



Marriage/Marriage Age

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Background

Marriage has generally been defined as a contract between a man and a woman who have consented to become husband and wife. More specifically, the U. S. Congress, in the Defense of Marriage Act (DOMA), PUBLIC LAW 104-199, passed in 1996, defines marriage as "a legal union between one man and one woman as husband and wife."

Marriage requirements are defined by the laws of each state. Yet, there are certain aspects of a valid marriage that are required of any couple desiring to become husband and wife. These additional considerations include the capacity of the parties to enter into the marriage, the consent of the parties, and the age of each person. Regarding age, if individuals are minors, they must obtain the consent of either one or both of their parents, depending upon the laws of the state.

The fact that the states can regulate marriage has given rise to laws that control other aspects of the ability of a couple to wed including the race of the each party in the couple, the sex of each party, and whether either party is already married. Although the states have the authority to regulate the institution of marriage and establish the laws that do so, some laws, such as those forbidding people of different races to marry, have been struck down by the Supreme Court of the United States as unconstitutional. The Congress of the United States has also enacted limitations to the marital union, the most recent being the enactment of DOMA which not only defines marriage but also gives individual states the right not to recognize "a relationship between persons of the same sex that is treated as a marriage under the laws of such other State." In other words, such laws from one state do not have to be recognized by another state.

Because the laws regarding marriage vary considerably from state to state, couples desiring more specific information should contact their state government.

Consent

Before a marital union is recognized by a state, there must, foremost, be consent—or agreement— between the parties of the union to be married. For consent to exist, both parties must agree to the marriage and there must be no mistake as to the nature of the union. In addition, no force must be used upon either party to enter into the union. Once consent is determined to exist, the laws of the individual states determine the status of the couple as husband and wife.

Age

Age is an additional aspect of consent to marry. All states prescribe the age which must be reached by both parties to the marriage for the couple to be able to legally agree to become husband and wife without parental permission. For all but two states this "age of consent" is eighteen (in Mississippi the age is twenty-one and in Nebraska the age is nineteen).

The states vary in determining the minimum age at which a couple can marry with parental consent. However, for the majority of states, this age is sixteen though in a very few states, this age is as low as fourteen.

Capacity

Capacity generally refers to the mental ability of one or both of the parties to the marriage to agree to become husband and wife. Both parties must be of "sound" mind and capable of agreeing to the marriage. Not all forms of mental illness and insanity serve to render someone incapable of entering into a marriage. A common test of capacity is the ability of individuals to understand the nature of marriage and what their responsibilities are to their partners once they enter into the union. Physical incapacity, and in particular the physical inability to have sexual intercourse, does not in and of itself render one incapable of marrying and does not on its face void a marriage that has already occurred.

Between Close Relatives

The laws of each state strictly regulate the marriage between relatives (also known as consanguinity). According to the "rules of consanguinity," no state allows marriage to a child, grandchild, parent, grandparent, uncle, aunt, niece, or nephew. However, for all other familial relationships, the states vary widely and the particular laws of the state of marriage must be consulted.

Common Law Marriage

Though laws regarding marriage are well regulated by the states, at one point, most state laws allowed for the institution of [COMMON LAW](#) marriage. Common law marriages were based not just on the desire of the couple to live together or by their actually living or having lived together. For a common law marriage to achieve validity as a marriage, the couple must have lived together for a certain amount of time, had sexual relations, and represented themselves as husband and wife in all affairs and to all people. Though no marriage ceremony had taken place, their children are viewed as legitimate and surviving families are entitled to state sanctioned [INHERITANCE](#).

Currently, the majority of states do not recognize common law marriage. Three states that do not recognize common law marriages (Georgia, Idaho, and Indiana) recognize unions that were entered into before certain dates (for Georgia and Idaho the year is 1997, for Indiana the year is 1958).

Interracial Marriage

There are no prohibitions to interracial unions in the United States. At one time, many states had enacted statutes forbidding marriages between people of different races. Such a mixed-race union is also known as "miscegenation." These antimiscegenation statutes were found across the United States and particularly in Southern states. Though most states had repealed such laws by the time of the case of *Loving v. Virginia*, in 1967 the U. S. Supreme Court, in deciding that case, decreed all such laws to be unconstitutional because they violated the **EQUALPROTECTION** Clause of the U. S. Constitution.

