Choosing a Home: When Should Children Make Autonomous Choices About Their Home Life?

"The law of children has developed in a patchwork and inconsistent fashion. Decisionmakers including Congress, state legislatures, the Supreme Court, and state courts have created laws and decided cases without a comprehensive vision of what it means to be a child or how children think and behave."[1]

I. INTRODUCTION

A sixteen-year-old female may decide to give birth and become a mother, but she cannot independently obtain an abortion or marry the father of her child.[2] A young mother may relinquish rights to her child without judicial intervention, but that same teenager may not decide independently with which parent she wishes to live.[3] The passage of the Twenty-Sixth Amendment highlighted inconsistencies in the law that allowed eighteen-year-olds to fight for their country but deprived those same individuals of the right to vote for the politicians who sent them to war.[4] Although this debate changed the way many individuals feel, society has failed to fully integrate young people into the legal and social worlds currently populated only by adults.[5] Similar inconsistencies still remain regarding minors' abilities to choose with whom they wish to live.[6]

1. Larry Cunningham, *A Question of Capacity: Towards a Comprehensive and Consistent Vision of Children and Their Status Under Law*, 10 U.C. DAVIS J. JUV. L. & POL'Y 275, 277 (2006).

2. *See, e.g.*, MASS. GEN. LAWS ANN. ch. 112, § 12S (West 2013) (limiting minors' abortion rights by requiring parental consent or judicial bypass); MASS. GEN. LAWS ANN. ch. 207, § 7 (West 2013) (excluding minors under eighteen from marriage without certain approvals); Nicole Phillis, *When Sixteen Ain't So Sweet: Rethinking the Regulation of Adolescent Sexuality*, 17 MICH. J. GENDER & L. 271, 273-75 (2011) (describing inequities in abortion and consent laws).

3. *See* Randy Frances Kandel, *Just Ask the Kid! Towards a Rule of Children's Choice in Custody Determinations*, 49 U. MIAMI L. REV. 299, 300 (1994) (criticizing tendency to ignore child's custody preference); Phillis, *supra* note 2, at 273 (noting inequity in allowing minor to have baby adopted but not to abort).

4. *See* U.S. CONST. amend. XXVI; Cunningham, *supra* note 1, at 294-98 (explaining historical development of minors' right to vote).

5. *See* Cunningham, *supra* note 1, at 294-98 (finding long road ahead toward recognizing full rights for minors); *see also* Michael S. Wald, *Children's Rights: A Framework for Analysis*, 12 U.C. DAVIS L. REV. 255, 258 (1979) (explaining children still excluded from certain rights). "To date, neither legislatures nor courts have developed a coherent philosophy or approach when addressing questions relating to children's rights. Different courts and legislatures have been willing to give some new rights to children, while denying them others, without explaining the difference in outcome." Wald, *supra*, at 258.

6. *See infra* Part II (explaining legal inconsistencies for minors).

The United States Supreme Court decided *Meyer v. Nebraska*[7] in 1923 and established the fundamental rights to marry, to establish a home, and to raise children.[8] By 1944, the Supreme Court limited these rights for minors in *Prince v. Massachusetts*.[9] Since the *Prince* decision, a patchwork of federal and state laws has impacted a minor's right to determine his or her living situation.[10] The time has come to make sense of the patchwork and provide consistent results for minors in the family-law system.[11]

Scholars, judges, and the general public have offered a multitude of reasons for limiting minors' rights to make decisions about their home-life, including: promoting socialization and education; guaranteeing sufficient care; pursuing family interests; implementing normative models of proper behavior; and supporting and protecting minors.[12] These reasons, however, do not explain inconsistencies in laws allowing minors to make some family-law decisions and taking away those rights with regard to other decisions.[13] This Note calls for consistency in the treatment of minors and explores how the law treats minors in four family-law subject areas: marriage, adoption, custody, and abortion. Part II investigates the historical foundations of the belief that minors lack capacity to make important decisions.[14] It then goes on to discuss the historical development of minors' treatment with respect to autonomy and decision-making ability.[15] Part III suggests potential solutions for creating consistency in the law and discusses possible criticisms of those suggestions.[16] This Note ultimately calls for consistency in the law regarding minors' capacity to make decisions about their home lives.[17]

II. HISTORY

Historically, adults have viewed children as lacking capacity for rational choice.[18] Capacity "is founded on the ability to think rationally, form plans,

7. 262 U.S. 390 (1923).

8. *See id.* at 399 (recognizing fundamental right to privacy extends to home life).

9. *See* 321 U.S. 158, 168-69 (1944) (creating limitations on privacy rights of mature young people).

10. *See infra* Part II (exploring treatment of minors in domestic-relations law).

11. *See infra* Part III (arguing for consistent laws regarding children).

12. *See* Kirsten Scheiwe, *Between Autonomy and Dependency: Minors' Rights to Decide on Matters of Sexuality, Reproduction, Marriage, and Parenthood. Problems and the State of Debate—An Introduction*, 18 INT'L J.L. POL'Y & FAM. 262, 263 (2004) (suggesting limiting minors' rights).

13. *See infra* Part II (highlighting inconsistencies in children's treatment).

14. *See infra* Part II (explaining historical beginnings of children's rights).

15. *See infra* Part II (examining history of four family-law practice areas).

16. *See infra* Part III (analyzing treatment of minors in family law).

17. *See infra* Part III (criticizing current system and suggesting alternatives).

18. *See* Lee E. Teitelbaum, *Children's Rights and the Problem of Equal Respect*, 2006 UTAH L. REV. 173, 176 (discussing theorists' views that children lack reasoning capacity and should not have adult rights). Teitelbaum explains the theories of John Locke and John Stuart Mill who both found children did not have the same capacity for reasoning as adults and therefore should be denied certain rights. *See id.* at 176-77. Mill explains children still require others to care for them and therefore must be protected for their own good. *See id.* Locke explains children lack reason early in their lives, so parents must care for them and thus have power

and make choices."[19] The law presumes a cognitively competent individual can make decisions in his or her best interests.[20] It remains unanswered whether or not this common belief should lead to an assumption that children under a certain age lack capacity, but current law restricting a child's right to make a decision assumes children are not competent to make those decisions.[21]

Researchers differ in their opinions about how and when children develop capacity for choice.[22] Some claim children as young as age four or five can engage in causal reasoning and therefore have capacity to act rationally.[23] Slightly older children have been found to identify risks of treatments and make "adult-like" decisions even if unable to completely evaluate risks and benefits as adults would.[24] Other research suggests children between infancy and age eight have rational thoughts about the closeness of their relationships with their parents, each parent's ability to spend time with the child, the day-to-day stability of each parent, and the degree to which each parent provides care.[25] By the time children reach age nine or ten, they may match the competence of fourteen- to eighteen-year-olds in formulating a reasonable preference for custody.[26] Most researchers have agreed that by age twelve, children

over them until they are able to care for themselves. *See id.*; *see also* JOHN LOCKE, THE SECOND TREATISE ON CIVIL GOVERNMENT § 55, at 32 (Prometheus Books 1986) (1690) (explaining temporary state of childhood lacks rights for limited time). Locke writes that a parent holds only temporary and proportionate power over a child based on the ability to reason. *See* LOCKE, *supra*, at 32; *see also* LAURENCE D. HOULGATE, THE CHILD & THE STATE: A NORMATIVE THEORY OF JUVENILE RIGHTS 69-73 (1980) (arguing more studies needed to determine children's capacity).

19. Teitelbaum, *supra* note 18, at 176 (explaining capacity concept).

20. *See* Wallace J. Mlyniec, *A Judge's Ethical Dilemma: Assessing a Child's Capacity to Choose*, 64 FORDHAM L. REV. 1873, 1888 (1996) (explaining most appellate courts presume capacity of older adolescents and incapacity of younger children).

21. *See* HOWARD COHEN, EQUAL RIGHTS FOR CHILDREN 38 (1980) (explaining adult who acts unreasonably differs from child because adult has capacity to act rationally). Cohen explains children have potential to "reason, make choices, or recognize the moral dimension of humanity." *Id.*

22. *See* Barbara A. Atwood, *The Child's Voice in Custody Litigation: An Empirical Survey and Suggestions for Reform*, 45 ARIZ. L. REV. 629, 655 (2003) (claiming children between infancy and age eight can think rationally about certain topics); Gary B. Melton, *Taking* Gault *Seriously: Toward a New Juvenile Court*, 68 NEB. L. REV. 146, 155 (1989) (claiming children engage in causal reasoning as early as four years old); Mlyniec, *supra* note 20, at 1878-79 (expressing Piaget's stage theory, which recognizes four stages of reasoning ability); Linda Whobrey Rohman et al., *The Best Interests of the Child in Custody Disputes*, *in* PSYCHOLOGY AND CHILD CUSTODY DETERMINATIONS: KNOWLEDGE, ROLES, AND EXPERTISE 59, 75-77 (Lois A. Weithorn ed., 1987) (concluding children older than twelve understand others' perspectives, think hypothetically, and compare alternatives).

23. *See* Melton, *supra* note 22, at 155 (explaining some four-year-olds can causally reason).

24. *See id.* at 153-54 (citing studies finding young children model adult decision-making behavior).

