



Chihuahua, Mexico: Parentage, Filiation, and Paternity Laws

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CHIHUAHUA, MEXICO

PARENTAGE, FILIATION, AND PATERNITY LAWS

1. Do the legitimation laws of the State Chihuahua, Mexico, distinguish between children born in wedlock and out of wedlock?

Parentage is governed in the State of Chihuahua, Mexico, by the Civil Code of the State. Under the Code all children have equal rights regardless of whether they were born within a union not bound by marriage or within a marriage.¹

2. If the distinctions have been eliminated, are there other requirements for legitimation, such as acknowledgment, court order, etc.?

When children are born within an union not bound by marriage, they need to have their parentage established in order to have their rights implemented. The parentage of this group of children is established with respect to the mother by the mere fact of birth² and with respect to the father by voluntary acknowledgment of the child or by a final court judgement declaring the paternity of the child.³

The acknowledgment of a child born out of wedlock may be done in any of the following ways:

- I. On the birth record, before the Civil Registry Officer
- II. By a special acknowledgment proceeding before the same officer (*por acta especial*)
- III. By a public notarial instrument
- IV. Under a will
- V. By direct and open admission in open court⁴

3. If the distinctions have not been eliminated, what are the requirements for legitimizing a child (marriage, court, order, etc)?

Not applicable.

¹ Código Civil de Chihuahua, 7th ed. (Editorial Porrúa, México, D.F., 2002), arts. 366 and 1499. (Originally published officially in *Periódico Oficial* (P.O.) of the State Chihuahua, May 17, 1989). It became in force twenty days after its official publication, that is June 6, 1989. (First Transitory Article).

² *Id.* art. 337.

³ *Id.*

⁴ *Id.* art. 346.

4. If there are no longer distinctions, what is the date the law became effective? Is the law applied retroactively?

Laws establishing the equality of children

Children were granted equal rights not only since the date the current Civil Code came into force, on June 6, 1989,⁵ but at least since the date the previous Civil Code came into force, on July 31, 1942.⁶ At the federal level, there are several legal instruments applicable throughout the Republic which also have established the equality of all children.⁷

⁵ Código Civil del Estado de Chihuahua (Periódico Oficial, May 17, 1989, arts.366 and 1499, available at <http://www.chihuahua.gob.mx/congreso/>

⁶ Código Civil del Estado de Chihuahua (Suplemento al P.O., Julio 11, 1942), arts. 357, 1433, 1328, 337 and 328. The Code became in force twenty days after its official publication; that is July 31, 1942. (First Transitory Article).

⁷ Mexico became a State party to the United Nations Convention on the Right of the Child in 1989 (United Nations Convention on the Rights of the Child. Periodic reports of States parties due in 1997: Mexico. 17/08/98, at 4, available at <http://www.unhchr.ch/tbs/doc.nsf>). Under the Convention all rights apply to all children without discrimination of any kind, irrespective of the child's, or his parents', birth, or other status. (United Nations Convention on the Rights of the Child, available at <http://www.unicef.org/crc/introduction.htm>). Mexico is also a State party to the International Convention on Civil and Political Rights (CCPR), having acceded to the Convention in June 1981. (International Covenant on Civil and Political Rights. Office of the United Nations High Commissioner for Human Rights, available at <http://www.unhchr.ch/tbs/doc.nsf>). This later Convention states that all persons are equal before the law and are entitled without discrimination to the equal protection of the law. It also mandates that the law must prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as birth or other status (CCPR, art. 26). A similar provision in the Convention also states that every child must have the right, without discrimination because of birth, to such measures of protection as are required by his status as a minor, on the part of his family, society, and the State (CCPR, art. 24). Furthermore, under article 2 of the Convention, each State party to the Convention undertakes to respect and to ensure to all individuals, within its territory and subject to its jurisdiction, the rights recognized in the Convention, without distinction of any kind such as race, color, birth, or other status (CCPR, art. 2).

The Mexican government has set up the mechanisms for improved monitoring of the implementation of the Convention on the Rights of the Child through the National System for the Integral Development of the Family (Estatuto Orgánico del Sistema Nacional para el Desarrollo Integral de la Familia, D.O., June 1, 1999, arts. 28 and 31).

In addition, to further advance the implementation of the above referred Conventions, in 2000, Mexico promulgated the Law on the Protection of Girls, Boys, and Adolescents, based on article 4 of the Federal Constitution. This statute is applied throughout the Republic, and its provisions guarantee the fundamental rights of children, such as their non-discrimination at all times and their equality, regardless circumstances of birth or any other condition on their part or on the part of their parents. (Ley para la Protección de los Derechos de Niñas, Niños, y Adolescentes, D.O. May 29, 2000, arts. 1, 3 and 16).

Under the Constitution all treaties made by the President of the Republic, with the approval of the Senate, must, together with the Constitution itself and the laws of the Federal Congress, constitute the Supreme Law of the Union. The judges of each State must conform to the said Constitution, laws and treaties, notwithstanding any contradictory provision that may appear in the Constitution or laws of the States. (*Infra* note 8, vol. 5, art. 133).

In acceding to the above referred multilateral Conventions, Mexico has made both of them part of the national legislation. These, as well as the above referred federal statute, have higher hierarchical rank than the States laws, and they may be the basis and foundation for any legal action if there were any state law provisions conflicting with them.

Time Frame for Application of the Law

The issue of retroactivity of the law can be found in the Mexican Constitution. Article 14 reads as follows:

Article 14.- No law shall be given retroactive effect to the detriment of any person whatsoever.⁸

In harmony with the above constitutional provision, the Civil Code of Chihuahua expressly provides that its dispositions shall govern the legal effects of acts that occurred before its promulgation, if with its application no vested rights are violated.⁹ An equal provision is found in the previous Civil Code of 1942.¹⁰

The exceptions to the constitutional mandate of non-retroactivity of the law on civil matters has been interpreted by the Supreme Court of Mexico. The Court held that a new law can be applied to the future effects of acts that took place prior to its promulgation, but it cannot affect the validity of acts that took place under a previous law nor change the effects of these acts that were already executed.¹¹

In summary, the provisions of the Civil Code of Chihuahua, such as those governing the equality of all children, are of immediate application to present and future legal situations of a contractual nature. They also govern those legal situations that were established and created before the promulgation of the current Code and continue in existence after such promulgation. There is an exception to this principle when the application of the current law affects the validity of acts originated under the previous law or conflicts with vested rights.

Based on the above, it may be stated that under the laws of Chihuahua, the provisions of the current Civil Code establishing the equality of children's rights are applicable also to those children who were born before the enactment of the current Civil Code. However, the provisions of the current Code cannot be given retroactive effect to the detriment of any person.

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⁸ Constitución Política de los Estados Unidos Mexicanos (Editorial Porrúa and IJJ-UNAM, México, D.F., 2000), art. 14. Originally published officially in Diario Oficial (D.O.) Feb. 5, 1917; errata: D.O. Feb. 6, 1917.

⁹ *Supra* note 1, Second Transitory Article.

¹⁰ *Supra* note 6, Second Transitory Article.

¹¹ La Interpretación Constitucional de la Suprema Corte de Justicia (1917-1982). México, UNAM, Instituto de Investigaciones Jurídicas, 1984, vol. I, p. 893. Amparo administrativo en revisión, t. LXIV, 1398/39, 15 de Junio de 1940, mayoría de 3 votos, in Código Civil para el Distrito Federal en Materia Común y para toda la República en Materia Federal, vol. V., p. 533-534, UNAM and Miguel Angel Porrúa, 1993.