

Marriage Rights

of Adults with Developmental Disabilities

Legal Authorities
and Current Practices



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Abstract

Although freedom to marry has been recognized as a fundamental right protected by the United States Constitution for more than five decades, not everyone has been allowed to participate in the institution of marriage.

The United States Supreme Court has made lofty statements about the esteemed place that marriage has in our society:

“We deal with a right of privacy older than the Bill of Rights — older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.”

“The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.”

Griswold v. Connecticut
381 U.S. 479 (1965)

Yet, when the Court made this pronouncement in 1965, persons of differing races could not marry. Nor could persons of the same sex.

As for adults with developmental disabilities, there were barriers to marriage even if the parties were of the same race and of differing genders. Some of the barriers were direct while others were camouflaged.

A [commentary](#) published in the Michigan Bar Journal explains the direct and offensive prohibition that existed in that state prohibiting marriage by adults with mental or developmental disabilities.

The “Idiot Law” goes back to 1846, when it said: “No white person shall intermarry with a negro, and no insane person or idiot shall be capable of contracting marriage.”

The commentary explains: “The racial prohibition was deleted by the Michigan Legislature in 1899. But the idiot portion was expanded in 1905 to the current version, which includes “feeble-minded” persons and “imbeciles.” The spouse can be punished with five years in prison, and so can the preacher who aids and abets this criminality.

Missouri, like most states, is not so blatant in its terminology. But nonetheless, many adults with developmental disabilities are excluded from marriage, either through guardianship proceedings or because they lack “capacity” because they have not been properly educated about the duties and obligations of marriage.

Transition services unfortunately do not generally include marriage in the topics that are covered for teens with developmental disabilities who are about to become adults.

Then there are the indirect barriers to marriage for adults receiving government benefits. A process called “deeming” often makes marriage unattainable due to financial penalties.

This report explains the legal basis for the freedom to marry for adults with developmental disabilities. It also makes recommendations on how the State of Missouri can assist such adults in making that right become a reality.

Marriage Rights

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Legal Authorities and Current Practices

International Norms

The Convention on the Rights of Persons with Disabilities (CRPD) was approved by the General Assembly of the United Nations on December 12, 2006. As of May 6, 2022, the treaty had been ratified by 186 nations. President Barrack Obama signed the treaty in 2009 although it has not yet been ratified by the United States Senate.

Two provisions of the Convention set international norms for the right of people with developmental disabilities to marry and should help inform American courts when they interpret state and federal statutory and constitutional provisions that protect the rights of people with disabilities.

Article 23 – Respect for Home and Family – declares that “States Parties shall: take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that: a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized.”

Article 12 – Equal recognition before the law – requires State Parties to: reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law; recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life; and take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

The United Nation’s Committee on the Rights of Persons with Disabilities meets twice a year in Geneva. The role of the Committee is to receive and review the reports from States Parties to the CRPD. The Committee has [taken action](#) to strengthen the right to marry.

For example, in Observations on Peru, the Committee called for the State to amend domestic laws “to adequately guarantee the exercise of civil rights, in particular the right to marry, to all persons with disabilities.”

Observations on Argentina also address marriage rights under Article 23, noting with concern that Article 309 of the Civil Code of Argentina denies the right to form a family to some persons with disabilities, especially those who lack legal capacity. The Committee recommended amending the law restricting freedom of marriage.

The Committee called upon Hungary to take appropriate measures to enable men and women with disabilities who are of marriageable age to marry and form a family.

Article 6 of the CRPD calls upon “State Parties to take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse. This would require a certain degree of protection from marriages entered through force, undue influence, or without consent. Such protections would be consistent with the requirement of Article 23 that marriage be based on the full and free consent of the intending spouses.”

A blanket prohibition of marriage by adults who have mental or developmental disabilities would be contrary to international norms as would unduly restrictive definitions of capacity.

Federal Constitution

The United States Constitution prohibits states from depriving persons of liberty without due process of law. A long line of Supreme Court decisions hold that the right to marry is a fundamental aspect of personal liberty. Fundamental rights can only be restricted or denied in furtherance of compelling state interests, using the least restrictive means necessary to achieve such objectives.

The Supreme Court discussed marriage as a fundamental right implicit in the Due Process Clause in *Griswold v. Connecticut*, 381 U.S. 479 (1965) – a case involving a criminal law prohibiting married couples from using contraceptives. The Court observed:

"We deal with a right of privacy older than the Bill of Rights — older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions." *Id.*, at 486."

