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MEMORANDUM (2)(I)(i)¹

TO: Statutory Revision Committee

FROM: Jane M. Ritter, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Repeal outdated "legitimate"/"illegitimate" child terminology

Summary and Analysis

Since the repeal and reenactment of the "Uniform Parentage Act"² in 1987, Colorado has gradually ceased referring to children born in this state as either "legitimate" or "illegitimate", depending upon the marital status of the child's parents. All children are considered "legitimate".

This is clearly established in section 19-4-103, C.R.S.:

19-4-103. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

However, a handful of outdated terminology references remain in statute, serving no purpose, legal or otherwise.

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

² Article 4 of title 19, C.R.S.

Statutory Charge³

Removing outdated references to "legitimate" or "illegitimate" children meets the Committee's statutory charge to remove antiquated language and to bring the law of this state into harmony with modern conditions.

Proposed Bill

The attached bill draft⁴ makes the necessary changes to remove outdated statutory references to "legitimate" or "illegitimate" as they applied to children.

³ The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

⁴ See **Addendum A**.

Addendum A
Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

BILL (2)(I)(i)

Temporary storage location: S:\LLS\2018A\Bills\Pre-Draft\18-SRC illegitimate child.wpd

LLS NO. 18-####.## Jane Ritter x4342

COMMITTEE BILL

Statutory Revision Committee

A BILL FOR AN ACT

101 **CONCERNING THE REMOVAL OF STATUTORY REFERENCES TO THE**
102 **MARITAL STATUS OF PARENTS OF A CHILD.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Statutory Revision Committee. The bill removes or modernizes outdated statutory references to a "legitimate" or "illegitimate" child and a "child born out of wedlock". Colorado only recognizes parentage of a child and acknowledges that the parent and child relationship extends equally to every child and every parent, regardless of the marital status of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

the parents.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 8-41-505 as
3 follows:

4 **8-41-505. Minor children.** ~~Illegitimate minor children~~ A MINOR
5 CHILD of a deceased putative father ~~shall be~~ IS entitled to compensation
6 ~~in the same respect as a legitimate minor child of said decedent~~ when it
7 is proved to the satisfaction of the director that the father, during his
8 lifetime, has acknowledged ~~said children to be~~ THE CHILD AS his and has
9 regularly contributed to ~~their~~ HIS OR HER support and maintenance for a
10 reasonable period of time prior to his death.

11 **SECTION 2.** In Colorado Revised Statutes, 10-16-104, **amend**
12 (6)(b) as follows:

13 **10-16-104. Mandatory coverage provisions - definitions -**
14 **rules. (6) Dependent children.** (b) ~~No~~ AN entity described in ~~paragraph~~
15 ~~(a) of this subsection (6) shall~~ SUBSECTION (6)(a) OF THIS SECTION MUST
16 NOT refuse to provide coverage for a dependent child under the health
17 plan of the child's parent for the sole reason that: ~~the child:~~

18 (I) THE CHILD does not live in the home of the parent applying for
19 the policy; or

20 (II) THE CHILD does not live in the insurer's service area,
21 notwithstanding any other provision of law restricting enrollment to the
22 persons who reside in an insurer's service area; or

23 (III) ~~Was born out of wedlock~~ THE CHILD'S PARENTS WERE NOT
24 MARRIED AT THE TIME OF HIS OR HER BIRTH; or

25 (IV) THE CHILD is not claimed as a dependent on the CHILD'S

1 PARENT'S federal or state income tax return. ~~of the child's parent.~~

2 **SECTION 3.** In Colorado Revised Statutes, 13-25-126, **amend**

3 (1)(i) as follows:

4 **13-25-126. Genetic tests to determine parentage.** (1) (i) The
5 presumption of ~~legitimacy~~ PARENTAGE of a child born during ~~wedlock~~ A
6 MARRIAGE may be overcome, as provided in section 19-4-105 (2)(a),
7 ~~C.R.S.~~, if the court finds that the conclusion of the experts conducting the
8 tests, as disclosed by the evidence based upon the tests, shows that ~~the~~
9 ~~husband or wife~~ ONE OF THE SPOUSES is not the parent of the child.

