

## RESOLUTION 01-01-2019

### DIGEST

#### Litigation Privilege: Divorce Proviso

Amends Civil Code section 47 to eliminate the “divorce proviso” in its entirety so that parties in family law proceedings receive the same privilege afforded to other civil litigants.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

Similar to Resolution 07-08-2018, which was disapproved.

#### Reasons:

This resolution amends Civil Code section 47 to eliminate the “divorce proviso” in its entirety so that parties in family law proceedings receive the same privilege afforded to other civil litigants. This resolution should be approved in principle because Civil Code section 47 pre-dates California’s “no fault” divorce scheme and the concerns which motivated the adoption of the divorce proviso are no longer viable.

Originally adopted in 1927, Civil Code section 47, subdivision (b), provides that statements made during judicial proceedings are generally privileged and nonactionable, except for an “allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action.” This marital dissolution exception is known as the “divorce proviso.”

When the divorce proviso was originally adopted in 1927, the purpose was to avoid the potential coercive impact and reputational damage of unfounded allegations of adultery against third parties in divorce proceedings. (Friedman, *Guarding Life’s Dark Secrets: Legal and Social Controls Over Reputation, Propriety, and Privacy* (Stanford U. Press 2007) p. 290, n. 48.) However, this statutory concept pre-dates California’s shift to a “no fault” divorce, which was adopted by California in 1970.

In a “no fault” divorce, allegations of fault are no longer admissible and allegations of adultery against third parties are irrelevant, except in the very limited circumstance of one spouse accusing the other spouse of unauthorized gifts of community property, which are typically alleged to have arisen as part of an affair. Also, approximately 70 to 80 percent of California family law litigants are self-represented and do not have the assistance of counsel to explain such concepts of defamation and the associated potential legal liability. Therefore, retaining the divorce proviso creates the potential for a legal hurdle for self-represented litigants, without any meaningful benefit to the process.

Because the proposed resolution would delete the provision that limits the litigation privilege in dissolution proceedings, it should be approved in principle.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend section 47 of the Civil Code as follows:

1 §47

2 A privileged publication or broadcast is one made:

3 (a) In the proper discharge of an official duty.

4 (b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official  
5 proceeding authorized by law, or (4) in the initiation or course of any other proceeding  
6 authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of  
7 Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

8 ~~(1) An allegation or averment contained in any pleading or affidavit filed in an action for  
9 marital dissolution or legal separation made of or concerning a person by or against whom no  
10 affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to  
11 the person making the allegation or averment within the meaning of this section unless the  
12 pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable  
13 and probable cause for believing the truth of the allegation or averment and unless the allegation  
14 or averment is material and relevant to the issues in the action.~~

15 ~~(12)~~ This subdivision does not make privileged any communication made in furtherance  
16 of an act of intentional destruction or alteration of physical evidence undertaken for the purpose  
17 of depriving a party to litigation of the use of that evidence, whether or not the content of the  
18 communication is the subject of a subsequent publication or broadcast which is privileged  
19 pursuant to this section. As used in this paragraph, "physical evidence" means evidence specified  
20 in Section 250 of the Evidence Code or evidence that is property of any type specified in Chapter  
21 14 (commencing with Section 2031.010) of Title 4 of Part 4 of the Code of Civil Procedure.

22 ~~(23)~~ This subdivision does not make privileged any communication made in a judicial  
23 proceeding knowingly concealing the existence of an insurance policy or policies.

24 ~~(34)~~ A recorded lis pendens is not a privileged publication unless it identifies an action  
25 previously filed with a court of competent jurisdiction which affects the title or right of  
26 possession of real property, as authorized or required by law.

27 (c) In a communication, without malice, to a person interested therein, (1) by one who is  
28 also interested, or (2) by one who stands in such a relation to the person interested as to afford a  
29 reasonable ground for supposing the motive for the communication to be innocent, or (3) who is  
30 requested by the person interested to give the information. This subdivision applies to and  
31 includes a communication concerning the job performance or qualifications of an applicant for  
32 employment, based upon credible evidence, made without malice, by a current or former  
33 employer of the applicant to, and upon request of, one whom the employer reasonably believes is  
34 a prospective employer of the applicant. This subdivision authorizes a current or former  
35 employer, or the employer's agent, to answer whether or not the employer would rehire a current  
36 or former employee. This subdivision shall not apply to a communication concerning the speech  
37 or activities of an applicant for employment if the speech or activities are constitutionally  
38 protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other  
39 provision of law.

40 (d) (1) By a fair and true report in, or a communication to, a public journal, of (A) a  
41 judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the  
42 course thereof, or (E) of a verified charge or complaint made by any person to a public official,  
43 upon which complaint a warrant has been issued.

44 (2) Nothing in paragraph (1) shall make privileged any communication to a public  
45 journal that does any of the following:

46 (A) Violates Rule 5-120 of the State Bar Rules of Professional Conduct.

47 (B) Breaches a court order.

48 (C) Violates any requirement of confidentiality imposed by law.

49 (e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was  
50 lawfully convened for a lawful purpose and open to the public, or (2) the publication of the  
51 matter complained of was for the public benefit.

(Proposed new language underlined; language to be deleted stricken.)

