

# **Change of Alabama Marriage Law and Catholic Diocese of Birmingham Procedures**

*August 23, 2019*

## **Introduction**

The Church is a proponent of the civil order and the public common good. In this connection, as regards marriage, the Church recognizes that governments have legitimate claims on the regulation of its civil effects (see Code of Canon Law, canons 1059 and 1071). Therefore, as good citizens, we strive to follow such laws and encourage others to observe them also.

Until now, in the State of Alabama, a couple could enter into a civilly recognized marriage even if they contracted it in a church setting. In such cases, they did so by first obtaining a marriage license (permission) from a judge of probate. This license was then signed by the minister who witnessed their marriage immediately after its celebration. Upon receiving the signed license, the State would record the union as a valid marriage with civil effects.

A new law, signed by Governor Kay Ivey on May 31, 2019 and taking effect on August 29, 2019, drastically changes the process we have known for decades. It is urgent that we understand these changes and be ready to implement them for any man and woman who wish to celebrate marriage in our Catholic churches in the Diocese of Birmingham after the effective date.

## **Summary of the New Law**

The new law eliminates the requirement for a marriage license and is no longer concerned with marriage ceremonies. Rather, the State will recognize a couple as married when they properly complete and submit the appropriate affidavit within the timelines stipulated by the new law. The State neither requires a marriage ceremony nor prohibits it. What is only important for the State is the filing of the correct paperwork.

Through this new process, the State does not declare anyone to be married or otherwise designate anyone to preside over a marriage. If they meet the minimum age requirements, fill out the forms completely and correctly, and pay the associated fees, the State accepts that they are married – even if there was no formal ceremony, whether secular or religious.

*That said, it must remain clear that Catholics are still bound by the canonical form for marriage.* When a Catholic wishes to marry another Catholic, a baptized Christian, or a non-baptized person and have that union be recognized as valid before God and in the Church, he or she must follow the Church's own marriage laws, in addition to the civil marriage laws where he or she resides.

## **Primary Benefit and Pitfall of the New Law**

The primary benefit of the new law for the State concerns the protection of consciences of State officials, particularly in light of legislation of recent years recognizing same-sex unions

as civilly valid marriages. The introduction of such laws resulted in some civil officials feeling coerced into cooperating in something that, in conscience, they could not support. Some judges of probate even refused to issue marriage licenses for same-sex couples in their jurisdictions. Now, under the new law, they do not have to approve in any way of unions they consider to be wrong (whether of the same sex or of other varieties – e.g., divorced-and-remarrying individuals); the onus is put on the couple to declare themselves married, rather than on the State to license their union.

A major pitfall of the new civil law is that it may further confuse people’s understanding of marriage. “The law is a teacher” – but this new civil law does not recognize church ceremonies for the purposes of contracting a marriage with civil effects. Many Catholics already are confused over civil and Church laws on marriage and how those laws interact. Moreover, pastors have noted the steep decline in recent decades of Catholics seeking Church marriages – many opt for venue weddings (e.g., at the beach) presided over by a justice of the peace or non-Catholic minister instead. The new law could reinforce among under-catechized Catholics the erroneous idea that the ecclesiastical ceremony is not important. *It will be more necessary than ever for us to catechize our people on the Catholic form of marriage and how it differs from State requirements.*

## **New State Procedures**

As of this writing, there are still some aspects of the new law that are unclear from the outset and are awaiting clarification; additional doubts could also arise as the law is put into practice. Based on the information currently available, the new State procedures may be summarized as follows:

1. Obtain a Marriage Certificate Form from the state or county probate judge’s office. This form is also available on the web site of the Alabama Department of Public Health: <http://www.alabamapublichealth.gov/vitalrecords/marriage-certificates.html>. *Please note that there is a distinct form when at least one of the parties to marriage is under 18 years of age but at least 16; the consent of parent(s) is also required.*
2. Complete the form according to its instructions. The form requests the same basic information about each spouse as under the old system. Some counties may require that the form be typed to avoid difficulties in reading the certificate. There has been talk of the form being provided in a “fillable PDF” format, but the one linked from the site above does not function that way, as yet.
3. Take the completed form to a Notary Public for both parties to sign. The parties can sign the document separately and/or at different times, but both signatures must be notarized. Many parish offices have an employee who is a licensed Notary Public; almost all banks do as well.
4. Deliver the notarized form to the county probate judge’s office for recording, along with the filing fee from that county (fees may vary by county). The form must be submitted within 30 days of the latter of the two spouses’ signatures on it.
5. The effective date of the marriage will be recorded by the State as the latter of the dates of the signatures of the spouses. In other words, if the spouses do not sign it together in front of the notary but have their signatures notarized separately, the date for the one who signed it last will determine the date of the marriage in the state register. (See below for a disclaimer about anniversary dates!)

All other civil requirements related to getting married – namely, that applicants must be of legal age, are not already married, are not related, and are competent to enter into marriage – remain the same. The marriage does not have to be solemnized by a minister or someone else licensed to perform a ceremony, and that person does not have to sign the form.