25. *See* Atwood, *supra* note 22, at 655 (determining young children capable of rational thought). Atwood explains that young children may be particularly susceptible to parental influence or emotional decision-making. *See id.* They may also struggle to adequately verbalize their preferences, especially in a courtroom setting where they may not understand what information a judge attempts to elicit. *See id.*

26. *See* Ellen Greenberg Garrison, *Children's Competence to Participate in Divorce Custody Decisionmaking*, 20 J. CLINICAL CHILD PSYCHOL. 78, 78-79 (1991) (comparing competence of nine- and ten-year-olds with older adolescents). Garrison argues some nine- and ten-year-olds may competently express custody preferences, but others may be too emotional or may be torn between their parents. *See id.* at 85.

understand others' perspectives, think hypothetically, and compare alternatives.[27]

Leading researcher Jean Piaget formed his cognitive-development theory by claiming children go through four basic levels of development: sensory motor period (birth to two years old); preoperational thought period (two to seven years old); concrete operations period (seven to eleven years old); and formal operations period (eleven to fifteen years old).[28] Other theorists reject Piaget's stage theory and believe adolescents individually develop skills at varying times.[29]

Childhood was not always considered a separate stage of life.[30] Only in the seventeenth century did adults begin to view children as lesser beings and feel the need to protect and safeguard them.[31] In colonial America, adults treated children as servants, completely subservient to their parents.[32] The civil law in England and early America established twenty-one as the age of legal adulthood.[33] In *In re Gault*,[34] the Supreme Court explained children had the right, "not to liberty but to custody."[35]

Many reasons have been offered for denying children rights, but throughout history, adults have most commonly argued that children need protection.[36] The state has a parens patriae interest in protecting minors' health and welfare from decisions grounded in immaturity.[37] Adults fear the impact that making

27. *See* Rohman et al., *supra* note 22, at 75-77 (stating children older than twelve develop formal reasoning capacity and make decisions objectively).

28. *See* Mlyniec, *supra* note 20, at 1879 (explaining Piaget's theory).

29. *See id.* at 1880 (explaining other theorists' rejection of Piaget's stages). Piaget's stage theory pays little attention to the emotional aspects of decision-making that may significantly alter a child's decision-making process. *See id*. Further, the inflexible stages do not account for variables in environment, family lifestyle, or individual abilities. *See id*.

30. *See* Note, *Parental Consent Requirements and Privacy Rights of Minors: The Contraceptive Controversy*, 88 HARV. L. REV. 1001, 1007 n.42 (1975) (explaining children treated as small adults historically).

31. *See id.* (highlighting development of paternalistic attitudes toward children).

32. *See id.* at 1008 (describing children treated as property of parents in colonial America).

33. *See* Mlyniec, *supra* note 20, at 1877 (differentiating between treatment of children in civil and criminal law).

34. 387 U.S. 1 (1967).

35. *See id.* at 17 (declaring impossibility of denying procedural rights to children because they have no such rights). The Court explained that from the beginning of the juvenile court system, adolescents were accorded different rights than adults. *See id*. at 14.

36. *See* COHEN, *supra* note 21, at vii (claiming protection of children touchstone for family life and broader social policy); SARAH H. RAMSEY & DOUGLAS E. ABRAMS, CHILDREN AND THE LAW IN A NUTSHELL 9 (3d ed. 2008) (explaining protection as basis for denying rights); Atwood, *supra* note 22, at 657 (claiming children may undergo psychological hardship if required to testify or take responsibility for decisions); Robert E. Emery, *Children's Voices: Listening—and Deciding—Is an Adult Responsibility*, 45 ARIZ. L. REV. 621, 621-22 (2003) (arguing adults should shield children from decision-making responsibility); Robert E. Emery, Commentaries, *Easing the Pain of Divorce for Children: Children's Voices, Causes of Conflict, and Mediation: Comments on Kelly's "Resolving Child Custody Disputes,"* 10 VA. J. SOC. POL'Y & L. 164, 166 (2002) (explaining personal reasons for advocating to shield children).

37. *See* Bellotti v. Baird, 443 U.S. 622, 635 (1979) (justifying decision based on accounting for children's vulnerability); RAMSEY & ABRAMS, *supra* note 36, at 9 (developing history of parens patriae

decisions regarding custody and other important life matters will have on children, so instead, adults make these decisions for children.[38] Adults justify denying children freedom to make decisions because they view children as vulnerable, incapable of making rational decisions, and in need of protection.[39]

Parenting has been encompassed in the right to privacy and this has subjugated the rights of children to those of parents.[40] No Supreme Court decision has explicitly held the right to privacy applies to minors, but the Court has extended the right to privacy to parents' choices in raising their children.[41] Parents have almost absolute authority and autonomy over the upbringing of their legally incompetent children.[42] More recently, the Supreme Court has repudiated this antiquated view, but the Court has still refused to fully analyze the relationship between minors and the state and to set forth a uniform standard for the treatment of children.[43] In fact, the Court appears to have found that capacity is not relevant in determining applicability of fundamental rights to minors.[44] Justice Stewart wrote in his concurrence in *Ginsberg v. New York*,[45] "a child . . . is not possessed of that full capacity for individual choice . . . . It is only upon such a premise . . . that a State may deprive children of other rights—the right to marry, for example, or the right to vote—deprivations that would be constitutionally intolerable for adults."[46]

Currently, courts and legislatures have accepted that children hold some rights.[47] States vary the age at which they grant minors legal capacity, which

reasoning from royal prerogative); Jan C. Costello, *Making Kids Take Their Medicine: The Privacy and Due Process Rights of De Facto Competent Minors*, 31 LOY. L.A. L. REV. 907, 910 (1998) (explaining state parens patriae interest in protecting health and welfare of minors).

38. *See* Atwood, *supra* note 22, at 657 (recognizing reason behind denying rights to children as fear of harm).

39. *See* COHEN, *supra* note 21, at vii (exposing protection as fundamental reason behind treatment of children); *see also* RAMSEY & ABRAMS, *supra* note 36, at 9 (reviewing dichotomy of protecting children versus granting of rights).

40. *See* COHEN, *supra* note 21, at 4 (acknowledging privacy of parental relationship with child except in abuse cases).

41. *See* Note, *supra* note 30, at 1009 (noting Supreme Court refuses to give full rights to minors); *see also* Pierce v. Soc'y of Sisters, 268 U.S. 510, 534-35 (1925) (creating parental right to direct upbringing and education of children).

42. *See* RAMSEY & ABRAMS, *supra* note 36, at 15 (recognizing almost complete parental authority over child historically); *see also* Wisconsin v. Yoder, 406 U.S. 205, 242 (1972) (Douglas, J., dissenting) (arguing children have constitutional right to determine whether to attend school); Morrissey v. Perry, 137 U.S. 157, 159 (1890) (refusing to disturb parental control even to require military service).

43. *See* Note, *supra* note 30, at 1008 (examining Supreme Court treatment of children's rights); *see also* Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 511 (1969) (providing minors with limited First Amendment rights in schools); *In re* Gault, 387 U.S. 1, 12, 30-31 (1967) (providing juvenile with some due-process protections).

44. *See* Note, *supra* note 30, at 1008-09 (concluding Court tends to ignore capacity arguments).

45. 390 U.S. 629, 649-50 (1968).

46. *See id.* (reasoning lack of capacity only justification for denying children rights).

47. *See* Teitelbaum, *supra* note 18, at 177-78 (explaining states provided statutory rights for older children).

suggests that rights are not all-or-nothing propositions.[48] Judges who reject childrens' preferences do so after concluding that a child's biological, psychosocial, and educational development makes her incapable of rational thought or subject to influences that render her rational judgment unsound.[49] This treatment has led to the current, confused state of the law, which pits a child's freedom of choice against a parent's desire to protect that child.[50]

A. Marriage

Despite current trends in the United States viewing marriage as an institution that individuals enter later in life, many communities have historically encouraged and continue to encourage marriage during teenage years.[51] English common law recognized three age groups with different capacities to marry.[52] The common law did not generally require parental approval, but Parliament enacted Lord Hardwicke's Act in 1753, which voided all marriages of persons under twenty-one if entered into without the consent of an underage party's father.[53]

The Supreme Court has held that the right to privacy encompasses marriage.[54] The Court, however, has refused to extend this fundamental right

48. *See id.* at 181 (suggesting variation in rights granted to minors means "different rights require different competencies").

49. *See* Mlyniec, *supra* note 20, at 1874-75 (evaluating judges' reasons for ignoring children's preferences).

50. *See generally* SAMUEL M. DAVIS & MORTIMER D. SCHWARTZ, CHILDREN'S RIGHTS AND THE LAW (1987) (explaining differences as struggle between freedom of choice and protectionism).

> These disparate results stem from an inherent conflict in the law—a kind of schizophrenia—between the desire to accord children a greater degree of control over their lives and freedom of choice, and the need, on the other hand, to protect them from others, their surroundings, and, sometimes, from their own folly.

Id. at 201.

51. *See* Michele Goodwin & Naomi Duke, *Capacity and Autonomy: A Thought Experiment on Minors' Access to Assisted Reproductive Technology*, 34 HARV. J.L. & GENDER 503, 549 (2011) (differentiating between U.S. trends and foreign countries that encourage marriage at young ages).

52. *See* Lynn D. Wardle, *Rethinking Marital Age Restrictions*, 22 J. FAM. L. 1, 5-6 (1983) (noting English common-law distinction between three age groups). Children under age seven were considered completely incapable of marrying. *See id.* Between age seven and age fourteen for boys or twelve for girls, individuals could enter an "imperfect" marriage considered valid, but voidable at will by either party until both reached the age of discretion. *See id.* After the age of twelve for girls and fourteen for boys, the marriage was considered valid and the only way to dissolve it was divorce or death. *See id.*

53. *See id.* at 7 (examining creation of parental consent requirement for minor to marry).

