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The Uniform Marriage and Divorce Act--Marital Age Provisions

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Note: The Uniform Marriage and Divorce Act—Marital Age Provisions

I. INTRODUCTION

The Commissioners on Uniform State Laws in 1970 proposed a Uniform Marriage and Divorce Act¹ containing, among other provisions, restrictions on marital age. This Note will examine the relevant provisions of the Act in light of some of the sociological findings on teenage marriage. It will also examine the statutory pattern of marriage regulation in the United States and present some of its weaknesses. The Uniform Act will then be compared with the present statutes in terms of minimization of those weaknesses and maximization of the goals of marital age restrictions.

II. THE MARITAL AGE PROVISIONS

The age regulations of the Uniform Act provide the following: 1) parties may marry at age 18 without parental or judicial consent² [hereinafter referred to as marriageable age³]; 2) parties between the ages of 16 and 18 [hereinafter referred to as the intermediate age group] are allowed to marry if they obtain either parental or judicial consent, the latter being given only where the court finds marriage to be in the party's best interest and that he or she has the capacity to assume the responsibilities of marriage;⁴ 3) parties under 16 [hereinafter re-

1. Approved and recommended for enactment August 1-7, 1970, Rev. 1971 [hereinafter referred to as UNIFORM ACT].

2. [*License to Marry.*] When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the [marriage license] clerk and paid the marriage license fee of [\$], the [marriage license] clerk shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective, or will have attained the age of 16 years and has either the consent to the marriage of both parents or his guardian, or judicial approval; [or, if under the age of 16 years, has both the consent of both parents or his guardian and judicial approval;]

UNIFORM DIVORCE AND MARRIAGE ACT § 203 (1970) (Rev. 1971). All optional provisions are discussed herein as effective provisions of the UNIFORM ACT.

3. The terms, such a "marriageable age," used herein are not reflected in all the state statutes and are used here only for convenience.

4. See note 2 *supra*.

ferred to as the age of capacity] are allowed to marry only with parental and judicial consent, pregnancy not being the determinative factor in the granting of judicial consent;⁵ and 4) underage parties and their parents have the right to sue for annulment of a marriage contracted in violation of the above provisions,⁶ but only if they act before the underage child reaches the age at which he could marry without the omitted requirement.⁷ Finally there are miscellaneous provisions applying to all applicants: waiting periods and evidentiary requirements.⁸

5. [Judicial Approval.]

(a) The [] court, after a reasonable effort has been made to notify the parents or guardian of each underaged party, may order the [marriage license] clerk to issue a marriage license and a marriage certificate form:

(1) to a party aged 16 or 17 years who has no parent capable of consenting to his marriage, or whose parent or guardian has not consented to his marriage; [or

(2) to a party under the age of 16 years who has the consent of both parents to his marriage, if capable of giving consent, or his guardian.]

(b) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interests. Pregnancy alone does not establish that the best interests of the party will be served

UNIFORM ACT § 205.

6. [Declaration of Invalidity.]

(a) The [] court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

... (3) a party [was under the age of 16 years and did not have the consent of his parents or guardian and judicial approval or] was aged 16 or 17 years and did not have the consent of his parents or guardian or judicial approval; or

... (b) A declaration of invalidity under subsection (a)(1) through (3) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

... (3) for the reason set forth in subsection (a)(3), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

... (e) Unless the court finds, after a consideration of all relevant circumstances including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of this Act relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to non-retroactive decrees of invalidity.

UNIFORM ACT § 208.

7. *Id.*

8. [License, Effective Date] A license to marry becomes ef-

III. THE GOAL OF MARITAL AGE REGULATION

Age restraints have generally been believed necessary to prevent hasty and immature marriages and thus promote stability of the marriage relationship.⁹ The fear is that teenage¹⁰ marriages are likely to end in divorce because many young people do not have the capacity to meet the problems incident to marriage. Some commentators, however, have suggested that the proper goal of marriage legislation should be easy access to marriage rather than stability.¹¹ They argue that the costs of the present system of controls outweigh its benefits. For example, many proposed marriages which would be successful are presently denied legal sanction, with the result that many couples form relationships outside the law which do not receive the stability of the legal title of "husband and wife." The societal cost of an illicit relationship would appear to be greater than any cost of allowing the marriage. Furthermore, commentators argue that the present restrictions are ineffective in that a couple may avoid them by lying about their ages or traveling to a state with more favorable laws.¹²

fective throughout this state 3 days after the date of the issuance and expires 180 days after it becomes effective, unless the [] court orders that the license is effective when issued. UNIFORM ACT § 204. See note 2 *supra* for evidentiary provisions as to age and parental consent.

9. In C. FOOTE, R. LEVY, & F. SANDER, *CASES AND MATERIALS ON FAMILY LAW* 194 (1966), age regulations are discussed as "protections against immature or hasty marriage . . ." In *In re Barbara Haven*, 86 Pa. D. & C. 141, 143 (Orphan's Ct. 1953), such regulations are discussed in terms of restraining "impetuous youth." Comment, *The Validity of Child Marriages in Louisiana*, 14 *TUL. L. REV.* 106, 107 (1939), lists the need for maturity as one of the reasons for restriction. WISC. STAT. ANN. § 245.05 (Supp. 1971) requires that the applicants be given a card which reads in part: "It is the intent of Chapters 245 to 248 to promote the stability and best interests of marriage and the family."

10. "Teenagers" will hereafter refer to those under the most common statutory marriageable age—21 for males and 18 for females.

11. Monahan, *Does Age at Marriage Matter in Divorce?*, 32 *SOCIAL FORCES* 81, 87 (1953): "If assistance were given quite generally, in place of interference, the results . . . might be different." See also Gallaher & Levy, *Youth Marriage: Summary and Critique of the Data and Literature*, Appendix C, appearing in, R. LEVY, *UNIFORM MARRIAGE AND DIVORCE LEGISLATION: A PRELIMINARY ANALYSIS*, at C-60, 61 (Prepared for the Special Committee on Divorce of the National Conference of Commissioners on Uniform State Laws): "And perhaps, even, the culture may find its way to acceptance of love and affection being fully expressed between young people, without the normative concomitant of marriage and family."

12. Burchinal, *Research on Young Marriage: Implications for Family Life Education*, 9 *FAMILY LIFE COORDINATOR* 6, 20 (1960) ("21 percent of the 18 year old brides and 12 percent of the 20 or 22 year old

Although the prefatory note to the Act suggests that stability of marriage is the goal of age regulations,¹³ there is much to suggest that the draftsmen, if not the commissioners, favored maximum access to marriage and that stability was of only secondary concern.¹⁴ They were skeptical that age restrictions do or could effectively promote stability¹⁵ and concerned that the benefit of present legislation does not outweigh the loss of individual freedom occasioned by restriction.¹⁶ Nevertheless, the Act incorporates many of the present statutory restrictions, apparently out of the fear that otherwise it would not receive serious consideration.¹⁷

Despite the ineffectiveness of present age regulation and the loss of individual autonomy caused by the restrictions, this Note assumes that stability of marriage is a proper goal. The costs of divorce can be great both for society and the individual involved. Children suffer from parental dispute and one-parent homes,¹⁸ and economic hardship may ensue to both the husband who is paying alimony and the wife with children to support. However, it is also assumed that these restrictions should not is-

brides (primary marriages) were non-state residents"); Lowrie, *Early Marriage: Premarital Pregnancy and Associated Factors*, 27 J. MARR. FAM. 48 (1965) ("[found] some migration to marry out of the county, more frequently out of the state, to evade legal restrictions"); Plateris, *The Impact of the Amendment of Marriage Laws in Mississippi*, 28 J. MARR. FAM. 206, 207 (1966) ("Before the marriage laws were amended a very high proportion of brides and grooms married in Mississippi were residents of other states attracted by very permissive premarital requirements. . . . Before 1958 about two thirds of those married in Mississippi were nonresidents . . ."); Rosenwaike, *Parental Consent Ages as a Factor in State Variation in Bride's Age at Marriage*, 29 J. MARR. FAM. 452, 455 (1967) ("The parental consent laws, rather than deterring marriage, contribute to migratory marriage").

13. "Without undermining the state's interest in the stability of marriages, the Act . . . simplifies . . . regulation." Prefatory note to the UNIFORM ACT.

14. Interview with Robert J. Levy, Reporter to the Commissioners on Uniform State Laws, Special Committee on Divorce, in Minneapolis, Minnesota, April 4, 1972.

15. "[D]oes it make any sense to establish an elaborate statutory and administrative structure which will be used for formalities alone—either because permission to marry will always be given or because, when permission to marry is denied, the applicants will often ignore the decision?" R. LEVY, UNIFORM MARRIAGE AND DIVORCE LEGISLATION: A PRELIMINARY ANALYSIS 26 (Prepared for the Special Committee on Divorce of the National Conference of Commissioners on Uniform State Laws).

16. Interview with Robert J. Levy, *supra* note 14.

17. *Id.*

18. See Burgess, *The Single-Parent Family: A Social and Sociological Problem*, 19 FAMILY LIFE COORDINATOR 137 (1970).

sue when the benefits of the resultant stability are less than the cost of interfering with the personal lives of individuals.

A further assumption is made as to intermediate goals in achieving marital stability. The present statutes attempt both to deter¹⁹ teenage marriages and evaluate proposed marriages by means of parental consent. Since there appears to be ample reason to advise against youthful marriage,²⁰ and since it is axiomatic that stability is served by reliable rather than unreliable evaluation of a proposed marriage's chance of success, this Note will assume that both deterrence and reliable evaluation are proper intermediate goals in achieving stability.