## STATEMENT OF REASONS

The Problem: Civil Code section 47 creates a privilege for communications in the course of judicial proceedings. It was designed to avoid chilling a party's constitutional right of free speech, and to ensure ability to pursue meritorious legal claims without fear of defamation suits. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055–1056; *Healthsmart Pacific, Inc. v. Kabateck* (2016) 7 Cal.App.5th 416, 426-427.) In 1927, in connection with the “fault” divorce laws, the Legislature added the “divorce proviso” to section 47, providing a statement about third parties in divorce filings is not automatically privileged. That was because to obtain a divorce, a spouse had to allege and prove an affair, and name a third party. In 1970 California adopted no-fault divorce. A spouse no longer had to prove fault to divorce, only a general allegation of irreconcilable differences. Allegations of fault are inadmissible. The days of proving infidelity are long over. However, the divorce proviso has lingered in Civil Code section 47. Parties to a dissolution proceeding are thus not afforded the same privilege for speech in their pleadings as other civil litigants. This can create a chilling effect in pleadings, which does not exist in any other area of law.

The Solution: To ensure equal protection of law and fairness to family law litigants, legislation is required to amend Section 47 to remove the divorce proviso.

## IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

## CURRENT OR PRIOR RELATED LEGISLATION

None known.

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**RESPONSIBLE FLOOR DELEGATE**: Michelene Insalaco

**COUNTER ARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS**

FLEXCOM Approves in Principle this resolution.

**RESOLUTION 01-02-2019**

**WITHDRAWN BY PROPONENT**

## RESOLUTION 01-03-2019

### DIGEST

Marital Dissolution: Required Service of Respondent's Preliminary Declaration of Disclosure  
Amends Family Code section 2104 to provide for timely service of a preliminary declaration of disclosure if no response to a petition for dissolution or legal separation was filed.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Family Code section 2104 to provide for timely service of a preliminary declaration of disclosure if no response to a petition for dissolution or legal separation was filed. This resolution should be approved in principle because it eliminates an inconsistency in existing law regarding the timing of a respondent's service of a preliminary declaration of disclosure.

Preliminary declarations of disclosure are required in all California dissolution proceedings to ensure that both parties have all of the relevant information for giving their informed consent to an uncontested dissolution or legal separation. Properly prepared declarations of disclosure should indicate all assets, debts, income and expenses of the respective parties, both community and separate. Existing law requires that a party in a dissolution or legal separation proceeding serve their preliminary declaration of disclosure concurrently with their response to the petition, or within 60 days of filing the response to the petition. (Fam. Code, § 2104, subd. (f).)

Consequently, the current statutory language ties a respondent's obligation to serve their preliminary declaration of disclosure to the date the respondent files the response to the petition for dissolution or legal separation. However, the statute does not set a deadline for serving a preliminary declaration when the respondent does not file a response to the petition. This creates confusion because it suggests that a respondent has to file a preliminary declaration only if they respond to the petition. This is inconsistent with Family Code section 2104, subdivision (a), which requires that "[e]xcept by court order for good cause...each party shall serve on the other party a preliminary declaration of disclosure."

Because many California dissolutions proceed as "hybrid defaults," (a process by which the case can be resolved without a response ever being filed), tying the requirement for service of the preliminary declaration of disclosure to the filing of a response creates confusion. The requirement of a full disclosure of assets, debts, income, and expenses must be met in every case, regardless of whether a response is filed. The resolution improves existing law by clarifying that the requirement to file the declaration of disclosure exists, regardless of whether the respondent files a response.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 2104 as follows:

1 §2104

2 (a) Except by court order for good cause, as provided in Section 2107, or when service of  
3 the preliminary declaration of disclosure is not required pursuant to Section 2110, in the time  
4 period set forth in subdivision (f), each party shall serve on the other party a preliminary  
5 declaration of disclosure, executed under penalty of perjury on a form prescribed by the Judicial  
6 Council. The commission of perjury on the preliminary declaration of disclosure may be grounds  
7 for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing  
8 with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are  
9 available under law for the commission of perjury. The preliminary declaration of disclosure  
10 shall include all tax returns filed by the declarant within the two years prior to the date that the  
11 party served the declaration.

12 (b) The preliminary declaration of disclosure shall not be filed with the court, except on  
13 court order. However, the parties shall file proof of service of the preliminary declaration of  
14 disclosure with the court.

15 (c) The preliminary declaration of disclosure shall set forth with sufficient particularity,  
16 that a person of reasonable and ordinary intelligence can ascertain, all of the following:

17 (1) The identity of all assets in which the declarant has or may have an interest and all  
18 liabilities for which the declarant is or may be liable, regardless of the characterization of the  
19 asset or liability as community, quasi-community, or separate.

20 (2) The declarant's percentage of ownership in each asset and percentage of obligation for  
21 each liability when property is not solely owned by one or both of the parties. The preliminary  
22 declaration may also set forth the declarant's characterization of each asset or liability.

23 (d) A declarant may amend his or her preliminary declaration of disclosure without leave  
24 of the court. Proof of service of any amendment shall be filed with the court.

25 (e) Along with the preliminary declaration of disclosure, each party shall provide the  
26 other party with a completed income and expense declaration unless an income and expense  
27 declaration has already been provided and is current and valid.