54. *See* David D. Meyer, *The Paradox of Family Privacy*, 53 VAND. L. REV. 527, 539-42 (2000) (analyzing Supreme Court treatment of right to marry). In *Loving v. Virginia*, the Court invalidated state restrictions on interracial marriage and indicated that marriage is a fundamental constitutional right. 388 U.S. 1, 12 (1967). The Court further rejected state-imposed limitations on marriage throughout the 1970s and 1980s. *See* Turner v. Safley, 482 U.S. 78, 95 (1987) (invalidating marriage restrictions for prisoners); Zablocki v. Redhail, 434 U.S. 374, 383-84 (1978) (holding child-support-payment requirement before marriage unreasonably infringed on fundamental rights).

to minors.[55] The right to privacy has been extended to minors in other areas of law, such as the right to decide whether or not to use contraception or have an abortion.[56] Yet the Court claims governments need not provide exceptional justification to limit underage marriage.[57] In *Moe v. Dinkins*,[58] the Second Circuit upheld a New York state law requiring all male applicants between sixteen and eighteen and all female applicants between fourteen and eighteen to obtain parental consent to marry.[59] The court found three legitimate state interests in requiring parental consent: ensuring the involvement of at least one mature person in the decision-making process; preventing the formation of unstable marriage relationships; and supporting parental rights as a fundamental privacy right.[60]

All American jurisdictions have statutes that regulate minors' ability to marry, and all jurisdictions except two set the age of consent at eighteen.[61] Many states have minimum ages of marriage capacity ranging from age thirteen to eighteen, but with judicial interpretation and exceptions, these minimum ages often have no meaning.[62] Further, all states require parental consent for marriage of children under some age set by the legislature.[63]

55. *See* Wardle, *supra* note 52, at 3 (examining Supreme Court decisions on marriage of minors). Marriage has been extensively regulated and controlled by the state, and the Court has cited this as a reason for applying rationality-review tests to statutes regulating minors' ability to marry. *See id.*

56. *See id.* at 21 (distinguishing between marriage cases and cases granting minors' right to use contraceptive or have abortion); *see also infra* Part II.D (analyzing treatment of minors' abortion choice). The Supreme Court held in *Planned Parenthood of Cent. Mo. v. Danforth* that minors' rights do not spring into existence upon reaching majority; instead they exist all along. 428 U.S. 52, 74 (1976). In *Bellotti v. Baird*, the Court further explained that while minors do not have the same rights as adults, certain decisions, like the decision to have or abort a child, cannot be postponed until adulthood. *See* 443 U.S. 622, 642-43 (1979). Yet the decision to marry may have the same urgency as the abortion decision because it will determine whether the child is legitimate or illegitimate. *See* Wardle, *supra* note 52, at 21.

57. *See Zablocki*, 434 U.S. at 392 (Stewart, J., concurring) (arguing no right to marry in constitutional sense); *id.* at 399 (Powell, J., concurring) (concluding state has absolute right to prescribe conditions upon which marriage relation granted); *id.* at 404 (Stevens, J., concurring) (arguing evenhanded regulation allowed even if substantially interfering with ability to marry); *see also* Meyer, *supra* note 54, at 540 (reiterating Court's determination that reasonable regulations do not interfere with right to marry).

58. 669 F.2d 67 (2d Cir. 1982).

59. *See id.* at 68 (holding minors have no constitutional right to marry against wishes of parents).

60. *See* Moe v. Dinkins, 533 F. Supp. 623, 629-31 (S.D.N.Y. 1981) (providing reasons for restricting marriage of minors), *aff'd*, 669 F.2d 67 (2d Cir. 1982).

61. *See* Wardle, *supra* note 52, at 7 (summarizing state statutes setting age of majority and restricting ability of minors to marry); *see also infra* Appendix A (listing state laws limiting minors' ability to marry). Nebraska sets the age of majority at nineteen, but allows minors to marry at age seventeen, and Mississippi sets the age of majority at twenty-one. *See* NEB. REV. STAT. ANN. §§ 42-102, 42-105, 43-2101 (LexisNexis 2012) (setting majority at age nineteen); *see also* MISS. CODE ANN. §§ 93-1-5, 1-3-27 (2012) (setting majority at twenty-one).

62. *See* Wardle, *supra* note 52, at 12-14 (explaining minimum marriage age has little to no effect on validity of marriage).

63. *See id.* at 7, 9 (discussing statutes requiring parental consent under certain ages). Twenty-eight states allow sixteen- and seventeen-year-olds to marry with parental consent. *See id.* In Arkansas, for example, males may marry with parental consent at seventeen, while females may marry with parental consent at sixteen. *See* ARK. CODE ANN. § 9-11-102 (2012) (requiring satisfactory evidence of parental consent for marriage of

Specific requirements vary by state, but most states have a dual approach that requires parental consent for older minors, and both parental and judicial consent for younger minors or in exceptional cases.[64] Most states also provide some exceptions that waive the parental-consent requirement, including best interests of the parties, pregnancy, or the existence of a child born to the couple previously.[65]

The legislators who enacted the aforementioned statutes typically give three reasons for drafting the statutory language in such a way: respect for tradition, deference for parental authority, and contemporary sociological concerns.[66] Preventing unstable marriages is certainly a worthy goal, but research has failed to support the conclusion that all teenage marriages are unstable.[67] It remains

minors based on gender).

64. *See* Wardle, *supra* note 52, at 9 (concluding most common approach consists of two parts). New York requires parental consent for sixteen- and seventeen-year-olds, but also requires parental *and* judicial consent for fourteen- and fifteen-year-olds. *See* N.Y. DOM. REL. LAW §§ 15 to 15-a (McKinney 2013) (determining younger minors must obtain both parental and judicial consent).

65. *See* Wardle, *supra* note 52, at 7, 11 (providing statutory exceptions authorizing teenage marriages without parental consent); *see also* ALASKA STAT. § 25.05.171 (2013) (providing best-interest exception when parents absent, disagree, unfit, or arbitrarily withhold consent); ARK. CODE ANN. § 9-11-103 (2012) (providing exception when female pregnant); COLO. REV. STAT. § 14-2-108 (2013) (giving judges discretion to bypass parental-consent requirement, but pregnancy alone insufficient); CONN. GEN. STAT. ANN. § 46b-30 (West 2013) (giving judicial discretion if parent not U.S. resident); DEL. CODE ANN. tit. 13, § 123 (2013) (providing judge shall consider both minors' and parents' wishes in determining marriageability); FLA. STAT. ANN. § 741.0405 (West 2012) (providing exception if parents of minor deceased or minor previously married); 750 ILL. COMP. STAT. ANN. § 5/208 (West 2013) (allowing sixteen-year-old to marry without parental consent if reasonable efforts to notify parents fail); IND. CODE ANN. § 31-11-2-3 (West 2012) (providing judicial bypass of parental-consent requirement); IOWA CODE ANN. § 595.2 (West 2013) (creating judicial exception if both parents dead, incompetent, or not located); KY. REV. STAT. ANN. § 402.020 (West 2012) (allowing marriage without consent if minor pregnant); MD. CODE ANN., FAM. LAW § 2-301 (LexisNexis 2013) (providing pregnancy exception for individuals fifteen and older); MICH. COMP. LAWS ANN. §§ 551.51, .103, .201-.204 (West 2012) (giving judges discretion and eliminating consent requirement when parents dead); MISS. CODE ANN. §§ 1-3-27, 93-1-5(1)(d) (2012) (giving judge discretion to waive parental-consent requirement); MO. ANN. STAT. § 451.090 (West 2012) (allowing judge to authorize marriage without parental consent); N.J. STAT. ANN. § 37:1-6 (West 2013) (allowing marriage without consent if parents of unsound mind); N.M. STAT. ANN. § 40-1-6 (West 2012) (providing pregnancy exception if approved by judge); N.C. GEN. STAT. § 51-2.1 (2013) (allowing exception for pregnancy and judicial determination); OHIO REV. CODE ANN. § 3101.01 (LexisNexis 2012) (eliminating consent requirement if parent resides in foreign country or jail, or has abandoned child); 23 PA. CONS. STAT. ANN. § 1304 (West 2012) (appointing guardian pro hac vice if parental consent and judicial consent not accessible); S.C. CODE ANN. § 20-1-250 (2012) (requiring consent only if minor lives with parent); TENN. CODE ANN. §§ 36-3-104, -107 (2012) (requiring three-day waiting period without parental consent, but allowing judge to waive waiting period); TEX. FAM. CODE ANN. § 2.103 (West 2011) (creating judicial exception if in best interests of minor); WASH. REV. CODE ANN. § 26.04.010 (West 2012) (creating judicial exception upon showing of necessity of marriage); WYO. STAT. ANN. §§ 20-1-102, -105 (2012) (giving judge discretion to authorize marriage). Some states specifically find that proof of pregnancy alone does not constitute extraordinary circumstances. *See* Wardle, *supra* note 52, at 12 (explaining some states provide exceptions on ban of marriage if bride pregnant or mother).

66. *See* Wardle, *supra* note 52, at 24 (stating three most important reasons given by legislatures for restricting marriage based on age).

67. *See* Moe v. Dinkins, 669 F.2d 67, 68 (2d Cir. 1982). The appeals court explained the decision in *Moe v. Dinkins*, by claiming the need to prevent unstable marriages among those "lacking the capacity to act in their own best interests." *Id.*; *see also* Wardle, *supra* note 52, at 26-29 (summarizing research claiming age at

unclear whether the partners' ages determine the success of the marriage, or whether other factors may also impact minors' divorce rate, such as income, education, or familial support.[68]

Further, limiting or attempting to ban teenage marriage by statute typically has not operated as intended.[69] In many cases, teenagers simply lie about their age to marry without constraint, and in others, they may travel to another state with more lenient laws in order to do so.[70]

B. Adoption

Adoptions can involve minors as a parent or as a child; in either situation, the minors at the center of an adoption decision should have a say in determining whether the adoption should be finalized.[71] In 1851, Massachusetts enacted the first modern adoption statute, and today, every state provides for adoption proceedings.[72] Currently, only ten states require some form of third-party involvement when a minor parent seeks to place her child up for adoption.[73] Only five states require legal counsel for a minor adoptee.[74]

Public policy favors requiring consent from the adoptee before an adoption can occur.[75] Fifty state statutes direct courts to consider a child's preference to

marriage linked with divorce rate and marriage satisfaction).

68. *See* Wardle, *supra* note 52, at 35-39 (arguing causation link not found between age at marriage and failure of marriage).

69. *See id.* at 39-49 (arguing ineffectiveness of statutes aimed at preventing teenage marriage).

70. *See id.* at 44-45 (arguing teenagers find way to marry if desired). Fifty states with fifty separate laws give teenagers incentives to travel in order to get married. *See id.* at 45. This may lead to what some would call undesirable consequences, including runaways, teenagers living together before marriage, increasing numbers of abortions and adoptions, or single-parent families. *See id.* at 49-54.