Another leading decision of the Supreme Court on the right to marry is *Loving v. Virginia*, 388 U. S. 1 (1967). In that case, the Court reaffirmed that the freedom to marry is a fundamental liberty protected by the Due Process Clause. In striking down a law that prohibited inter-racial marriage, the Court pronounced:

"The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men."

"Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival."

The Court revisited the issue of freedom to marry a decade later in *Zeblocki v. Redhail*, 434 U.S. 374 (1978), a case involving marriage by a prisoner. Affirming the prisoner's right to marry, the Court stated: "Cases subsequent to *Griswold* and *Loving* have routinely categorized the decision to marry as among the personal decisions protected by the right of privacy."

As with all constitutional rights, the Court in *Zeblocki* explained that the right to marry is not absolute. "Reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed." The Court elaborated: *Zeblocki*, at p. 388.

"When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests."

This legal test is particularly relevant to decisions by the state that significantly interfere with the choice of an adult with a developmental disability to marry. Prohibitions or restrictions of this type would be strictly scrutinized by courts for constitutional infirmity. A law or rule that only allows persons to marry who have "capacity to consent" would be examined as applied to the facts of a particular case, using criteria for capacity that comply with constitutional requirements and federal disability nondiscrimination laws.

The most recent pronouncement by the Supreme Court on the right to marry is *Obergefell v. Hodges*, 576 U.S. 644 (2015) – a case in which the Court invalidated state statutes throughout the nation prohibiting same-sex marriages. Affirming the constitutional right of same-sex couples to marry, the Court explained:

"Under the Due Process Clause of the Fourteenth Amendment, no State shall 'deprive any person of life, liberty, or property, without due process of law.' The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. . . In addition these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define

"[T]he right to personal choice regarding marriage is inherent in the concept of individual autonomy. . . . Choices about marriage shape an individual's

destiny. . . The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality. This is true for all persons, whatever their sexual orientation. . . Marriage responds to the universal fear that a lonely person might call out only to find no one there. It offers the hope of companionship and understanding and assurance that while both still live there will be someone to care for the other.”

These judicial observations and pronouncements would apply equally to marriages in which one or both adults have a developmental disability. So too would the Court’s conclusion that prohibiting an adult from marrying someone of the same sex violates the Equal Protection Clause. The following quote from its marriage decision is relevant to assumptions about marriages by adults with developmental disabilities: *Obergefell*, at p. 674.

“Indeed, in interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged.”

Consent and Incapacity

Supreme Court precedents regarding liberty focus on “personal choices” central to individual dignity and autonomy. Its marriage decisions have affirmed that “the right to personal choice regarding marriage is inherent in the concept of individual autonomy.” In other words, the constitution protects an individual’s freedom of choice.

This is consistent with international human rights recognition that all persons with disabilities who are of marriageable age have a right to marry and to found a family on the basis of free and full consent. Consent is another term for choice.

Many adults with developmental disabilities may aspire to someday do what most other people desire — to marry. The right to marry and “have a family of one's own is not reserved only for persons with no disabilities, and the yearning for companionship, love, and intimacy is no less compelling for persons living with disabilities.” *In re Proceeding for the Appointment of D*, 19 N.Y.S.3d 867, 875 (N.Y. Surr. Ct. 2015)

Despite having a developmental disability, an adult may desire “to choose whom he loves, to marry, to establish a home, and, perhaps, to bring up children some day; these are choices central to his personal dignity and autonomy and his pursuit of happiness, and they are his to make.” *Appointment of D.*, supra.

Not in a Guardianship

As in all other states, Missouri requires that the parties to a marriage must consent. “Marriage is considered in law as a civil contract, to which the consent of the parties capable in law of contracting is essential.” RSM §451.010. Marriages between persons who lack capacity to enter into a marriage contract are presumptively void. RSM §451.020.

Although a marriage may be challenged on the ground that one or both of the parties did not consent or lacked the capacity to consent, every person is presumed to have the capacity to marry until the contrary is shown. *Sheffield v. Andrews*, 440 S.W.2d 175, 179. (Mo. Ct. App. 1969) “The presumption of the validity of a marriage is one of the strongest known to the law.” *Forbis v. Forbis*, 274 S.W.2d 800, 806 (Mo. Ct. App. 1955)

A contract of marriage is not lightly to be pronounced void on the ground that one of the parties was incompetent and thus incapable of contracting. The presumption of the validity of a marriage “may be repelled only by the most cogent and satisfactory evidence.” *Sheffield*, supra. The burden of proving the invalidity of a marriage rests upon anyone who asserts such invalidity. *Forbis*, supra, at p. 806-807.