28 (f) The petitioner shall serve the other party with the preliminary declaration of disclosure  
29 either concurrently with the petition for dissolution or legal separation, or within 60 days of  
30 filing the petition. When a petitioner serves the summons and petition by publication or posting  
31 pursuant to court order and the respondent files a response prior to a default judgment being  
32 entered, the petitioner shall serve the other party with the preliminary declaration of disclosure  
33 within 30 days of the response being filed. The respondent shall serve the other party with the  
34 preliminary declaration of disclosure either concurrently with the response to the petition, or  
35 within 60 days of the deadline for filing the response, which is 30 days following service of the  
36 petition (pursuant to Family Code section 2020) unless the petition was served by posting or  
37 publication, regardless of whether respondent files a response to the petition. The time periods  
38 specified in this subdivision may be extended by written agreement of the parties or by court  
39 order.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of San Francisco

## **STATEMENT OF REASONS**

The Problem: The current language in Section 2104(f) permits a Respondent to choose to not file a Response to the Petition and avoid the Preliminary Declaration of Disclosure requirements of 2104(a). This loophole is inconsistent with the Legislature’s policy set forth in Section 2100(a):

“It is the policy of the State of California (1) to marshal, preserve, and protect community and quasi-community assets and liabilities that exist at the date of separation so as to avoid dissipation of the community estate before distribution, (2) to ensure fair and sufficient child and spousal support awards, and (3) to achieve a division of community and quasi-community assets and liabilities on the dissolution or nullity of marriage or legal separation of the parties as provided under California law.”

Family Code section 2104(f) was amended in 2012, effective on January 1, 2013, to include a deadline of 60 days from the date of the filing of the Petition for Petitioner’s PDOD and 60 days from the filing of the Response for Respondent’s PDOD. However, many dissolutions are uncontested where both parties participate but a Respondent may choose not to file a Response to the Petition. The current language of Section 2104(f) would permit a Respondent to avoid submitting a PDOD.

The Solution: This proposed amendment to Family Code section 2104(f) would provide an explicit mechanism for a Petitioner in a family law action to obtain information from the Respondent about assets, debts, income, expenses, and legal fees incurred. Clear language in Section 2104(f) that is understandable by self-represented parties would further the public policy set forth in Section 2100. This amendment also would provide the basis for a Petitioner to enforce a request for a PDOD under Family Code section 2107.

## **IMPACT STATEMENT**

This resolution does not affect any other law or statute.

## **CURRENT OR PRIOR RELATED LEGISLATION**

None known.

**AUTHOR AND/OR PERMANENT CONTACT:** Karine Cargo, Hersh Family Law Practice; 456 Montgomery St., 17<sup>th</sup> Flr., San Francisco, CA 94104; (415) 788-2200; [kcargo@hflp.com](mailto:kcargo@hflp.com).

**RESPONSIBLE FLOOR DELEGATE:** Karine Cargo

**COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS**

**FLEXCOM**

FLEXCOM Approves in Principle this resolution.

**RESOLUTION 01-04-2019**

**DIGEST**

Child Support: Written Itemized Statement and Waiver of Reimbursement Rights

Amends Family Code section 4063 to provide for a waiver of reimbursement rights unless the non-payor parent is provided with a written, itemized statement of the costs within 30 days.

**RESOLUTIONS COMMITTEE RECOMMENDATION  
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution amends Family Code section 4063 to provide for a waiver of reimbursement rights unless the non-payor parent is provided with a written, itemized statement of the costs within 30 days. This resolution should be disapproved because it would create confusion as to which statutory provisions should be applied when a parent is requesting reimbursement for child support costs from the other parent.

Family Code section 4063, subdivision (b), provides that for purposes of reimbursement for certain types of childcare expenses, a payor parent shall provide the non-payor parent with “an itemized statement” within “a reasonable time, but not more than 30 days after accruing the costs.” The proposed language in subdivision (c) restates the existing law in subdivision (b), but adds additional language, which includes: (1) a “*written* itemized statement of the costs within not more than 30 days” (emphasis added), and (2) mandatory waiver of the payor parent’s right of reimbursement if the written itemized statement is not provided to the non-payor parent within 30 days.

The proposed resolution does not delete the existing language in Family Code section 4063, subdivision (b), but restates the same language in subdivision (c) with additional requirements. This causes confusion as to whether or not a “written” itemized statement should be provided and, if not provided within 30 days of accrual or payment of the additional child support costs, be deemed waived. Therefore, the resolution should be disapproved.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 4063, to read as follows:

- 1 §4063
- 2 (a) When making an order pursuant to paragraph (2) of subdivision (a) of Section 4062,
- 3 the court shall:
- 4 (1) Advise each parent, in writing or on the record, of his or her rights and liabilities,
- 5 including financial responsibilities.

6 (2) Include in its order the time period for a parent to reimburse the other parent for the  
7 reimbursing parent's share of the reasonable additional child support costs subject to the  
8 requirements of this section.

9 (b) Unless there has been an assignment of rights pursuant to Section 11477 of the  
10 Welfare and Institutions Code, when either parent accrues or pays costs pursuant to an order  
11 under this section, that parent shall provide the other parent with an itemized statement of the  
12 costs within a reasonable time, but not more than 30 days after accruing the costs. ~~These costs~~  
13 ~~shall be paid as follows:~~

14 (c) Unless there has been an assignment of rights pursuant to Section 11477 of the  
15 Welfare and Institutions Code, the parent who accrues or pays costs pursuant to an order under  
16 this section, shall provide the other parent with a written itemized statement of the costs within  
17 not more than 30 days. If the parent who accrues or pays costs pursuant to an order under this  
18 section fails to do so, the parent who accrues or pays costs pursuant to an order under this section  
19 is deemed to have waived any right to reimbursement.

20 (d) Reimbursements requested under Subsection (b) shall then be paid as follows:

21 (1) If a parent has already paid all of these costs, that parent shall provide proof of  
22 payment and a request for reimbursement of his or her court-ordered share to the other parent.