IV. DATA ON YOUTHFUL MARRIAGE

Age restrictions rest upon assumptions as to the likelihood and probable causes of divorce in early marriages and the effectiveness of various regulations in deterring them. A brief summary of the data available on youthful marriage is therefore appropriate.²¹

First, it appears that marriages between younger persons will be less stable than marriages between older persons. One study, for example, found that the ratio of divorces to marriages for those under age 21 was .29 for males and .24 for females, while the corresponding ratios for those between 21 and

19. See Comment, *The Validity of Child Marriages in Louisiana*, 14 TUL. L. REV. 106 (1939) ("The reasons usually ascribed for such restrictions on child marriages are: . . . (2) it is desirable for the better development of the race that marriages of very young people be avoided; . . ." (emphasis added)). See also *In re Barbara Haven*, 86 Pa. D. & C. 141, 143 (Orphan's Ct. 1953) ("The statute in question . . . fulfills a two-fold function in protecting marriage as an estate and in placing a restraining hand upon the shoulder of impetuous youth.") The court was dealing with the requirement of judicial consent, but it is clear it was referring to age restrictions generally. Some commentators are apparently convinced that one purpose of the statutory age restrictions is to deter youthful marriage. Burchinal, *Trends and Prospects for Young Marriages in the United States*, 27 J. MARR. FAM. 243, 253 (1965) ("There are justifiable grounds for discouraging young marriages." (emphasis added)). Gover & Jones, *Requirement of Parental Consent: A Deterrent to Marriage?* 26 J. MARR. FAM. 205 (1964) ("If it is assumed that parents generally are opposed to early marriage and will, if given a chance, prevent their daughters from marrying at early ages, it is reasonable to hypothesize that the laws requiring formal parental consent are a deterrent to early marriage.").

20. See note 22 *infra*.

21. For an excellent and more complete summary, see Gallaher & Levy, *Youth Marriage: Summary and Critique of the Data and Literature*, appearing in, R. LEVY, UNIFORM MARRIAGE AND DIVORCE LEGISLATION: A PRELIMINARY ANALYSIS at Appendix C.

25 was .14 and .11.²² Since the hazard of failure in teenage marriage is obviously important in evaluating the potential benefits of age restrictions, and since most studies conclude that there is a significantly greater risk of divorce in teenage marriage,²³ the basic assumption of marital age regulation appears to be correct.

Second, although there is some disagreement,²⁴ the average marital age appears to have declined over the last several decades.²⁵ Various explanations are offered for the finding of variations in marital age including industrialization,²⁶ economic trends,²⁷ the greater percentage of women in the population,²⁸ availability of nonmarital intercourse,²⁹ and sociological dis-

22. Monahan, *supra* note 11, at table 3.

Because divorces in one year do not come from marriages in that particular year, but from all preceding years (in a constantly diminishing degree), a non-comparability obtains when we set marriage and divorce data in tables covering the same time period. . . . [i]f the pattern of age at marriage were changing rapidly, such a comparison could be grossly misleading.

Id. at 81.

For calculations of the increased risk of divorce in teenage marriage, see J. LANDIS & M. LANDIS, *PERSONAL ADJUSTMENT: MARRIAGE AND FAMILY LIVING*, 174, 177 (1971) (several times); Burchinal, *Trends and Prospects for Young Marriages in the United States*, 27 J. MARR. FAM. 243, 249 (1965) (between two to four times); Furlong, *Youthful Marriage and Parenthood: A Threat to Family Stability*, 19 HASTINGS L.J. 105, 109 (1967) (two to three times). The California Assembly Interim Committee Reports (1963-1965) indicate that marriages where one party is under age 20 are almost twice as likely to end in divorce. Final Report of the Assembly Interim Committee on Judiciary: Relating to Domestic Relations, Part 2: *Youthful Marriage and Parenthood—A Threat to Family Stability*, 25-61, Appendix D, Vol. 23, No. 6 (Jan. 11, 1965).

23. A number of studies in addition to the few cited in this section make use of statistical data on marriage stability, in one form or other. . . . [I]t is impossible to characterize them in any one general statement, other than to say they all support, to one degree or another, the generalization that younger marriages tend to be less stable than later ones.

Gallaher & Levy, *supra* note 21, at C-18.

24. Some sociologists report that the average age of marriage has remained stable since 1950. Burchinal, *Research on Young Marriage: Implications for Family Life Education*, 9 FAMILY LIFE COORDINATOR 6, 7 (1960); Parke & Glick, *Prospective Changes in Marriage and the Family*, 29 J. MARR. FAM. 249, 251 (1967). There is apparently no alarming increase.

25. Moss, *Teen-Age Marriage: Cross-National Trends and Sociological Factors in the Decision of When to Marry*, 27 J. MARR. FAM. 230, 233 at table 4 (1965).

26. Moss, *supra* note 25, at 230.

27. Furlong, *supra* note 22, at 108.

28. Parke & Glick, *supra* note 24, at 256.

29. Moss, *supra* note 25, at 240.

organization.³⁰ Conspicuously absent from the list are legal requirements. If legal requirements do not affect the age at which people marry, then one assumption upon which age restrictions rest—that they deter youthful marriage—is incorrect, and the resultant costs of legal restrictions will not be offset by any increase in stability.

Since the number of youthful marriages has varied over the years while the laws have for the most part remained the same, other factors may be primarily responsible for the decision to marry young. Sociological and cultural variants have been presented as the determining factors.³¹ Apparently no sociologist has identified the law as the determining factor,³² and studies in Mississippi and South Carolina indicate that age restrictions do not affect the age of marriage.³³

However, there are explanations for the failure of the regulations to adequately increase stability in addition to the ineffectiveness of legal regulations as a means of influencing the age of marriage. There is evidence that regulations are not enforced.³⁴ Furthermore, some states invite underage marriages by regulations that are easily evaded,³⁵ and many young people may travel to such a state to be married. Thus any conclusion as to the deterrent effect of marital age regulations is tentative until there is uniformity and effective enforcement.

Third, many factors other than age are associated³⁶ with the

30. *Id.* at 236.

31. Moss, *supra* note 25, at 230.

32. See, e.g., Rosenwalke, *Parental Consent Ages as a Factor in State Variation in Bride's Age at Marriage*, 29 J. MARR. FAM. 452, 455 (1967): "The parental consent laws, rather than deterring marriage, contribute to migratory marriage."

33. Gover & Jones, *Requirement of Parental Consent: A Deterrent to Marriage?*, 26 J. MARR. FAM. 205 (1964); Plateris, *The Impact of the Amendment of Marriage Laws in Mississippi*, 28 J. MARR. FAM. 206 (1966). Both Mississippi and South Carolina enacted legislation placing greater restrictions on marriage. Both states began requiring proof of legal age. It was believed that many teenagers were evading the regulations through lying about their age. Mississippi enacted waiting periods and proof of parental consent. The result of the Mississippi study: "Contrary to expectation, teenage marriages . . . declined [in percentage comparison] only slightly more than the total number of marriages . . ." Plateris at 209. The result of the South Carolina study: "There is, however, no evidence from the South Carolina data to support the hypothesis that the requirement of parental consent is a deterrent to early marriage." Gover & Jones at 206.

34. Burchinal, *supra* note 12.

35. Lowrie, *supra* note 12.

36. However, no causal relationship between these factors and the

risk of failure in youthful marriages,³⁷ so that age alone is an insufficient indicator.³⁸ Among the factors are lack of education, premarital pregnancy, short acquaintance before marriage, limited number of dating partners, maturity, social adjustment, low socio-economic status, strongly opposed parents, elopement and civil ceremony, economic dependence upon parents and living with the parents after the marriage.³⁹ There is no agreement as to the relative weight to be given to each factor.⁴⁰ Because these other factors are associated with the risk of failure in youthful marriages, a policy directed solely at regulating the age of marriage may not be effective. Discouraging marriage at a given age will not eliminate the difficulties associated with low socio-economic status or lack of education in those marriages that are permitted. A rational legislative choice to use age restrictions must recognize that even if regulations deter youthful marriage they may not solve the problem.

risk of marital failure has been identified. Gallaher & Levy, *supra* note 21, at C-12.

37. *Id.* at C-10.

38. Burchinal, *Trends and Prospects for Young Marriages in the United States*, 27 J. MARR. FAM. 243 (1965): "Age per se is not an adequate criterion for predicting marital confidence, but numerous factors related to readiness for marriage are reasonably well correlated with age."

39. *Id.* at table 5.

40. For example, note the discussion of the macroscopic as opposed to the microscopic evaluation of youthful marriage problems in Gallaher & Levy, *supra* note 21, at C-7-10. Sociologists taking the macroscopic approach would ascribe cultural variants as the important factors, whereas those taking a microscopic approach would focus more on psychological factors. An important question left unanswered as a result of this lack of agreement is to what extent the data can aid in predicting success in youthful marriage. The reporter to the Commissioners on Uniform Laws in his preliminary analysis related that "[t]he data available is insufficiently reliable to permit more than very tentative hypotheses" and that "[p]resent predictive skills are fairly primitive . . ." R. LEVY, UNIFORM MARRIAGE AND DIVORCE LEGISLATION: A PRELIMINARY ANALYSIS 23, 35. Yet one sociologist believes that forecasts of success and failure can be made by utilizing the factors associated with those youthful marriages that fail and those that succeed:

With the presence of an increasing number of negative factors, forecasts for competent or satisfying relations would become more doubtful; whereas with the presence of an increasing number of positive factors, more competent or successful marital and parental interaction could be expected.

Burchinal, *supra* note 38, at 252. It appears that only limited forecasts can be made in any given case. However, under both the present system and the Uniform Act someone is to evaluate for the child his proposed marriage's chance of success. That evaluation would be more meaningful if use is made of the available data.

V. ANALYSIS OF CURRENT STATUTES AND UNIFORM ACT PROVISIONS

A. MARRIAGEABLE AGE

In setting 18 as the age at which parties may marry without parental consent,⁴¹ and in treating males and females alike, the Uniform Act reflects a trend in the states,⁴² even though about half of the states still require either that both parties be 21⁴³ or that the male be 21 and the female 18.⁴⁴ It appears that the

41. At common law a male of 14 or a female of 12 could enter into a valid marriage. 1 BLACKSTONE, COMMENTARIES 436 (1807). The age requirements were based upon both contract law and the ability to reproduce.