Under these precedents, there is a strong presumption that adults with developmental disabilities may legally marry in Missouri. If such a marriage is challenged, the condition of mind at the time of the marriage governs the question of mental capacity to enter into a marriage contract. *Westermayer v. Westermayer*, 216 Mo. App. 74, 85. (Mo. Ct. App. 1924)

“[M]ere weakness of intellect is not deemed sufficient to invalidate the marriage if the party is capable of comprehending and understanding the subject of the contract, its nature, and probable consequence.” *Westermayer*, supra, at p. 83.

“It is apparent from an examination of the authorities that it would be dangerous as well as difficult to prescribe the exact degree of mental capacity necessary to the validity of such a contract. Such contracts, in many cases, depend upon sentiments of attachment and affection, which the weak as well as the strong intellectually may feel. Thus, a marriage contract differs in many respects from all other civil contracts.”

Although an individual may be found incompetent to make commercial contracts, that finding does not automatically render him or her incompetent to make a marriage contract, because the nature of marriage contracts differs from that of other contracts. *In re O'Brien*, 847 N.W.2d 710, 715 (Minn. Ct. App. 2014) Any limitation on the right to marry must therefore be supported by findings focused specifically on whether “a person clearly is incapacitated with respect to choosing a spouse.”

Capacity to consent to marriage exists if a person comprehends and understands “the nature and effect of the marriage contract and the duties and obligations thereby assumed by the contracting parties.” *Forbis*, supra, at p. 806. There is a consensus in the states regarding this standard for capacity to marry. *In re O'Brien*, supra.

With this standard in mind, the education and counseling of adults with developmental disabilities who are contemplating a marriage should focus on the nature of marriage and the consequences of becoming married.

Capacity to consent to marriage can be professionally evaluated after an adult with a developmental disability receives appropriate education and counseling. According to one professional journal article, four criteria are suggested to determine if capacity to marry exists. “Evaluation of the Capacity to Marry,” *Journal of the American Academy of Psychiatry and the Law*, Vol. 45, pp. 292–97 (2017).

“There are four basic elements to assessing capacity, and it is important to keep in mind that capacity is decision specific and can be fluid. The first criterion is that a patient must be able to express a clear and consistent choice. . . . Second, the patient must be able to understand the risks and benefits of the decision, as well as the alternatives. The risks and benefits may relate to finances and living arrangements. It may also have implications for end-of-life decision-making, as the spouse is the one to whom providers turn first to make these decisions in the setting of patient incapacity if a formal health-care proxy is not designated. . . . The third prong of a capacity assessment is to be able to apply those risks, benefits, and information regarding the decision to the evaluatee. . . . This means that [the evaluatee] would understand beyond the general implications of the risks, benefits, and alternatives to marriage and instead be able to understand how those elements apply in his particular case. Finally, the patient must be able to manipulate the relevant information rationally, meaning that there is not, for example, a mental illness such as dementia, psychosis, or severe depression that is hindering rational thought. In other words, there is not a cognitive or information-processing barrier preventing the patient from grasping the gravity of the decision at hand.”

For adults who are receiving financial benefits from the government, marriage can result in a reduction or loss of such benefits depending on the assets and income of the intended spouse. This is sometimes called “deeming.” The person counseling the adult should determine whether such a reduction or loss will occur, explain that to the adult, and make sure they understand this consequence. If the economic consequence is too severe, unmarried cohabitation with a non-legal commitment ceremony is an option which may be chosen.

Several guidelines emerge as these four principles are applied to the capacity to marry. First, an adult entering into marriage must do so voluntarily. There may not be undue influence or coercion. Second, the adult must have the capacity to do so, as defined above by the four criteria. Finally, the adult must know with whom he is entering the marriage. In essence, these principles are an amalgam of the principles used in medical venues (medical decision-making capacity) and legal venues (such as testamentary and contract capacity).

It is important to remember, perhaps due to fundamental nature of the right to marry, that “an extremely low level of mental capacity [is] needed before making the decision to marry. . . . Marriage arises out of a civil contract, but courts recognize this is a special kind of contract that does not require the same level of mental capacity of the parties as other kinds of contracts.” *In re Marriage of Greenway*, 217 Cal.App.4th 628, 641 (2013)

The presumption of and standard for capacity to marry was discussed in a law review article providing additional guidance on these issues. “All His Sexless Patients: Persons with Mental Disabilities and the Competence to Have Sex,” 89 Wash. L. Rev. 257 (2014).