71. *See generally* PEW COMM'N ON CHILDREN IN FOSTER CARE, FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE (2004), http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Foster_care_reform/foster_care_final_051804.pdf (suggesting children's involvement necessary in adoption proceedings). In 2003, the Pew Commission on Children in Foster Care wrote, "[n]o child . . . should face the partial or permanent severance of familial ties without a fully informed voice in the legal process." *Id.* at 35. This report recommended children "have a direct voice in court, effective representation, and the timely input of those who care about them." *Id.* at 41.

72. *See* Janet Hopkins Dickson, Comments, *The Emerging Rights of Adoptive Parents: Substance or Specter?*, 38 UCLA L. REV. 917, 924 (1991) (examining history of adoption).

73. *See* Phillis, *supra* note 2, at 274 n.14 (noting minority of states require third-party involvement when minor gives child up for adoption).

74. *See id.* (showing few states require representation for minor adoptees).

75. *See, e.g.*, MASS. GEN. LAWS ANN. ch. 210, § 2 (West 2013) (requiring consent of child over twelve for adoption); Swaffar v. Swaffar, 827 S.W.2d 140, 141, 143 (Ark. 1992) (prohibiting adoption because fifteen-year-old withheld consent). *See generally* Am. Bar Ass'n Child Custody & Adoption Pro Bono Project, *Hearing Children's Voices and Interests in Adoption and Guardianship Proceedings*, 41 FAM. L.Q. 365 (2007) [hereinafter *Hearing Children*] (fifty-one-jurisdiction analysis on hearing children's voices in adoptions). The Uniform Adoption Act requires a minor's informed consent for adoption if he or she is at least twelve years old, unless the court, in the best interest of such minor, dispenses with the minor's consent. UNIF. ADOPTION ACT §§ 2-401(c), 2-402(b)(2) (amended 1994), 9.IA U.L.A. 49-53 (1999). In Massachusetts, the Supreme Judicial Court stopped one adoption agreed to by both parents because the child turned twelve shortly after the agreement and refused to be adopted. *See* White v. Laingor, 746 N.E.2d 150, 152 (Mass. 2001).

some extent during adoption proceedings.[76] Forty-nine jurisdictions require courts to contemplate a child's preferences by requiring a child's consent to adoption if the child has attained a certain age.[77] States vary greatly in the way they deal with learning about and handling children's preferences.[78] Judges often waive the consent requirement or find the adoption to be in the child's best interest, regardless of the child's consent or lack thereof.[79] Only two states provide for representatives for the child; thus, the vast majority of children do not have help articulating their preferences to the court.[80] In practice, however, most courts do not consider the child's preference or consent a significant factor in making an adoption decision.[81]

76. *See Hearing Children*, *supra* note 75, at 376 (concluding fifty jurisdictions, excluding Wisconsin, require consideration of child's preferences to some degree).

77. *See id.* at 376 (breaking down state laws by age where consent required). New Jersey and Wisconsin are the two states that do not require a minor's consent to an adoption. *See id.* (excluding New Jersey and Wisconsin from list and including District of Columbia in forty-nine states). Twenty-five jurisdictions require consent for children over age fourteen, eighteen jurisdictions require consent for children over age twelve, and six jurisdictions require consent for children over age ten. *See Appointment Provisions in Adoption Cases*, 41 FAM. L.Q. 2, App. A (2007), *available at* http://www.americanbar.org/content/dam/aba/publishing/family_law_quarterly/family_flq_flq4102_appendixa_adoption.authcheckdam.pdf [hereinafter ABA Chart] (charting adoption provisions by state).

78. *See Hearing Children*, *supra* note 75, at 377 (explaining variety of state laws). Colorado has a rebuttable presumption that relinquishment is not in an adoptee's best interests if a child twelve years or older objects, and requires written consent to any adoption for a child twelve or older. *See* COLO. REV. STAT. § 19-5-103 (2013). New Jersey requires the child to appear at the final adoption hearing and directs courts to solicit a child's wishes regarding the adoption, provided that a child has the capacity to form an intelligent preference with regard to the adoption, unless good cause is shown. *See* N.J. STAT. ANN. § 9:3-49 (West 2013). New Jersey, however, continues to give judges full discretion to determine "if the child is of sufficient capacity to form an intelligent preference regarding the adoption" and does not require that a minor of any age give his or her consent to adoption. N.J. STAT. ANN. § 9-3-49. Alaska directs courts to consider a child's wishes even if an adoptee has not reached the age at which consent is required, provided that a child has sufficient age and intelligence to state his or her preferences regarding the adoption. *See* ALASKA STAT. § 25.23.125 (2013). Oregon specifically provides the court may take testimony from or confer with the child. *See* OR. REV. STAT. ANN. § 109.307 (West 2012). Missouri and Oklahoma include ascertaining the child's wishes in the duties of the guardian ad litem. *See* MO. ANN. STAT. § 453.025 (West 2012) (providing duties of guardian ad litem); OKLA. STAT. tit. 10, § 7505-1.2 (2012). Michigan, which makes no reference to the appointment of a representative for the child, provides that the court shall consider the child's preference if the adoptee is fourteen or younger and the court considers the adoptee to be of sufficient age to express a preference. *See* MICH. COMP. LAWS ANN. § 710.22 (West 2012).

79. *See Hearing Children*, *supra* note 75, at 377, 380 (explaining judges have wide discretion to dispense with consent requirement); *see also* W. VA. CODE ANN. § 48-22-301 (LexisNexis 2012) (allowing courts to dispense with consent requirement if extraordinary cause); ABA Chart, *supra* note 77 (summarizing state laws allowing judges to ignore consent requirement).

80. *See Hearing Children*, *supra* note 75, at 380 (explaining children do not have adequate help expressing opinions to judge). Only Illinois and Wisconsin require appointment of representatives for the child, while many other states allow for guardian ad litems, but do not require their use. See 750 ILL. COMP. STAT. ANN. 50/13; WIS. STAT. ANN. § 48.235 (West 2013). This lack of representation may be due to a lack of funding in the judicial system. *See id.* at 381. Appointing a guardian ad litem or an attorney for a child is expensive and courts simply do not have the resources to make such an investment. *See id.* at 381-82. Further, the attorneys who do this type of work typically have been poorly trained or are not qualified to represent children. *See id.* at 381.

81. *See id.* at 380-81 (reasoning child's opinion not considered in most cases). The majority of states give judges broad discretion to determine the weight of a child's opinion and few states provide a child with

A sixteen-year-old pregnant teenager may consent to have her child adopted but may not decide to have an abortion without parental consent.[82] Most states permit a minor, biological parent to consent to the adoption of her child without any advice from parents or counsel.[83] In Massachusetts, a biological mother must consent to the adoption proceedings for a valid adoption to occur, and the statute does not provide an express minimum age at which such consent may be given.[84] In California, a minor parent has a legal right to consent to an adoption, and that consent will not be subject to revocation because of the individual's minor status, but the law does require that consent be signed in the presence of a State Department of Social Services agent or a licensed county adoption agency.[85] Legislators have viewed parental consent as so vital to adoption proceedings that in many states the law allows a birthmother as long as six months or a year to revoke her consent to adoption.[86] The rationale behind the consent requirement for biological parents in adoption cases lies in the Supreme Court's finding that parents have a fundamental right to raise their children as they wish, including giving a child up for adoption.[87] This standard, however, ignores the need to balance a child's right to choose continuity and stability against a parent's privacy right to raise (or not raise) a child.[88]

independent representation. *See id.*

82. *See* Phillis, *supra* note 2, at 273 (highlighting inconsistency in laws based on teenager's decision to keep or abort baby).

83. *See* RAMSEY & ABRAMS, *supra* note 36, at 268 (explaining consent necessary for minor to give child up for adoption).

84. *See* Adoption of Thomas, 559 N.E.2d 1230, 1232 (Mass. 1990) (ruling minor may consent to child's adoption, but probate court may require evidence concerning maturity).

85. *See* CAL. FAM. CODE § 8700 (West 2012) (allowing minor child to relinquish parental rights to department or licensed adoption agency). In one 1990 California case, a fifteen-year-old unwed mother placed her infant with prospective adoptive parents before revoking her consent and regaining custody of her child. *See In re* Baby Boy M., 272 Cal. Rptr. 27, 28 (Cal. Ct. App. 1990) (overturning trial-court decision terminating minor's parental rights after mother expressed desire to keep child).

86. *See* Mindy Schulman Roman, Note, *Rethinking Revocation: Adoption from a New Perspective*, 23 HOFSTRA L. REV. 733, 745 (1995) (arguing patriarchal laws encourage birthmother to change mind about adoption); *see also In re Baby Boy M.*, 272 Cal. Rptr. at 31 (returning eighteen-month-old to fifteen-year-old birth mother upon revocation of consent). The Pennsylvania Supreme Court explained in *K.N. v. Cades*:

> [W]e think it would be most unjust to hold the mother to her promise, as appellants would have us do. She was very young. She consented to give her child for adoption only in response to her parents' urging. She received no outside or professional counseling to guide her in making so agonizing a decision. And she only made the decision after being assured that she had six months within which to change her mind and get her child back.

432 A.2d 1010, 1016 (Pa. 1981) (recognizing youth as reason for revocation of consent to adopt).

87. *See* Roman, *supra* note 86, at 748 (explaining legal culture surrounding birthmother's right to revoke consent).

88. *See* Marcus T. Boccaccini & Eleanor Willemsen, *Contested Adoption and the Liberty Interest of the Child*, 10 ST. THOMAS L. REV. 211, 227 (1998) (concluding current standards ignore children's rights and place children in harm).

