

## **Chapter 49.**

### **Children Born Out of Wedlock.**

#### Article 1.

#### Support of Children Born Out of Wedlock.

##### **§ 49-1. Title.**

This Article shall be referred to as "An act concerning the support of children of parents not married to each other." (1933, c. 228, s. 11.)

##### **§ 49-2. Nonsupport of child born out of wedlock by parents made misdemeanor.**

Any parent who willfully neglects or who refuses to provide adequate support and maintain his or her child born out of wedlock shall be guilty of a Class 2 misdemeanor. A child within the meaning of this Article shall be any person less than 18 years of age and any person whom either parent might be required under the laws of North Carolina to support and maintain if the child were the legitimate child of the parent. (1933, c. 228, s. 1; 1937, c. 432, s. 1; 1939, c. 217, ss. 1, 2; 1951, c. 154, s. 1; 1977, c. 3, s. 1; 1993, c. 539, s. 414; 1994, Ex. Sess., c. 24, s. 14(c); 2013-198, s. 17.)

##### **§ 49-3. Place of birth of child no consideration.**

The provisions of this Article shall apply whether such child shall have been begotten or shall have been born within or without the State of North Carolina: Provided, that the child to be supported is a bona fide resident of this State at the time of the institution of any proceedings under this Article. (1933, c. 228, s. 2.)

##### **§ 49-4. When prosecution may be commenced.**

The prosecution of the reputed father of a child born out of wedlock may be instituted under this Chapter within any of the following periods, and not thereafter:

- (1) Three years next after the birth of the child; or
- (2) Where the paternity of the child has been judicially determined within three years next after its birth, at any time before the child attains the age of 18 years; or
- (3) Where the reputed father has acknowledged paternity of the child by payments for the support thereof within three years next after the birth of the child, three years from the date of the last payment whether the last payment was made within three years of the birth of the child or thereafter: Provided, the action is instituted before the child attains the age of 18 years.

The prosecution of the mother of a child born out of wedlock may be instituted under this Chapter at any time before the child attains the age of 18 years. (1933, c. 228, s. 3; 1939, c. 217, s. 3; 1945, c. 1053; 1951, c. 154, s. 2; 2013-198, s. 18.)

##### **§ 49-5. Prosecution; death of mother no bar; determination of fatherhood.**

Proceedings under this Article may be brought by the mother or her personal representative or, if the child is likely to become a public charge, the director of social services or such person as by

law performs the duties of such official in said county where the mother resides or the child is found. Proceedings under this Article may be brought in the county where the mother resides or is found, or in the county where the putative father resides or is found, or in the county where the child is found. The fact that the child was born outside of the State of North Carolina shall not be a bar to proceedings against the putative father in any county where he resides or is found, or in the county where the mother resides or the child is found. The death of the mother shall in no wise affect any proceedings under this Article. Preliminary proceedings under this Article to determine the paternity of the child may be instituted prior to the birth of the child but when the judge or court trying the issue of paternity deems it proper, he may continue the case until the woman is delivered of the child. When a continuance is granted, the courts shall recognize the person accused of being the father of the child with surety for his appearance, either at the next session of the court or at a time to be fixed by the judge or court granting a continuance, which shall be after the delivery of the child. (1933, c. 228, s. 4; 1961, c. 186; 1969, c. 982; 1971, c. 1185, s. 18; 1981, c. 599, s. 13.)

**§ 49-6. Mother not excused on ground of self-incrimination; not subject to penalty.**

No mother of a child born out of wedlock shall be excused, on the ground that it may tend to incriminate her or subject her to a penalty or a forfeiture, from attending and testifying, in obedience to a subpoena of any court, in any suit or proceeding based upon or growing out of the provisions of this Article, but no such mother shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, she may so testify. (1933, c. 228, s. 5; 1939, c. 217, s. 5; 2013-198, s. 19.)