The article explains: “As in other areas of civil law, individuals are presumed to possess capacity in the absence of a determination to the contrary. Moreover, a presumption of validity applies to marriages, reflecting the state's interest in promoting and protecting marriage and family.” It adds: “The best accepted standard for mental capacity to marry is whether the individual understands the nature of the marriage contract and the duties and responsibilities it creates.”

In terms of the consequences of marriage, an adult does not have to understand the technicalities of matters such as the property rights of a surviving spouse or the effect of marriage on wills pre-dating the marriage. All that is required is a general understanding that the adult will have duties to the spouse, such as a duty to provide support, and the spouse may have authority to make decisions affecting the adult, such as the right to make medical decisions if the adult were to become unconscious.

Again, courts have emphasized that marriage differs from ordinary contracts. *Johnson v. Johnson*, 104 N.W.2d 8, 14 (N.D. 1960)

“[Marriage,] in many cases, depends more on sentiments of mutual esteem, attachment, and affection, which the weakest may feel as well as the strongest intellects, than on the exercise of a clear, unclouded reason, or sound judgment, or intelligent discernment and discrimination, and in which it differs in a very important respect from all other contracts.”

“[Marriage] is not a contract resembling in any but the slightest degree, except as to the element of consent, any other contract with which the courts have to deal, is apparent upon

a moment's reflection. * * * What persons establish by entering into matrimony, is not a contractual relation, but a social status; and the only essential features of the transactions are that the participants are of legal capacity to assume that status, and freely consent so to do." *Edmunds v. Edwards*, 287 N.W.2d 420, 425 (Neb. 1980).

In a Guardianship

There are more than 30,000 adults in Missouri who are living under an order of guardianship. Many of them have developmental disabilities. Some of these individuals may have a desire to marry. Can they do so without the prior consent of their guardian?

A threshold question is whether the objections of a parent to marriage by their adult son or daughter justifies the filing of a petition for a guardianship. One court has emphatically said it is not. *Appointment of D.*, supra.

Missouri law is clear that an adult who has a guardian is not precluded from marrying because he or she is in a guardianship. Although an adult in a guardianship may not enter into an ordinary contract without permission from the guardian, this rule does not apply to a marriage contract. *Wormington v. Wormington*, 226 Mo. App. 195, 201 (Mo. Ct. App. 1932)

A Missouri statute which makes the contracts of persons of unsound mind under guardianship absolutely void does not apply to marriage contracts. A person under guardianship may legally contract a valid and binding marriage and it may not be annulled if such person was actually of sound mind at the time of the marriage. *In re Guthery v. Wetzel*, 205 Mo. App. 664, 669 (Mo. Ct. App. 1920)

Judicial precedents in other states are consistent with the rule in Missouri that adults living under an order of guardianship may marry if they actually have the capacity to consent. For example, in Ohio the mere fact that an adult is under a guardianship does not render his or her marriage void. *Boyd v. Edwards*, 4 Ohio App. 3d 142, 148 (Ohio Ct. App. 1982). The same is true in Minnesota. "[A] person who has been adjudged incompetent may contract to a valid marriage if he had, in fact, sufficient mental capacity for that purpose." *Johnson v. Johnson*, 214 Minn. 462, 8 N.W.2d 620, 622 (1943).

The same criteria for capacity to marry is used for adults in a guardianship as for those who are not. If they have a basic understanding of the nature of a marriage and the general consequences arising from a marriage, they have the legal capacity to marry.

The Standards of Practice of the National Guardianship Association provide guidance regarding marriages by adults living under an order of guardianship. Although it does not specifically mention marriage, Standard 10 states: The guardian shall acknowledge the person's right to interpersonal relationships and sexual expression. The guardian shall take

steps to ensure that a person's sexual expression is consensual, that the person is not victimized, and that an environment conducive to this expression in privacy is provided.” Freedom to marry is inherent in the “right to interpersonal relationships and sexual expression.”

Educational [materials](#) provided in a [self-study course](#) offered by the National Guardianship Association are quite detailed about the right to marry and legal capacity for adults whether they are in a guardianship or not. The NGGA course used a paper titled “Maximizing Autonomy and Ensuring Accountability.” The paper and its authors were also used in a [webinar](#) sponsored by the United States Department of Justice in 2021 and at the Fourth National Guardianship [Summit](#) held at Syracuse University College of Law the same year.