Polygamy

POLYGAMY occurs when a spouse is married to more than one person at the same time. Polygamy is illegal in the United States. Polygamous marriages have been illegal since 1878 when the U. S. Supreme Court ruled that one of the basic tenets of Western civilization was the marriage of one man to one woman. Therefore, anyone who marries for the second time without ending a first marriage could be charged with polygamy.

Same Sex/Gay Marriage

Traditionally in the United States, the marital union has been confined to a relationship between a man and a woman. However, that notion has been challenged in states such as Hawaii and Vermont. In response to these and other challenges, at least twenty-five states have passed marriage laws prohibiting same sex marriages. In almost as many states, bills prohibiting same sex/gay marriage have been defeated. In 1996, the Congress of the United States passed the Defense of Marriage Act (DOMA). This act defines the word marriage as a "legal union between one man and one woman as husband and wife." In addition, in response to the possibility that some states would recognize a same sex relationship as a marriage while others would not, DOMA determines that other states do not have to "give effect to" or recognize "a right or claim arising from" such unions which may be legal in other states.

Effective July 1, 2000, the state of Vermont enacted a law, the first in the country, permitting same sex couples to be parties to a "civil union." These unions, though not technically marriages, give same sex couples all the "benefits, protections, and responsibilities under Vermont law . . . as are granted to spouses in a marriage." This law also allows parties who reside outside Vermont to enter the state to achieve a civil union. However, in accordance with DOMA, other states are not required to recognize these unions.

Change of Last Name

A woman is not legally required to change her last name to that of her husband upon her marriage.

State by State Summary (age of consent, etc.)

The following is a state by state summary of the "age of consent" for marriage and other pertinent marriage information for the fifty states, the District of Columbia, and Puerto Rico

ALABAMA: The [AGE OF CONSENT](#) is eighteen. With parental consent, parties can marry at age fourteen. However, this parental consent is not required if the minor has already been married. (Other [STATUTORY](#) laws apply.) Common law marriage is recognized.

ALASKA: The age of consent is eighteen. With parental consent, parties can marry at the age sixteen. Parties can marry at a younger age, also with parental consent. Common law marriage is not recognized.

ARIZONA: The age of consent is eighteen. With parental consent, parties can marry at the age of sixteen. Parties can marry at a younger age, but with both parental and judicial consent.

ARKANSAS: The age of consent is eighteen. With parental consent, males can marry at the age of seventeen and under the age of seventeen can marry with parental consent and can receive a license by reason of pregnancy or the birth of a child. With parental consent, females can marry at age sixteen and under the age of sixteen can marry with parental consent and can receive a license by reason of pregnancy or the birth of a child.

CALIFORNIA: The age of consent is eighteen. With parental consent, there are no age limits regarding the minimum age for a couple to marry. (Other statutory laws apply.)

COLORADO: The age of consent is eighteen. Parties can marry at a younger age, also with parental consent. Common law marriage is recognized.

CONNECTICUT: The age of consent is eighteen. With parental consent, parties can marry at the age of sixteen. Parties can marry at a younger age, but with both parental and judicial consent.

DELAWARE: The age of consent is eighteen. Males can marry under the age of eighteen with parental consent and under the age of seventeen can receive a license by reason of pregnancy or the birth of a child. With parental consent, females can marry at age sixteen and under the age of sixteen can apply for and receive a license by reason of pregnancy or the birth of a child. Common law marriage is not recognized.

FLORIDA: The age of consent is eighteen. With parental consent, parties can marry at age sixteen and parties under the age of sixteen can receive a license by reason of pregnancy or the birth of a child. However, this parental consent is not required if the minor has already been married. Common law marriage is not recognized.

GEORGIA: The age of consent is eighteen. With parental consent and/or the consent of a judge, parties can marry at age sixteen and under the age of sixteen can apply for and receive a license by reason of pregnancy or the birth of a child. Common law marriages are not recognized except for those that were entered into before 1997.