C. Custody

Little doubt remains in the law that the best-interests-of-the-child test serves as the standard for custody cases; however, judges differ in the manner in which they weigh that standard against a child's own preferences.[89] Under English law, the voices and wishes of children were audible and often heeded, and early American law followed English precedent.[90] The law began to shift due to cases involving disputes *between* natural parents.[91] Modern law now provides for discretionary consideration of a child's preferences.[92] The Uniform Marriage and Divorce Act—like some state statutes—explains that courts must consider a child's wishes but then allows the court to determine how much weight to afford them.[93] In worst-case scenarios, this lenient standard allows judges and parents to treat children as mere property rather than "thoughtful and expressive adolescents."[94]

States differ with respect to the weight given to children's preferences, as well as the methods used to ascertain those wishes.[95] Some states require the court to consider a child's wishes if that child is above a certain age.[96] Some

89. *See* Atwood, *supra* note 22, at 634 (showing disagreement between judges about best way to protect children during custody disputes). Atwood further explains there is no doubt that all involved, including the judge, lawyers, and parents, want the best for the child; however, these parties often disagree about what is in the child's best interests. *See id.*

90. *See* Kandel, *supra* note 3, at 306-07 (stating English and early American courts allowed child to leave courthouse with whomever child preferred). English law presumed the child competent to form and state opinions about with whom she wished to live. *See id.*

91. *See id.* at 308 (explaining emergence of consideration of child's preferences in custody cases); *see also* Commonwealth v. Hamilton, 6 Mass. 273, 275 (1810) (following fourteen-year-old child's wish to remain with defendant); *In re* M'Dowle, 8 Johns. 328, 329 (N.Y. Sup. Ct. 1811) (relying on child's preference to determine custody).

92. *See* Kandel, *supra* note 3, at 300 (explaining judge has discretion during best-interests analysis to consider child's preference). "The law strives to make decisions for children to protect them from harm rather than helping and supporting them to make decisions for themselves." *Id.* at 305. One multistate survey found judges typically consider a child's wishes in custody cases but do not always find those wishes controlling. *See* Catherine A. Crosby-Currie, *Children's Involvement in Contested Custody Cases: Practices and Experiences of Legal and Mental Health Professionals*, 20 LAW & HUM. BEHAV. 289, 290-92 (1996).

93. *See* UNIF. MARRIAGE & DIVORCE ACT § 402 (1998) (suggesting states adopt system of considering child's wishes as part of best-interests determination). Other statutes require a finding of sufficient mental capacity before considering the child's preferences. *See* Kandel, *supra* note 3, at 300 n.4 (explaining four types of child-preference statutes). Some states give judges complete discretion, and still others explain a child's preference should have controlling weight if the child reaches a certain age. *See id.*

94. *See* Barbara Bennett Woodhouse, *Child Abuse, the Constitution, and the Legacy of* Pierce v. Society of Sisters, 78 U. DET. MERCY L. REV. 479, 481-82 (2001) (summarizing case where constitutional right to parental autonomy enabled father to regain custody of children).

95. *See* Atwood, *supra* note 22, at 630 (summarizing role of child's voice in custody-dispute-resolution cases).

96. *See generally Determining the Best Interests of the Child: Summary of State Laws*, CHILD WELFARE INFO. GATEWAY (2010), http://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf (summarizing state requirements to consider child's wishes). In Texas, the applicable statute requires the judge to interview any child over age twelve and gives the judge discretion to interview children under twelve. *See* TEX. FAM. CODE ANN. § 153.009 (West 2011). Missouri and Pennsylvania case law has required judges to consider a child's wishes. *See* Reeves-Weible v. Reeves, 995 S.W.2d 50, 62-63 (Mo. Ct. App. 1999)

states merely give preference to the views of older minors.[97] In the majority of states, however, the codified law leaves to trial judges the task of discerning whether to consider children's preferences and the weight to be given to those wishes.[98] Even if a statute does not require a judge to consider more seriously the view of older minors, many judges do so sua sponte.[99] American courts have largely agreed that children's wishes play some role in custody decisions, but are not dispositive.[100] Most judges evaluate the child's mental capacity to make an informed and intelligent choice in order to determine whether to follow the child's wishes.[101] Some judges feel that young children cannot make these decisions, but those judges fail to consider that even young children may have valuable insights about their relationships, many of which could assist a judge in resolving custody disputes.[102]

(mandating consideration of child's preference in making required best-interests determination); McMillen v. McMillen, 602 A.2d 845, 847 (Pa. 1992) (requiring consideration of child's wishes, but giving judges discretion in final determination).

97. *See* Atwood, *supra* note 22, at 632 (explaining Arizona's custody law giving judges discretion to determine appropriate significance). In contrast, in states like Georgia, a child who has reached age fourteen has the right to select the parent with whom to live, and the child's selection must control unless the court finds the chosen parent unfit. *See* GA. CODE ANN. § 19-9-3 (2012) (presuming child over fourteen has capacity to decide custody decisions); Burney v. Burney, 152 S.E.2d 871, 873 (Ga. 1966) (overturning decision granting custody against child's wishes because court failed to find parent unfit); Saxon v. Saxon, 428 S.E.2d 376, 377 (Ga. Ct. App. 1993) (overturning trial court based on child's preference and inadequate finding that mother unfit). In New Mexico, the court may consider the desires of a minor under fourteen, but the court must do so when the minor is fourteen or older. *See* N.M. STAT. ANN. § 40-4-9(B) (West 2012). Mississippi law gives children over twelve the right to choose with whom to live, but requires the court to find the decision in the best interests of the child. *See* MISS. CODE ANN. § 93-11-65(1)(a) (2012) (requiring explanation whether child's preferences honored or not). Maryland grants children sixteen and older the right to petition for a change in custody without proceeding through a guardian or next friend. *See* MD. CODE ANN., FAM. LAW § 9-103 (LexisNexis 2013). Both Indiana and Tennessee require the court to more seriously consider children's wishes above a certain age. *See* IND. CODE ANN. § 31-17-2-8(3) (West 2012); TENN. CODE ANN. § 36-6-106(a)(7) (2012) (requiring court to seriously consider preferences of child above age twelve). Finally, in Massachusetts, the law creates a presumption of competency that a child twelve or older has the capability to offer his or her opinion. *See* MASS. GEN. LAWS ANN. ch. 119, § 1 (West 2013).

98. *See* COLO. REV. STAT. § 14-10-124 (1.5)(a)(II) (2013) (directing trial judges to consider child's wishes "if he or she is sufficiently mature to express reasoned and independent preferences").

99. *See* Atwood, *supra* note 22, at 634-35 (summarizing judge's answers to survey about child's preference consideration in custody case based on age). One study found a correlation between the child's age and the judge's willingness to defer to the child's expressed preference. *See* Elizabeth S. Scott et al., *Children's Preference in Adjudicated Custody Decisions*, 22 GA. L. REV. 1035, 1037 (1988) (concluding weight placed on child's preference directly correlates to age).

100. *See* Atwood, *supra* note 22, at 640 (explaining trend in custody disputes finding child's wishes relevant but not dispositive); *see also* Tasker v. Tasker, 395 N.W.2d 100, 103 (Minn. Ct. App. 1986) (concluding trial court properly denied interview because court had discretion to make determination); D.W. O'Neill, Annotation, *Child's Wishes as Factor in Awarding Custody*, 4 A.L.R. 3d 1396, 1402-09 (1965 & Supp. 2002) (listing custody cases by state).

101. *See* Mlyniec, *supra* note 20, at 1888 (recognizing mental-capacity test). Most appellate courts typically presume young children do not possess this capacity while older children do. *See id.*

102. *See* Edward M. Ginsburg, *Guidelines for Child Custody Cases*, 26 BOS. B.J. 23, 24 (1982) (discouraging consideration of child's preference in custody cases). Massachusetts Probate and Family Court Judge Edward M. Ginsburg wrote that children's expressed preferences cannot be taken at face value because children cannot properly assess their own long-term interests and may be manipulated by parents. *See id. But*

D. Abortion

Every year, hundreds of thousands of women between the ages of fifteen and nineteen become pregnant.[103] These teenagers may legally consent to engage in sexual relations, but they do not have the right to independently decide to obtain an abortion if they do become pregnant.[104] If a young woman chooses to become a young mother, she immediately obtains adult-like rights, but if the same young, pregnant teenager decides to abort, her choice is subject to adult involvement.[105]

The Supreme Court has held that minors have some privacy rights, but the extension of those rights has been limited.[106] The Supreme Court recognized the right to obtain an abortion as part of the right to privacy and then extended part of that right to minors.[107] In 1977, the Court held that the right of personal privacy included "the interest in independence in making certain kinds of

see Atwood, *supra* note 22, at 631 (suggesting benefits of involving even young children in custody disputes). Judge Ginsburg failed to consider the long-term emotional benefits that may arise from the very experience of being consulted during custody litigation. *See* Atwood, *supra* note 22, at 631 (indicating children benefit from consultation during custody dispute).

103. *See* KATHRYN KOST & STANLEY HENSHAW, GUTTMACHER INST., U.S. TEENAGE PREGNANCIES, BIRTHS AND ABORTIONS, 2008: NATIONAL TRENDS BY AGE, RACE AND ETHNICITY (2012), http://www.guttmacher.org/pubs/USTPtrends08.pdf (summarizing national trends of teenage pregnancies, births and abortions). In 2008, nearly 750,000 women younger than twenty became pregnant—the lowest teenage pregnancy rate in thirty years. *Id.* at 2. That same year, the teenage abortion rate in the United States dropped to the lowest rate since abortion was legalized. *Id.*

104. *See* Phillis, *supra* note 2, at 273-75 (explaining inconsistencies where minors deal with sexual consequences without parental consent unless choosing abortion). As of 2004, twenty-six states place the age of consent to sexual relations below the age at which a minor can independently obtain an abortion. *See id.* at 274. "[T]he minor female's right to procreate vests regardless of her individual maturity." *Id.* at 274-75 (explaining law favors teenage motherhood over abortion). Meanwhile, the choice to terminate pregnancy requires parental or judicial consent, which requires an evaluation of an individual's maturity. *See id.* Most recently, the Massachusetts Supreme Judicial Court held that a father could not use a restraining order to prevent his sixteen-year-old daughter from having sex because the age of consent in Massachusetts is sixteen. *See* E.C.O. v. Compton, 464 Mass. 558, 562-63 (2013). This case further reinforces a minor's right to have consensual sexual relations at age sixteen, but in Massachusetts, the daughter of E.C.O. would not be able to obtain an abortion without her parents' consent until she reached age eighteen. *See* MASS. GEN. LAWS ANN. ch. 112, § 12S (West 2013).