The paper explains that the English Common Law standard for capacity to marry is stated in the frequently cited English probate case of *Durahm v. Durahm*, 10 P.D. 80 (1855):

“It appears to me that the contract of marriage is a very simple one, which it does not require a high degree of intelligence to comprehend. It is an engagement by a man and a woman to live together and love each other as husband and wife to the exclusion of others. I accept for the purpose of definition (of soundness of mind) which has been substantially agreed to by counsel, viz, a capacity to understand the nature of the contract, and the duties and responsibilities which it creates.”

The paper also discusses the issue of marriage for adults living under an order of guardianship. “Although the criteria may differ among states, all state guardianship statutes presume capacity. Just because an order has been entered adjudicating an adult to be incapacitated does not bar contracting a valid marriage.”

Removing Barriers to Marriage

Adults with developmental disabilities may be excluded or dissuaded from marriage by social, educational, or financial barriers. Since marriage is a creation of state government – with marriage licenses issued by government officials and ceremonies performed by judges – various federal laws require that state agencies and officials should provide reasonable accommodations to make marriage accessible to adults with developmental disabilities.

Developmental Disabilities Assistance and Bill of Rights Act of 2000 ([link](#))

Congress declared that the nation has a goal of providing individuals with developmental disabilities with the information, skills, opportunities, and support to:

- * make informed choices and decisions about their lives;

- * live in homes and communities in which such individuals can exercise their full rights and responsibilities as citizens;
- * have interdependent friendships and relationships with other persons.
- * have friendships and relationships with individuals and families of their own choice.

With this goal in mind, Congress created protection and advocacy systems in each state to protect the legal and human rights of individuals with developmental disabilities. Congress has also provided funds to state and local agencies to provide educational, counseling, and other services to people with developmental disabilities. Entities receiving such funds should take affirmative steps to provide the necessary information to such persons to enable them to attain the capacity to consent to marriage. Education and counseling about marriage, including its rights and responsibilities, should be made available in a format that is understandable, considering the mental abilities of the person being educated or advised.

Americans with Disabilities Act ([link](#))

When it adopted the ADA in 1990, Congress recognized the need to protect the rights of people with disabilities. Congress declared that, despite their right to participate fully in all aspects of society:

- * many people with physical or mental disabilities have been precluded from doing so because of discrimination;
- * people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially; and
- * physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers.

To remedy these and other problems identified by Congress, Title II of the ADA was enacted to prohibit state and local governments from discriminating against people with physical and mental disabilities.

The passage of these federal laws establish a clear national policy that adults with developmental disabilities should have the same marriage and family rights as adults without such disabilities. Full participation in all aspects of society includes a meaningful opportunity to participate in the institution of marriage. Barriers to marriage should be removed. This may require modifications to sex education classes or instructional materials about marriage and family to make them more understandable to people with developmental disabilities.

HCBS Rule ([link](#))

The HCBS Rule is a federal Medicaid regulation that defines person-centered planning (PCP) standards for individuals receiving Home and Community Based Services which are an array of long-term care services funded by Medicaid.

The [website](#) of the federal Administration for Community Living explains: “The PCP [person centered planning] approach identifies the person’s strengths, goals, medical needs, needs for home-and community-based services, and desired outcomes. The approach also identifies the person’s preferences in areas such as recreation, transportation, friendships, therapies and treatments, housing, vocational training and employment, family relationships, and social activities. Unique factors such as culture and language also are addressed.”

These elements are included in a written plan for supporting the person which is developed based on those considerations.

Any private or public entity providing HCBS to an adult with a developmental disability must help the individual develop and implement a plan that respects their civil rights, including family relationships. Marriage is an important family relationship. Education and counseling about the possibility of marriage, if desired by the service recipient, should be an option to be included in their service plan . [Missouri](#) has a wide range of HCBS programs.

Economic Barriers

Various federal and state benefits programs make it practically impossible for many adults with significant disabilities to marry. One of them is Supplemental Security Income (SSI) – a Social Security Administration (SSA) program for people with disabilities who have little to no income and assets.

“SSI recipients receive a monthly cash benefit and Medicaid. Medicaid covers personal attendant care and other disability-related services and devices that private insurance does not cover. Many people with significant disabilities must have Medicaid to live in the community with supports instead of in institutional settings.” [Website](#), Disability Rights Education and Defense Fund. As DREDF explains:

“SSI recipients can lose their cash benefit and Medicaid if they marry a person with even a modest income or level of assets. This is because SSA counts part of the spouse’s income and assets as belonging to the SSI recipient. For many SSI recipients, this means that they are then considered or “deemed” to have income or assets that are too high for SSI or Medicaid. This counting is called ‘spousal deeming.’”

