

House Bill 158

By: Representatives Willard of the 49<sup>th</sup>, Jacobs of the 80<sup>th</sup>, Oliver of the 83<sup>rd</sup>, Lane of the 167<sup>th</sup>, and Everson of the 106<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 7 of Title 19 the Official Code of Georgia Annotated, relating to parent  
2 and child relationship generally, so as to clarify methods of legitimation of a child; to change  
3 provisions relating to petitions for legitimation of a child; to provide the courts with the  
4 ability to order genetic testing upon its own order; to change certain provisions relating to  
5 voluntary acknowledgments of paternity; to amend Chapter 11 of Title 15, Chapter 8 of Title  
6 19, Code Section 29-2-15, and Chapter 2 of Title 53 of the Official Code of Georgia  
7 Annotated, relating to juvenile proceedings, adoption, notice of petition for appointment of  
8 permanent guardian, protest of father, and petition to legitimate, and descent and distribution,  
9 respectively, so as to correct cross-references; to provide for related matters; to repeal  
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 7 of Title 19 the Official Code of Georgia Annotated, relating to parent and child  
14 relationship generally, is amended by adding a new Code section to read as follows:

15 "19-7-21.1.

16 (a) As used in this Code section, the term:

17 (1) 'Acknowledgment of legitimation' means a written statement contained in a voluntary  
18 acknowledgment of paternity form indicating that a mother and father of a child born out  
19 of wedlock have freely agreed and consented that the child may be legitimated.

20 (2) 'Legal father' means a male who:

21 (A) Has legally adopted a child;

22 (B) Was married to the biological mother of that child at the time the child was  
23 conceived or was born, unless such paternity was disproved by a final order pursuant  
24 to Article 3 of this chapter;

1 (C) Married the legal mother of the child after the child was born and recognized the  
 2 child as his own, unless such paternity was disproved by a final order pursuant to  
 3 Article 3 of this chapter;

4 (D) Has been determined to be the father by a final paternity order pursuant to Article  
 5 3 of this chapter;

6 (E) Has legitimated the child by a final order pursuant to Code Section 19-7-22; or

7 (F) Has legitimated a child pursuant to this Code section

8 and who has not surrendered or had terminated his rights to the child.

9 (b) Prior to the child's first birthday, a father of a child born out of wedlock may render  
 10 his relationship with the child legitimate when both the mother and father have freely  
 11 agreed, consented, and signed a voluntary acknowledgment of paternity which includes an  
 12 acknowledgment of legitimation and which has been made and has not been rescinded  
 13 pursuant to Code Section 19-7-46.1. The State Office of Vital Records shall provide  
 14 notice, in writing, of the alternatives to, legal consequences of, and the rights and  
 15 responsibilities of signing a voluntary acknowledgment of legitimation.

16 (c) Voluntary acknowledgment of legitimation shall not be recognized if:

17 (1) The mother was married to another man when the child was born;

18 (2) The mother was married to another man at any time within the usual period of  
 19 gestation;

20 (3) There is another legal father;

21 (4) The mother has signed a voluntary acknowledgment of legitimation with another  
 22 man; or

23 (5) The child is one year of age or older.

24 (d) If any of the circumstances described in subsection (c) of this Code section exists, the  
 25 provisions of Code Section 19-7-22 shall be the only method of legitimation.

26 (e) Voluntary acknowledgment of legitimation shall not authorize the father to receive  
 27 custody or visitation until there is a judicial determination of custody or visitation.

28 (f) It shall be unlawful to make a false statement on a voluntary acknowledgment of  
 29 legitimation, and the making of a false statement shall be punishable as an act of false  
 30 statements and writings under Code Section 16-10-20."

## 31 SECTION 2.

32 Said chapter is further amended by revising Code Section 19-7-22, relating to petition for  
 33 legitimation of child, as follows:

34 "19-7-22.

35 (a) A father of a child born out of wedlock may render his relationship with the child  
 36 legitimate by petitioning the superior court of the county of the residence of the child's

1 mother or other party having legal custody or guardianship of the child; provided, however,  
2 that if the mother or other party having legal custody or guardianship of the child resides  
3 outside the state or cannot, after due diligence, be found within the state, the petition may  
4 be filed in the county of the father's residence or the county of the child's residence. If a  
5 petition for the adoption of the child is pending, the father shall file the petition for  
6 legitimation in the county in which the adoption petition is filed.

7 (b) The petition shall set forth the name, age, and sex of the child, the name of the mother,  
8 and, if the father desires the name of the child to be changed, the new name. If the mother  
9 is alive, she shall be named as a party and shall be served and provided an opportunity to  
10 be heard as in other civil actions under Chapter 11 of Title 9, the 'Georgia Civil Practice  
11 Act.' If there is a legal father, as such term is defined in Code Section 19-7-21.1, he shall  
12 be named as a party and shall be served and provided an opportunity to be heard as in other  
13 civil actions under Chapter 11 of Title 9, the 'Georgia Civil Practice Act.'

14 (c) Upon the presentation and filing of the petition, and after a hearing, the court may pass  
15 an order declaring the father's relationship with the child to be legitimate, and that the  
16 father and child shall be capable of inheriting from each other in the same manner as if  
17 born in lawful wedlock and specifying the name by which the child shall be known.

18 (d) A legitimation petition may be filed, pursuant to paragraph (2) of subsection (e) of  
19 Code Section 15-11-28, in the juvenile court of the county in which a deprivation  
20 proceeding regarding the child is pending. Such petition shall contain the same  
21 information and require the same notice as set forth in subsection (b) of this Code section,  
22 and the juvenile court shall proceed in accordance with subsection (c) of this Code section.  
23 After a petition for legitimation has been granted, if a demand for jury trial as to matters  
24 of child support has been properly filed by either parent, then the case shall be transferred  
25 from the juvenile court to the superior court for such determination.