105. *See* J. Shoshanna Ehrlich, *Shifting Boundaries: Abortion, Criminal Culpability and the Indeterminate Legal Status of Adolescents*, 18 WIS. WOMEN'S L.J. 77, 91 (2003) (highlighting inconsistencies in law regarding decisional capacity based on pregnancy outcome); *see also supra* Part II.B (explaining rights of minor to give child up for adoption). "The law therefore trusts pregnant minors to responsibly, maturely, and independently carry a pregnancy to term but distrusts their ability [to] seek an abortion without parental involvement." *See* Phillis, *supra* note 2, at 291. Phillis argues, "by recognizing consensual maturity for intercourse and pregnancy but then rescinding that presumptive maturity only for abortion, states both violate the Constitution and create dangerous public policy." *Id.* at 275.

106. *See* Teitelbaum, *supra* note 18, at 182 (discussing granting of children's rights); *see also* Carey v. Population Servs. Int'l, 431 U.S. 678, 682 (1977) (upholding minor's right of access to contraceptives); Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 84 (1976) (upholding minors' right of access to abortion).

107. *See* Roe v. Wade, 410 U.S. 113, 153 (1973) (recognizing privacy right to abortion with certain limitations); *see also Danforth*, 428 U.S. at 72-75 (holding parent may not have absolute veto over minor's right to abortion).

important decisions."[108] The Court wrote in 1972, "[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."[109] The Court, however, has consistently withheld this full right from children due to a purported lack of capacity.[110] But if a child has sexual-consent capacity at a certain age, the corresponding protection should be granted for that child's privacy right to an abortion at the same age.[111]

In thirty-four states, females under the age of eighteen must have some form of parental involvement in order to obtain an abortion.[112] States offer different reasons for the parental consent or notification requirement, including protecting immature minors, fostering family structure, and protecting parents' ability to control their children.[113] Some states give the abortion physician discretion to determine whether the abortion should be performed.[114] Parental-consent requirements may expose pregnant teenagers to the same dangers that caused the Court to strike down spousal-consent requirements.[115]

108. Whalen v. Roe, 429 U.S. 589, 599-600 (1977).

109. Eisenstadt v. Baird, 405 U.S. 438, 453 (1972).

110. *See* Teitelbaum, *supra* note 18, at 182 (discussing denial of children's rights).

111. *See* Phillis, *supra* note 2, at 287 (contrasting age of consent for sexual relations with age of consent for abortion without parental consent). The difference between sexual-consent capacity and privacy rights "seriously challenges the applicability of the immaturity justification for parental involvement." *Id.* (arguing determination of minor's maturity should necessitate treatment as adult for abortion purposes).

112. *See id.* at 282 (summarizing state abortion laws regarding minors). Of those states, twenty-six require either one or both parents to consent to the procedure. *See State Policies in Brief: Parental Involvement in Minors' Abortions*, GUTTMACHER INST. (2013), http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf [hereinafter *Abortion Laws Overview*] (summarizing state parental-consent requirements). In Massachusetts and Pennsylvania, if a minor under age eighteen seeks an abortion, she must have either parental or judicial consent. *See* MASS. GEN. LAWS ANN. ch. 112, § 12S (West 2013) (permitting judicial process when parents refuse to allow abortion); 18 PA. CONS. STAT. ANN. § 3206(f)(4) (West 2012) (allowing teen to seek either parental or judicial consent for abortion). Twelve states require only that either or both parents are notified of the procedure. *See Abortion Laws Overview*, *supra*. Finally five states require both parental notification and consent for a minor to obtain an abortion. *See id.*

113. *See, e.g.*, ALA. CODE § 26-21-1 (2012) (explaining reasons for parental consent requirement); COLO. REV. STAT. § 12-37.5-102 (2013) (declaring traditional family preservation and parental rights vitally important); DEL. CODE ANN. tit. 24, § 1781 (2013) (offering many reasons for limiting minor's right to abortion). In Alabama, the legislative findings for the statute requiring parental consent specifically state, "the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related." *See* ALA. CODE § 26-21-1 (providing reasoning for limitations on abortion right of minors).

114. *See* MD. CODE ANN., HEALTH-GEN. § 20-103 (LexisNexis 2013) (providing exceptions to parental consent requirements). In Maryland, a physician may perform an abortion without parental notice if notice may lead to abuse, notification would not be in the minor's best interest, a reasonable effort to give notice fails, or the physician finds the minor mature. *See id.*

115. *See* Phillis, *supra* note 2, at 288 (examining dangers of requiring parental involvement in minor's decision to abort).

> Without the immaturity rationale to justify parental involvement, parental notification and consent regulations impose an undue burden for many of the same reasons as spousal notification provisions, leaving the minor exposed to the risk of: 1) physical reprimand and punishment by parents; 2)

Many states created a judicial-bypass option for minors to avoid the need for parental consent by proving to a judge that the minor is sufficiently mature to make the abortion decision or that the abortion is in her best interests.[116]

> Since adult and minor women have the same capacity to conceive and to be intimidated into not exercising their reproductive freedom, equal protection should be extended to both groups. Yet, the Court is unwilling to relinquish parental control or, in the alternative, state control over an unemancipated female body until she reaches the age of eighteen.[117]

The Court, however, has justified the differential treatment of minors' abortion rights on two grounds: presumptive immaturity of minors, and parental rights to be involved in a minor child's decision-making.[118] The establishment of a minor's maturity to make the abortion decision raises another question, however: May the minor then make other decisions that the law determines she is too immature to make?[119]

III. ANALYSIS

A. The Current System Fails to Consider Children's Rights

United States citizens value personal, constitutional rights above most other

financial ostracization and withdrawal of economic support; 3) psychological abuse and intimidation by family and peers; 4) actual intervention by a parent to prevent a child from obtaining an abortion.

Id.

116. *See* 18 PA. CONS. STAT. ANN. § 3206(f)(4) (authorizing physician to perform abortion if court determines pregnant woman mature); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 899 (1992) (requiring judicial process to determine minor capable of giving informed consent if parents refuse); Bellotti v. Baird, 443 U.S. 622, 651 (1979) (requiring independent judicial-determination option for minor to obtain abortion).

117. *See* Leonard Berman, Note, Planned Parenthood v. Casey*: Supreme Neglect for Unemancipated Minors' Abortion Rights*, 37 HOW. L.J. 577, 578 (1994) (criticizing Supreme Court's *Casey* decision as protecting male-dominated rule).

118. *See* Phillis, *supra* note 2, at 280 (explaining Supreme Court justifications for treatment of minor's abortion rights); *see also Bellotti*, 443 U.S. at 640-42 (reasoning minors too immature to make informed choice about abortion without parental or judicial consent). The Court explained further in *Casey* that parental-involvement laws were "reasonably designed" to further the state's "'strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely.'" *See Casey*, 505 U.S. at 970-71 (quoting Hodgson v. Minnesota, 497 U.S. 417, 444 (1990)) (holding parental-consent provision consistent with previous decisions).

119. *See Bellotti*, 443 U.S. at 635 (limiting children's right to decide issues with potentially serious consequences based on lack of maturity); Costello, *supra* note 37, at 910-11 (raising issue of inconsistency between abortion and other decisions once child deemed mature). Can a minor who is determined to be mature, then decide to get married, to get adopted, or to choose who should have custody over her? *See* Costello, *supra* note 37, at 910-11 (questioning why minor deemed mature still denied right to make certain decisions).

things, but deny these same rights to children.[120] The denial of these rights, however, takes place at an age arbitrarily set.[121] Courts and legislatures should instead evaluate whether any age restriction is necessary to achieve a legitimate state interest and whether a blanket age restriction is reasonable in the circumstances.[122]

"[A]lthough rights to speech, procreation and the like are justified for adults in terms of their capacity for rational choice, the extension of these rights to minors has never been explained on grounds assuming the same capacity for choice."[123] Justice Stewart explained in a concurring opinion in *Ginsberg v. New York*[124] that the only constitutionally tolerable justification for denying children rights would be that children lack full capacity for individual choice.[125] This argument relies on children making seemingly immature decisions and adults finding these children lack capacity; however, if adults made the same decisions, they would merely be considered bad decisions and adults would still be viewed as capable.[126]

Legislatures engage in balancing to filter minors' rights, using parental supervision and support as tipping points.[127] States have chosen to shift responsibility for decisions about competence to parental authority.[128] This system, however, focuses on the parents' choices on behalf of minors, rather than minors' own choices.[129] In fact, shifting responsibility to parents may eliminate the capacity argument entirely because parents make decisions on a personal basis, rather than by evaluating the child's maturity to reach his or her

120. *See* COHEN, *supra* note 21, at 43 (questioning why society denies children rights so essential to adults). Treating children differently requires a strong justification or else this different treatment should be eliminated, just as Jim Crow laws were once abolished. *See id.* at 44.

121. *See* Wald, *supra* note 5, at 267 (concluding states adopt age constraints "without any basis in developmental or sociological differences").

122. *See id.* at 268 (criticizing blanket restrictions at certain ages).

123. Teitelbaum, *supra* note 18, at 183-85 (explaining historical Court decisions granting rights without thought about child's capacity).

124. 390 U.S. 629, 648-50 (1968) (Stewart, J., concurring).

125. *See id.* at 649-50 (permitting denial of children's rights based on lack of capacity).

> I think a State may permissibly determine that, at least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees. It is only upon such a premise, I should suppose, that a State may deprive children of other rights—the right to marry, for example, or the right to vote—deprivations that would be constitutionally intolerable for adults.

Id.

126. *See* COHEN, *supra* note 21, at 52-53 (demonstrating disparity between decision-making of adult and child); *see also* HOULGATE, *supra* note 18, at 66 (distinguishing correct choice from reasonable choice).

127. *See* Goodwin & Duke, *supra* note 51, at 527 (explaining legislatures use parental oversight to give rights to minors).

128. *See* Teitelbaum, *supra* note 18, at 182 (noting legislatures and courts have shifted decision-making power from children to parents).