**§ 49-7. Issues and orders.**

The court before which the matter may be brought shall determine whether or not the defendant is a parent of the child on whose behalf the proceeding is instituted. After this matter has been determined in the affirmative, the court shall proceed to determine the issue as to whether or not the defendant has neglected or refused to provide adequate support and maintain the child who is the subject of the proceeding. After this matter has been determined in the affirmative, the court shall fix by order, subject to modification or increase from time to time, a specific sum of money necessary for the support and maintenance of the child, subject to the limitations of G.S. 50-13.10. The amount of child support shall be determined as provided in G.S. 50-13.4(c). The order fixing the sum shall require the defendant to pay it either as a lump sum or in periodic payments as the circumstances of the case may appear to the court. The social security number, if known, of the minor child's parents shall be placed in the record of the proceeding. Compliance by the defendant with any or all of the further provisions of this Article or the order or orders of the court requiring additional acts to be performed by the defendant shall not be construed to relieve the defendant of his or her responsibility to pay the sum fixed or any modification or increase thereof.

The court before whom the matter may be brought, on motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence

when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist or other duly qualified person. The evidentiary effect of those blood tests and comparisons and the manner in which the expenses therefor are to be taxed as costs shall be as prescribed in G.S. 8-50.1. In addition, if a jury tries the issue of parentage, they shall be instructed as set out in G.S. 8-50.1. From a finding on the issue of parentage against the alleged-parent defendant, the alleged-parent defendant has the same right of appeal as though he or she had been found guilty of the crime of willful failure to support a child born out of wedlock. (1933, c. 228, s. 6; 1937, c. 432, s. 2; 1939, c. 217, ss. 1, 4; 1944, c. 40; 1947, c. 1014; 1971, c. 1185, s. 19; 1975, c. 449, s. 3; 1977, c. 3, s. 2; 1979, c. 576, s. 2; 1987, c. 739, s. 1; 1989, c. 529, s. 6; 1997-433, s. 4.1; 1998-17, s. 1; 2013-198, s. 20.)

**§ 49-8. Power of court to modify orders, suspend sentence, etc.**

Upon the determination of the issues set out in G.S. 49-7 and for the purpose of enforcing the payment of the sum fixed, the court is hereby given discretion, having regard for the circumstances of the case and the financial ability and earning capacity of the defendant and his or her willingness to cooperate, to make an order or orders upon the defendant and to modify such order or orders from time to time as the circumstances of the case may in the judgment of the court require subject to the limitations of G.S. 50-13.10. The order or orders made in this regard may include any or all of the following alternatives:

- (1) Repealed By Session Laws 1994, Extra Session, c. 14, s. 35.
- (2) Suspend sentence and continue the case from term to term;
- (3) Release the defendant from custody on probation conditioned upon the defendant's compliance with the terms of the probation and the payment of the sum fixed for the support and maintenance of the child;
- (4) Order the defendant to pay to the mother of the said child the necessary expenses of birth of the child and suitable medical attention for her;
- (5) Require the defendant to sign a recognizance with good and sufficient security, for compliance with any order which the court may make in proceedings under this Article. (1933, c. 228, s. 7; 1939, c. 217, s. 6; 1987, c. 739, s. 2; 1994, Ex. Sess., c. 14, s. 35.)

**§ 49-9. Bond for future appearance of defendant.**

At the preliminary hearing of any case arising under this Article it shall be the duty of the court, if it finds reasonable cause for holding the accused for a further hearing, to require a bond in the sum of not less than one hundred dollars (\$100.00), conditioned upon the reappearance of the accused at the further hearing under this Article. This bond and all other bonds provided for in this Article shall be justified before, and approved by, the court or the clerk thereof. (1933, c. 228, s. 8.)

Article 2.

Legitimation of Children Born Out of Wedlock.

**§ 49-10. Legitimation.**

The putative father of any child born out of wedlock, whether such father resides in North Carolina or not, may apply by a verified written petition, filed in a special proceeding in the superior court of the county in which the putative father resides or in the superior court of the county in which the child resides, praying that such child be declared legitimate. The mother, if living, and the child shall be necessary parties to the proceeding, and the full names of the father, mother and the child shall be set out in the petition. A certified copy of a certificate of birth of the child shall be attached to the petition. If it appears to the court that the petitioner is the father of the child, the court may thereupon declare and pronounce the child legitimated; and the full names of the father, mother and the child shall be set out in the court order decreeing legitimation of the child. The clerk of the court shall record the order in the record of orders and decrees and it shall be cross-indexed under the name of the father as plaintiff or petitioner on the plaintiff's side of the cross-index, and under the name of the mother, and the child as defendants or respondents on the defendants' side of the cross-index. (Code, s. 39; Rev., s. 263; C.S., s. 277; 1947, c. 663, s. 1; 1971, c. 154; 1977, c. 83, s. 1.)