10 **SECTION 4.** In Colorado Revised Statutes, 14-2-110, **repeal** (2)
11 as follows:

12 **14-2-110. Prohibited marriages.** (2) ~~Children born of a~~
13 ~~prohibited marriage are legitimate.~~

14 **SECTION 5.** In Colorado Revised Statutes, **amend** 14-2-111 as
15 follows:

16 **14-2-111. Putative spouse.** ~~Any~~ A person who has cohabited with
17 another to whom he OR SHE is not legally married in the good faith belief
18 that he OR SHE was married to that person is a putative spouse until
19 knowledge of the fact that he OR SHE is not legally married terminates his
20 OR HER status and prevents acquisition of further rights. ~~Children born of~~
21 ~~putative spouses are legitimate.~~ A putative spouse acquires the rights
22 conferred upon a legal spouse, including the right to maintenance
23 following termination of his OR HER status, whether or not the marriage
24 is prohibited under section 14-2-110, declared invalid, or otherwise
25 terminated by court action. If there is a legal spouse or other putative
26 spouses, rights acquired by a putative spouse do not supersede the rights
27 of the legal spouse or those acquired by other putative spouses, but the

1 court shall apportion property, maintenance, and support rights among the
2 claimants as appropriate in the circumstances and in the interests of
3 justice.

4 **SECTION 6.** In Colorado Revised Statutes, **amend** 14-6-108 as
5 follows:

6 **14-6-108. Citizenship - residence.** FOR ALL THE PURPOSES OF
7 THIS ARTICLE 6, citizenship or residence once acquired in this state by any
8 parent of ~~any legitimate or illegitimate~~ A child living in this state ~~shall be~~
9 ~~deemed for all the purposes of this article to continue~~ CONTINUES until
10 ~~such~~ THE child has arrived at the age of sixteen years, so long as ~~said~~ THE
11 child continues to live in this state. In case of prosecution under this
12 ~~article~~ ARTICLE 6 for the violation of any of the provisions of this ~~article~~
13 ARTICLE 6, such citizenship or residence ~~shall likewise be deemed to~~
14 ~~continue~~ CONTINUES so long as ~~such~~ THE spouse or parent resides in this
15 state and is entitled to the support or maintenance provided for in section
16 14-6-101.

17 **SECTION 7.** In Colorado Revised Statutes, 14-10-111, **repeal** (4)
18 as follows:

19 **14-10-111. Declaration of invalidity.** (4) ~~Children born of a~~
20 ~~marriage declared invalid are legitimate.~~

21 **SECTION 8.** In Colorado Revised Statutes, 14-10.5-102, **amend**
22 (1) as follows:

23 **14-10.5-102. Legislative declaration.** (1) The general assembly
24 ~~hereby~~ finds and declares that in most situations it is important to the
25 healthy development of children that the children spend quality time with
26 both parents. The general assembly further finds that due to dissolution
27 of marriage, legal separation, and ~~out-of-wedlock births~~ CHILDREN BORN

1 TO SINGLE PARENTS, families are often divided. ~~and~~ As a result, many
2 children do not have the opportunity to spend the time with both parents
3 that a court may have determined is in their best interests.

4 **SECTION 9.** In Colorado Revised Statutes, 14-14-112, **amend**
5 (2) introductory portion and (2)(c) as follows:

6 **14-14-112. Deductions for health insurance.** (2) THE OBLIGEE
7 OR THE OBLIGEE'S REPRESENTATIVE SHALL MAIL notice of the deduction
8 for health insurance ~~shall be mailed by first-class mail by the obligee or~~
9 ~~the obligee's representative~~ to the obligor's employer. The notice of the
10 deduction for health insurance ~~shall~~ MUST contain:

11 (c) A statement that the employer shall enroll an obligor's child in
12 the health insurance plan in which the obligor is enrolled if the child can
13 be covered under that plan or, if the obligor is not enrolled, in the least
14 costly plan otherwise available to the child, regardless of ~~whether the~~
15 ~~child was born out of wedlock~~, THE MARITAL STATUS OF THE CHILD'S
16 PARENTS WHEN HE OR SHE WAS BORN OR WHETHER THE CHILD IS claimed
17 as a dependent on the obligor's federal or state income tax return, lives
18 with the obligor, or lives within the insurer's service area, notwithstanding
19 any other provision of law restricting enrollment to persons who reside in
20 an insurer's service area;