Just as the law requires, for ordinary contracts, that a party thereto must have reached an age sufficient to give him reasonable discretion, so, in connection with the contract of marriage, the law has required that the parties be not too immature.

Kingsley, *The Law of Infants' Marriages*, 9 VAND. L. REV. 593 (1956). The ages of puberty were considered to be 14 for males and 12 for females. LA. CIV. CODE art. 36 (1870) (common law ages adopted for marriage laws). Today the justification commonly given for age restrictions is that they are necessary to prevent hasty and immature decisions to marry. See note 9 *supra*.

42. A number of states allow both males and females to marry at age 18 without restriction. See, e.g., CAL. CIV. CODE § 4101 (West 1970) (amended 1971); GA. CODE ANN. § 53-204 (1961), as amended, Ga. Acts 1972, no. 862; KY. REV. STAT. § 402.210 (1972); MASS. ANN. LAWS ch. 207, § 7 (1969) (amended 1971); MICH. COMP. LAWS ANN. § 551.103 (1967) (amended 1968); MISS. CODE ANN. § 461 (1942) (statute unclear); N.M. STAT. ANN. § 57-1-5 (1962), § 13-13-1 (1953) (amended 1971); N.C. GEN. STAT. § 51-2 (1966); PA. STAT. ANN. tit. 48, §§ 1-5(c) (1965), as amended, Pa. Acts 1972, no. 152; S.C. CODE ANN. § 20-24 (1962); S.D. COMPILED LAWS ANN. § 26-1-1 (1967) (amended 1972); TENN. CODE ANN. § 36-408 (1955), as amended, Tenn. Acts 1972, Ch. 545; VT. STAT. ANN. tit. 18, § 5142, tit. 1, § 173 (amended 1971); VA. CODE ANN. § 20-48, 49 (1960) (amended 1972); WASH. REV. CODE ANN. § 26.04.010 (1961) (amended 1970); Wyo. Acts (1971), Ch. 247 (in effect only if voters approve in November 1972 a constitutional amendment lowering the voting age to eighteen). In addition some allow marriage without parental consent for both males and females at 19. ALASKA STAT. § 25.05.011 (1962) (amended 1970, males 19, females 18); DEL. CODE ANN. tit. 13, § 123 (1953) (amended 1969); IOWA CODE ANN. § 595.3 (1950), as amended, Iowa Acts 1972, house file 1011; MONT. REV. CODE ANN. § 48-143 (1947) (amended 1971); NEB. REV. STAT. § 42-105, § 38-101 (1968), as amended, Neb. Acts (1972) leg. bill 1086; TEX. FAM. CODE ANN. § 1.51 (1971) (males 19, females 18). It should be noted that most of these states still discriminate between males and females in establishing the age of capacity. See note 54 *infra*.

43. CONN. GEN. STAT. ANN. § 46-5g (1958); FLA. STAT. ANN. § 741.04 (1964); LA. CIV. CODE ANN. art. 97 (West 1952); OHIO REV. CODE ANN. § 3101.01 (Page 1960), § 3109.01 (Page 1972); W. VA. CODE ANN. § 48-1-8 (1966).

44. ALA. CODE tit. 34, § 10 (1958); ARIZ. REV. STAT. ANN. § 25-122

Uniform Act set 18 as the marriageable age in order to eliminate the inconsistency of treating an 18 year old as mature enough to vote and be drafted but not mature enough to marry without consent.⁴⁵ However, deciding for whom to vote may require different skills than those required to decide whether to marry and maintain a successful marriage. The fact that marriages of persons in their teens are more divorce prone⁴⁶ than others lends some support to this proposition. The rationale of the Act may be that even though 18 year olds may not generally be mature enough for marriage⁴⁷ they should not be required to assume the burdens of adulthood without the full rights of adults. However, insofar as the goal is stability of marriage, age restrictions should be based upon a judgment as to the age at which the probability of divorce declines to an acceptable level.⁴⁸

Discrimination between males and females with respect to marriageable age has persisted in the United States. While the origin of the discrimination may lie in the difference in age of puberty,⁴⁹ it has apparently continued partly because females

(1956); ARK. STAT. ANN. § 55-102 (1971); D.C. CODE ENCYCL. ANN. § 30-111 (1968); IDAHO CODE ANN. § 32-202 (1963); ILL. ANN. STAT. ch. 89, § 3 (Smith-Hurd 1966); IND. ANN. STAT. § 44-202 (1965); KAN. STAT. ANN. § 23-106 (Supp. 1971); MD. ANN. CODE art. 62, § 9 (1972); MINN. STAT. § 517.02 (1969); MO. ANN. STAT. § 451.090 (1952); NEV. REV. STAT. § 122.020 (1965); N.J. STAT. ANN. § 37:1-6 (1968); N.Y. DOM. REL. LAW § 15 (McKinney 1964); N.D. CENT. CODE § 14-03-02 (1971); ORE. REV. STAT. § 106.060 (1971); R.I. GEN. LAWS ANN. § 15-2-11 (1969); UTAH CODE ANN. § 30-1-9 (1969).

45. [I]t is consistent with the trend in federal as well as state law to lower to 18 the age at which persons are permitted to vote and to make autonomous decisions about important matters affecting their lives.

UNIFORM ACT § 203, comment.

46. See Monahan, *supra* note 22, at table 3.

47. The view might also be that the ratio of divorces to marriages is at an acceptable level for 18 year old females and that it would be either unconstitutional under the proposed Equal Rights Amendment or unwise to discriminate against males, even though the ratio of divorces to marriages is at an unacceptable level for males.

48. The touchstone is, of course, "acceptable," which must take into account not only the probability of divorce but the efficacy of the age restrictions and one's perceptions of the costs of the restrictions. In terms of probability alone, the data in note 22 *supra* would support the choice of 18 for females, but not for males.

49. The amendment of 1934 changed the minimum ages from fourteen for males and twelve for females to eighteen and sixteen, respectively. The original age limits had been based on puberty.

Comment, *The Validity of Child Marriages in Louisiana*, 14 *TUL. L. REV.* 106, 107 (1939). "Since a principal end of marriage is procreation, the parties should have this capacity. . . ." *Id.* at 106.

marry sooner than males.⁵⁰ However, the Uniform Act makes no sexual distinction; sociological data does support this choice for those under 18. Marriages of males under 18 have been found in one study to be as stable as marriages of females under 18.⁵¹ Furthermore, the proposed "Equal Rights" Amendment⁵² may preclude such discrimination.⁵³ But even in the absence of a constitutional requirement there should be no discrimination unless it is shown that marriages of males are significantly more likely to end in divorce than marriages of females of the same age.

B. INTERMEDIATE AGE GROUP

1. *The Present Statutory Pattern*

Under the Uniform Act a person in the intermediate age group (16 or 17) may marry if he or she obtains either parental or judicial consent. In almost all jurisdictions a showing of parental consent is sufficient for a party in this age group to marry.⁵⁴ A typical statute provides that for males between the

50. Monahan, *supra* note 22, at table 1.

51. Monahan, *supra* note 22, at table 3. Note that the ratio of divorces to marriage for ages 16 and under for both males and females is .45 and at age 17 is .27 for males and .28 for females.

52. Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification.

Proposed Amendment to the United States Constitution, H.R.J. Res. 208, 92d Cong., 2d Sess. (March 22, 1972).

53. The basic principle of the Equal Rights Amendment is that sex is not a permissible factor in determining the legal rights of women, or of men. This means that the treatment of any person by the law may not be based upon the circumstance that such person is of one sex or the other. The law does, of course, impose different benefits or different burdens upon different members of the society. That differentiation in treatment may rest upon particular characteristics or traits of the persons affected, such as strength, intelligence, and the like. But under the Equal Rights Amendment the existence of such a characteristic or trait to a greater degree in one sex does not justify classification by sex rather than by the particular characteristic or trait.

Brown, Emerson, Falk & Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 YALE L.J. 871, 889 (1971).

54. ALA. CODE tit. 34, § 10 (1958); ALASKA STAT. § 25.05.171 (1965); ARIZ. REV. STAT. ANN. § 25-122 (1956); ARK. STAT. ANN. § 55-102 (1971); CONN. GEN. STAT. ANN. § 46-5(g) (1958); DEL. CODE ANN. tit. 13, § 123 (1953); D.C. CODE ENCYCL. ANN. § 30-111 (1968); FLA. STAT.

ages of 18 and 21 and females between the ages of 16 and 18, parental consent is both necessary and sufficient.⁵⁵ However, a number of statutes provide that in the event of pregnancy a judge may issue a license in the absence of parental consent;⁵⁶ only a few provide that the judge has discretion to override the requirement of parental consent in all cases.⁵⁷ Thus, except in the circumstance of pregnancy, parental consent is a necessity in almost all jurisdictions for obtaining a license for those in the intermediate age group.

2. Inadequacies of the Present Statutory Pattern

Present age restrictions impose significant costs by infringing upon individual freedom without achieving an acceptable

ANN. § 741.04 (1964); GA. CODE ANN. § 53-204 (1961), *as amended*, Ga. Acts 1972, no. 862; HAWAII REV. LAWS § 572-2 (1968); IDAHO CODE ANN. § 32-202 (1963); ILL. ANN. STAT. ch. 89, § 3 (Smith-Hurd 1966); IND. ANN. STAT. § 44-202 (1965); IOWA CODE ANN. § 595.3 (1950), *as amended*, Iowa Acts 1972, house file 1011; KAN. STAT. ANN. § 23-106 (Supp. 1971); KY. REV. STAT. § 402.210 (1972); LA. CIV. CODE ANN. art. 97 (West 1952); ME. REV. STAT. ANN. tit. 19, § 62 (1964); MD. ANN. CODE art. 62 § 9 (1972); MASS. ANN. LAWS Ch. 207, § 7 (1969); MICH. COMP. LAWS ANN. § 551.103 (1967); MISS. CODE ANN. § 461 (1942); MO. ANN. STAT. § 451.090 (1952); NEB. REV. STAT. § 42-105 (1968); NEV. REV. STAT. § 122.020 (1965); N.J. STAT. ANN. § 37:1-6 (1968); N.M. STAT. ANN. § 57-1-6 (1962); N.Y. DOM. REL. LAW § 15 (McKinney 1964); N.C. GEN. STAT. § 51-2 (1966); N.D. CENT. CODE § 14-03-02 (1971); OHIO REV. CODE ANN. § 3101.01 (Page 1960); ORE. REV. STAT. § 106.060 (1971); PA. STAT. ANN. tit. 48, § 1-5 (1965), *as amended*, Pa. Acts 1972, no. 152; R.I. GEN. LAWS ANN. § 15-2-11 (1969); S.C. CODE ANN. § 20-24 (1962); TEX. FAM. CODE ANN. § 1.51 (1971); UTAH CODE ANN. § 30-1-9 (1969); VT. STAT. ANN. tit. 18, § 5142 (1968); VA. CODE ANN. § 20-48 (1960); WASH. REV. CODE ANN. § 26.04.210 (1961); W. VA. CODE ANN. § 48-1-8 (1966); WIS. STAT. ANN. § 245.02 (1957); WYO. STAT. ANN. § 20-3 (1957).

