

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 11 of Title 15 and Title 19 of the Official Code of Georgia  
2 Annotated, relating to general provisions regarding the juvenile code and domestic relations,  
3 respectively, so as to revise the definition of legal father; to provide for legitimation through  
4 petitioning the Department of Human Services if the department has established an order  
5 obligating support of the child by his or her biological father; to provide for exceptions; to  
6 provide for recording of such legitimations with the clerk of superior court; to provide for  
7 rules and regulations; to provide for related matters; to repeal conflicting laws; and for other  
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to  
12 general provisions regarding the juvenile code, is amended by revising paragraph (43) of  
13 Code Section 15-11-2, relating to definitions, as follows:

14 "(43) 'Legal father' means a male who has not surrendered or had terminated his rights  
15 to a child and who:

16 (A) Has legally adopted such child;

17 (B) Was married to the biological mother of such child at the time such child was born  
18 or within the usual period of gestation, unless paternity was disproved by a final order  
19 pursuant to Article 3 of Chapter 7 of Title 19;

20 (C) Married the legal mother of such child after such child was born and recognized  
21 such child as his own, unless paternity was disproved by a final order pursuant to  
22 Article 3 of Chapter 7 of Title 19; ~~or~~

23 (D) Has legitimated such child by a final order pursuant to Code Section 19-7-22 or  
24 19-7-22.1; or

25 (E) Has been determined to be the father of such child by a final paternity order  
26 pursuant to Article 3 of Chapter 7 of Title 19."

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## SECTION 2.

Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is amended by revising paragraph (2) of subsection (a) of Code Section 19-7-22, relating to petition for legitimation of child, requirement that mother be named as a party, court order, effect, claims for custody or visitation, and third-party action for legitimation in response to petition to establish paternity, as follows:

"(2) 'Legal father' means a male who has not surrendered or had terminated his rights to a child and who:

(A) Has legally adopted such child;

(B) Was married to the biological mother of such child at the time such child was born or within the usual period of gestation, unless paternity was disproved by a final order pursuant to Article 3 of this chapter;

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

(D) Has legitimated such child pursuant to this Code section or Code Section 19-7-22.1."

## SECTION 3.

Said title is further amended by adding a new Code section to read as follows:

"19-7-22.1.

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

(1) 'Biological father' means the male who impregnated the biological mother resulting in the birth of a child.

(2) 'Legal father' means a male who has not surrendered or had terminated his rights to a child and who:

(A) Has legally adopted such child;

(B) Was married to the biological mother of such child at the time such child was born or within the usual period of gestation, unless paternity was disproved by a final order pursuant to Article 3 of this chapter;

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

(D) Has legitimated such child pursuant to this Code section or Code Section 19-7-22.

(b)(1) The biological father of a child born out of wedlock may petition the Department of Human Services for an order legitimating such child if the department has established an order obligating him to support such child.

63       (2) The department shall use the application for child support services for purposes of  
 64       evaluating the petition under this Code section.

65       (3) The petition shall be made on forms provided by the department.

66       (c) Upon the presentation and filing of a legitimation petition as provided for in  
 67       subsection (b) of this Code section, and after a hearing for which notice was provided to  
 68       the party having legal custody or guardianship of the child and any other parties that the  
 69       application for child support services would show to be an interested party, the legitimation  
 70       petition shall be granted if, at the time of the petition, the department determines by clear  
 71       and convincing evidence that:

72       (1) The order to provide support is not currently, and for any preceding 12 month period  
 73       has not been, in arrears of more than \$50,000.00, unless the department finds that any  
 74       such arrears is a result of a period of incarceration;

75       (2) The petitioner has no prior criminal convictions for family violence or offenses  
 76       provided for in Chapter 13 of Title 19 or Chapter 6 of Title 16 and is not subject to a  
 77       protective order against him for family violence or offenses provided for in Chapter 13  
 78       of Title 19 or Chapter 6 of Title 16; and

79       (3) The petitioner, for a continuous time during the preceding 12 month period, has had  
 80       sustained involvement in the child's life as evidenced through sworn affidavits of at least  
 81       one third party.

82       (d) The legitimation petition provided for in subsection (b) of this Code section shall not  
 83       be granted if the department determines by clear and convincing evidence that:

84       (1) The father caused his child to be conceived as a result of having nonconsensual  
 85       sexual intercourse with the mother of his child or when the mother is less than ten years  
 86       of age, or an offense which consists of the same or similar elements under federal law or  
 87       the laws of another state or territory of the United States; or

88       (2) There is a legal father who is not the biological father.

89       (e) Upon the department's granting of the legitimation petition provided for in subsection  
 90       (b) of this Code section, the department shall memorialize its determination in a written  
 91       order and file a verified copy of the order and granted legitimation petition with the clerk  
 92       of superior court of the county of the residence of the child's mother or other party having  
 93       legal custody or guardianship of the child, and the clerk shall record the legitimation  
 94       petition in a book maintained for such purposes.

95       (f) If a legitimation petition is granted under this Code section, the biological father and  
 96       child shall be capable of inheriting from each other in the same manner as if born in lawful  
 97       wedlock. The biological father may seek judicial determinations for matters involving the  
 98       name of the child or claims for visitation, parenting time, or custody involving the child;  
 99       provided, however, that nothing in this Code section shall be construed to affect, or be a

100 contingency for, determinations on the visitation between a child and his or her biological  
 101 father.  
 102 (g) The Department of Human Services may promulgate rules and regulations as may be  
 103 necessary for the execution of its functions under this Code section."

104 **SECTION 4.**

105 Said title is further amended by revising Code Section 19-7-25, relating to in whom parental  
 106 power over child born out of wedlock lies, as follows:

107 "19-7-25.

108 Only the mother of a child born out of wedlock is entitled to custody of the child, unless  
 109 the father legitimates the child as provided in Code Section 19-7-22 or 19-7-22.1.  
 110 Otherwise, the mother may exercise all parental power over the child."

111 **SECTION 5.**

112 Said title is further amended by revising paragraph (6) of Code Section 19-8-1, relating to  
 113 definitions, as follows:

114 "(6) 'Legal father' means a male who has not surrendered or had terminated his rights to  
 115 a child and who:

116 (A) Has legally adopted such child;

117 (B) Was married to the biological mother of such child at the time such child was born  
 118 or within the usual period of gestation, unless paternity was disproved by a final order  
 119 pursuant to Article 3 of Chapter 7 of this title;

120 (C) Married the legal mother of such child after such child was born and recognized  
 121 such child as his own, unless paternity was disproved by a final order pursuant to  
 122 Article 3 of Chapter 7 of this title; or

123 (D) Has legitimated such child by a final order pursuant to Code Section 19-7-22 or  
 124 19-7-22.1."

125 **SECTION 6.**

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