23 (2) If a parent has paid his or her court-ordered share of the costs only, that parent shall  
24 provide proof of payment to the other parent, request the other parent to pay the remainder of the  
25 costs directly to the provider, and provide the reimbursing parent with any necessary information  
26 about how to make the payment to the provider.

27 (3) The other parent shall make the reimbursement or pay the remaining costs within the  
28 time period specified by the court, or, if no period is specified, within a reasonable time not to  
29 exceed 30 days from notification of the amount due, or according to any payment schedule set by  
30 the health care provider for either parent unless the parties agree in writing to another payment  
31 schedule or the court finds good cause for setting another payment schedule.

32 (4) If the reimbursing parent disputes a request for payment, that parent shall pay the  
33 requested amount and thereafter may seek judicial relief under this section and Section 290. If  
34 the reimbursing parent fails to pay the other parent as required by this subdivision, the other  
35 parent may seek judicial relief under this section and Section 290.

36 ~~(e)~~ (e) Either parent may file a noticed motion to enforce an order issued pursuant to this  
37 section. In addition to the court's powers under Section 290, the court may award filing costs and  
38 reasonable attorney's fees if it finds that either party acted without reasonable cause regarding  
39 his or her obligations pursuant to this section.

40 ~~(f)~~ (d) There is a rebuttable presumption that the costs actually paid for the uninsured  
41 health care needs of the children are reasonable, except as provided in subdivision ~~(g)~~ (e).

42 ~~(g)~~ (e) Except as provided in subdivision ~~(i)~~ (g):

43 (1) The health care insurance coverage, including, but not limited to, coverage for  
44 emergency treatment, provided by a parent pursuant to a court order, shall be the coverage to be  
45 utilized at all times, consistent with the requirements of that coverage, unless the other parent can  
46 show that the health care insurance coverage is inadequate to meet the child's needs.

47 (2) If either parent obtains health care insurance coverage in addition to that provided  
48 pursuant to the court order, that parent shall bear sole financial responsibility for the costs of that  
49 additional coverage and the costs of any care or treatment obtained pursuant thereto in excess of  
50 the costs that would have been incurred under the health care insurance coverage provided for in  
51 the court order.

52            (h)(f) Except as provided in subdivision (i)(g):

53            (1) If the health care insurance coverage provided by a parent pursuant to a court order  
54 designates a preferred health care provider, that preferred provider shall be used at all times,  
55 consistent with the terms and requirements of that coverage.

56            (2) If either parent uses a health care provider other than the preferred provider  
57 inconsistent with the terms and requirements of the court-ordered health care insurance coverage,  
58 the parent obtaining that care shall bear the sole responsibility for any nonreimbursable health  
59 care costs in excess of the costs that would have been incurred under the court-ordered health  
60 care insurance coverage had the preferred provider been used.

61            (i)(g) When ruling on a motion made pursuant to this section, in order to ensure that the  
62 health care needs of the child under this section are met, the court shall consider all relevant  
63 facts, including, but not limited to, the following:

64            (1) The geographic access and reasonable availability of necessary health care for the  
65 child which complies with the terms of the health care insurance coverage paid for by either  
66 parent pursuant to a court order. Health insurance shall be rebuttably presumed to be accessible if  
67 services to be provided are within 50 miles of the residence of the child subject to the support  
68 order. If the court determines that health insurance is not accessible, the court shall state the  
69 reason on the record.

70            (2) The necessity of emergency medical treatment that may have precluded the use of the  
71 health care insurance, or the preferred health care provider required under the insurance,  
72 provided by either parent pursuant to a court order.

73            (3) The special medical needs of the child.

74            (4) The reasonable inability of a parent to pay the full amount of reimbursement within a  
75 30-day period and the resulting necessity for a court-ordered payment schedule.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Contra Costa County Bar Association

## **STATEMENT OF REASONS**

The Problem: Under the current law, there is language which suggests reimbursement requests must be made within 30 days of accruing or paying the cost; however, there is no language to establish that if a parent sits on their right to reimbursement, they waive their right to seek such reimbursement.

The Solution: The resolution adds language to FCS 4063 establishing a waiver of a right to reimbursement if notice is not given in accordance with the code. The Courts do not apply FCS 4063 strictly, and consequently, there is ambiguity as to whether the Court will allow for such reimbursements. This adds to a “gamble” on the side of the litigant seeking the reimbursement, and potentially unnecessary litigation costs for both parties, as well as valuable judicial resources. The ambiguity also allows litigants to believe they can seek reimbursements on claims which date as far back as the litigant wishes to go, often testifying that notice was provided by US postal mail, when it cannot be proven that it occurred. In the technological age of text messages and email, there is no reason to maintain the ambiguity in the law. A parent’s right to reimbursement should rise and fall on whether the parent has sound evidence that the

code was followed, and proper notice was provided to the other parent within the 30 days required by the code.

**IMPACT STATEMENT**

This resolution does not affect any other law, statute, or rule.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

**AUTHOR AND/OR PERMANENT CONTACT:** Lisa J. Mendes, Contra Costa County Bar Association. 1990 N. California Blvd. Suite 1020, Walnut Creek, CA 94596, 925-390-3222, lisa@mwlawca.com.

**RESPONSIBLE FLOOR DELEGATE:** Lisa J. Mendes

**COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS**

**FLEXCOM**

FLEXCOM Approves this resolution if it is amended to have the notice period to provide information to the non-paying parent changed from 30 days to 90 days throughout Family Code section 4063. FLEXCOM agrees with the goal of the resolution to provide certainty as to the effect of late notices, but also believes a longer period of notice should be allowed since a waiver of rights may occur.