21 **SECTION 10.** In Colorado Revised Statutes, 19-5-203, **amend**
22 (1)(f) as follows:

23 **19-5-203. Availability for adoption.** (1) A child may be
24 available for adoption only upon:

25 (f) Written and verified consent of the parent or parents as defined
26 in section 19-1-103 (82) in a stepparent adoption where the ~~child is~~
27 ~~conceived and born out of wedlock~~ CHILD'S PARENTS WERE NOT MARRIED

1 AT THE TIME THE CHILD WAS CONCEIVED AND BORN;

2 **SECTION 11.** In Colorado Revised Statutes, 19-5-211, **amend**
3 (1) as follows:

4 **19-5-211. Legal effects of final decree.** (1) After the entry of a
5 final decree of adoption, the person adopted ~~shall be,~~ **IS,** FOR all intents
6 and purposes, the child of the petitioner. He ~~shall be~~ **OR SHE IS** entitled to
7 all the rights and privileges and ~~be~~ **IS** subject to all the obligations of a
8 child born ~~in lawful wedlock~~ to the petitioner.

9 **SECTION 12.** In Colorado Revised Statutes, **amend** 25-2-107 as
10 follows:

11 **25-2-107. Reports of adoption, dissolution of marriage,**
12 **parentage, and other court proceedings affecting vital statistics - tax**
13 **on court action affecting vital statistics.** (1) The clerk of each court or,
14 for parentage proceedings, the clerk of the court or a delegate child
15 support enforcement unit, shall prepare a report containing ~~such~~
16 information and using ~~such form~~ **FORMS** as may be prescribed and
17 furnished by the state registrar with respect to every decree entered by the
18 court with respect to parentage, ~~legitimacy,~~ adoption, change of name,
19 dissolution of marriage, legal separation, or declaration of invalidity of
20 marriage, and every decree amending or nullifying such a decree and also
21 with respect to every decree entered pursuant to section 25-2-114. On or
22 before the tenth day of each month, or more frequently if so requested by
23 the state registrar, ~~such~~ **THE** clerk shall forward to the state registrar the
24 reports for all such decrees entered during the preceding period.

25 (2) In order to help defray the maintenance of vital statistics
26 records, ~~there shall be levied,~~ **AND** in addition to the tax levied under
27 section 2-5-119, ~~C.R.S.,~~ a tax of three dollars **SHALL BE LEVIED** upon each

1 action with respect to parentage, ~~legitimacy~~, adoption, change of name,
2 dissolution of marriage, legal separation, or declaration of invalidity of
3 marriage that is filed in the office of each clerk of a court of record in this
4 state on or after July 1, 1985. The tax ~~shall~~ MUST be paid at the time of ~~the~~
5 ~~filing of such action~~ THE ACTION IS FILED, and the clerk shall keep ~~such~~
6 THE tax in a separate fund and ~~shall~~ transmit ~~such~~ THE tax monthly to the
7 state treasurer, who shall credit the same to the vital statistics records cash
8 fund pursuant to section 25-2-121. A delegate child support enforcement
9 unit acting pursuant to article 13 of title 26 ~~C.R.S., shall be~~ IS exempt
10 from paying the tax authorized in this subsection (2).

11 **SECTION 13.** In Colorado Revised Statutes, 25-2-113, **amend**
12 (1)(a) and (3) as follows:

