), An Act to end child marriage in Massachusetts – Referred to the Joint Committee on Children, Families and Persons with Disabilities

In the MA House: [H.1478](#), An Act to end child marriage in Massachusetts – Referred to the Joint Committee on the Judiciary – it is still unclear if this bill will go to Children and Families. The House Judiciary Chair indicated an interest in the bill. It died in the

MA Law as it is now – although there is no minimum age in MA, there is misinformation on the internet that suggests there is a minimum, and there is a case that has been cited that suggest :

(<https://blog.mass.gov/masslawlib/legal-topics/child-brides/>)

In Massachusetts, under [MGL c.207, s. 25](#), a person under eighteen cannot marry without parental consent . Massachusetts does not have a law specifying the minimum age at which a person can marry **with** a parent’s consent. The process requires court approval, so whether or not to authorize the marriage of a particular minor is within a judge’s discretion.

Yet if you search the web, several sites suggest either that the minimum age to marry here with parental consent is 14 for boys and 12 for girls, or that it is 16 for both. Where do these ages come from?

The notion of a minimum age of 14 for boys and 12 for girls comes from an 1854 case, [Parton v. Hervey](#), 67 Mass. 119. In this case, a 13-year-old girl got married **without** her mother’s consent, and her mother was forbidding her from going to live with her new husband. The court ruled that while it is illegal for someone to perform a marriage of a minor, the marriage itself is only voidable, not void. So the minor could get out of the marriage if she wanted to, but that the marriage was not void as a matter of law, as long as the minor was above the “age of consent.” The case then went on to say that the age of consent in Massachusetts (in **1854**) was fourteen for males and twelve for females, and thus the girl was still married and her mother couldn’t keep her from her beloved husband. This case was most recently cited in 1977 in [Baird v. Attorney Gen.](#), 371 Mass. 741 , for its basic premise “A marriage ceremony involving a freely assenting minor, acting without parental consent, has been held valid, although, because of the minor’s age, the ceremony was performed in violation of law.” This case did not reiterate the ages of 12 and 14.

Presumably, the concept that the minimum age is sixteen for both males and females comes from that same notion, that a minor above the age of consent may have a valid marriage. Massachusetts does not have a general age of consent for all things (for example, consent to medical treatment or kidnapping are different). For sexual matters, though, sixteen is generally called the “age of consent,” because sex with a person under sixteen is prohibited by [MGL c.265 s.23](#). And so some websites state that you can marry here with parental consent at sixteen, and without it at eighteen. But just the law does not list a minimum age of twelve, it doesn’t give a minimum age of sixteen either.

The truth is both simpler and more murky. In Massachusetts, if a parent consents to a minor child’s marriage, authorization must still be obtained from the Probate or District Court. The judge will use his or her discretion to determine if the marriage is in the child’s best interest. *As far as we can determine, there is no minimum age*; there also is no requirement that the judge approve any request. Each case is simply decided on its own merits.

What happens to girls who marry at such young ages?

from a [Global Citizen's article](#):

Throughout the US, about 248,000 children were married between 2000 and 2010, and the consequences of this practice can be especially devastating for girls. Married young girls are twice as likely to live in poverty and three times as likely to face domestic violence than older married women. Child brides are also often forced to drop out of school.

Because they’re physically immature, these girls are more likely to have health problems during pregnancy and childbirth. Furthermore, child brides often do not have access to adequate health care, and their babies have a reduced rate of survival.

Who opposes changing this law and why?

An article in the [Concord Monitor gives us an example](#):

Though the bill had unanimous backing from the House child law committee, it was toppled after a last-minute push from a handful of Republican representatives.

They argued the age increase would block young soldiers from getting married and providing military benefits to their partners or children. Others said the change could lead to more single-parent households.

“If we pass this, we will ensure forever that every child born to a minor will be born out of wedlock,” said Republican Rep. David Bates, of Windham.

The House voted 179-168 to indefinitely postpone the bill, meaning it effectively can't come up for the next two years.

Other objections throughout the country have come from [religious organizations](#):

A most curious incident happened recently in the New Jersey legislature. A bill that attempted to ban marriages for anyone under the age of eighteen failed to pass. The reason: a Jewish state assemblyman, representing the interests of the Ultra-Orthodox community, blocked passage of the bill citing that it lacked exemptions for religious communities. The dimensions of the legislation have raised contemporary ethical questions: To what degree is secular society allowed to determine religious marriage rules? Is the state intervening too much? Are religious groups afforded too much leniency?

And the anti-abortion community who claim that allowing underage girls to marry will mean fewer abortions. But as this excerpt from a story provides an alternative look at this situation:

Yet she was blunt about what happened: "The marriage was a way to cover up the rape. The marriage was a way to keep me from being an unwed teen mother. The marriage was a way to avoid any child services investigation. The marriage was a way to avoid child neglect charges against my parents. The marriage was a way to keep my husband out of prison."

What is the Massachusetts age of consent (to have sex)?

The Massachusetts Age of Consent is 16 years old. In the United States, the age of consent is the minimum age at which an individual is considered legally old enough to consent to participation in sexual activity. Individuals aged 15 or younger in Massachusetts are not legally able to consent to sexual activity, and such activity may result in prosecution for statutory rape.

Massachusetts statutory rape law is violated when a person has consensual sexual intercourse with an individual under age 16. The age of consent is raised to 18 if the victim is "of a chaste life"ⁱ and the offender induces them to have sexual intercourse.

Massachusetts does not have a close-in-age exemption. Close in age exemptions, commonly known as "Romeo and Juliet laws", are put in place to prevent the prosecution of individuals who engage in consensual sexual activity when both participants are significantly close in age to each other, and one or both partners are below the age of consent.

Because there is no such "Romeo and Juliet law" in Massachusetts, it is possible for two individuals both under the age of 16 who willingly engage in intercourse to both be prosecuted for statutory rape, although this is rare. Similarly, no protections are reserved for sexual relations in which one participant is a 15-year-old and the second is a 16 or 17-year-old.

i chaste. c.1200, "virtuous, pure from unlawful sexual intercourse" (as defined by the Church), from Old French chaste "morally pure" (12c.), from Latin castus "clean, pure, morally pure" (see caste).

References and more information:

- <http://family.findlaw.com/marriage/state-by-state-marriage-age-of-consent-laws.html>
- <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter112/Section12S>
 - o Section 7 : Minors; Solemnization of Marriage (Prohibits marrying individuals under 18). See also, Parton v. Hervey , 67 Mass. 119 (1854) for more discussion of the marriage of minors.
 - o Section 14 : Determination of Validity (Annulment)
 - o Section 24 : Nonage minors; receiving of notice; prohibition (Age requirement is 18)
 - o Section 25 : Nonage minors; authorization of marriage (Parental consent required under 18)
- <https://blog.mass.gov/masslawlib/legal-topics/child-brides/> (2007)
- https://en.wikipedia.org/wiki/Age_of_marriage_in_the_United_States
- <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/marriage.html>
- https://www.watchdog.org/national/analysis-child-marriage-is-legal-in-u-s-states/article_fbefbf04-5d0e-11e8-b6e6-cb9d5643bc13.html
- <https://thehill.com/homenews/state-watch/379135-new-momentum-seen-in-legislative-fight-to-ban-child-marriage>