

9-1-1989

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Recommended Citation

F. Cullen, *DOMESTIC RELATIONS Legitimation Cases: Establish the Duty of the Father to Support His Child*, 6 GA. ST. U. L. REV. (1989).

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DOMESTIC RELATIONS

Legitimation Cases: Establish the Duty of the Father to Support His Child

CODE SECTION: O.C.G.A. § 19-7-22 (amended)
BILL NUMBER: HB 556
ACT NUMBER: 427
SUMMARY: The Act amends section 19-7-22 relating to legitimation of children. The Act authorizes the court to establish the father's duty to provide child support concurrent with the court's order declaring his child to be legitimate.
EFFECTIVE DATE: July 1, 1989

History

Upon the proper filing of a petition by the father of a child born out of wedlock, and upon notice to the mother, the superior court may declare an order of legitimation which allows the child to inherit from the father as if the child were born of parents legally married.¹ The order of legitimation gives the father parental rights to the child equal to those of the mother.² The Act clarifies the right of the superior court to order the father to pay child support at the same time the court declares the child to be legitimate.³

HB 556

O.C.G.A. § 19-7-22 provides the procedure by which a father may petition the superior court to legitimate his child born out of wedlock.⁴ Previously, the power of a superior court to order child support payments concurrent with the court's decision declaring the child legitimate was unclear.⁵ The Act clarifies the court's authority to consider and establish the father's duty to provide child support when the child is deemed to be legitimate.⁶

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1. O.C.G.A. § 19-7-22 (Supp. 1989).
 2. Telephone interview with Representative Mary Margaret Oliver, House District No. 53 (Mar. 23, 1989) [hereinafter Oliver Interview].
 3. *Id.*
 4. O.C.G.A. § 19-7-22 (Supp. 1989).
 5. Oliver Interview, *supra* note 2.
 6. *See* O.C.G.A. § 19-7-22 (Supp. 1989).

As originally proposed, HB 556 sought to add a new section which would have defined "dependent child" to include persons under the age of twenty-two who are mentally retarded, emotionally disturbed, or physically handicapped, as well as any child under the age of eighteen.⁷ The new section would have permitted the superior court to mandate that child support payments continue through the age of twenty-two for those children designated "dependent" under the Code.⁸ The federal government allows persons receiving special education under the Education for All Handicapped Children Act⁹ to continue their educational program through age twenty-one.¹⁰ The proposed definition of "dependent" in HB 556 would have been similar to the federal law in that it gave extra protection to handicapped persons.¹¹ The House Committee on Judiciary declined to add this new section; the committee wanted to protect noncustodial parents in the face of other pending legislation regarding the determination and enforcement of child support obligations.¹²

The Act provides the superior court with the power to establish the father's duty to provide child support concurrent with its order of legitimation.¹³ The court will determine the child's needs, consider the mother's circumstances, and notify the mother when it establishes the father's child support obligation.¹⁴

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7. HB 556, as introduced, 1989 Ga. Gen. Assem.

8. *Id.*

9. 20 U.S.C. §§ 1401, 1411 to -20 (1982).

10. 20 U.S.C. § 1412(2)(B) (1982).

11. Oliver Interview, *supra* note 2.

12. *Id.* HB 139 amended O.C.G.A. § 19-6-15 to provide judges with guidelines for determining the noncustodial parent's required amount of child support; three new sections, O.C.G.A. §§ 19-6-31 to -33 (Supp. 1989), allow wage deduction for child support payments as determined by "the Office of Child Support Recovery of the Department of Human Resources and its contractors." O.C.G.A. § 19-6-31(F) (Supp. 1989).

13. O.C.G.A. § 19-7-22 (Supp. 1989).

14. *Id.*