Several jurisdictions also require judicial consent in certain cases: CAL. CIV. CODE § 4101 (West 1970) (For parties under 18); MINN. STAT. § 517.02 (1969) (For females 16 to 18); MONT. REV. CODE ANN. § 48-143 (1961) (For parties under 19); N.H. REV. STAT. ANN. § 457:5 *et seq.* (1968) (For males under 20 and females under 18).

55. ARIZ. REV. STAT. ANN. § 25-122 (1956).

56. FLA. STAT. ANN. § 741.06 (1964); ILL. ANN. STAT. Ch. 89, § 3.2 (Smith-Hurd 1966); IOWA CODE ANN. § 595.2 (1950); MD. ANN. CODE art. 62, § 9(a) (1972) (physician's certificate of pregnancy sufficient); N.J. STAT. ANN. § 37:1-6 (1968); N.M. STAT. ANN. § 57-1-6 (1962); N.C. GEN. STAT. § 51-2 (1966) (Director of Public Welfare); S.C. CODE ANN. § 20-24.5 (1962) (when female pregnant, male may marry without his parents' consent).

57. *See, e.g.*, IND. ANN. STAT. § 44-202 (1965) (judge may waive the age requirements where there are "good and sufficient reasons shown and it is in the best interests of the parties"); R.I. GEN. LAWS ANN. § 15-2-11 (1969) (the director of public welfare's consent is a substitute for parental consent). These powers are probably exercised only in the case of pregnancy.

level of stability.⁵⁸ Some of the failure may be due to lack of enforcement and uniformity, but the chief reason is probably the use of parental consent as the mechanism to deter youthful marriage and to provide a more mature evaluation of a proposed marriage. Parental consent is inadequate for several reasons.

First, obtaining parental consent is preventive rather than preparative. Even if the parents consent only after careful consideration of their child's capacities and potential problems, the risks of early marriage will not disappear since the problem of immaturity in coping with problems after marriage remains. A system relying solely on the selective approval of youthful marriages will therefore not minimize the problem of immaturity. A better approach requires some form of premarital education that will prepare young people for the difficulties of an early marriage.⁵⁹

Second, parental consent may be a mere formality. While many parents who are asked to consent consider the factors associated with the risk of divorce in teenage marriage such as inadequate future income and living accommodations, there is no guarantee that they will do so; and despite a conclusion that the marriage will not succeed, parents may be easily convinced to consent.⁶⁰ For example, after South Carolina (marriageable age 18) began requiring proof of age by birth certificate for 18, 19 and 20 year olds the number of marriages with parental consent increased. This led one investigator to conclude that "[t]here is . . . no evidence from the . . . data to support the hypothesis that the requirement of parental consent is a deterrent to early marriage."⁶¹ Further, Minnesota juvenile court judges report that parents are "willing to lie as to their daugh-

58. See, e.g., Monahan *supra* note 22.

59. For example, premarital counseling, which has been used in California and Iowa. CAL. CIV. CODE § 4101 (West Supp. 1971) provides that a license will not be issued to one under 18 unless he "participate[s] in premarital counseling concerning social, economic, and personal responsibilities incident to marriage . . ." See Adams, *Marriage of Minors: Unsuccessful Attempt to Help Them*, 3 FAM. L.Q. 13 (1969), for an account of the Iowa experience. Another premarital training device is family life education conducted in primary and secondary schools.

60. R. LEVY, *supra* note 15, at 21-22: "What little evidence there is suggests that parents cannot be relied on to achieve state regulatory objectives. . . ." See also Burchinal, *Research on Young Marriage: Implications for Family Life Education*, 9 FAMILY LIFE COORDINATOR 6, 17 (1960), ("most parents are not able or willing to provide their children with adequate preparation . . ."); Rosenwaike, *supra* note 32.

61. Gover & Jones, *supra* note 33.

ter's pregnancy in order to obtain the required judicial authorization."⁶²

A third weakness of the present system is that the purpose of the parental consent requirement may be to preserve parental authority rather than to achieve stability in teenage marriage. Some cases suggest that parental consent is a prerogative for the parents rather than a safeguard for the child.⁶³ Although it is arguably inconsistent to impose on parents the responsibility for the well-being and training of children without granting the legal right to control, the preservation of the right to *forbid* marriage comes only at the expense of limiting individual choice and possibly preventing many marriages which could have succeeded. Thus the potential costs of requiring parental consent, such as forcing young people into an illicit relationship, justify review of the parental decision.

Conversely, the parental right to *allow* a child to marry is not justified if it conflicts with the goal of preventing divorce-prone marriage. Even assuming that parents are in the best position to determine whether their child has the ability to accept the responsibilities of marriage, it is doubtful that many parents, who are frequently emotionally involved, rationally evaluate the prospects for success. Review of the parental decision to consent by some outside authority is probably necessary for rational evaluation.

A fourth weakness is that the parental consent system ignores many factors in addition to age and immaturity such as large expenses, early pregnancy, the sudden need to drop out of school and emotional disturbance that cause youthful marriages to fail. Virtually all youthful marriages are subject to these risks, and to expect parents to evaluate the likelihood of success with any certainty is impossible. Perhaps a more rational marital age regulation system should attempt to discourage youthful marriage in general yet aid those youthful marriages that are allowed. Continued marital counseling after marriage and financial and educational aid are possible solutions

62. R. LEVY, *supra* note 15, at 22.

63. In *Lyndon v. Lyndon*, 69 Ill. 43, 44 (1873), the Illinois Supreme Court stated that children "are in a state of servitude to their parents, from which they cannot be released except by the consent of the parents." And a California court in *Turner v. Turner*, 167 Cal. App. 2d 636, 642, 334 P.2d 1011, 1015 (1959), stated that the "purpose of a statute providing that a marriage license shall not be issued to a person under age without the consent of a parent is to permit the parent to exercise control and discipline over a child"

that could be coupled with the requirement of consent. Such a program is of course subject to the criticism that in aiding youthful marriages it is an incentive to marry young. In any event, reliance should be shifted from parental consent. It provides no real deterrent and does not guarantee a meaningful evaluation of a proposed marriage. The important question is whether a different system could achieve these goals and whether that achievement would reduce the risk in teenage marriage sufficiently to justify invasion of individual liberty to marry. Any alternative should provide for review of parental decisions and emphasize preparation and aid for those marriages that are allowed.

3. *The Uniform Act*

The Uniform Act follows the majority of states in providing that parental consent alone is sufficient for marriage between the age of capacity and marriageable age. The Act is subject to the same criticisms as the state statutes in this respect. However, the Act is innovative in providing that no paramount right is vested in parents to decide when their child may *not* marry. The comment to Section 205 states that "applicants cannot be denied judicial approval solely because a parent or parents have refused to consent to the marriage" To grant consent in the absence of parental consent the judge must find that marriage is in the best interests of the applicant and that the applicant is capable of assuming the responsibilities of marriage.⁶⁴ Removed from the emotions of the family, judicial consideration hopefully provides a more rational evaluation of the marriage's chance of success. A judge well versed in the sociological data will be more likely to consider the factors associated with success and failure.

There are several criticisms of this extension of judicial power. First, it can be argued the power to override a parental veto harms family life. It is true that parental consent is an important part of a strong family unit and that respect for parental decisions may decline when society provides an alternative. However, judicial consent in the case of parental disapproval is not likely to issue under the Uniform Act unless there is abuse of parental control,⁶⁵ in which case review is justified. In addi-

64. UNIFORM ACT § 205 (1970).

65. Undoubtedly a judge will consider that parents are generally in the best position to know whether their child is capable of assuming

tion, where parental abuse exists the family unit is probably not stable at the outset.

A second possible criticism of the judicial consent provision is that it fails to provide a standard for judicial consent. The judge is to consider the "best interests" of the applicant, the ability to assume "the responsibilities of marriage," and must also consider that "[p]regnancy alone does not establish that the best interests of the party would be served."⁶⁶ It would be better to consider all the factors associated with failure in youthful marriages, because such would reduce the chance of arbitrary treatment. However, no standard incorporating a mechanical formula is possible due to the lack of agreement of the value to be assigned each factor.

It might be argued that a forum other than a court might be better equipped to apply the necessarily vague standard.⁶⁷ Social service organizations have better investigative procedures and would be more cognizant of the predictive sociological data, particularly if the judge deals with family law only infrequently. If there is to be a review of the parental decision not to consent, that review should be the most rational one available; even though the Uniform Act is correct in the choice of a standard, it is perhaps wrong in its choice of the reviewer.

A third possible criticism of the extension of judicial review is that it may produce a large caseload, since young people wishing to marry may seek judicial consent whenever their parents refuse. However, as already noted, judges will likely override the parental refusal to consent only where there is clear parental abuse and the number of such occasions will probably be small. Once these limits are established recourse to the court should quickly diminish.