#### **§ 49-11. Effects of legitimation.**

The effect of legitimation under G.S. 49-10 shall be to impose upon the father and mother all of the lawful parental privileges and rights, as well as all of the obligations which parents owe to their lawful issue, and to the same extent as if said child had been born in wedlock, and to entitle such child by succession, inheritance or distribution, to take real and personal property by, through, and from his or her father and mother as if such child had been born in lawful wedlock. In case of death and intestacy, the real and personal estate of such child shall descend and be distributed according to the Intestate Succession Act as if he had been born in lawful wedlock. (Code, s. 40; Rev., s. 264; C.S., s. 278; 1955, c. 540, s. 2; 1959, c. 879, s. 10; 1963, c. 1131.)

#### **§ 49-12. Legitimation by subsequent marriage.**

When the mother of any child born out of wedlock and the reputed father of such child shall intermarry or shall have intermarried at any time after the birth of such child, the child shall, in all respects after such intermarriage be deemed and held to be legitimate and the child shall be entitled, by succession, inheritance or distribution, to real and personal property by, through, and from his father and mother as if such child had been born in lawful wedlock. In case of death and intestacy, the real and personal estate of such child shall descend and be distributed according to the Intestate Succession Act as if he had been born in lawful wedlock. (1917, c. 219, s. 1; C.S., s. 279; 1947, c. 663, s. 2; 1955, c. 540, s. 3; 1959, c. 879, s. 11.)

#### **§ 49-12.1. Legitimation when mother married.**

(a) The putative father of a child born to a mother who is married to another man may file a special proceeding to legitimate the child. The procedures shall be the same as those specified by G.S. 49-10, except that the spouse of the mother of the child shall be a necessary party to the proceeding and shall be properly served. A guardian ad litem shall be appointed to represent the child if the child is a minor.

(b) The presumption of legitimacy can be overcome by clear and convincing evidence.

(c) The parties may enter a consent order with the approval of the clerk of superior court. The order entered by the clerk shall find the facts and declare the proper person the father of the

child and may change the surname of the child after determination that the change is in the best interests of the child.

(d) The effect of legitimation under this section shall be the same as provided by G.S. 49-11.

(e) A certified copy of the order of legitimation under this section shall be sent by the clerk of superior court under his official seal to the State Registrar of Vital Statistics who shall make a new birth certificate bearing the full name of the father of the child and, if ordered by the clerk after determination that the change is in the best interests of the child, changing the surname of the child. (1991, c. 667, s. 2; 1991 (Reg. Sess., 1992), c. 1030, s. 15; 1997-433, s. 4.9; 1998-17, s. 1; 2019-42, s. 1.)

### **§ 49-13. New birth certificate on legitimation.**

A certified copy of the order of legitimation when issued under the provisions of G.S. 49-10 shall be sent by the clerk of the superior court under his official seal to the State Registrar of Vital Statistics who shall then make the new birth certificate bearing the full name of the father. The surname of the child shall remain the same except if the mother and father agree and request that the child's surname be changed under G.S. 130A-118 or the court orders a change in surname after determination that the change is in the best interests of the child.

When a child is legitimated under the provisions of G.S. 49-12, the State Registrar of Vital Statistics shall make a new birth certificate bearing the full name of the father upon presentation of a certified copy of the certificate of marriage of the father and mother. The surname of the child shall remain the same except if the mother and father agree and request the child's surname be changed under G.S. 130A-118. (1947, c. 663, s. 3; 1955, c. 951, s. 2; 2019-42, s. 2.)

**§ 49-13.1:** Repealed by Session Laws 2004-203, s. 3, effective August 17, 2004.

## Article 3.

### Civil Actions Regarding Children Born Out of Wedlock.

#### **§ 49-14. Civil action to establish paternity; motion to set aside paternity.**

(a) The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. A copy of a certificate of birth of the child shall be attached to the complaint. The establishment of paternity shall not have the effect of legitimation. The social security numbers, if known, of the minor child's parents shall be placed in the record of the proceeding.