## RESOLUTION 01-05-2019

### DIGEST

#### Marriage: Ban Child Marriage in California

Deletes Family Code sections 302, 303, 304 and amends Family Code sections 308, 2210, 7002 and Penal Code sections 261.5, 311.1, 311.2, 311.4, 312.3 to ban child marriage in California.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

Similar to Resolution 07-04-2018, which was disapproved and Resolution 07-05-2018, which was withdrawn.

#### Reasons:

This resolution deletes Family Code sections 302, 303, 304 and amends Family Code sections 308, 2210, 7002 and Penal Code sections 261.5, 311.1, 311.2, 311.4, 312.3 to ban child marriage in California. This resolution should be disapproved because it creates unanticipated consequences that are detrimental to existing long-term marriages, and to minors who marry outside of California.

Under current law, a minor may be married in California, only after a court order is issued approving the marriage. (Fam. Code, § 302, subd. (a).) In 2018, Senate Bill 273 (2017-2018 Reg. Sess.) was signed into law creating additional requirements for minors who wish to marry (e.g. premarital counselling). (See Fam. Code, § 297.1.) This was a compromise from an earlier version of the Senate bill that would have banned all marriages by minors in California.

This resolution should be disapproved because it creates a number of new problems. For example, because this resolution would invalidate all marriages involving a minor, a marriage that took place fifty years ago would not be recognized and would be invalid in California if one of the spouses was a minor on the date of marriage. There are no exceptions to this situation. This resolution could also make things worse for minors who are married. By making the marriage void (rather than voidable), the minor would be denied the protections associated with marriage, e.g. the minor would be denied community property rights, the right to spousal support, and even access to the adult spouse's health care or survivor benefits. Further, if the marriage is void, then a California court may lack jurisdiction over the "marriage" and therefore could not enter an order granting a divorce and associated spousal support orders. If the marriage fails, it is not clear what the minor may do to terminate the marriage that continues to be recognized in another state. Additionally, the resolution does not specify how the marriage is to be treated if the spouses are only in California temporarily. If the spouses are on vacation in California and it is necessary to make health care decisions, if the marriage is automatically void upon entering California, then the spouses may not be able to make those decisions for one another. In addition, the Legislature considered this issue a year ago and rejected an outright ban on minors getting married.

This resolution would create a number of unintended consequences that would create problems

for those it seeks to protect. Accordingly, it should be disapproved.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to delete Family Code, sections 302, 303, 304 and amend Family Code sections 308, 2210, 7002 and Penal Code, sections 261.5, 311.1, 311.2, 311.4, 312.3 to read as follows:

1    §302

2           ~~(a) An unmarried person under 18 years of age is capable of consenting to and~~  
3 ~~consummating marriage upon obtaining a court order granting permission to the underage person~~  
4 ~~or persons to marry.~~

5           ~~(b) The court order and written consent of at least one of the parents or the guardian of~~  
6 ~~each underage person shall be filed with the clerk of the court, and a certified copy of the order~~  
7 ~~shall be presented to the county clerk at the time the marriage license is issued.~~

8  
9    §303

10           ~~If it appears to the satisfaction of the court by application of a minor that the minor~~  
11 ~~requires a written consent to marry and that the minor has no parent or has no parent capable of~~  
12 ~~consenting, the court may make an order consenting to the issuance of a marriage license and~~  
13 ~~granting permission to the minor to marry. The order shall be filed with the clerk of the court and~~  
14 ~~a certified copy of the order shall be presented to the county clerk at the time the marriage~~  
15 ~~license is issued.~~

16  
17    §304

18           ~~As part of the court order granting permission to marry under Section 302 or 303, the~~  
19 ~~court shall, if it considers it necessary, require the parties to the prospective marriage of a minor~~  
20 ~~to participate in premarital counseling concerning social, economic, and personal responsibilities~~  
21 ~~incident to marriage. The parties shall not be required, without their consent, to confer with~~  
22 ~~counselors provided by religious organizations of any denomination. In determining whether to~~  
23 ~~order the parties to participate in the premarital counseling, the court shall consider, among other~~  
24 ~~factors, the ability of the parties to pay for the counseling. The court may impose a reasonable~~  
25 ~~fee to cover the cost of any premarital counseling provided by the county or the court. The fees~~  
26 ~~shall be used exclusively to cover the cost of the counseling services authorized by this section.~~

27  
28    §308

29           A marriage contracted outside this state that would be valid by laws of the jurisdiction in  
30 which the marriage was contracted is valid in California, unless one of the parties to the marriage  
31 was a minor on the date that the marriage was contracted.

32  
33    §2210

34           A marriage is voidable and may be adjudged a nullity if any of the following conditions  
35 existed at the time of the marriage:

36           (a) The party who commences the proceeding or on whose behalf the proceeding is  
37 commenced was under 18 years of age, ~~unless the party entered into the marriage pursuant to~~

38 ~~Section 302 or 303.~~

39 (b) The spouse of either party was living and the marriage with that spouse was then in  
40 force and that spouse (1) was absent and not known to the party commencing the proceeding to  
41 be living for a period of five successive years immediately preceding the subsequent marriage for  
42 which the judgment of nullity is sought or (2) was generally reputed or believed by the party  
43 commencing the proceeding to be dead at the time the subsequent marriage was contracted. (c)  
44 Either party was of unsound mind, unless the party of unsound mind, after coming to reason,  
45 freely cohabited with the other as his or her spouse.

