



# HOUSE BILL 578: Modify Legitimations Provisions.

2019-2020 General Assembly

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<b>Committee:</b>		<b>Date:</b>	January 13, 2020
<b>Introduced by:</b>		<b>Prepared by:</b>	Tawanda F. Artis
<b>Analysis of:</b>	S.L. 2019-42		Staff Attorney

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**OVERVIEW:** *S.L. 2019-42 removes language in regard to the legitimation process that conflicts with current case law.*

*This act became effective June 21, 2019, and applies to birth certificates issued on or after that date.*

**CURRENT LAW:** Article 2 of Chapter 49 of the General Statutes provides methods through which children born out of wedlock may be legitimated. The current General Statutes require a child's surname be changed to that of the father when a child is legitimated, and their birth certificate must be changed. Current case law (*Jones v. McDowell*, 53 N. C. App. 434 (1981)) conflicts with this requirement of changing the child's surname.

## **BILL ANALYSIS:**

**Section 1** requires a clerk of superior court to determine that changing a child's surname is in the best interests of the child before making the name change.

**Section 2** removes language that requires the child's surname to be changed to the father's surname after legitimation. This section also provides the child's surname will remain the same unless the parents agree to request the surname be changed pursuant to the law amending birth certificates, or if the court orders a change in the surname as being in the best interests of the child.

**Section 3** modifies the law on amending birth and death certificates to make a conforming change.

**EFFECTIVE DATE:** This act became effective on June 21, 2019, and applies to birth certificates issued on or after that date.

**BACKGROUND:** *Jones v. McDowell*, heard in the N.C. Court of Appeals, held that the statutory provisions establishing filial relationship between illegitimate children and their fathers was not enhanced, advanced, or served in any useful or justifiable way by the additional statutory requirement that child's surname be changed to that of the father, such requirement denied the mother of an illegitimate child the equal protection of the laws and, because it required an arbitrary action on part of agency of state, it also denies such mothers a protected liberty interest without due process of law. Thus, the name change requirement in current law was invalid. Constitutional protection of certain matters of family life extends to the interest of the mother of an illegitimate child in retaining the surname given to the child at birth. As well, mere notice and hearing is not enough to supply due process if the statutory scheme also predetermines the outcome. 53 N.C. App. 434 (1981)

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