The provision for judicial consent, then, represents an improvement because it demands a realistic evaluation of the chance of success for a proposed marriage where parents *refuse*

the obligations of marriage and that the lack of parental support may lessen the chances for success of the marriage. Some sociologists do identify the lack of parental support as a factor associated with the risk of divorce in teenage marriage. Burchinal, *supra* note 24, at 7; Winch & Greer, *The Uncertain Relation Between Early Marriage and Marital Stability: A Quest for Relevant Data*, 8 ACTA SOCIOLOGICA 83, 92-95 (1965).

66. See note 64 *supra*.

67. See, e.g., R.I. GEN. LAWS ANN. § 15-2-11 (1969). An investigation by the Welfare Department for those under 16 wishing to marry is required.

to consent. However, there is no provision under the Act for judicial review of an irrational parental decision to *allow* the child to marry. Since there is evidence that parental consent is often a mere formality, judicial review should be extended to those cases where the parents consent. The parties would then have to prove they are capable of assuming the responsibilities of marriage, and would be forced to think more carefully about an early marriage. Since prediction of a marriage's chance of success is probably more accurate if based on sociological data, a judge, who is more likely to have access to that data, should provide a better selective procedure.

Further, judicial review of parental consent represents no greater invasion of family autonomy than review of the parental refusal to consent, which the Uniform Act incorporates. Extending judicial review to those cases where the parents do consent, however, presents the danger of misuse of judicial discretion. The decision might often be based upon arbitrary standards due to the imprecision of sociological data; in many cases the judge may be in no better position than the parents to make the decision. In addition, there is no agreement as to the essential elements of a successful marriage, nor can the problems a teenage marriage will face be accurately predicted. Perhaps for these reasons the authors of the Uniform Act considered arbitrary judicial treatment a major problem in family law⁶⁸ and were therefore concerned about the extension of judicial review. However, judicial review is no more arbitrary than parental consent, and it has the advantage of being more than a mere formality. Moreover, the danger of judicial arbitrariness in reviewing the parental decision to consent is no greater in any given case than that present in reviewing parental refusal, which the Act incorporates.

C. UNDER THE AGE OF CAPACITY

The Uniform Act requires both parental and judicial consent for marriage under the age of 16. There are presently three major categories of statutes regulating such marriages.⁶⁹ The

68. In the absence of reliable information suggesting that the judicial task has been well performed in the past, I would prefer to limit the discretion exercised by individual judges.

Levy, *Report to Members of the Special Committee on Uniform Divorce and Marriage Laws* 23 (July 10, 1967).

69. Some states have a statutory pattern for marriage under the age of capacity that fits into more than one category. *E.g.*, HAWAII REV. LAWS § 572-1 (1968) (males under 17 and females under 15 may never

first prohibits marriage below the age of capacity.⁷⁰ The second allows marriage only where the girl is pregnant or has given birth.⁷¹ A few of these statutes allow marriage if there is parental consent,⁷² while others require both parental and judicial consent.⁷³ The third category allows marriage without regard to pregnancy when both parental and judicial consent is obtained.⁷⁴

marry). Above those ages, but beneath 18 for males and 16 for females, both parental and judicial consent is required. Beneath 18 and 16 (the ages of capacity), then, there are two sets of regulations in some states.

70. ALA. CODE tit. 34, § 4 (1958) (17 for males, 14 for females); D.C. CODE ENCYCL. ANN. § 30-103 (1968) (18 for males, 16 for females); GA. CODE ANN. § 53-102 (1961) (17 for males, 14 for females); HAWAII REV. LAWS § 572-1 (1968) (17 for males, 15 for females); ILL. ANN. STAT. ch. 89, § 3.1 (Smith-Hurd 1966) (16 for males, 15 for females); MASS. GEN. LAWS ANN. ch. 207, § 9 (1969) (14 for males, 12 for females); MINN. STAT. § 517.03 (1969) (18 for males, 16 for females); NEB. REV. STAT. § 42-102 (1968) (18 for males, 16 for females); N.Y. DOM. REL. LAW § 15-a (McKinney 1964) (16 for males, 14 for females); N.D. CENT. CODE § 14-03-02 (18 for males, 15 for females); ORE. REV. STAT. § 106.010 (1971) (18 for males, 15 for females); TEX. FAM. CODE ANN. § 1.51 (1971) (16 for males, 14 for females); UTAH CODE ANN. § 30-1-2 (1969) (16 for males, 14 for females); WIS. STAT. ANN. § 245.02 (1957) (18 for males, 16 for females); WYO. STAT. ANN. § 20-2 (1957) (16 for males, 15 for females) (in effect only if the voters approve in November 1972 a constitutional amendment lowering the voting age to 18).

71. ALASKA STAT. § 25.05.171 (1965); ARIZ. REV. STAT. ANN. § 25-102 (1956); ARK. STAT. ANN. § 55-102 (1971); DEL. CODE ANN. tit. 13, § 123(f) (1953); FLA. STAT. ANN. § 741.06 (1964); GA. CODE ANN. § 53-206 (1961), as amended, Ga. Acts 1972, no. 862; ILL. ANN. STAT. ch. 89, § 3.2 (Smith-Hurd 1966); IND. ANN. STAT. § 44-101 (1965); IOWA CODE ANN. § 595.2 (1950); KY. REV. STAT. § 402.020 (1972); MICH. COMP. LAWS ANN. § 551.201 (1967); N.M. STAT. ANN. § 57-1-6 (1962); N.C. GEN. STAT. § 51-2 (1966); OHIO REV. CODE ANN. § 3101.04 (Page 1960); S.C. CODE ANN. § 20.24.5 (1962); S.D. COMPILED LAWS ANN. § 25-1-12 (1967); VA. CODE ANN. § 20-48 (1960); W. VA. CODE ANN. § 48-1-1 (1966).

In only one state has there been a statutory movement away from leniency in the case of pregnancy. Nebraska in 1971 removed all mention of pregnancy from its statute. NEB. REV. STAT. § 42-102 (1968).

72. Alaska, Georgia, South Carolina, South Dakota, Virginia. See note 71 *supra*.

73. Arizona, Arkansas, Michigan, Ohio, West Virginia. See note 71 *supra*.

74. CAL. CIV. CODE § 4101 (West 1970); CONN. GEN. STAT. ANN. § 46-5f, g (1958); HAWAII REV. LAWS § 572-1 (1968) (approval of family court); IDAHO CODE ANN. § 32-202 (1963); KAN. STAT. ANN. § 23-106 (Supp. 1971); LA. CIV. CODE ANN. art. 92 (West 1952); ME. REV. STAT. ANN. tit. 19, § 62 (1964); MASS. ANN. LAWS Ch. 207, § 25 (1969); MISS. CODE ANN. § 461 (1942); MO. ANN. STAT. § 451.090 (1952); MONT. REV. CODE ANN. § 48-143 (1961); NEV. REV. STAT. § 122.025 (1965); N.H. REV. STAT. ANN. § 457:6-7 (1968); N.Y. DOM. REL. LAW § 15 (McKinney 1964); PA. STAT. ANN. tit. 48, § 1-5 (1964), as amended, Pa. Acts 1972, no. 152; R.I. GEN. LAWS ANN. § 15-2-11 (1969); VT. STAT. ANN. tit. 18, § 5142 (1968).

The predominant pattern, then, is to require both parental and judicial consent either with or without the additional factor of pregnancy. The standards of such judicial consent are vague and are most often phrased in terms of the "best interests of the public"⁷⁵ or "good cause."⁷⁶ The purpose of the pregnancy statutes is to remove the stigma of unwed motherhood and illegitimacy,⁷⁷ though there is some suggestion that the latter is the predominant concern.⁷⁸

The Uniform Act requires both the parents and a judge to consent to a marriage under the age of 16. Since the sociological data reveals that marriages where one of the parties is under 16 are the most divorce prone,⁷⁹ effective control is most important in this age group. The answer is clearly not to prohibit all marriage below the age of capacity, since such an arbitrary regulation only encourages parties denied legal sanction to form illicit relationships. An appropriate regulation in this area would be one which would be highly selective in allowing such marriages. It has already been suggested that parental consent represents a mere formality in many cases. However, under the Uniform Act knowledge that a judge must also grant permission may deter children from deciding to marry and will also ensure that there is a less emotional consideration of the chance of success of a marriage.⁸⁰

The Uniform Act also provides that pregnancy itself does not establish that the best interests of the party would be served by allowing the marriage. Sociologists report that "[d]isproportionately high divorce rates are found to be associated with the condition of premarital pregnancy"⁸¹ In fact, no other factor has been so frequently identified with the risk of divorce.⁸² Perhaps pregnancy should be a reason for not allowing the marriage rather than a basis for approval, and in any event,

75. *E.g.*, ME. REV. STAT. ANN. tit. 19, § 62 (1964).

76. TENN. CODE ANN. § 36-409 (1955).

77. *See, e.g.*, OHIO REV. CODE ANN. § 3101.04 (Page 1960).

78. *Id.* (legislative comment).

79. *See* note 22 *supra*.

80. As noted in note 67 *supra*, a social service organization would be better suited to make this evaluation because of better social science training and investigative capacity.

81. Christensen & Meissner, *Studies in Child Spacing: III-Premarital Pregnancy as a Factor In Divorce*, 18 AMER. SOCIAL REV. 641, 642 (1953).

82. Gallaher & Levy, *Youth Marriage: Summary and Critique of the Data and Literature*, appearing in, R. LEVY, UNIFORM MARRIAGE AND DIVORCE LEGISLATION: A PRELIMINARY ANALYSIS, Appendix C, at C-47.

a greater showing of the advisability of marriage should be required where the female is pregnant. The marital age regulations should not be used to further a policy of legitimating children, especially when the child is unlikely to be better off in the unhappy or broken home that may result from a marriage necessitated by pregnancy.

D. WAITING PERIOD, EVIDENTIARY REQUIREMENTS, COUNSELING

Several provisions of the Uniform Act apply to all marriages. The Act provides that a license will not issue until three days after application is made.⁸³ It further provides that satisfactory proof of age and parental consent⁸⁴ must be given before a license will issue. Although an earlier draft provided that applicants be given a printed statement advising counseling,⁸⁵ the present Act makes no mention of premarital counseling.