HAWAII: The age of consent is eighteen. With parental consent and/or the consent of a judge, parties can marry at age fifteen. Common law marriage is not recognized.

IDAHO: The age of consent is eighteen. With parental consent, parties can marry at age sixteen. Common law marriages are not recognized except for those that were entered into before 1997.

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ILLINOIS: The age of consent is eighteen. With parental consent, parties can marry at age sixteen. If parents refuse to consent, judicial consent may be obtained on behalf of the parties. Common law marriage is not recognized.

INDIANA: The age of consent is eighteen. With parental consent, parties can marry at age seventeen and under the age of seventeen can receive a license by reason of pregnancy or the birth of a child. Common law marriages are not recognized except for those that were entered into before 1958.

IOWA: The age of consent is eighteen. With parental consent and/or the consent of a judge, parties can marry at age sixteen. Common law marriage is recognized.

KANSAS: The age of consent is eighteen. With parental consent and/or the consent of a judge, males can marry at age fourteen and females at age twelve. Common law marriage is recognized.

KENTUCKY: The age of consent is eighteen. With parental consent and/or the consent of a judge, parties can marry under eighteen years of age. Common law marriage is not recognized.

LOUISIANA: The age of consent is eighteen. Parties under eighteen years of age can marry with parental consent. Common law marriage is not recognized.

MAINE: The age of consent is eighteen. With parental consent, parties can marry at age sixteen. With parental consent, parties can marry at age sixteen. Common law marriage is not recognized.

MARYLAND: The age of consent is eighteen. With parental consent, parties can marry at age sixteen and younger parties may receive a license by reason of pregnancy or the birth of a child. Parties giving consent must appear in person to give consent and provide proof of age if the parties seeking marriage are at least sixteen years old. Also, if one of the parents giving consent is ill both an [AFFIDAVIT](#) by the ill parent and from a physician is required to submit. Common law marriage is recognized.

MASSACHUSETTS: The age of consent is eighteen. With parental consent and/or the consent of a judge, males can marry at fourteen years of age and females can marry at the age of twelve. Common law marriage is not recognized.

MICHIGAN: The age of consent is eighteen. With parental consent, parties can marry at age sixteen. Common law marriage is not recognized.

MINNESOTA: The age of consent is eighteen. With parental consent and/or the consent of the judge, parties can marry at age sixteen. Common law marriage is not recognized.

MISSISSIPPI: The age of consent is twenty-one. With parental consent and/or the consent of the judge, males can marry at age seventeen and females can marry at age fifteen. Common law marriage is not recognized.

MISSOURI: The age of consent is eighteen. With parental consent, parties can marry at age fifteen and younger parties may receive a license by reason of special circumstances. Common law marriage is not recognized.

MONTANA: The age of consent is eighteen. With parental consent and/or consent of a judge, parties can marry at age sixteen and younger parties may receive a license by reason of special circumstances. Common law marriage is recognized.

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NEBRASKA: The age of consent is nineteen. With parental consent, parties can marry at age seventeen. Common law marriage is not recognized.

NEVADA: The age of consent is eighteen. With parental consent, parties can marry at age sixteen and younger. Common law marriage is not recognized.

NEW HAMPSHIRE: The age of consent is eighteen. With parental consent and the consent of the judge, males can marry at age fourteen and females can marry at age thirteen. Common law marriage is not recognized.

NEW JERSEY: The age of consent is eighteen. With parental consent, parties can marry at age sixteen or younger. Also, younger parties may receive a license by reason of pregnancy or the birth of a child or other special circumstances. Common law marriage is not recognized.

NEW MEXICO: The age of consent is eighteen. With parental consent, parties can marry at age sixteen and younger parties may receive a license by reason of pregnancy or the birth of a child or other special circumstances. Common law marriage is not recognized.

NEW YORK: The age of consent is eighteen. With parental and judicial consent, parties can marry at age sixteen. Common law marriage is not recognized.

NORTH CAROLINA: The age of consent is eighteen. With parental consent, parties can marry at age sixteen and younger parties may receive a license by reason of pregnancy or the birth of a child. Common law marriage is not recognized.