13 **25-2-113. New certificates of birth following adoption -**
14 **parentage determination.** (1) (a) THE STATE REGISTRAR SHALL PREPARE
15 a new certificate of birth ~~shall be prepared by the state registrar~~ as to any
16 person born in this state whenever he OR SHE receives, with respect to
17 such a person, any of the following: A report concerning adoption
18 ~~legitimacy~~, or parentage as required by section 25-2-107; or a report or
19 certified copy of a decree concerning the adoption ~~legitimacy~~, or
20 parentage of ~~such a~~ THE person from a court of competent jurisdiction
21 outside this state; or a certified copy of the marriage certificate of the
22 parents, together with a statement of the husband, executed after ~~such~~ THE
23 marriage, in which the husband acknowledges paternity. ~~but with respect~~
24 ~~to adoptions, no~~ THE STATE REGISTRAR SHALL NOT PREPARE A NEW
25 certificate of birth ~~shall be prepared if the state registrar is requested not~~
26 ~~to do so by~~ FOR AN ADOPTION IF the court that has decreed the adoption,
27 ~~by an adoptive parent, or by the adopted person HAS REQUESTED THAT~~

1 THE STATE REGISTRAR NOT PREPARE SUCH NEW CERTIFICATE OF BIRTH.
2 Each new certificate ~~shall~~ MUST show all information shown on the
3 original certificate of birth, except information for which substitute
4 information is included as a result of the report or decree which prompts
5 the preparation of the new certificate.

6 (3) Thereafter, the original certificate and evidence concerning
7 adoption ~~legitimacy~~, or parentage ~~shall~~ MUST be sealed and ~~not be~~ IS NOT
8 subject to inspection, except as provided in section 25-2-113.5 or in part
9 3 of article 5 of title 19, ~~C.R.S.~~, by regulation, or upon order of a court of
10 competent jurisdiction after the court has satisfied itself that the interests
11 of the child or the child's descendants or the parents will best be served
12 by opening ~~said~~ THE seal. The information obtained from opening ~~said~~
13 THE seal may be withheld from public view or from being presented as
14 evidence at the discretion of the judge.

15 **SECTION 14.** In Colorado Revised Statutes, 25-2-115, **amend**
16 (1) as follows:

17 **25-2-115. Alteration of reports and certificates - amended**
18 **reports and certificates.** (1) ~~No~~ A vital statistics report or certificate
19 shall NOT ever be altered in any way except in accordance with this ~~article~~
20 ARTICLE 2 and applicable ~~regulations~~ RULES. The date of alteration and a
21 summary description of the evidence submitted in support of the
22 alteration ~~shall~~ MUST be endorsed on or made a part of each vital statistics
23 certificate that is altered. Every vital statistics report or certificate that is
24 altered in any way ~~shall~~ MUST be marked "Amended" except the birth
25 report or certificate of ~~any illegitimate~~ A child altered by the addition of
26 a father's name pursuant to section 25-2-112 (3), in which case, upon
27 request of the parents, the surname of the child shall be changed on the

1 report and certificate to that of the father, and also except additions and
2 minor corrections made within one year after the date of the statistical
3 event as may be specified by applicable ~~regulations~~ RULES. A child's
4 surname may be changed upon affidavit of the parent that the change is
5 being made to conform ~~such~~ THE child's surname to the parent's legal
6 surname.

7 **SECTION 15.** In Colorado Revised Statutes, 26-2-705, **amend**
8 (2)(c) as follows:

9 **26-2-705. Works program - purposes.** (2) The purposes of the
10 works program are to:

11 (c) Prevent and reduce the incidence of ~~out-of-wedlock~~
12 pregnancies OF WOMEN AND MEN WHO ARE NOT MARRIED and to establish
13 annual numerical goals for preventing and reducing the incidences of
14 these pregnancies;

15 **SECTION 16.** In Colorado Revised Statutes, 26-2-712, **amend**
16 (5) introductory portion and (5)(d) as follows:

17 **26-2-712. State department duties - authority.** (5) **Oversight.**
18 In connection with overseeing the works program, the SPECIFIC DUTIES OF
19 THE state department ~~shall have the specific duties~~ ARE to:

20 (d) Establish statewide goals and monitor the state's progress
21 toward meeting such goals for the reduction in the incidence of
22 ~~out-of-wedlock~~ pregnancies OF WOMEN AND MEN WHO ARE NOT MARRIED;

23 **SECTION 17. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 ■, 2018, if adjournment sine die is on May ■, 2018); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act
2 within such period, then the act, item, section, or part will not take effect
3 unless approved by the people at the general election to be held in
4 November 2018 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.