129. *See id.* at 188 (explaining statutory rights give parents right to make child's decision).

own decision.[130]

Three main reasons explain why children's rights may be ignored in the legal system: measuring capacity, protecting children because parents know best, and preserving and promoting family relationships.[131] While capacity has been acknowledged as a main reason for denying children's rights, no serious measurement of capacity has been established.[132] As discussed above, scholars disagree about the correct measurement of capacity.[133] Legislatures often claim that parents know best when it comes to their own children, but typically fail to provide support for this reasoning.[134] This protectionism argument stems from viewing children as vulnerable and in need of protection.[135] Perhaps more accurately, neither judges nor legislative bodies will place the rights of children above those of parents.[136] Further, judges and legislatures appear concerned by placing the interests of children and parents in competition or contention.[137] Recognizing parental privacy rights over a child's rights gives parents nearly absolute autonomy over their child's decision-making.[138]

B. Solutions to Recognize Children's Rights

One potential solution to this systemic problem would be to adopt a uniform age at which minors may make independent decisions based on research on minors' capacity to decide.[139] If all persons of a certain age will have their decisions treated equally, however, society must be absolutely certain that all members of that age group can and will make decisions with a certain level of competence.[140] Another solution could be to appoint representatives for a child.[141] At a minimum, perhaps children should have the right to be heard, even if society still denies them the ultimate right to decide.[142]

130. *See id.* at 182-83 (criticizing shifting of decision-making rights to parents who make decisions on personal basis). This system subjects minors to the personal domination of parents and not to general rules. *See id.* at 183.

131. *See* COHEN, *supra* note 21, at 11 (summarizing reasons for failing to grant children rights); Goodwin & Duke, *supra* note 51, at 532-33 (criticizing courts and legislatures for lack of serious consideration of capacity analysis).

132. *See* Goodwin & Duke, *supra* note 51, at 532-33 (explaining difficulty in determining measurement for maturity or capacity).

133. *See supra* Part II (explaining capacity as measuring factor for maturity).

134. *See* COHEN, *supra* note 21, at 10-11 (examining legislative deferral to adult decision-making as caretaker for children).

135. *See supra* Part II; *supra* notes 36-39 and accompanying text (protecting children main reason for denying rights).

136. *See* Goodwin & Duke, *supra* note 51, at 532 (putting parental rights above children's rights).

137. *See id.* (avoiding placing rights in competition).

138. *See supra* Part II; *supra* notes 40-46 and accompanying text (encompassing parenting into right of privacy eliminates ability of children to express rights).

139. *See* Mlyniec, *supra* note 20, at 1907 (basing age limit on understanding of child-development specialists). Mlyniec argues judges should give no weight to a minor's preference under age ten. *See id.*

140. *See* Teitelbaum, *supra* note 18, at 189 (explaining need to set age where all children meet capacity).

141. *See Hearing Children*, *supra* note 75, at 386 (suggesting representation of children as solution).

142. *See* Atwood, *supra* note 22, at 660-61 (acknowledging benefits to children who participate in

Society should shift the focus more significantly to capacity and require adolescents to demonstrate appropriate ability to reason abstractly and consider the future before granting rights.[143] The assessment of capacity would have to expand beyond traditional cognitive measures to consider a child's "judgment."[144] The real question should be whether a child is capable of engaging in rational decision-making, and if so, the child should then be allowed to make independent decisions about his or her own life.[145] Some scholars envision a middle ground between the flat rule suggested above and this individual-capacity rule.[146]

Another related solution would provide status exemptions for certain children.[147] Current law provides categorical exemptions for marriage, military service, emancipation, and in certain cases when maturity has been proven.[148] Black's Law Dictionary defines an "emancipated minor" as a "person under eighteen years of age who is totally self-supporting."[149] Simply put, emancipation occurs when a child is free from parental authority and regarded as an adult.[150] Emancipation may occur when a child marries, joins the

decision-making). Atwood argues, "courts at a minimum should consider the child's views if the child is capable of making her views known and wants to make them known." *Id.* at 663.

143. *See* Goodwin & Duke, *supra* note 51, at 550 (recommending shifting focus to analysis of capacity in order to grant children rights). Requiring children to establish understanding of cause-and-effect relationships and ability to weigh risks and benefits would ensure only capable children were allowed to make decisions on their own. *See id.* (suggesting movement away from arbitrary age limitations to individualized capacity-based system).

144. *See* Laurence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making*, 20 LAW & HUM. BEHAV. 249, 250 (1996) (recognizing need to analyze more than cognitive functioning to determine minor's capacity).

145. *See* Cunningham, *supra* note 1, at 329-30 (rejecting "mature" or "correct" as standards for child's autonomy).

146. *See* Mlyniec, *supra* note 20, at 1906-07 (describing system giving children rights). Mlyniec envisions a system where highly trained judges, aware of the most recent research on capacity of children, make decisions. *See id.* (requiring judicial training in child development for proposed system). This would mean that judges would presume capacity for children fourteen and older, presume incapacity for children ten and under, and make individualized assessments for between ages ten and fourteen. *See id.* Individualized assessments would engage professionals to judge a child's cognitive capacity and if determined capable, the child's decision would bind the court. *See id.* at 1908. This system would be similar to current abortion laws in many states, which allow no abortions under a certain age, an abortion with judicial consent between certain ages, and an independent abortion above a certain age. *See id.* at 1912 (proposing extension of abortion laws to system for granting rights generally).

147. *See* Ehrlich, *supra* note 105, at 88 (describing status exceptions and maturity exemptions for minor abortions); Phillis, *supra* note 2, at 297 (categorizing status exceptions); Jennifer L. Rosato, *Let's Get Real: Quilting a Principled Approach to Adolescent Empowerment in Health Care Decision-Making*, 51 DEPAUL L. REV. 769, 776-78 (2002) (describing status exceptions generally).

148. *See* Ehrlich, *supra* note 105, at 88 (examining status-based consent rights); Phillis, *supra* note 2, at 297 (recognizing status exceptions); Rosato, *supra* note 147, at 776-78 (explaining statutory nature of status exceptions).

149. BLACK'S LAW DICTIONARY 521 (6th ed. 1990) (defining emancipation).

150. *See* Berman, *supra* note 117, at 585 (defining emancipation as individual autonomy and freedom from parental control); *see also* DAVIS & SCHWARTZ, *supra* note 50, at 39 (explaining features of emancipation).

military, lives separately and apart from his or her parents, or is otherwise economically self-supporting.[151] Financial independence and control, rather than psychosocial indicators of developmental maturity, often determine emancipation.[152]

If emancipation fails to provide a solution, the "mature minor" doctrine might be used to allow for individualized competency determinations.[153] Currently the law uses the mature-minor doctrine to allow minors to make medical decisions against a parent's wishes.[154] Perhaps one solution to the problem would be an expansion of the mature-minor doctrine allowing minors who reach the age of sexual consent to petition the court to obtain mature-minor status before ever becoming pregnant.[155]

> In general, the evolution of exceptions to the parental consent requirement reflects an increasing sensitivity to the child as a person; the focus of the exceptions has shifted from emphasis on bodily integrity (emergency) to judicial recognition of de facto majority (emancipation) to concern over the characteristics and mental capabilities of the minor (maturity).[156]

This method, however, does not provide an ultimate solution because it will not work in cases where minors are unable to plan ahead or the determination of competency will be based on an adult's decision, and because it requires significant costs and increased litigation.[157]

Yet another system similar to emancipation would be a comprehensive

151. *See* Berman, *supra* note 117, at 585 (simplifying emancipation and explaining when it occurs).

152. *See* Phillis, *supra* note 2, at 297 (exploring emancipation as solution); *see also* Ehrlich, *supra* note 105, at 88-89 (discussing emancipation).

153. *See* Teitelbaum, *supra* note 18, at 189 (suggesting individualized process of factual determination of competence). Under the mature-minor doctrine, all minors found competent to make a particular kind of decision will acquire an entitlement to make other similar decisions. *See id.*

154. *See* Walter Wadlington, *Minors and Health Care: The Age of Consent*, 11 OSGOODE HALL L.J. 115, 119 (1973) (explaining factors for mature-minor standard for medical procedures). Wadlington claims courts rely upon three factors to recognize a mature-minor exception: whether the treatment should be undertaken for the minor's own benefit rather than that of a third party, whether the minor is at least fifteen and has sufficient mental capacity to understand the nature and importance of the proposed treatment, and whether the medical procedure was major. *See id.*

155. *See* Phillis, *supra* note 2, at 298 (explaining mature-minor status); *see also* Barbara Bennett Woodhouse, *Talking About Children's Rights in Judicial Custody and Visitation Decision-Making*, 36 FAM. L.Q. 105, 110 (2002) (arguing American law recognizes children have interests, not rights).

156. Note, *supra* note 30, at 1003-04 (examining development of mature-minor exceptions).

157. *See* John Eekelaar, *The Interests of the Child and the Child's Wishes: The Role of Dynamic Self-Determinism*, 8 INT'L J.L. & FAM. 42, 55-56 (1994) (criticizing methods of determining competence); Phillis, *supra* note 2, at 298 (criticizing preemptive status exemptions for unduly clogging courts); Teitelbaum, *supra* note 18, at 189-90 (explaining criticisms of individualized determinations of competency). "If courts required litigants to prove capacity, maturity, and understanding, the cost of litigation would substantially increase and justice could be delayed." Mlyniec, *supra* note 20, at 1905 (disparaging individualized competency requirements).

regulatory system of minor licensing.[158] A minor's ability to consent to sex would depend on successful completion of an education program and qualitative assessment.[159] By granting consensual capacity and legal maturity in one license, the uncertainty of a minor's status would be eliminated.[160] This proposal would replace age as the baseline for maturity by instead assessing the voluntary manifestation of objective knowledge.[161] While this system may make the most sense academically, it is highly unlikely ever to be put in place because it would eliminate parental involvement and would cost a significant amount to create a new licensing system.[162]

Finally, the most extreme option would simply extend full rights to children.[163] Children could borrow capacities from others in order to exercise their rights.[164] Agents would inform children about the possible consequences of their decisions and help children reach a sensible decision.[165] This type of system, some say, would interfere with family autonomy, but giving children full rights would not preclude parents from offering incentives for the children to make decisions that the parents prefer.[166] The theory of full rights for children bases its conclusions on equality and justice.[167]

At a minimum, however, consistent age restrictions across areas of the law—such as family law, criminal law, and health law—are necessary.[168] Inconsistent results based on a judge's individual opinion, a parent's decision-making for a child, or a legislature's arbitrary setting of an age limit confuse our understanding of children's rights and deny a segment of our society the protections of the Constitution.[169]

IV. CONCLUSION

Minors should be treated more consistently across a wide array of family-

158. *See* Phillis, *supra* note 2, at 300 (proposing system of licensing for consent capacity).