1. *Three Day Waiting Period*

Most states presently have either a three or five day waiting period,⁸⁶ apparently to avoid spur-of-the-moment marriages.⁸⁷

83. A license to marry becomes effective throughout this state 3 days after the date of the issuance and expires 180 days after it becomes effective, unless the [] court orders that the license is effective when issued.

UNIFORM ACT § 204.

84. Parental consent, of course, applies only to those under "marriageable age."

85. First Tentative Draft (New Orleans).

86. See, e.g., ALASKA STAT. § 25.05.091 (1965); ARK. STAT. ANN. § 55-205 (1971); CONN. GEN. STAT. ANN. § 46-5d (1958); DEL. CODE ANN. tit. 13, § 107 (1953); D.C. CODE ENCYCL. ANN. § 30-109 (1968); FLA. STAT. ANN. § 741.04 (1964); GA. CODE ANN. § 53-202 (1961), as amended, Ga. Acts 1972, no. 862; IDAHO CODE ANN. §§ 32-202, 403 (1963); IND. ANN. STAT. § 44-201 (1965); IOWA CODE ANN. § 595.4 (1950); KAN. STAT. ANN. § 23-106 (Supp. 1971); KY. REV. STAT. § 402.080 (1972); LA. CIV. CODE ANN. art. 99 (West 1952); ME. REV. STAT. ANN. tit. 19, § 61 (1964); MASS. ANN. LAWS ch. 207, § 19 (1969); MICH. COMP. LAWS ANN. § 551.103a (1967); MINN. STAT. § 517.08 (1969); MISS. CODE ANN. § 461 (1942); MO. ANN. STAT. § 451.040 (1952); MONT. REV. CODE ANN. § 48-118.1 (1961); NEB. REV. STAT. § 42.104 (1968); N.H. REV. STAT. ANN. § 457:26 (1968); N.J. STAT. ANN. § 37:1-4 (1968); N.M. STAT. ANN. § 57-1-11.1 (1962); OHIO REV. CODE ANN. § 3101.05 (Page 1960); TENN. CODE ANN. § 36-406 (1955); VT. STAT. ANN. tit. 18, § 5145 (1968); WASH. REV. CODE ANN. § 26.04.160 (1961); W. VA. CODE ANN. § 48-1-6 (1966); WIS. STAT. ANN. § 245.08 (1957).

87. E.g., Proposed Marriage and Divorce Codes for Pennsylvania, Pennsylvania General Assembly, Joint State Government Commission, 1961, § 207 comment (c).

Some have advocated a longer waiting period, such as 30 days,⁸⁸ arguing that easy marriage breeds easy divorce⁸⁹ and therefore anything which impedes easy marriage is beneficial.⁹⁰

A longer period does provide more time for the parties to contemplate their decision and perhaps change their minds; however, where the decision has already been made and any required consent obtained, it is unlikely that a 30 day wait will be a further deterrent.⁹¹ The Uniform Act's choice of a short waiting period rather than a long one thus appears correct; it is consistent with the Act's approach of streamlining premarital regulations which have no useful effect.

2. Evidentiary Requirements

All states require some indication that an applicant has reached the age at which parental consent is no longer required. While an oath is almost always required,⁹² some states also provide that the licensing officer may require proof of age.⁹³ A distinct minority require proof—generally a birth certificate—in every case.⁹⁴ In most states, therefore, a mature-appearing underage party may successfully lie about his age.

88. Royal Commission on Marriage and Divorce, Report 1951-1955, Cmd. No. 9678, Minutes of Evidence at 308 (1956).

89. See, e.g., note 87 *supra*.

90. Furlong, *Youthful Marriage and Parenthood: A Threat to Family Stability*, 19 HASTINGS L.J. 105, 128 (1967).

91. The comment to UNIFORM ACT § 204 indicates that longer waiting periods do not discourage potentially unstable marriages, but this ineffectiveness may result from provisions allowing the judge to waive the waiting period.

92. See, e.g., ALASKA STAT. § 25.05.091 (1965); ARIZ. REV. STAT. ANN. § 25-121 (1956); CONN. GEN. STAT. ANN. § 46-5a (1958); DEL. CODE ANN. tit. 13, § 120 (1953); D.C. CODE ENCYCL. ANN. § 30-110 (1968); FLA. STAT. ANN. § 741.04 (1964); GA. CODE ANN. § 53-202 (1961), *as amended*, Ga. Acts 1972, no. 862; HAWAII REV. LAWS § 572-6 (1968); ILL. ANN. STAT. ch. 89, § 6 (Smith-Hurd 1966); KAN. STAT. ANN. § 23-106 (Supp. 1971); MD. ANN. CODE art. 62, § 6 (1972); MASS. ANN. LAWS ch. 207, § 20 (1969); MISS. CODE ANN. § 461 (1942); NEV. REV. STAT. § 122.040 (1965); N.J. STAT. ANN. § 37:1-8 (1968); OHIO REV. CODE ANN. § 3101.05 (Page 1960); R.I. GEN. LAWS ANN. § 15-2-7 (1969); VT. STAT. ANN. tit. 18, § 5131 (1968); VA. CODE ANN. § 20-16 (1960); WASH. REV. CODE ANN. § 26.04.160 (1961); W. VA. CODE ANN. § 48-1-8 (1966).

93. ALA. CODE tit. 34, § 16 (1948); CAL. CIV. CODE § 4201 (West 1970); HAWAII REV. LAWS § 572-6 (1968); MASS. ANN. LAWS Ch. 207, § 33A (1969); MICH. COMP. LAWS ANN. § 551.103 (1967); N.C. GEN. STAT. § 51-8 (1966).

94. GA. CODE ANN. § 53-206 (1961), *as amended*, Ga. Acts 1972, no. 862; IDAHO CODE ANN. § 32-202 (1963); IND. ANN. STAT. § 44-202 (1965); IOWA CODE ANN. § 595.4 (1950); LA. CIV. CODE ANN. art. 98 (West 1952); MISS. CODE ANN. § 461 (1942); MONT. REV. CODE ANN. § 48-134 (1961);

Many states require proof of parental consent in writing before an officer or a notary.⁹⁵ Some require only that parental consent be in writing,⁹⁶ while others require that the parents personally appear before the licensing officer.⁹⁷ Virtually all states provide sanctions for false statements to the licensing officer;⁹⁸ and licensing officers and judges that issue licenses in violation of the age provisions are subject to more severe penalties.⁹⁹ These

N.J. STAT. ANN. § 37:1-8 (1968); N.M. STAT. ANN. § 57-1-10 (1962); N.Y. DOM. REL. LAW § 15 (McKinney 1964); N.D. CENT. CODE § 14-03-17 (1971); R.I. GEN. LAWS ANN. § 15-2-11 (1969); S.C. CODE ANN. §§ 20.24.1, 2 (1962); W. VA. CODE ANN. § 48-1-6; WIS. STAT. ANN. § 245.09 (1957); WYO. STAT. ANN. § 20-5 (1957).

95. ALA. CODE tit. 34, § 10 (1958); CONN. GEN. STAT. ANN. § 46-5g (1958); DEL. CODE ANN. tit. 13, § 123 (1953); FLA. STAT. ANN. § 741.04 (1964); GA. CODE ANN. § 53-204 (1961), *as amended*, Ga. Acts 1972, no. 862; IDAHO CODE ANN. § 32-202 (1963); IND. ANN. STAT. § 44-202 (1965); KAN. STAT. ANN. § 23-106 (Supp. 1971); KY. REV. STAT. § 402.210 (1972); ME. REV. STAT. ANN. tit. 19, § 62 (1964); MICH. COMP. LAW ANN. § 551.103 (1967); MINN. STAT. § 517.08 (1969); MISS. CODE ANN. § 461 (1942); MO. ANN. STAT. § 451.090 (1952); MONT. REV. CODE ANN. § 48-143(a) (1961); NEB. REV. STAT. § 42-105 (1968); NEV. REV. STAT. § 122.025 (1965); N.M. STAT. ANN. § 57-1-5 (1962); N.Y. DOM. REL. LAW § 15 (McKinney 1964); N.D. CENT. CODE § 15-03-17 (1971); UTAH CODE ANN. § 30-1-9 (1969); WASH. REV. CODE ANN. § 26.04.160 (1961); W. VA. CODE ANN. § 48-1-8 (1966); WIS. STAT. ANN. § 245.02 (1957).

96. ARIZ. REV. STAT. ANN. §§ 25-122, 128 (1956); CAL. CIV. CODE § 4101 (West 1970); HAWAII REV. LAWS § 572-2 (1968); MASS. ANN. LAWS ch. 207 § 33 (1969); N.H. REV. STAT. ANN. § 457:6 (1968); N.C. GEN. STAT. § 51-2 (1966); VT. STAT. ANN. tit. 18, § 5142 (1968).

97. GA. CODE ANN. § 53-204 (1961), *as amended*, Ga. Acts 1972, no. 862; ILL. ANN. STAT. ch. 89, § 3 (Smith-Hurd 1966); ME. REV. STAT. ANN. tit. 19, § 62 (1964); TEX. FAM. CODE ANN. § 1.52 (1971). Apparently a parent must be present at the solemnization in New York. N.Y. DOM. REL. LAW § 11a (McKinney 1964).