When an SSI recipient marries a person who is not on SSI, a portion of the non-SSI spouse's income is considered by the SSA to be available to the recipient which can cause his or her SSI stipend to go lower. DREDF describes how this can affect Medicaid benefits:

“If the SSI spouse's stipend goes to \$0 due to ‘spousal deeming,’ then they no longer qualify for SSI. Losing SSI can mean losing Medicaid unless the SSI spouse can qualify for Medicaid another way.

“‘Spousal deeming’ also applies to assets. If the combined countable assets of the couple exceeds \$3,000, then the SSI spouse no longer qualifies for SSI and can lose Medicaid. With such a low asset limit, marrying someone with \$3,500 in savings could cost someone their SSI stipend and Medicaid.”

DREDF points to several bills in Congress that would eliminate or reduce the barrier to marriage caused by spousal deeming:

“The Marriage Equality for Disabled Adults Act, H.R. 6405 (Rep. Jimmy Panetta, CA-20), would allow DAC recipients to marry without losing Medicaid through spousal deeming. The Marriage Access for People with Special Abilities Act, H.R. 761 (Rep. John Katko NY-24) would eliminate the “spousal deeming” rules for a subset of recipients of SSI, people with intellectual developmental disabilities.

“The SSI Savings Penalty Elimination, S. 4102 (Sen. Sherrod Brown, D-OH), and the Supplemental Security Income Restoration Act of 2021, S. 2065 (Sen. Brown, D-OH), would each increase SSI asset limits. Higher asset limits would make it less likely for ‘spousal deeming’ of assets to cost someone their SSI benefits.

“The SSA can itself change the ‘spousal deeming’ rules for SSI recipients without Congress doing anything. The statute says that a portion of the spousal income must be counted, except where the SSA finds that deeming is “inequitable under the circumstances.” Under this rule, the SSA could count less of the income received by the non-SSI spouse by first deducting a living allowance. This is what the SSA does in the context of a parent who does not receive SSI but who lives with a child who receives SSI.

The Arc of the United States has engaged in an educational campaign to gain support for the elimination of spousal deeming for adults with developmental disabilities. “When People With Disabilities Are Forced to Choose Between Love and Needed Benefits: Marriage Penalties,” February 12, 2021, Arc [website](#). Spectrum Institute has [written](#) to The Arc, offering to collaborate on this important endeavor. The letter explained how Spectrum

Institute and its organizers have been working to solve the “deeming” problem for 40 years.

A proposal by the California Legislature’s Joint Select Task Force on the Changing Family should be considered by the Missouri Legislature. Remedial legislation could be patterned after a law adopted decades ago in the Virgin Islands for seniors. A modified bill in Missouri could be designed for use by people with disabilities who are receiving government benefits.

The Virgin Islands legalized an alternate form of marriage in 1981 to eliminate the effects of “deeming” on seniors who might lose pension survivor benefits if they remarried. Vesper Marriage Act of 1981, V.I. Code Ann. tit. 16, §§ 81-86 (Supp. 1982-1983).

The "Vesper Marriage Act designates couples legally married, but allows each individual to be treated as a single person for the purposes of taxation, inheritance, and receipt of pension benefits. The act provides that "[f]or purpose of taxation and the receipt of pension benefits, parties to a vesper marriage shall be considered and treated as single persons as though they had not entered into the marriage contract." Id. at § 84(c).

While federal legislation may remain pending for years without enactment, the Missouri Legislature could take action now to remove some or all of the financial barriers to marriage for adults with developmental or other disabilities by passing a Vesper Marriage Act.

Transition Education and Counseling

Studies have shown that marriage may have significant benefits for those who chose to form and live in such a relationship. “Altar-Bound? The Effect of Disability on the Hazard of Entry into a First Marriage,” *International Journal of Sociology*, [Vol. 41](#) (Spring 2011)

“Researchers consistently find evidence that marriage offers a number of benefits: improved psychological and physical health, lower rates of risky health behaviors, financial benefits, and higher levels of sexual satisfaction (Waite 1995). Married individuals have lower rates of mortality than the never married, divorced, or widowed (Ross, Mirowsky, and Goldsteen 1990), and, particularly for women, those who are married report significantly better health than do the never married, the widowed, and the divorced (Liu and Umberson 2008). Further, marriage improves mental well-being: Individuals’ mental health status improves after they marry and declines after they divorce or are widowed (Marks and Lambert 1998).”