46 (d) The consent of either party was obtained by fraud, unless the party whose consent was  
47 obtained by fraud afterwards, with full knowledge of the facts constituting the fraud, freely  
48 cohabited with the other as his or her spouse.

49 (e) The consent of either party was obtained by force, unless the party whose consent was  
50 obtained by force afterwards freely cohabited with the other as his or her spouse.

51 (f) Either party was, at the time of marriage, physically incapable of entering into the  
52 marriage state, and that incapacity continues, and appears to be incurable.

53

54 §7002

55 A person under the age of 18 years is an emancipated minor if any of the following  
56 conditions is satisfied:

57 ~~(a) The person has entered into a valid marriage, or has established a valid domestic~~  
58 ~~partnership, regardless of whether the marriage or the domestic partnership has been dissolved.~~

59 (ba) The person is on active duty with the Armed Forces of the United States.

60 (eb) The person has received a declaration of emancipation pursuant to Section 7122.

61

62 §261.5

63 (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a  
64 ~~person who is not the spouse of the perpetrator, if the person is a minor.~~ For the purposes of this  
65 section, a “minor” is a person under the age of 18 years and an “adult” is a person who is at least  
66 18 years of age.

67 (b) Any person who engages in an act of unlawful sexual intercourse with a minor who is  
68 not more than three years older or three years younger than the perpetrator, is guilty of a  
69 misdemeanor.

70 (c) Any person who engages in an act of unlawful sexual intercourse with a minor who is  
71 more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony,  
72 and shall be punished by imprisonment in a county jail not exceeding one year, or by  
73 imprisonment pursuant to subdivision (h) of Section 1170.

74 (d) Any person 21 years of age or older who engages in an act of unlawful sexual  
75 intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a  
76 felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by  
77 imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

78 (e)(1) Notwithstanding any other provision of this section, an adult who engages in an act  
79 of sexual intercourse with a minor in violation of this section may be liable for civil penalties in  
80 the following amounts:

81 (A) An adult who engages in an act of unlawful sexual intercourse with a minor less than  
82 two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars  
83 (\$2,000).

84 (B) An adult who engages in an act of unlawful sexual intercourse with a minor at least  
85 two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars  
86 (\$5,000).

87 (C) An adult who engages in an act of unlawful sexual intercourse with a minor at least  
88 three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars  
89 (\$10,000).

90 (D) An adult over the age of 21 years who engages in an act of unlawful sexual  
91 intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-  
92 five thousand dollars (\$25,000).

93 (2) The district attorney may bring actions to recover civil penalties pursuant to this  
94 subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing  
95 the action shall be deposited with the treasurer of the county in which the judgment was entered,  
96 and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is  
97 hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention  
98 Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by  
99 the Legislature.

100 (3) In addition to any punishment imposed under this section, the judge may assess a fine  
101 not to exceed seventy dollars (\$70) against any person who violates this section with the  
102 proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however,  
103 take into consideration the defendant's ability to pay, and no defendant shall be denied probation  
104 because of his or her inability to pay the fine permitted under this subdivision.

105  
106 §311.1

107 (a) Every person who knowingly sends or causes to be sent, or brings or causes to be  
108 brought, into this state for sale or distribution, or in this state possesses, prepares, publishes,  
109 produces, develops, duplicates, or prints any representation of information, data, or image,  
110 including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy,  
111 videotape, video laser disc, computer hardware, computer software, computer floppy disc, data  
112 storage media, CD-ROM, or computer-generated equipment or any other computer-generated  
113 image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute  
114 or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to,  
115 or exchanges with, others, any obscene matter, knowing that the matter depicts a person under  
116 the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in  
117 Section 311.4, shall be punished either by imprisonment in the county jail for up to one year, by  
118 a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment, or by  
119 imprisonment in the state prison, by a fine not to exceed ten thousand dollars (\$10,000), or by the  
120 fine and imprisonment.

121 (b) This section does not apply to the activities of law enforcement and prosecuting  
122 agencies in the investigation and prosecution of criminal offenses or to legitimate medical,  
123 scientific, or educational activities, or to lawful conduct between spouses.

124 (c) This section does not apply to matter which depicts a child under the age of 18, which  
125 child is legally emancipated, ~~including lawful conduct between spouses when one or both are~~  
126 ~~under the age of 18.~~

127 (d) It does not constitute a violation of this section for a telephone corporation, as defined  
128 by Section 234 of the Public Utilities Code, to carry or transmit messages described in this  
129 chapter or perform related activities in providing telephone services.

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§311.2

(a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000).

(b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars (\$100,000), in the absence of a finding that the defendant would be incapable of paying that fine, or by both that fine and imprisonment.

(c) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment, or by imprisonment in the state prison. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If a person has been previously convicted of a violation of this subdivision, he or she is guilty of a felony.

(d) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute

176 or exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute,  
177 distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing  
178 that the matter depicts a person under the age of 18 years personally engaging in or personally  
179 simulating sexual conduct, as defined in Section 311.4, is guilty of a felony. It is not necessary to  
180 prove commercial consideration or that the matter is obscene in order to establish a violation of  
181 this subdivision.

182 (e) Subdivisions (a) to (d), inclusive, do not apply to the activities of law enforcement  
183 and prosecuting agencies in the investigation and prosecution of criminal offenses, to legitimate  
184 medical, scientific, or educational activities, or to lawful conduct between spouses.

185 (f) This section does not apply to matter that depicts a legally emancipated child under  
186 the age of 18 years ~~or to lawful conduct between spouses when one or both are under the age of~~  
187 ~~18 years.~~

188 (g) It does not constitute a violation of this section for a telephone corporation, as  
189 defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in  
190 this chapter or to perform related activities in providing telephone services.