159. *See id.* (describing suggested licensing system).

160. *See id.* at 306 (recommending elimination of "irrational, arbitrary, and undue burden" on minors' rights).

161. *See id.* (removing age as arbitrary barrier to rights).

162. *See* Phillis, *supra* note 2, at 306-10 (explaining pros and cons of theory).

163. *See* COHEN, *supra* note 21, at vii (arguing children deserve same rights as adults).

164. *See id.* at 56-73 (considering system where children borrow capacities). Cohen argues that adults borrow capacities from each other all the time by hiring others to represent them using special skills and talents, such as lawyers and doctors. *See id.* at 57 (explaining borrowing capacities as used today).

165. *See id.* at 56-73 (arguing agents appointed for children could help children make decisions and exercise rights).

166. *See id.* at 92-93 (distinguishing between corporal punishment and incentives for disciplining children).

167. *See* HOULGATE, *supra* note 18, at 15-16 (articulating theory of liberating children from paternalism).

168. *See* Cunningham, *supra* note 1, at 367 (suggesting different ages of consent for different categories of rights).

169. *See* HOULGATE, *supra* note 18, at 4 (criticizing legal confusion for similar subjects about consent ages).

law practice areas.[170] Further, judges should assess children for their rationality and ability to make cognitive decisions, and then allow children to make a decision about with whom they want to live. "[R]ejecting a child's preference in a custody case may not cause a child harm, but may constitute an assault on the personal autonomy of a mature competent adolescent."[171] The natural progression of the law leads towards a system of recognizing children's liberty interests in family relationships.[172]

Sarah J. Baldwin

170. *See id.* (discussing disparities between family-law practice areas such as marriage and abortion).

171. *See* Mlyniec, *supra* note 20, at 1905 (suggesting denial of children's rights harms both children and society).

172. *See* Gilbert A. Holmes, *The Tie That Binds: The Constitutional Right of Children to Maintain Relationships with Parent-Like Individuals*, 53 MD. L. REV. 358, 385 (1994) (examining Supreme Court cases leading to additional autonomy for children).

APPENDIX A:
STATE MARRIAGE LAWS RESTRICTING MINORS' RIGHT TO MARRY

STATE	CODE SECTION	RESTRICTIONS
AL	ALA. CODE § 30-1-5 (2012)	Placing restrictions on marriages under age sixteen, and between sixteen and eighteen without parental consent
AK	ALASKA STAT. § 25.05.171 (2013)	Limiting marriage eligibility to individuals older than fourteen
AZ	ARIZ. REV. STAT. ANN. § 25-102 (2012)	Requiring premarital counseling and court finding for minor under sixteen to marry
AR	ARK. CODE ANN. § 9-11-102 (2012)	Restricting right to marry for males under seventeen and females under sixteen
CA	CAL. FAM. CODE § 302 (West 2012)	Requiring court order and parental consent for marriage of person under eighteen
CO	COLO. REV. STAT. § 14-2-106 (2013)	Linking requirements to marry with age of parties
CT	CONN. GEN. STAT. ANN. § 46b-30 (West 2013)	Denying right of sixteen-year-old and younger to marry without judicial consent
DE	DEL. CODE ANN. tit. 13, § 123 (2013)	Requiring judicial order to marry if under age eighteen
DC	D.C. CODE §§ 46-403, 46-411 (2012)	Denying right to marry if person younger than sixteen
FL	FLA. STAT. ANN. § 741.0405 (West 2012)	Denying right to marry to minor under sixteen unless pregnancy or child involved
GA	GA. CODE ANN. §§ 19-3-2, 19-3-37 (2012)	Limiting marriage to those aged sixteen and older
HI	HAW. REV. STAT. ANN. § 572-2 (LexisNexis 2012)	Requiring written judicial and parental consent to marry under age eighteen
ID	IDAHO CODE ANN. § 32-202 (2012)	Requiring special showing of maturity to marry if under age sixteen
IL	750 ILL. COMP. STAT. ANN. §§ 5/203, 5/208 (West 2013)	Limiting marriage to individuals older than sixteen with judicial approval, or eighteen without

STATE	CODE SECTION	RESTRICTIONS
IN	IND. CODE ANN. §§ 31-11-1-4, 31-11-1-5, 31-11-2-1 (West 2012)	Restricting marriage to individuals at least seventeen years old if parents consent
IA	IOWA CODE ANN. § 595.2 (West 2013), *invalidated on other grounds by* Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009)	Requiring parental consent and approval of court for marriage of sixteen- and seventeen-year-olds and prohibiting marriage for those under sixteen
KS	KAN. STAT. ANN. § 23-2505 (West 2012)	Placing restrictions on marriage of persons between ages fifteen and eighteen
KY	KY. REV. STAT. ANN. § 402.210 (West 2012)	Requiring parental consent for sixteen- or seventeen-year-old and judicial consent younger than sixteen
LA	LA. CHILD. CODE ANN. art. 1545 (2012)	Requiring parental consent for minor to marry
ME	ME. REV. STAT. ANN. tit. 19-A, § 652 (2012)	Limiting minor's right to marry under age eighteen
MD	MD. CODE ANN., FAM. LAW § 2-301 (LexisNexis 2013)	Prohibiting marriage of individuals under age fifteen
MA	MASS. GEN. LAWS ANN. ch. 207, § 7 (West 2012)	Requiring parental consent for marriage of minor under eighteen
MI	MICH. COMP. LAWS ANN. § 551.103 (West 2012)	Denying marriage of minors younger than sixteen
MN	MINN. STAT. ANN. § 517.02 (West 2013)	Refusing to allow marriage of minor under age sixteen
MS	MISS. CODE ANN. §§ 1-3-27, 93-1-5 (2012)	Setting age of majority at twenty-one (higher than most states), but allowing marriage of male at least seventeen and female at least fifteen
MO	MO. ANN. STAT. § 451.090 (West 2012)	Requiring judicial allowance for marriage of minor under fifteen
MT	MONT. CODE ANN. § 40-1-202 (2013)	Preventing marriage of minor under sixteen

STATE	CODE SECTION	RESTRICTIONS
NE	NEB. REV. STAT. ANN. §§ 42-102, 42-105, 43-2101 (LexisNexis 2012)	Setting age of majority at nineteen but allowing marriage at seventeen with parental consent which terminates minority status
NV	NEV. REV. STAT. ANN. § 122.020 (LexisNexis 2013)	Restricting marriage of individuals under age sixteen
NH	N.H. REV. STAT. ANN. § 457:5 (2013)	Setting age of consent to marry at eighteen
NJ	N.J. STAT. ANN. § 37:1-6 (West 2013)	Requiring judicial approval for marriage of individual under age sixteen
NM	N.M. STAT. ANN. § 40-1-6 (West 2012)	Stopping minor under sixteen from marrying
NY	N.Y. DOM. REL. LAW §§ 15, 15-a (McKinney 2013)	Prohibiting marriage if either party under fourteen
NC	N.C. GEN. STAT. § 51-2 (2013)	Establishing marriage of individual under age fourteen unlawful
ND	N.D. CENT. CODE § 14-03-02 (2012)	Refusing to allow individuals under age sixteen to marry
OH	OHIO REV. CODE ANN. § 3101.01 (LexisNexis 2012)	Limiting marriage to males over eighteen and females over sixteen
OK	OKLA. STAT. tit. 43, § 3 (2012)	Forbidding marriage of individual younger than sixteen unless pregnancy or child involved
OR	OR. REV. STAT. ANN. § 106.010 (West 2012)	Requiring person to attain age seventeen before marrying
PA	23 PA. CONS. STAT. ANN. § 1304 (West 2012)	Requiring best interests finding to allow marriage of individual younger than sixteen
RI	R.I. GEN. LAWS §§ 15-2-11, 15-12-1 (2012)	Requiring additional steps for marriage of female under sixteen and male under eighteen
SC	S.C. CODE ANN. § 20-1-250 (2012)	Refusing to issue marriage license when either party under age sixteen
SD	S.D. CODIFIED LAWS §§ 25-1-13, 26-1-1 (2012)	Requiring parental consent for marriage of individual under eighteen

STATE	**CODE SECTION**	**RESTRICTIONS**
TN	TENN. CODE ANN. §§ 36-3-105 to -106 (2012)	Refusing to allow individual under age sixteen to marry even with parental consent
TX	TEX. FAM. CODE ANN. §§ 2.101-.102 (West 2011)	Preventing marriage of individuals under age sixteen
UT	UTAH CODE ANN. § 30-1-9 (LexisNexis 2012)	Requiring judicial approval for marriage of minor under age fifteen and parental approval for minor under eighteen
VT	VT. STAT. ANN. tit. 18, § 5142 (2012)	Prohibiting marriage of minor under sixteen
VA	VA. CODE ANN. § 20-49 (2012)	Requiring person under eighteen to obtain parental consent to marry
WA	WASH. REV. CODE ANN. § 26.04.210 (West 2012)	Restricting marriage to minors older than seventeen
WV	W. VA. CODE ANN. § 48-2-301 (LexisNexis 2012)	Requiring parental and judicial consent for marriage of minor
WI	WIS. STAT. ANN. § 765.02 (West 2012)	Prohibiting marriage of minor under sixteen
WY	WYO. STAT. ANN. §§ 20-1-102 to -103, -105 (2012)	Requiring judicial approval for marriage of person under sixteen