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**REPORT FOR THE
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MEXICO

**LEGITIMATION AND RIGHTS OF
ACKNOWLEDGED CHILDREN
BORN OUT OF WEDLOCK IN THE
STATE OF CHIHUAHUA, 1993–1998
(AND CURRENTLY)**

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LEGITIMATION AND RIGHTS OF ACKNOWLEDGED CHILDREN BORN OUT OF WEDLOCK IN THE STATE OF CHIHUAHUA, 1993–1998 (AND CURRENTLY)

Executive Summary

The Chihuahua Civil Code includes a chapter on legitimation, which provides that children born out of wedlock may be considered to be born in wedlock as long as the parents subsequently marry and expressly acknowledge the children as theirs. An acknowledged child has the right to take the last name of, and get support from, the acknowledging parent(s), and to get an inheritance share and support as provided by law.

The Chihuahua Code for the Protection of Minors provides that every minor has the right to a dignified and decent life that must include an identity (comprising nationality, name, and filiation in accordance with applicable laws) and the right to be treated without discrimination on the basis of race, language, customs, and other analogous circumstances.

I. Summary of the Request

An official with the Executive Office for Immigration Review (EOIR) has requested information on the basic rules that govern the following topics, pursuant to the law of the State of Chihuahua, Mexico, as in force in 1993–1998 and currently:

- Legitimation
- Acknowledgment of children born out of wedlock, particularly acknowledgment before the Civil Registry
- Rights of acknowledged children
- Provisions prohibiting discrimination against children born out of wedlock

II. Legitimation and the Rights of Acknowledged Children Born Out of Wedlock

The Civil Code of the State of Chihuahua, enacted in 1974, governs parentage (including legitimation and rules applicable to acknowledgment and rights of children born out of wedlock).¹ A brief summary of key provisions follows.

¹ Código Civil del Estado de Chihuahua [Civil Code of the State of Chihuahua], *as amended*, Periódico Oficial del Estado [POE], 23 de Marzo de 1974, *available at* the website of the Chihuahua State Congress, <http://www.congresochihuahua.gob.mx/biblioteca/codigos/archivosCodigos/13.pdf>.

A. Legitimation

Articles 331–336 of the Chihuahua Civil Code, as originally enacted in 1974, comprise a chapter titled “On Legitimation.” According to the current version of the Chihuahua Civil Code available on the website of the Chihuahua State Congress, these provisions have not been amended.²

Specifically, articles 331 and 332, as provided by the Code, indicate that children born out of wedlock may be considered to be born in wedlock if the parents subsequently marry and expressly acknowledge the children as theirs, either jointly or separately. Acknowledgment may take place before or during the marriage ceremony, or during the marriage.³ Legitimation is effective from the day on which the parents marry, even if acknowledgment takes place afterward.⁴

B. Acknowledgment and Rights of Acknowledged Children

The Chihuahua Civil Code also includes a chapter entitled “On Acknowledgment of Children Born Out of Wedlock.”⁵ This chapter provides that filiation of children born out of wedlock is established, with respect to the mother, by the mere fact of birth.⁶ With respect to the father, filiation may only be established by voluntary acknowledgment or by a judgment that declares paternity.⁷

Acknowledgment of a child born out of wedlock must be done in one of the following ways:

- I. In the birth certificate before the Civil Registry official;
- II. In a special certificate before the Civil Registry official;
- III. By a notarized document;
- IV. By a will;
- V. By direct and express judicial confession.⁸

A child acknowledged by the father, mother, or both parents has the following rights:

- I. To take the last name of the acknowledging parent(s);

² *Id.*, arts. 331–336.

³ *Id.* art. 332.

⁴ *Id.* art. 334.

⁵ *Id.*, “Del Reconocimiento de los Hijos Nacidos Fuera del Matrimonio,” arts. 337–366.

⁶ *Id.* art. 337.

⁷ *Id.*

⁸ *Id.* art. 346.

- II. To get support from the acknowledging parent(s);
- III. To get an inheritance share and support as provided by law.⁹

According to the current version of the Chihuahua Civil Code available on the website of the Chihuahua State Congress, the provisions cited above concerning acknowledgment of children born out of wedlock have not been amended.

Article 349 of the Chihuahua Civil Code provides that a married woman may acknowledge a child born before her marriage took place without her husband's consent, but she does not have the right to take the child to live in the marital home without her husband's express consent. Article 350 provides that a husband may acknowledge a child born before his marriage took place or during his marriage, but he does not have the right to take the child to live in the marital home without his wife's express consent. According to the current version of the Chihuahua Civil Code available on the website of the Chihuahua State Congress, articles 349 and 350 were last amended in 1981.¹⁰

III. Anti-Discrimination Laws

Article 5 of the Chihuahua Code for the Protection of Minors provides that every minor has the right to a dignified and decent life that must include

- an identity, which comprises nationality, name, and filiation in accordance with applicable laws; and
- being treated without discrimination on the basis of race, language, customs, and other analogous circumstances.¹¹

Furthermore, Chihuahua's Law to Prevent and Eliminate Discrimination states that its purpose is to prevent and eliminate all forms of discrimination against any person in Chihuahua.¹² This law provides that discrimination includes any distinction, exclusion, or restriction based on a wide variety of factors, including personal status.¹³

It is unclear whether other provisions included in other Chihuahua statutes provide additional rules specifically prohibiting discrimination against children on the basis of their birth circumstances.

⁹ *Id.* art. 366.

¹⁰ *Id.* arts. 349–350.

¹¹ Código para la Protección y Defensa del Menor [Code for the Protection and Defense of Minors], *as amended*, art. 5(I–II), POE, 2 de Febrero de 1994, *available at* the website of the Chihuahua State Congress, <http://www.congresochihuahua.gob.mx/biblioteca/codigos/archivosCodigos/25.pdf>.

¹² Ley para Prevenir y Eliminar la Discriminación en el Estado de Chihuahua [Law to Prevent and Eliminate Discrimination in the State of Chihuahua], *as amended*, art. 1, POE, 7 de Julio de 2007, *available at* the website of the Chihuahua State Congress, <http://www.congresochihuahua.gob.mx/biblioteca/leyes/archivosLeyes/165.pdf>.

¹³ *Id.* art. 4(I).

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