191  
192 §311.4

193 (a) Every person who, with knowledge that a person is a minor, or who, while in  
194 possession of any facts on the basis of which he or she should reasonably know that the person is  
195 a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in  
196 Section 311.2, shall be punished by imprisonment in the county jail for up to one year, or by a  
197 fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment, or by  
198 imprisonment in the state prison. If the person has previously been convicted of any violation of  
199 this section, the court may, in addition to the punishment authorized in Section 311.9, impose a  
200 fine not exceeding fifty thousand dollars (\$50,000).

201 (b) Every person who, with knowledge that a person is a minor under the age of 18 years,  
202 or who, while in possession of any facts on the basis of which he or she should reasonably know  
203 that the person is a minor under the age of 18 years, knowingly promotes, employs, uses,  
204 persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of  
205 a minor under the age of 18 years under his or her control who knowingly permits the minor, to  
206 engage in or assist others to engage in either posing or modeling alone or with others for  
207 purposes of preparing any representation of information, data, or image, including, but not  
208 limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser  
209 disc, computer hardware, computer software, computer floppy disc, data storage media, CD-  
210 ROM, or computer-generated equipment or any other computer-generated image that contains or  
211 incorporates in any manner, any film, filmstrip, or a live performance  
212 involving, sexual conduct by a minor under the age of 18 years alone or with other persons or  
213 animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in  
214 the state prison for three, six, or eight years.

215 (c) Every person who, with knowledge that a person is a minor under the age of 18 years,  
216 or who, while in possession of any facts on the basis of which he or she should reasonably know  
217 that the person is a minor under the age of 18 years, knowingly promotes, employs, uses,  
218 persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of  
219 a minor under the age of 18 years under his or her control who knowingly permits the minor, to  
220 engage in or assist others to engage in either posing or modeling alone or with others for  
221 purposes of preparing any representation of information, data, or image, including, but not

222 limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser  
223 disc, computer hardware, computer software, computer floppy disc, data storage media, CD-  
224 ROM, or computer-generated equipment or any other computer-generated image that contains or  
225 incorporates in any manner, any film, filmstrip, or a live performance  
226 involving, sexual conduct by a minor under the age of 18 years alone or with other persons or  
227 animals, is guilty of a felony. It is not necessary to prove commercial purposes in order to  
228 establish a violation of this subdivision.

229 (d)(1) As used in subdivisions (b) and (c), "sexual conduct" means any of the following,  
230 whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral  
231 copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina  
232 or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or  
233 rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act  
234 as defined in Section 288, or excretory functions performed in a lewd or lascivious manner,  
235 whether or not any of the above conduct is performed alone or between members of the same or  
236 opposite sex or between humans and animals. An act is simulated when it gives the appearance  
237 of being sexual conduct.

238 (2) As used in subdivisions (b) and (c), "matter" means any film, filmstrip, photograph,  
239 negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software,  
240 computer floppy disc, or any other computer-related equipment or computer-generated image  
241 that contains or incorporates in any manner, any film, filmstrip, photograph, negative, slide,  
242 photocopy, videotape, or video laser disc.

243 (e) This section does not apply to a legally emancipated minor ~~or to~~  
244 ~~lawful conduct between spouses if one or both are under the age of 18.~~

245 (f) In every prosecution under this section involving a minor under the age of 14 years at  
246 the time of the offense, the age of the victim shall be pled and proven for the purpose of the  
247 enhanced penalty provided in Section 647.6. Failure to plead and prove that the victim was under  
248 the age of 14 years at the time of the offense is not a bar to prosecution under this section if it is  
249 proven that the victim was under the age of 18 years at the time of the offense.

250  
251 §312.3

252 (a) Matter that depicts a person under the age of 18 years personally engaging in or  
253 personally simulating sexual conduct as defined in Section 311.4 and that is in the possession of  
254 any city, county, city and county, or state official or agency is subject to forfeiture pursuant to  
255 this section.

256 (b) An action to forfeit matter described in subdivision (a) may be brought by the  
257 Attorney General, the district attorney, county counsel, or the city attorney. Proceedings shall be  
258 initiated by a petition of forfeiture filed in the superior court of the county in which the matter is  
259 located.

260 (c) The prosecuting agency shall make service of process of a notice regarding that  
261 petition upon every individual who may have a property interest in the alleged proceeds. The  
262 notice shall state that any interested party may file a verified claim with the superior court stating  
263 the amount of their claimed interest and an affirmation or denial of the prosecuting agency's  
264 allegation. If the notice cannot be given by registered mail or personal delivery, the notice shall  
265 be published for at least three successive weeks in a newspaper of general circulation in the  
266 county where the property is located. All notices shall set forth the time within which a claim of  
267 interest in the property seized is required to be filed.

268 (d)(1) Any person claiming an interest in the property or proceeds may, at any time  
269 within 30 days from the date of the first publication of the notice of seizure, or within 30 days  
270 after receipt of actual notice, file with the superior court of the county in which the action is  
271 pending a verified claim stating his or her interest in the property or proceeds. A verified copy of  
272 the claim shall be given by the claimant to the Attorney General or district attorney, county  
273 counsel, or city attorney, as appropriate.

274 (2) If, at the end of the time set forth in paragraph (1), an interested person has not filed a  
275 claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged  
276 interest, and it shall be subject to forfeiture upon proof of compliance with subdivision (c).

