

## **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.)