In the United States, the vast majority of individuals, perhaps as many as 90 percent, will marry at some point in their lives. Entry into marriage is one of many transitions into adulthood. But for adults with developmental disabilities, this transition generally never occurs. Disincentives to marry may involve parental disapproval, societal prejudices,

physical barriers to socializing and meeting a potential life mate, or economic penalties. Another barrier may be a lack of knowledge about marriage and educational messaging that marriage is even possible for people with developmental disabilities.

Data from one study suggests that the presence of a mental disability may suppress the transition from being single to being married. See the *Altar-Bound* study. Out of 16 million people surveyed who had no disability, nearly 50% had married once. In contrast, out of 1 million with a learning disability only 42% had married and of the 28,000 adults with a mental disability, only 37% had married. The study concluded that disability has a negative effect on the probability and timing of entry into marriage.

Helping adults with developmental disabilities to access the right to marry requires education and counseling. People with developmental disabilities are entitled to “Individualized education and information to encourage informed decision-making, including education about such issues as reproduction, marriage and family life. Joint Policy Statement of the American Association on Intellectual and Developmental Disabilities and The Arc of the United States (2008). Missouri [law](#) does not require students to be educated about marriage.

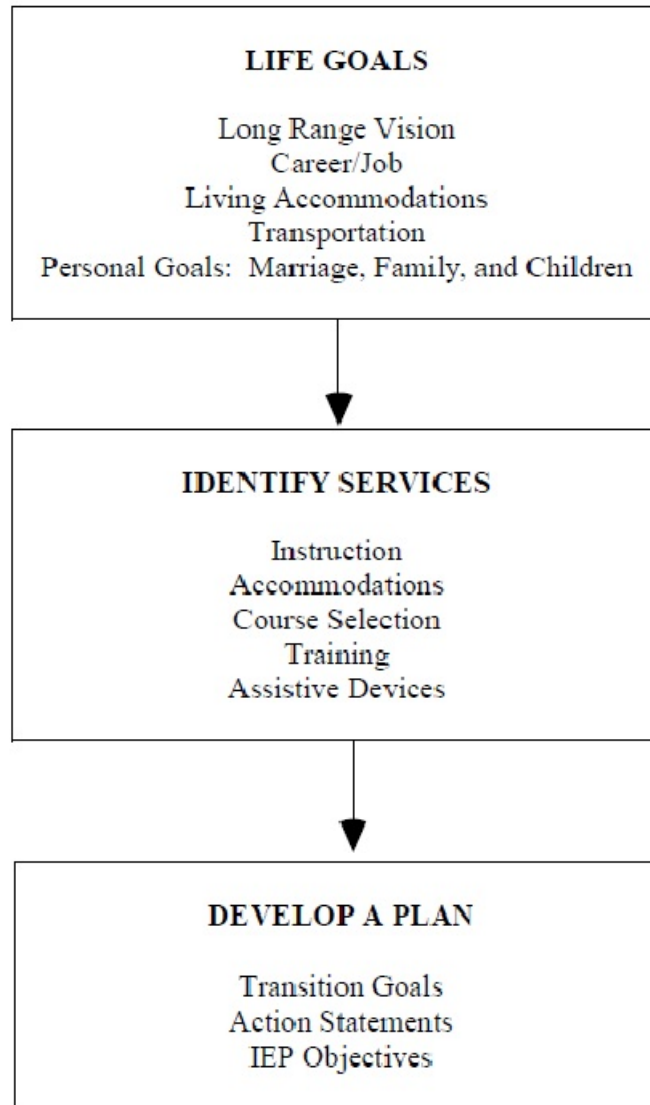
The topic of marriage, including its benefits and obligations, should be included in transition planning for special education students. In the field of education, the term “transition” is used to describe the passage from school to adult services and *full community participation*. “Transition and Your Adolescent with Learning Disabilities,” [Parent Handbook](#). The book was published by the Shawnee Mission School District with support from Kansas Transition Systems Change Project (a collaborative effort of the Kansas State Board of Education and Kansas Rehabilitation Services) under a grant from the U.S. Office of Special Education Programs.