NORTH DAKOTA: The age of consent is eighteen. With parental consent, parties can marry at age sixteen. Common law marriage is not recognized.

OHIO: The age of consent is eighteen. With parental consent, males under the age of 18 can marry and females at age sixteen can marry and younger parties may receive a license by reason of pregnancy or the birth of a child. Common law marriage is not recognized.

OKLAHOMA: The age of consent is eighteen. With parental consent, parties can marry at age sixteen (and younger) and, in addition, younger parties may receive a license by reason of pregnancy or the birth of a child. Common law marriage is recognized.

OREGON: The age of consent is eighteen. With parental consent, parties can marry at age seventeen with the exception that if one party does not have a parent who resides in the state and one party has been a resident in Oregon for at least six months, then no permission is necessary. Common law marriage is not recognized.

PENNSYLVANIA: The age of consent is eighteen. With parental consent, parties can marry at age sixteen and younger parties may receive a license by reason of special circumstances. Common law marriage is recognized.

RHODE ISLAND: The age of consent is eighteen. With parental consent, males can marry under age eighteen and females at sixteen and younger parties may receive a license under special circumstances. Common law marriage is recognized.

SOUTH CAROLINA: The age of consent is eighteen. With parental consent, males can marry at age sixteen and females at age fourteen and younger parties may receive a license by reason of pregnancy or the birth of a child. Common law marriage is recognized.

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SOUTH DAKOTA: The age of consent is eighteen. With parental consent, parties can marry at age sixteen and younger parties may receive a license by reason of pregnancy or the birth of a child. Common law marriage is not recognized.

TENNESSEE: The age of consent is eighteen. With parental consent, parties can marry at age sixteen. Under special circumstances, younger minors can receive a license to marry. Common law marriage is not recognized.

TEXAS: The age of consent is eighteen. With parental and judicial consent, parties can marry but not below the age of fourteen for males and thirteen for females. Common law marriage is recognized.

UTAH: The age of consent is eighteen. With parental consent, parties can marry at age fourteen. However, this parental consent is not required if the minor has already been married. In addition, each county is authorized to provide premarital counseling before issuing a marriage license to applicants under the age of eighteen and those who are divorced. Common law marriage is recognized.

VERMONT: The age of consent is eighteen. With parental or judicial consent, parties can marry at age sixteen. Common law marriage is not recognized. In addition, a Vermont law, the first in the country, permits same sex couples to be parties to a "civil union."

VIRGINIA: The age of consent is eighteen. With parental consent, parties can marry at age sixteen and under the age of sixteen may receive a license by reason of pregnancy or the birth of a child. Common law marriage is not recognized.

WASHINGTON: The age of consent is eighteen. With parental consent, parties can marry at age seventeen and at a younger age under special circumstances. Common law marriage is not recognized.

WEST VIRGINIA: The age of consent is eighteen. With parental consent, parties under the age of eighteen may receive a license at a younger age by reason of pregnancy or the birth of a child. Common law marriage is not recognized.

WISCONSIN: The age of consent is eighteen. With parental consent, parties can marry at age sixteen. Common law marriage is not recognized.

WYOMING: The age of consent is eighteen. With parental consent, parties can marry at age sixteen. They may obtain a license and marry at a younger age under special circumstances. Common law marriage is not recognized.

DISTRICT OF COLUMBIA: The age of consent is eighteen. With parental consent, parties can marry at age sixteen. However, this parental consent is not required if the minor has already been married. Common law marriage is recognized.

PUERTO RICO: The age of consent is twenty-one for males. The age of consent is also twenty-one for females who may apply for and receive a license at a younger age by reason of pregnancy or the birth of a child. Male applicants eighteen years of age and female applicants sixteen years of age may marry with parental consent. Younger males and females can marry with parental consent and receive a license by reason of pregnancy, the birth of a child, or other special circumstances. Common law marriage is not recognized.

Additional Resources

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West's Encyclopedia of American Law. West Group, 1998.

Organizations

Family Life

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URL: <http://www.familylife.com/>

Primary Contact: Dennis Rainey, Director

Institute for Equality in Marriage

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Marriage Ministries International (MMI)

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