

Georgia Legitimation Law Change

A brief summary culled from documents created by Jill Radwin of the Judicial Council of Georgia, the Office of Child Support Enforcement and the Carl Vinson Institute of Government.

Logistics:

What is the new bill and where can I find it?

- “SB 53 – Paternity; petition of legitimation of child; provide consent of mother/father.”
- Available at: http://www.legis.state.ga.us/legis/2005_06/pdf/sb53.pdf.

What Code section does it affect?

- It revises O.C.G.A. §19-7-22.
 - Available at:
http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=19-7-22

When does it become effective?

- The changes are in effect now and have been since July 1, 2005.

Context:

- Prior to SB 53, Georgia addressed legitimation in a manner that was different from the rest of the nation.
- In all 49 other states, paternity establishment also means establishing legitimation at the same time.
 - And thus establishing all the legal rights and duties associated with legitimation (inheritance rights, familial rights, visitation, etc.).
- Only in Georgia were paternity establishment and legitimation two distinct actions.
 - Further, unlike paternity, in Georgia an unmarried father could not administratively acknowledge legitimation through the hospital at the time of the child’s birth. Legitimation required a separate legal action.

What has changed:

- Now a father can administratively legitimate his child when establishing paternity.
 - This can be done through the hospital voluntary acknowledgement program or a child support office. The statement must include express language indicating voluntary acknowledgement of legitimation by both the mother and father.
 - Statement Example: *We voluntarily consent and agree that the relationship between the named child and father shall be considered legitimate for all purposes under the law pursuant to O.C.G.A. § 19-7-22(g)(2).* **[Both mother and father must initial].**
- An action for legitimation can be filed in the county of the mother’s residence or the county of residence of another person having legal custody or guardianship.
- Claims of custody and visitation can be decided in an action for legitimation, without the mother’s consent, but using the best interest of the child standard.

- If situations of domestic violence exist, O.C.G.A. § 19-9-1 applies and the court shall consider as primary the safety and well being of the child and mother.
- The mother shall be named as a party in the petition and shall be served and provided an opportunity to be heard as in other civil actions pursuant to the Georgia Civil Practice Act.

What is particularly relevant to Juvenile Court deprivation matters:

- A legitimation petition may be filed in the juvenile court of the county in which a deprivation proceeding is pending.
 - In a petition to establish paternity, a father may assert a third-party action for legitimation.
 - Upon determination of paternity or if voluntary acknowledgement of paternity (which has not been rescinded per § 19-7-46.1), the court may enter an order legitimating a child born out of wedlock.
- If DHR/Office of Child Support Enforcement files the action for paternity, issues of name change, visitation and custody shall not be determined until separate action is filed by one of the parents or legal guardian.
 - However, if the petition is brought by a party other than the state or if the alleged father seeks legitimation, the court may determine issues of name change, visitation and custody.