



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Maura McClelland

### **H.B. 511**

132nd General Assembly  
(As Introduced)

**Reps.** Lanese and Rogers, Rezabek, Antonio, Fedor

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### **BILL SUMMARY**

- Modifies the statutory specification of the age at which persons may marry, to generally provide that only persons of the age of 18 years, not nearer of kin than second cousins, and not having a husband or wife living, may marry.
  - Provides an exception for emancipated 17-year-olds to marry if they obtain consent from the juvenile court.
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### **CONTENT AND OPERATION**

#### **General marriage age of 18 years under the bill**

The bill modifies the existing statutory specification of the age at which a person may marry. Under the bill, subject to the exception described below in "**Exception for 17-year-olds under the bill**," only persons of the age of 18 years, not nearer of kin than second cousins, and not having a husband or wife living, may be joined in marriage.<sup>1</sup>

#### **Marriage age under current law**

Currently the statute specifies that male persons of the age of 18 years, and female persons of the age of 16 years, not nearer of kin than second cousins and not having a husband or wife living, may be joined in marriage. For a minor to be married under current law, the minor must first obtain the consent of the minor's parents, surviving parent, parent who is the minor's court-designated residential parent and legal custodian, guardian, or any one of the following who has been awarded permanent custody of the minor: (1) an adult person, (2) the Department of Job and

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<sup>1</sup> R.C. 3101.01(A).

Family Services, (3) a Department-certified child welfare organization, or (4) a public children services agency. Currently, for purposes of this provision, a minor is not required to obtain the consent of a parent who is unavailable for certain reasons, including residency in a foreign country and loss of parental rights and responsibilities.<sup>2</sup>

## **Exception for 17-year-olds under the bill**

### **Emancipation and consent of the juvenile court required**

The bill provides an exception for 17-year-olds to its general "18 years of age" requirement for marriage. Under the bill, any 17-year-old may be joined in marriage if (1) the 17-year-old is emancipated and (2) the juvenile court has filed a consent to the marriage, as described below in "**Probate court issuance of a license.**" If both persons are 17, both must be emancipated and receive the juvenile court consent. If only one person is 17, the other person cannot be more than four years older. A person is "emancipated" if the person has entered the United States armed services, become employed and self-subsisting, or has otherwise become independent from the care and control of the person's parent, guardian, or custodian.<sup>3</sup>

### **Considerations for the juvenile court**

Before granting consent to a marriage of one or two 17-year-olds, the bill requires the juvenile court to consider appointing an attorney as a guardian ad litem for the 17-year-old (or 17-year-olds if both persons are 17) or consulting with certain individuals listed in the bill. Or the juvenile court may choose to make the appointment *and* do the consultation. The individuals listed by the bill for the consultation are:

- The 17-year-old's parent, surviving parent, court-designated residential parent and legal custodian, or guardian;
- An adult person who has been awarded permanent custody of the 17-year-old;
- The Department of Job and Family Services, if the Department has been awarded permanent custody of the 17-year-old; or
- A Department-certified child welfare organization, if the organization has been awarded permanent custody of the 17-year-old.<sup>4</sup>

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<sup>2</sup> R.C. 3101.01(A) and (B).

<sup>3</sup> R.C. 3101.02.

<sup>4</sup> R.C. 3101.041.



## Probate court issuance of a license

Under the bill, when a juvenile court files a consent to marriage pursuant to the Juvenile Rules (see "**Juvenile court consent**," below), the probate court may thereupon issue a marriage license, notwithstanding either or both the contracting parties for the marriage are 17. The probate court may not issue the license until the parties have applied for the license, appeared before a specified probate court, made specified statements upon oath, provided other specified information, and if either applicant is 17, stated that they have received marriage counseling satisfactory to the court.<sup>5</sup>

Existing law is similar to the provisions of the bill described in the preceding paragraph, except that existing law refers to the contracting parties to the marriage being "under the minimum age prescribed" for marriage under existing law and also includes an additional restriction on the probate court's issuance of a marriage license (repealed by the bill), that specifies that, in addition to the other restrictions, the court may not issue the license "until such child has been born, or it is found beyond doubt by the juvenile court that the minor female is pregnant and intends to have the child."<sup>6</sup>

## Juvenile court consent

Juvenile Rule 42, adopted by the Ohio Supreme Court under the mandate of Ohio Constitution, Article IV, Section 5(B) and governing Ohio all courts, pertains to court consent for an underage marriage.

The Rule provides that when a minor desires to marry and has no parent, guardian, or custodian whose consent to the marriage is required by law, "the minor shall file an application under oath in the county where the female resides" requesting that the juvenile court judge give consent and approbation in the probate court for such marriage. The Rule specifies the required content of the application, which includes the reason why consent of a parent is not required and, if the minor alleges that parental consent is unnecessary because the parent has neglected or abandoned the child for at least one year immediately preceding the application, the name and address, if known, of the parent. If neglect or abandonment is alleged in the application and the parent's address is known, the court must cause notice of the date and time of hearing to be served upon the parent.<sup>7</sup>

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<sup>5</sup> R.C. 3101.04 and 3101.05

<sup>6</sup> R.C. 3101.04 and 3101.05.

<sup>7</sup> Juvenile Rule 42(A), (B), and (F), not in the bill.



Separately, the Rule provides that, when a female is pregnant or delivered of a child born out of wedlock and the parents of the child seek to marry even though one or both of them is under the minimum age prescribed by law for persons who may marry, the persons must file an application under oath in the county in which the female resides requesting that the juvenile court judge give consent in the probate court to the marriage. The Rule specifies the required content of the application, which includes an indication of whether the female is pregnant or has already delivered her child. And if pregnancy is asserted, a certificate from a physician verifying pregnancy must be attached to the application. If an "illegitimate child" has been delivered, the birth certificate of the child must be attached to the application. If consent to the marriage by a parent is required by law, the consent of each such parent whose consent is required must be indorsed on the application. Upon receipt of an application under this provision, the court has to require an investigation of the circumstances and conduct a hearing.<sup>8</sup>

If the court finds that the allegations in the application are true and that the granting of the application is in the best interest of the applicants, the court must grant the consent and make the applicant referred to in the second preceding paragraph a ward of the court. A copy of the court's judgment entry must be transmitted to the probate court.<sup>9</sup>

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## HISTORY

ACTION	DATE
Introduced	02-14-18

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<sup>8</sup> Juvenile Rule 42(C) to (E), not in the bill.

<sup>9</sup> Juvenile Rule 42(G) and (H), not in the bill.