98. *E.g.*, ALASKA STAT. § 25.05.341 (1965); DEL. CODE ANN. tit. 13, § 127 (1953); D.C. CODE ENCYCL. ANN. § 30-110 (1968); ILL. ANN. STAT. ch. 89, § 6 (Smith-Hurd 1966); IND. ANN. STAT. § 44-210 (1965); IOWA CODE ANN. § 595.8 (1950); ME. REV. STAT. ANN. tit. 19, § 100 (1964); MD. ANN. CODE art. 62, § 11 (1972); MASS. ANN. LAWS ch. 207, § 52 (1969); MICH. COMP. LAWS ANN. § 551.108 (1967); MONT. REV. CODE ANN. § 48-130.2 (1961); NEV. REV. STAT. § 122.200 (1965); N.H. REV. STAT. ANN. § 457:9 (1968); N.J. STAT. ANN. § 37:1-8 (1968); N.Y. DOM. REL. LAW § 16 (McKinney 1964); N.C. GEN. STAT. § 51-15 (1966); N.D. CENT. CODE § 14-03-28 (1971); OHIO REV. CODE ANN. § 3101.99 (Page 1960); S.C. CODE ANN. § 20-24.3 (1962); UTAH CODE ANN. § 30-1-10 (1969); VT. STAT. ANN. tit. 18, § 5140 (1968); WASH. REV. CODE ANN. § 26.04.210 (1961); WIS. STAT. ANN. § 245.30 (1957).

99. ALASKA STAT. § 25.05.331 (1965), for example, provides for either \$500 fine or 6 month imprisonment. *See also* ALA. CODE tit. 34, § 5 (1958); ARIZ. REV. STAT. ANN. § 25-128 (1956); ARK. STAT. ANN. § 55-214 (1971); CONN. GEN. STAT. ANN. § 46-51 (1958); DEL. CODE ANN. tit. 13, § 112 (1953); FLA. STAT. ANN. § 741.05 (1964); GA. CODE ANN. § 53-208 (1961), *as amended*, Ga. Acts 1972, no. 862; IDAHO CODE ANN. § 32-403 (1963); ILL. ANN. STAT. ch. 89, § 13 (Smith-Hurd 1966); IND.

penalties are not effective, because it is difficult to prove that an officer or judge has *knowingly* violated the provisions,¹⁰⁰ and the sanctions are often not enforced.¹⁰¹ A few states require a bond which is forfeited if the parties have violated the age restrictions.¹⁰²

The Uniform Act requires only "satisfactory proof" of age and parental consent. The draftsmen apparently felt that the Act should indicate that proof was essential, but that the choice of the type of proof was for the individual state.¹⁰³ The approach may also be due to a belief that enforcement depends less on the standard of proof than on the attitude of the licensing officer.¹⁰⁴ It is submitted, however, that the approach of the Uniform Act is inadequate. There are indications that the wide discretion afforded licensing officers is responsible for abuse and

ANN. STAT. § 44-202 (1965); IOWA CODE ANN. § 595.9 (1950); KAN. STAT. ANN. § 23-111 (1963); LA. CIV. CODE ANN. art. 92 (West 1952); ME. REV. STAT. ANN. tit. 19, § 62 (1964); MD. ANN. CODE art. 62, § 11 (1972); MASS. ANN. LAWS ch. 207, § 51 (1969); MICH. COMP. LAWS ANN. § 551.14 (1967); MINN. STAT. § 517.14 (1969); MO. ANN. STAT. § 451.120 (1952); NEB. REV. STAT. § 42-113 (1968); NEV. REV. STAT. § 122.210 (1965); N.H. REV. STAT. ANN. §§ 457:9, 35 (1968); N.J. STAT. ANN. § 37:1-11 (1968); N.M. STAT. ANN. § 57-1-10 (1962); N.Y. DOM. REL. LAW §§ 15, 15a (McKinney 1964); N.D. CENT. CODE § 14-03-28 (1971); OHIO REV. CODE ANN. § 3101.99 (Page 1960); R.I. GEN. LAWS ANN. § 15-3-10 (1969); S.C. CODE ANN. § 20-24.4 (1962); TENN. CODE ANN. § 36-413 (1955); TEX. FAM. CODE ANN. § 1.09 (1971); UTAH CODE ANN. §§ 30-1-15, 16 (1969); VT. STAT. ANN. tit. 18, §§ 5141, 5143 (1968); VA. CODE ANN. § 20-33 (1960); WASH. REV. CODE ANN. § 26.04.230 (1961); W. VA. CODE ANN. § 48-1-20 (1966); WIS. STAT. ANN. § 245.30 (1957); WYO. STAT. ANN. § 20-15 (1957).

100. For example, the Alaska Statute provides a penalty only if the officer "knowingly" performs a marriage in violation of the statutes. ALASKA STAT. § 25.05.341 (1965).

101. High rates of teenage marriage found in some Tennessee counties were attributed to lax enforcement of the marital regulations. There are many "marriage mills" or areas where either easily evadable laws or purposefully lax enforcement encourages migration of teenagers from other states. Rosenwaiké, *Parental Consent Ages as a Factor in State Variation in Bride's Age at Marriage*, 29 J. MARR. FAM. 452, 453 (1967). See C. FOOTE, R. LEVY & F. SANDER, *CASES AND MATERIALS ON FAMILY LAW* 238 (1966) for a discussion of marriage mills.

102. ARK. STAT. ANN. § 55-213 (1971); KY. REV. STAT. § 402.210 (1972).

103. The Act assumes that each state will adapt its existing marriage licensing statute so that it conforms to the substantive regulatory provisions of the Act. Such statutes vary substantially from state to state; and there is no special interest in obtaining uniformity as to the form utilized for marriage licenses and registrations.

UNIFORM ACT § 202, comment.

104. It may be that the economic return of "marriage mills" is such that they will occur regardless of strict proof requirements. See note 101, *supra*.

migratory marriage.¹⁰⁵ To remedy this problem, discretion in licensing officers should be limited by specifying the type of proof of age or consent required, and severe sanctions should be imposed upon licensing officers who willfully evade the statute. Requiring specific proof, such as a birth certificate or social security card, and requiring parents to appear before the licensing officer, are not heavy burdens for the applicant. If there is to be a serious attempt to supervise youthful marriage, it should not be easy to evade age restrictions.

3. *Premarital Counseling*

California requires premarital counseling prior to the issuance of a marriage license,¹⁰⁶ and other states have enabling statutes through which such a prerequisite could be established.¹⁰⁷ Counseling would apprise the parties of the problems they face, including the risk of failure of the marriage, and suggest solutions to these problems.¹⁰⁸ In appropriate cases marriage would be discouraged. It is submitted that preparative counseling should be an important component of any marriage regulation system. However, all experiences with counseling have not been successful.¹⁰⁹ The major criticism of counseling is that it only reaches the parties after they have made the decision to marry¹¹⁰ when there is little chance of deterrence and too little time to prepare the parties for marriage.¹¹¹ Furthermore, those involved place little value on the counseling—*e.g.*, a study in Iowa concluded that counseling arouses guilt, anger and hostility.¹¹² Finally, the number of parties dissuaded from marriage by premarital counseling apparently is not large.¹¹³

Success in preparation for marriage is most likely to come from areas other than the law. Many sociologists have thought that family life education is more effective than counseling in

105. Rosenwaike, *supra* note 101.

106. CAL. CIV. CODE § 4101 (West 1970).

107. See Weiss & Collada, *Judicial Consent to Marry—Its Complex Demands*, 3 FAM. L.Q. 288, 290 (1969). See Adams, *Marriage of Minors: Unsuccessful Attempt to Help Them*, 3 FAM. L.Q. 13 (1969).

108. Adams, *supra* note 107, at 14.

109. Adams, *supra* note 107, at 13. “[A study] showed that nearly all minors and parents felt that they were not being helped, while the . . . family service agency was . . . damaged . . .”

110. *Id.* at 20.

111. *Id.*

112. *Id.* at 17-20.

113. *Id.* at 15 (“all but one of the [28] marriages were sanctioned by the court”).

reducing the number of early marriages because it teaches the risks of early marriage before people have decided to marry.¹¹⁴ In addition, proper preparation for marriage appears more likely as the period of preparation and training is lengthened.

The failure of the Uniform Act to provide for any counseling may reflect the view that counseling is ineffective and that family life education is a better method of preparation and deterrence. It is unfortunate, however, that the Act does not express support for programs of preparation nor dissatisfaction with a system that only focuses on the decision to marry.

E. ANNULMENT AS ENFORCEMENT

Finally, the Act provides for annulment as a tool for enforcing the age and consent restrictions. Under the Act both the parties and the parents have the right to sue for the annulment of a marriage which violates both age and consent restrictions. A suit for annulment must be brought before the underage party reaches the age at which he could marry without the omitted requirement.¹¹⁵

Several state statutes treat marriages contracted by parties under a prescribed age as void or of no legal effect;¹¹⁶ however, most states treat marriages under the age of capacity only as voidable; of legal effect until judicial decree of annulment, either by common law¹¹⁷ or by statute.¹¹⁸ A number of statutes provide

114. There seems to be fairly general agreement that many of the causes of marital instability, especially among young spouses, may be ameliorated by a broad program of family life education in the public schools.

R. LEVY, *supra* note 15, at 31. Furlong, *Youthful Marriage and Parenthood: A Threat to Family Stability*, 19 HASTINGS L.J. 105, 117 (1967) ("greatest hope lies in prevention through a program of education").

115. No suit is permitted after the death of one of the parties. UNIFORM ACT § 208.

116. KY. REV. STAT. § 402.020 (1972) (marriage of male under 18, female 16 void); MASS. GEN. LAWS ANN. ch. 207, § 9 (1968) (marriage of male under 14, female 12 void); MICH. COMP. LAWS ANN. § 552.2 (1967) (marriage contracted under age of consent void); UTAH CODE ANN. § 30-1-2 (1969) (marriage of male under 16 or female under 14 void); WIS. STAT. ANN. § 245.21 (1957).

117. *E.g.*, *Luke v. Hill*, 137 Ga. 159, 73 S.E. 345 (1911). See also R. Kingsley, *The Law of Infants' Marriages*, 9 VAND. L. REV. 593, 597 (1956).