## **New Church Procedures**

From the foregoing it is evident that, since the State does not require any ceremonies (whether religious or otherwise), it also has no preference about the order that things are done for those couples who choose to have a ceremony – e.g., a church wedding. A couple, having followed the requirements of the state law, is acknowledged by the state to be civilly married. This can occur days, weeks, or even months *before or after* any religious ceremony.

However, from the perspective of the Diocese of Birmingham in Alabama, we believe that it is important that there be both a civilly recognized marriage, as well as a valid marriage in the Church. And from a practical perspective, the requirements for the civil marriage should be in process before the canonical marriage is celebrated.

Therefore, beginning August 29, 2019, our new internal (Church/diocesan) procedure for implementing this law will be as follows:

1. A couple must follow the State marriage process (see preceding section) *before* having their Church wedding.
2. They must bring a copy of their signed and notarized State Marriage Certificate Form to the church *before their Church ceremony may take place* – this is analogous to our prior practice with marriage licenses, where it was typically brought to the rehearsal the night before.
  - a. This form should have been signed, notarized by both parties, and submitted to the probate court within 30 days before their Church wedding. (We do not need proof that it was successfully filed with the State and that it was entered into State records.)
  - b. For those who have been civilly married and now wish to have their marriage convalidated in the Catholic Church, they should request a certified copy of their marriage certificate from the State (at a Public Health Department) and it should be included in their pre-nuptial file as proof of their civil marriage. The key point is, in the case of a convalidation, *we need to know that they followed through with registering their marriage and that it was entered into the State's records.*
3. The proofs should be included in the parties' permanent marriage file, which is kept in the parish's files.
4. Immediately following the church wedding, we then follow our normal procedures of recording the marriage in the sacramental register and notifying the parish(es) of baptism.

*A major consequence of this new law is that the date that the State considers the couple to have married will be different than the date of their Church wedding. We have the duty to remind couples that the Church ceremony is what actually brings about their marriage before God, so they should observe its date as their anniversary.*

## **Couples Prepared for Marriage in the Diocese but Marrying Out-of-State**

Whenever we have prepared a couple for marriage in one of our parishes, but their wedding is scheduled to take place elsewhere, they follow the civil law of the place where their marriage will take place.

Let's consider a concrete example: John and Susy met while completing their undergraduate degrees at Loyola in New Orleans but are now living and working in the Diocese of Birmingham. The couple wishes to celebrate their wedding at Loyola chapel in New Orleans. They go to their local priest or deacon in the Diocese of Birmingham to receive marriage preparation. He completes the Pre-Nuptial Investigation and other diocesan marriage requirements (Engaged Encounter, etc.). He then forwards the pre-nuptial file to the Chancellor's Office in Birmingham, which in turn forwards it to the Chancellor of the Archdiocese of New Orleans. The Chancellor there then sends it to the priest or deacon at Loyola who will be officiating the marriage. *The couple still must go to the civil authority in Louisiana to obtain a marriage license and fulfill the local requirements, before they have their wedding at the Loyola chapel.*

This procedure remains unchanged. It cannot be emphasized enough: everyone must follow the laws of the jurisdictions where they are getting married!

## **Couples Prepared for Marriage Out-of-State but Marrying Here**

The other reasonably common situation we encounter is that a couple has family roots in the Diocese of Birmingham, but they have since moved away for school or work. They go to the parish priest or deacon where they live, who completes their pre-marriage preparation in accordance with the policies of that diocese. The cleric then forwards the marriage file to the Chancellor of his diocese, who forwards it to the Chancellor of the Diocese of Birmingham, who forwards it to the priest or deacon who will officiate the marriage within our diocese. *In the past, that couple had to get to Alabama early enough to go and get a marriage license, which they then brought to the wedding rehearsal.*

Now they need to know that they must follow the new State procedure. Fortunately, the forms are available online and need not be completed or notarized within the State of Alabama; therefore, the couple will be able to fill it out, get it notarized, submit it to the probate court, and bring a copy with them before the wedding. *We should never accept non-notarized forms!* Couples must meet all the State requirements, which are clearly indicated on the form itself.

## **Immigrants**

From all appearances, the new law does not complicate things for those members of our immigrant population who may lack all the usual credentials that a citizen or resident alien possesses. However, should there be any problems, please contact the Chancellor's Office for further guidance (contact information below).

## **Updates**

Because some doubt remains about the particulars of this new State process, an updated version of this policy may be issued in September. In addition, it remains possible that this law could face legal challenges and possibly suspension or eventual abrogation. We will communicate about any changes that may arise.

## **Questions**

It will take us some time to adapt to the new procedures and new ways of thinking inherent in this change of civil law. If there are any questions, please do not hesitate to contact the Chancellor, Fr. Bryan Jerabek, at [fatherjerabek@bhmdiocese.org](mailto:fatherjerabek@bhmdiocese.org) (email is the most efficient way for the time being).