The handbook explains that “transition” is “a bridge between the security and structure offered by school and the opportunities and risks of adult life (Will, 1989). For the student with a learning disability, transition offers challenges that require guidance and assistance from families and others to help him or her effectively deal with these challenges.” It adds:

“Transition should be considered an outcome-oriented process. This means that the process first identifies future-oriented visions and life goals of your adolescent and then provides needed instruction or services to fulfill those goals. The process begins with identifying life goals developed by a ‘transition team’ ideally involving school and community professionals and you and your adolescent.”

A review of the websites of agencies and organizations in Missouri suggest that setting goals for relationships, marriage, and family is not a topic being covered by many transition education and counseling services. The “[transition services](#)” webpage of the Department of

Elementary and Secondary Education is silent on this topic. The same is true for the “[transition to adulthood](#)” webpage of Missouri Parents Act (MPACT, a non-profit and federally-funded Parent Training and Information Center. Information on the [transition webpage](#) of Autism Speaks discusses education, guardianship, social security, housing and vocational rehabilitation, but not marriage or family planning. The “[transition services](#)” webpage of Liberty Public Schools does not contain information about marriage or family planning.



The results of this preliminary search of transition planning services being offered in Missouri calls for a larger survey throughout the state.

College Transition Programs

In the fall of 2023, the University of Missouri College of Education and Human Development is launching PAWS—Preparing Adults for Work and Society—a residential program for post-secondary students with intellectual and developmental disabilities. The PAWS webpage explains that the program is modeled after a similar program at the University of Missouri–St. Louis. In addition to promoting job skills, it will teach and counsel students about independent living skills and social skills.

The two-year program will allow participants to take PAWS-specific classes, which will focus on job skills, healthy relationships and sex education, as well as independent living, and social skills. The program should include a specific component on marriage.

Other States

Massachusetts has published a [Resource Guide](#) on “Healthy Relationships, Sexuality and Disability” which includes resource materials on marriage. Many of the resources in the Healthy Relationships, Sexuality and Disability Resource Guide were first suggested by the youth and adults who took part in a statewide survey. Others were suggested by the staff of related state agencies and program partners. The guide was prepared by the Massachusetts Department of Public Health (MDPH) in partnership with the Massachusetts Department of Developmental Services (MDDS).

The University of California Office of Developmental Primary Care has [published](#) “Our Sexuality, Our Health: A Disabled Advocate's Guide to Relationships, Romance, Sexuality and Sexual Health.” It contains information about sex, family planning, dating, living together, and marriage.

In Virginia, Family Life Education was often not available to students in special education programs. In 2020, a [law](#) was passed requiring that such instruction be considered when developing an Individual Education Plan (IEP). The Institute for Innovation in Health and Human Services has published [booklets](#) on how to incorporate family life education into IEPs. Although the concepts outlined in one booklet includes various types of sex acts, dating, pregnancy, and parenting, unfortunately marriage is not mentioned.

An education tool called [Relationships Decoded](#), tested in partnership with the UC Davis MIND Institute, shows promise in helping people with neurodevelopmental disabilities to create healthy, romantic relationships. Funding was provided through the California Mental Health Services Act in partnership with the state’s Department of Developmental Services.

Learners who participated in the *Relationships Decoded* program scored significantly better on the post-test than the pre-test, showing that the lessons were effective in increasing

knowledge and understanding of social-sexual relationships. The [curriculum](#) uses evidence based practices and is free to teachers, therapists, and other professionals. While relationships and dating are included, marriage is not.

Conclusion

One academic [study](#) has reported that the primary barriers to relationship and sexuality education for students with developmental disabilities include: the need to protect vulnerable persons; the lack of training; the scarcity of educational resources; and cultural prohibitions. “Reducing the barriers to relationships and sexuality education for persons with intellectual disabilities,” *Journal of Intellectual Disabilities*, Vol. 16 (February 2012). If it truly values the institution of marriage and supports the principle of equal rights for people with disabilities, the State of Missouri should find ways to overcome those barriers.

In collaboration with the Department of Mental Health, the Department of Elementary and Secondary Education, and the University of Missouri, disability rights and disability service organizations should conduct a needs assessment survey for family life education and counseling, including marriage, for teenagers and adults with developmental disabilities. If they receive sufficient information about the nature and consequences of marriage, and support in their decision-making regarding marital status choices, it is more likely that people with developmental disabilities will be able to exercise their right to marry.

Furthermore, the Missouri Developmental Disabilities Council and other organizations in Missouri receiving federal funding should develop and promote methods to make marriage accessible to adults with developmental disabilities, without discrimination, as required by the Americans with Disabilities Act and other federal statutes.