277 (e) The burden is on the petitioner to prove beyond a reasonable doubt that matter is  
278 subject to forfeiture pursuant to this section.

279 (f) It is not necessary to seek or obtain a criminal conviction prior to the entry of an order  
280 for the destruction of matter pursuant to this section. Any matter described in subdivision (a) that  
281 is in the possession of any city, county, city and county, or state official or agency, including  
282 found property, or property obtained as the result of a case in which no trial was had or that has  
283 been disposed of by way of dismissal or otherwise than by way of conviction may be ordered  
284 destroyed.

285 (g) A court order for destruction of matter described in subdivision (a) may be carried out  
286 by a police or sheriff's department or by the Department of Justice. The court order shall specify  
287 the agency responsible for the destruction.

288 (h) As used in this section, "matter" means any book, magazine, newspaper, or other  
289 printed or written material or any picture, drawing, photograph, motion picture, or other pictorial  
290 representation, or any statue or other figure, or any recording, transcription or mechanical,  
291 chemical or electrical reproduction, or any other articles, equipment, machines, or materials.  
292 "Matter" also means any representation of information, data, or image, including, but not limited  
293 to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc,  
294 computer hardware, computer software, computer floppy disk, data storage media, CD-ROM, or  
295 computer-generated equipment or any other computer-generated image that contains or  
296 incorporated in any manner any film or filmstrip.

297 (i) This section does not apply to a depiction of a legally emancipated minor ~~or to lawful~~  
298 ~~conduct between spouses if one or both are under the age of 18.~~

299 (j) It is a defense in any forfeiture proceeding that the matter seized was lawfully  
300 possessed in aid of legitimate scientific or educational purposes.

(Proposed new language underlined; language to be deleted stricken)

**PROPOSERS:** Kelsey Blegen, Michael Fern, Maggie Grover, Shaun Jacobs, Christopher Long, Jack Osborn, Ujvala Singh, Darin Wessel, Martin White, Cathleen Yonahara.

## **STATEMENT OF REASONS**

The Problem: The US recognizes that child marriage harms children. Ending child marriage globally is a US foreign policy priority. (<https://www.state.gov/discoverdiplomany/explorer/issues/170039>). But the problem persists domestically. Only Delaware and New Jersey ban child marriage.

California has no minimum marriage age -- a child of any age can marry a child or adult of any age with parental consent and court order. (Family Code, sections 302-304). A married child automatically becomes an emancipated minor (Family Code, section 7002), treated as an adult for most purposes (Family Code, section 7050). Although automatically emancipated, the child married to an adult remains dependent on the adult spouse.

The requirement of a court order is illusory, because a child is not likely to speak up to contradict the wishes of the parents who give the consent, and because child marriages valid in other jurisdictions are valid in California (Fam. Code § 308), even if the other jurisdiction does not require a court order. (See, e.g., *In re J.S.* (2011) 199 Cal.App.4th 1291, 1296; see also *McDonald v. McDonald* (1936) 6 Cal.2d 457, 459). *In re J.S.* involved an abusive mother who took her pregnant teenage daughter to Nevada and consented to her marriage under Nevada law. The child was in the middle of juvenile dependency proceedings in California, but her marriage emancipated her, and the court lost jurisdiction over her. This was not a good outcome for the child, because the state was unable to provide needed care and services. The juvenile dependency courts protect children who are abused and neglected, but the abusers and neglecters can prevent the courts from protecting these children by consenting to their marriage, even in another state with no judicial oversight.

Child marriage allows statutorily sanctioned exploitation of children. Some examples: An exception to child pornography allows otherwise criminal acts to go unpunished if the child is married to the perpetrator. (Penal Code, section 311.3(c)). Child marriage is an exception to statutory rape (Penal Code, section 261.5); a married child cannot be a victim of statutory rape, even though spousal rape is a crime (Penal Code, section 262), and spousal rape law considers the age of the victim a factor for duress (Penal Code, section 262(b)).

Most child marriages, even in the US, involve a minor girl married to an adult man. “Studies show that girls in the US who marry as children have lower education attainment, are at greater risk of living in poverty and suffer adverse health consequences.” (<https://ph.ucla.edu/uclachildmarriage>); see also the 2018 study by UCLA Fielding School of Public Health, “Child Marriage in the United States: How Common is the Practice, and Which Children Are at Greatest Risk?” Child marriage is often a vehicle for forced marriage, child abuse, domestic violence and trafficking. Those who argue that child marriage is a solution for teenage pregnancy ignore these realities. California has an obligation to protect children, not allow them to be harmed.

The Solution: Align the minimum age of marriage with the age of majority, without exceptions.

## **IMPACT STATEMENT**

While the author has identified other statutes and rules which refer to child marriage or spouses under 18, it is possible that the author has inadvertently missed identifying all such statutes and rules. Therefore, further research is required to identify and amend all statutes and rules that refer to marriage of a minor and/or minor spouses.

## **CURRENT OR PRIOR RELATED LEGISLATION**

None known that would completely ban child marriage.

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**RESPONSIBLE FLOOR DELEGATE:** Ujvala Singh

### **COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS**

#### **FLEXCOM**

FLEXCOM Disapproves this resolution.

FLEXCOM is opposed to an absolute ban on marriages in which one or both parties are minors. FLEXCOM is also aware of SB 273, enacted in 2018, which amended and added to various sections of the Family Code to provide more oversight and resources to the process of allowing a minor to marry. FLEXCOM believes the efficacy of this recent change in the law needs to be determined through its implementation and application.