118. See, *e.g.*, ALASKA STAT. § 25.05.031 (1965); ARK. STAT. ANN. §§ 55-102, 106 (1971); D.C. CODE ENCYCL. ANN. § 30-103 (1968); IND. ANN. STAT. § 44-106 (1965); MINN. STAT. § 518.02 (1969); NEB. REV. STAT. § 42-118 (1968); NEV. REV. STAT. § 125.310 (1965); N.J. STAT. ANN. § 2A:34-1 (1952); N.Y. DOM. REL. LAW § 7 (McKinney 1964); OHIO REV. CODE ANN. § 3105.31 (Page 1953); VT. STAT. ANN. tit. 5, § 512

that parents may sue for annulment,¹¹⁹ and a few provide that the underage party's "next friend" can sue.¹²⁰ In the absence of such provisions, common law prevails.¹²¹ At common law the marriage of a party under the age of seven was void,¹²² and the marriage of a female between the age seven and 12 or a male between seven and 14 was voidable. While a void marriage was subject to suit by any interested party at any time, a voidable marriage was subject to attack only by one of the parties to the marriage. Parents, therefore, were generally not allowed to sue for annulment where their child was over seven years of age at the time of his marriage.¹²³

In most jurisdictions a marriage above the age of capacity without the required parental consent is valid and may not be annulled.¹²⁴ In those states providing for annulment of marriages which did not receive necessary parental consent, such marriages are treated as voidable, and under most statutes parents are allowed to sue only until the child reaches marriageable age.¹²⁵

(1958); W. VA. CODE ANN. § 48-2-1 (1966); WYO. STAT. ANN. § 20-33 (1957).

119. See, e.g., ARK. STAT. ANN. § 55-102 (1971); CAL. CIV. CODE § 4426 (West 1970); D.C. CODE ENCYCL. ANN. § 30-104 (1968); HAWAII REV. LAWS § 580-22 (1968); IDAHO CODE ANN. § 32-501 (1963); MONT. REV. CODE ANN. § 48-203 (1961); Nebraska Laws 1972, leg. bill 1086, § 29; NEV. REV. STAT. § 125.320 (1965); N.H. REV. STAT. ANN. § 457:5 (1968); N.M. STAT. ANN. § 57-1-9 (1962); N.Y. DOM. REL. LAW § 140 (McKinney 1964); N.C. GEN. STAT. § 51-2 (1966); N.D. CENT. CODE § 14-04-01 (1971); OHIO REV. CODE ANN. § 3105.32 (Page 1960); TEX. FAM. CODE ANN. § 2.41 (1971); VT. STAT. ANN. tit. 15, § 513 (1958); WIS. STAT. ANN. § 247.02 (1957); WYO. STAT. ANN. § 20-35 (1957). In some jurisdictions, if in the best interests of the parties, the court has authority to refuse an annulment sought by the parents. D.C. CODE ENCYCL. ANN. § 16-903 (1966); MONT. REV. CODE ANN. § 48-202 (1961); N.H. REV. STAT. ANN. § 457:5-5a (1968); TENN. CODE ANN. § 36-407 (1955); TEX. FAM. CODE ANN. § 2.41 (1971); N.Y. DOM. REL. LAW § 7 (McKinney 1964); UTAH CODE ANN. § 30-1-17.3 (1969).

120. See GA. CODE ANN. § 53-603 (1961); KY. REV. STAT. § 402.030 (1972).

121. *Niland v. Niland*, 96 N.J. Eq. 438, 126 A. 530 (1924); *Fink v. Fink*, 70 S.D. 366, 17 N.W.2d 717 (1945); *Kirby v. Gilliam*, 182 Va. 111, 28 S.E.2d 40 (1943); *Ex parte Hollopeter*, 52 Wash. 41, 100 P. 159 (1909).

122. 1 BLACKSTONE, COMMENTARIES 436 (1807).

123. *Id.* Where marriage was contracted over the age of seven, a participant could only bring suit for annulment before the death of his partner.

124. See, e.g., *Robertson v. Robertson*, 262 Ala. 114, 77 So. 2d 373 (1955); *Johnson v. Alexander*, 39 Cal. App. 177, 178 P. 297 (1918); *People ex rel. Mitts v. Ham*, 206 Ill. App. 543 (1917); *Noble v. Noble*, 299 Mich. 565, 200 N.W. 885 (1941); *Berry v. Winistorfer*, 55 N.D. 310, 213 N.W. 26 (1927).

125. See, e.g., ARK. STAT. ANN. § 55-102 (1971); CAL. CIV. CODE

The Uniform Act has a single provision governing annulment of marriages under age of capacity and marriages without the required parental consent.¹²⁶ It conforms to the general rule which treats underage marriages as voidable only, but it alters the statutory pattern of treating the parental consent requirement as directory only.

The annulment procedure of the Act has several weaknesses. First, divorce may be preferable¹²⁷ to annulment in that it avoids the sometimes severe economic consequences of annulment. An annulled marriage is now considered void from its inception, so no alimony is allowed and issue may be illegitimate.¹²⁸ By allowing the judge discretion to treat the annulment as a divorce, the Uniform Act makes a significant change in that a judge can award alimony and make a property distribution even though the marriage is deemed null and void.¹²⁹ The Act notes that annulment is a sham proceeding¹³⁰ and a handy substitute for divorce. The grounds for annulment, such as fraud in inducing marriage and duress, are probably seldom the real reasons for annulment; in most cases the marriage has failed for the usual reasons of incompatibility. There is therefore no persuasive reason why such marriages should be dissolved differently than marriages not subject to annulment.

Although annulment was retained in the Act due to the need to achieve substantial acceptance, it is unfortunate that a judge will still have discretion to deny alimony simply because the marriage is subject to annulment. In underage marriages, however, several factors mitigate the undesirable effects of annulment. Since an underage marriage is subject to annulment for at most only a few years after the marriage, and since the parties are at an age where remarriage and employment opportunities are available, denial of alimony by annulment in most cases will not work a hardship. In addition, the use of annulment may be necessary to provide a method of dissolution by the par-

§§ 4425, 4426 (West 1970); IDAHO CODE ANN. § 32-501 (1963); MONT. REV. CODE ANN. §§ 48-202, 203 (1947); NEV. REV. STAT. § 125.320 (1965); N.C. GEN. STAT. § 51-2 (1966); N.D. CENT. CODE §§ 14-04-01, 02 (1971); TEX. FAM. CODE ANN. § 2.41 (1971); WIS. STAT. ANN. § 247.02 (1957).

126. UNIFORM ACT § 208 (1970).

127. A divorce is awarded under present law for defects occurring after the marriage, an annulment where there is a defect existing at the inception of the marriage.

128. However, most states have enacted statutes legitimating such offspring.

129. UNIFORM ACT § 208 (1970).

130. UNIFORM ACT Prefatory Note.

ents since only the parties to a marriage are allowed to obtain a divorce.

Second, the provision for parental dissolution has some shortcomings. The right of parents to sue for annulment is apparently designed to achieve two goals. First, it deters couples from evading age restrictions by the threat of effective parental intercession. Second, it may be in the child's best interests for parents to have the right to dissolve his or her marriage where it has little chance of success. Theoretically both goals promote the primary goal of stability; yet, since the marriage has in fact occurred, allowing parents to dissolve the marriage in a sense brings about the evil sought to be prevented: the breakup of youthful marriages. Furthermore, where parents legally dissolve a marriage, there is no assurance that the parties will not continue the relationship extralegally. Finally, under the Act, the judge may not refuse to annul the marriage even if such a refusal appears to be in the best interests of the marriage partners. This is an undesirable procedure since a long, stable relationship may be involved.¹³¹ As there should be review of the parental decision to consent or not to consent to a marriage, so should there be review of the parental decision to dissolve a marriage.

The second weakness of the annulment procedure is that a suit for annulment may be instituted too long after the marriage. An earlier draft limited suits to 90 days after the marriage.¹³² Obviously, the longer suit is delayed the greater is the chance of birth of children. Also, allowing the couple to develop a relationship and then permitting someone else to destroy it is not consistent with a goal of marital stability. Finally, allowing annulment until the underage party reaches marriageable age is not likely to present any greater deterrent to evasion of the marriage regulations than suits restricted to 90 days of the marriage. It is suggested, therefore, that the Uniform Act should have adopted the 90 day approach.¹³³

The Uniform Act thus has serious deficiencies in its annulment provisions. Other than providing parents with a tool to

131. Several states now provide that a judge has discretion to refuse an annulment. The Utah statute reads in part: "[T]he court may, in its discretion, refuse to grant an annulment if it finds that it is in the best interest of the parties . . ." UTAH CODE ANN. § 30-1-17.3 (1969).

132. UNIFORM ACT § 208(c), Second Tentative Draft. Texas now has such a provision. See TEX. FAM. CODE ANN. § 2.41 (1971).

133. An exception might be needed for those cases in which the marriage had been concealed from the parents.

set aside the marriage, it serves no purpose that could not be served by divorce. Furthermore, the wisdom of allowing marriages to be annulled by parents is questionable. Therefore either the annulment provisions should have been omitted or, at least, the judge should have been given discretion to refuse an annulment.

VI. CONCLUSION

There is a significant risk of divorce in marriages by parties in their teens, yet the present system of controls designed to reduce divorce has not achieved a level of effectiveness that justifies the invasion of individual liberty. Perhaps the real issue is whether any system of controls can influence the teenage couple's decision to marry. There is ample reason to advise against youthful marriage, but if cultural and sociological variants, such as the stage of industrialization or the availability of premarital intercourse, determine the age at which parties form a legal or extralegal husband-wife relationship, and if the law (and parental or judicial consent) is of no account, then withholding legal sanction may only force couples to maintain their relationship without the legal title of man and wife. Another question is whether any analysis, be it provided by parents, a judge or a social worker, can provide reliable evaluation of proposed marriages. If not, restrictions might reduce the number of teenage marriages without ensuring that those allowed will succeed.

Assuming that the law can deter teenage marriage, judicial or administrative review of parental consent is necessary and desirable. It is also necessary to eliminate evasion of the law through adoption of uniform state regulations, strict proof requirements and severe penalties for those officials who undermine the law. The Uniform Act, by providing uniformity and review of the parental *refusal* to consent, takes some steps in the right direction.

Finally, a system of controls cannot hope to achieve the goal of marital stability without a substantial emphasis on early preparation for marriage. Serious consideration should also be given to post-marital financial and counseling aids for youthful marriages.