26 (e) ~~Except as provided by subsection (f) of this Code section~~ when there is a demand for  
27 a jury trial and the matter is transferred from juvenile court to superior court, the court shall  
28 upon notice to the mother further establish such duty as the father may have to support the  
29 child, considering the facts and circumstances of the mother's obligation of support and the  
30 needs of the child as provided under Code Section 19-6-15.

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

34 (f.1) The petition for legitimation may also include claims for visitation or custody. If  
35 such claims are raised in the legitimation action, the court may order, in addition to  
36 legitimation, visitation or custody based on the best interests of the child standard. In a

1 case involving allegations of family violence, the provisions of paragraph (2) of subsection  
2 (a) of Code Section 19-9-1 shall also apply.

3 ~~(g)(1)~~ In any petition to establish paternity pursuant to paragraph (4) of subsection (a) of  
4 Code Section 19-7-43, the alleged father's response may assert a third-party action for the  
5 legitimation of the child born out of wedlock. Upon the determination of paternity or if a  
6 voluntary acknowledgment of paternity has been made and has not been rescinded pursuant  
7 to Code Section 19-7-46.1, the court or trier of fact as a matter of law and pursuant to the  
8 provisions of Code Section 19-7-51 may enter an order or decree legitimating a child born  
9 out of wedlock, provided that such is in the best interest of the child. Whenever a petition  
10 to establish the paternity of a child is brought by the Department of Human Resources,  
11 issues of name change, visitation, and custody shall not be determined by the court until  
12 such time as a separate petition is filed by one of the parents or by the legal guardian of the  
13 child, in accordance with Code Section 19-11-8; if the petition is brought by a party other  
14 than the Department of Human Resources or if the alleged father seeks legitimation, the  
15 court may determine issues of name change, visitation, and custody in accordance with  
16 subsections (b) and ~~(f.1)~~ (f) of this Code section. Custody of the child shall remain in the  
17 mother unless or until a court order is entered addressing the issue of custody.

18 ~~(2) In any voluntary acknowledgment of paternity which has been made and has not been~~  
19 ~~rescinded pursuant to Code Section 19-7-46.1, when both the mother and father freely~~  
20 ~~agree and consent, the child may be legitimated by the inclusion of a statement indicating~~  
21 ~~a voluntary acknowledgment of legitimation."~~

### 22 SECTION 3.

23 Said chapter is further amended in Code Section 19-7-43, relating to a petition to establish  
24 paternity, procedure, and testing, by revising subsection (d) as follows:

25 "(d) In any case in which the paternity of a child or children has not been established, the  
26 court on its own motion may order or any party may make a motion for the court to order  
27 the mother, the alleged father, and the child or children to submit to genetic tests as  
28 specified in Code Section 19-7-45. Such motion shall be supported by a sworn statement  
29 (1) alleging paternity and setting forth facts establishing a reasonable possibility of the  
30 requisite sexual contact between the parties; or (2) denying paternity and setting forth facts  
31 establishing a reasonable possibility of the nonexistence of sexual contact between the  
32 parties. Appropriate orders shall be issued in accordance with the provisions of this article.  
33 The court shall grant the motion unless it finds good cause as defined by the federal Social  
34 Security Act or if other good excuse for noncooperation is established."





1 and will neither receive notice nor be entitled to object to the adoption of the child unless,  
2 within 30 days of receipt of such notice, he files:

3 (1) A petition to legitimate the child pursuant to Code Section 19-7-22 or an  
4 acknowledgment of legitimation pursuant to Code Section 19-7-21.1; and

5 (2) Notice of the filing of the petition to legitimate or acknowledgment of legitimation  
6 with the court in which the action under this Code section, if any, is pending and to the  
7 person who provided such notice to such biological father."

#### 8 SECTION 9.

9 Code Section 29-2-15 of the Official Code of Georgia Annotated, relating to the notice of  
10 petition for appointment of permanent guardian, protest of father, and petition to legitimate,  
11 is amended by revising subsection (c) as follows:

12 "(c) If the biological father files a timely objection to the petition, the court shall hear the  
13 objection and, if the biological father makes a request, shall continue the hearing for 30  
14 days to allow the father to file a petition to legitimate the minor pursuant to Code Section  
15 19-7-22 or an acknowledgment of legitimation pursuant to Code Section 19-7-21.1. If the  
16 biological father's petition for legitimation of the minor is granted or if an acknowledgment  
17 of legitimation has been filed, the petition for the appointment of a permanent guardian for  
18 the minor shall be dismissed."

#### 19 SECTION 10.

20 Chapter 2 of Title 53 of the Official Code of Georgia Annotated, relating to descent and  
21 distribution, is amended in Code Section 53-2-3, relating to inheritance by children born out  
22 of wedlock, by revising subparagraph (A) of paragraph (2) as follows:

23 "(2)(A) A child born out of wedlock may not inherit from or through the child's father,  
24 the other children of the father, or any paternal kin by reason of the paternal kinship,  
25 unless:

26 (i) A court of competent jurisdiction has entered an order declaring the child to be  
27 legitimate, under the authority of Code Section 19-7-22 or such other authority as may  
28 be provided by law;

29 (ii) A court of competent jurisdiction has otherwise entered a court order establishing  
30 paternity;

31 (iii) The father has executed a sworn statement signed by him attesting to the  
32 parent-child relationship;

33 (iv) The father has signed the birth certificate of the child; ~~or~~

34 (v) The father has declared the child to be legitimate pursuant to Code Section  
35 19-7-21.1; or

