

The House Committee on Judiciary offers the following substitute to HB 1172:

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 19-7-22 of the Official Code of Georgia Annotated, relating to petition for legitimation of child, notice to mother, court order, effect, and intervention by father, so as to provide for a father to legitimate his child by establishing paternity; to provide where petitions of legitimation shall be filed and served; to address the issues of custody and visitation in a legitimation action; to provide for custody of a child during the pendency of a paternity petition; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 19-7-22 of the Official Code of Georgia Annotated, relating to petition for legitimation of child, notice to mother, court order, effect, and intervention by father, and inserting in its place the following:

"19-7-22.

(a) ~~A~~ Except as provided in subsection (b) of this Code section, a father of a child born out of wedlock may render the same his relationship with the child legitimate by petitioning the superior court of the county of his residence, the county of residence of the child, or, if a petition for the adoption of the child is pending, the county in which the adoption petition is filed for legitimation of the child.

(b) If the petition also seeks visitation or custody rights, the father shall file the petition in the county of the residence of the child's mother or other party having legal custody or guardianship of the child; provided, however, that if the mother or other party having legal custody or guardianship of the child resides outside the state or cannot, after due diligence, be found within the state, the petition may be filed in the county of the father's residence or the county of the child's residence.

~~(b)~~ (c) The petition shall set forth the name, age, and sex of the child, the name of the mother, and, if the father desires the name of the child to be changed, the new name. If the

1 mother is alive, she shall ~~have notice of the petition for legitimation~~ be named as a party
2 and shall be served and provided an opportunity to be heard as in other civil actions under
3 Chapter 11 of Title 9, the 'Georgia Civil Practice Act.'

4 (c) ~~(d)~~ Upon the presentation and filing of the petition, the court may pass an order
5 declaring the father's relationship with the child to be legitimate, ~~and to be capable of~~
6 ~~inheriting from the father~~ that the father and child shall be capable of inheriting from each
7 other in the same manner as if born in lawful wedlock and specifying the name by which
8 the child shall be known.

9 ~~(d)~~ (e) A legitimation petition may be filed, pursuant to paragraph (2) of subsection (e) of
10 Code Section 15-11-28, in the juvenile court of the county in which a deprivation
11 proceeding regarding the child is pending.

12 ~~(e)~~ (f) Except as provided by subsection (f) (g) of this Code section, the court shall upon
13 notice to the mother further establish such duty as the father may have to support the child,
14 considering the facts and circumstances of the mother's obligation of support and the needs
15 of the child as provided under Code Section 19-6-15.

16 ~~(f)~~ (g) After a petition for legitimation is granted, if a demand for a jury trial as to support
17 has been properly filed by either parent, then the case shall be transferred from juvenile
18 court to superior court for such jury trial.

19 (h) The petition for legitimation may also include claims for visitation or custody. If such
20 claims are raised in the legitimation action, the court may order, in addition to legitimation,
21 visitation or custody based on the best interests of the child standard. In a case involving
22 allegations of family violence, the provisions of paragraph (2) of subsection (a) of Code
23 Section 19-9-1 shall also apply.

24 ~~(g)~~ (i) Consistent with the purpose of subsection (a) of this Code section, and subject to the
25 limitations provided in Code Section 19-11-8, whenever the Department of Human
26 Resources petitions the superior court or other authorized trier of fact to establish paternity,
27 the father may intervene to petition for the legitimation of the child born out of wedlock
28 if the mother of the child consents to the filing of such legitimation petition. Upon the
29 determination of paternity or if a voluntary acknowledgment of paternity has been made
30 and has not been rescinded pursuant to Code Section 19-7-46.1, the court or trier of fact as
31 a matter of law and pursuant to the provisions of Code Section 19-7-51 may enter an order
32 or decree legitimating a child born out of wedlock, provided that such is in the best interest
33 of the child. ~~Issues of name change, visitation, and custody shall not be determined by the~~
34 ~~court until such time as a separate petition is filed by one of the parents or by the legal~~
35 ~~guardian of the child.~~

36 (j) Custody of the child shall remain in the mother unless or until a court order is entered
37 addressing the issue of custody."

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SECTION 2.

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All laws and parts of laws in conflict with this Act are repealed.