

Marriage Laws Discriminate Against the Disabled

By Martha A. Churchill

Michigan law discriminates against people with developmental disabilities and people with mental illness. Getting married is actually a crime for these folks.

The worst of the anti-marriage laws is what I call the "Idiot Law" at MCL 551.6, which says idiots and insane persons can't marry.

If they do marry, their spouses are also violating our Criminal Sexual Conduct statute at 750.520b by sharing a home with the disabled person.

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 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.

Here's how it works: If you have ever been institutionalized, even briefly, you are forever barred from marriage in Michigan. The only escape is to obtain a certificate from two physicians declaring that you are completely cured and cannot have children with disabilities.

Guardianship has been part of the Idiot Law since 1923. Anyone "adjudged" an idiot, imbecile, etc., cannot marry, the law now says. This is no joke; the Idiot Law is still being enforced. In 1980, the Michigan Appeals Court published a decision endorsing it, voiding a woman's marriage simply because she had a guardian appointed for her.

May v Leneair, 99 Mich App 209, 297 NW2d 882 (1980).

In 1999, the same thing happened to Robert Evasic, who suffered a brain injury after an automobile accident. Five years after having a guardian appointed, Mr. Evasic married. He and his wife were busy raising a child when the guardian filed a complaint in Washtenaw County Probate Court to annul the marriage.

Applying the Idiot Law, our Michigan Court of Appeals ruled for the guardian, declaring that the marriage was "absolutely void." *Evasic v Evasic*, COA Docket No. 215875, February 4, 1999.

Michigan's Criminal Sexual Conduct statute is equally oppressive to people with mental disabilities. Anyone who dares walk down the aisle with a person who is developmentally disabled or mentally ill risks life in prison for first degree criminal sexual conduct. The statute gives a defendant life in prison if the other person is "mentally incapable, mentally disabled, [or] mentally incapacitated, . . . and . . . the actor is related to the victim by blood or affinity to the fourth degree." MCL 750.520b(h).

Therefore, if two mentally retarded adults get married to each other, this law says they are both felons.

People have actually been put behind bars in recent years for getting frisky with a person who has a developmental disability. *People v Breck*, 230 Mich App 450, 584 NW2d 602 (1998).

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The "Idiot Law" may be repealed soon. Even so, caselaw still holds—wrongly—that mentally disabled adults lack the legal capacity to enter into a marriage contract. It's time we superseded that caselaw with new statutes allowing marriage and other personal relationships, unless there is a danger to the individual.
—Martha A. Churchill

Last year, a sheltered workshop found itself being sued just because it failed to stop a romance involving someone with a developmental disability. *Bean v Directions Unlimited, Inc.*, 462 Mich 24, 609 NW2d 567 (2000).

Michigan must end its Neanderthal legal treatment of people with disabilities. The U.S. Supreme Court has spoken repeatedly of the Constitutional right to marriage, reproductive freedom, and the sanctity of the family. See *Griswold v Connecticut*, 381 US 1, 87 S Ct 1817 (1967); *Loving v Virginia*, 388 US 1, 87 S Ct 1817 (1967), and *Skinner v Oklahoma*, 316 US 535, 62 S Ct 1110 (1942).

By denying marriage and sexual freedom purely on the basis of disability, Michigan laws run afoul of the 14th Amendment to the Constitution as well as the Americans with Disabilities Act, 42 USC 12132. Anyone with a disability should assert this right, and so should the significant other.

Every citizen should have the right to date or marry a person with a disability.

I suggest amending the guardianship laws, both EPIC and the Mental Health Code, to permit a sensible evaluation of marriage by the probate judge. Does the person with a disability want to get married? Does the other party have a history of violence? Does marriage pose any health or safety risk for the disabled person?

Lets repeal Michigan's overprotective and oppressive laws, which prevent people from living life to the fullest. Instead, we need sensible criteria that evaluates each case on its merits. ♦

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