(b) Proof of paternity pursuant to this section shall be by clear, cogent, and convincing evidence.

(c) No such action shall be commenced nor judgment entered after the death of the putative father, unless the action is commenced either:

- (1) Prior to the death of the putative father;
- (2) Within one year after the date of death of the putative father, if a proceeding for administration of the estate of the putative father has not been commenced within one year of his death; or

- (3) Within the period specified in G.S. 28A-19-3(a) for presentation of claims against an estate, if a proceeding for administration of the estate of the putative father has been commenced within one year of his death.

Any judgment under this subsection establishing a decedent to be the father of a child shall be entered nunc pro tunc to the day preceding the date of death of the father.

(d) If the action to establish paternity is brought more than three years after birth of a child or is brought after the death of the putative father, paternity shall not be established in a contested case without evidence from a blood or genetic marker test.

(e) Either party to an action to establish paternity may request that the case be tried at the first session of the court after the case is docketed, but the presiding judge, in his discretion, may first try any pending case in which the rights of the parties or the public demand it.

(f) When a determination of paternity is pending in a IV-D case, the court shall enter a temporary order for child support upon motion and showing of clear, cogent, and convincing evidence of paternity. For purposes of this subsection, the results of blood or genetic tests shall constitute clear, cogent, and convincing evidence of paternity if the tests show that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher. If paternity is not thereafter established, then the putative father shall be reimbursed the full amount of temporary support paid under the order.

(g) Invoices for services rendered for pregnancy, childbirth, and blood or genetic testing are admissible as evidence without requiring third party foundation testimony and shall constitute prima facie evidence of the amounts incurred for the services or for testing on behalf of the child.

(h) Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an order of paternity may be set aside by a trial court if each of the following applies:

- (1) The paternity order was entered as the result of fraud, duress, mutual mistake, or excusable neglect.
- (2) Genetic tests establish the putative father is not the biological father of the child.

The burden of proof in any motion to set aside an order of paternity shall be on the moving party. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court shall order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to G.S. 8-50.1(b1). If the court determines, as a result of genetic testing, the putative father is not the biological father of the child and the order of paternity was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set aside the order of paternity. Nothing in this subsection shall be construed to affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage. (1967, c. 993, s. 1; 1973, c. 1062, s. 3; 1977, c. 83, s. 2; 1981, c. 599, s. 14; 1985, c. 208, ss. 1, 2; 1993, c. 333, s. 3; 1995, c. 424, ss. 1, 2; 1997-154, s. 1; 1997-433, ss. 4.2, 4.10; 1998-17, s. 1; 2005-389, s. 3; 2011-328, s. 1.)

#### **§ 49-15. Custody and support of children born out of wedlock when paternity established.**

Upon and after the establishment of paternity pursuant to G.S. 49-14 of a child born out of wedlock, the rights, duties, and obligations of the mother and the father so established, with regard to support and custody of the child, shall be the same, and may be determined and enforced in the same manner, as if the child were the legitimate child of the father and mother. When paternity has been established, the father becomes responsible for medical expenses incident to the pregnancy and the birth of the child. (1967, c. 993, s. 1; 2013-198, s. 23.)

**§ 49-16. Parties to proceeding.**

Proceedings under this Article may be brought by:

- (1) The mother, the father, the child, or the personal representative of the mother or the child.
- (2) When the child, or the mother in case of medical expenses, is likely to become a public charge, the director of social services or such person as by law performs the duties of such official,
  - a. In the county where the mother resides or is found,
  - b. In the county where the putative father resides or is found, or
  - c. In the county where the child resides or is found. (1967, c. 993, s. 1; 1969, c. 982; 1975, c. 54, s. 2.)

**§ 49-17. Jurisdiction over nonresident or nonpresent persons.**

(a) The act of sexual intercourse within this State constitutes sufficient minimum contact with this forum for purposes of subjecting the person or persons participating therein to the jurisdiction of the courts of this State for actions brought under this Article for paternity and support of any child who may have been conceived as a result of such act.

(b) The jurisdictional basis in subsection (a) of this section shall be construed in addition to, and not in lieu of, any basis or bases for jurisdiction within G.S. 1-75.4. (1979, c. 542.)