

2013 -- H 5141

=====
LC00320
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

—————
A N A C T

RELATING TO DOMESTIC RELATIONS -- DIVORCE AND SEPARATION

Introduced By: Representatives Giarrusso, Newberry, Costa, Morgan, and Chippendale

Date Introduced: January 23, 2013

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 15-5-16 of the General Laws in Chapter 15-5 entitled "Divorce and
2 Separation" is hereby amended to read as follows:

3 **15-5-16. Alimony and counsel fees -- Custody of children.** -- (a) In granting any
4 petition for divorce, divorce from bed and board, or relief without the commencement of divorce
5 proceedings, the family court may order either of the parties to pay alimony or counsel fees, or
6 both, to the other.

7 (b) (1) In determining the amount of alimony or counsel fees, if any, to be paid, the
8 court, after hearing the witnesses, if any, of each party, shall consider:

9 (i) The length of the marriage;

10 (ii) The conduct of the parties during the marriage;

11 (iii) The health, age, station, occupation, amount and source of income, vocational skills,
12 and employability of the parties; and

13 (iv) The state and the liabilities and needs of each of the parties.

14 (2) In addition, the court shall consider:

15 (i) The extent to which either party is unable to support herself or himself adequately
16 because that party is the primary physical custodian of a child whose age, condition, or
17 circumstances make it appropriate that the parent not seek employment outside the home, or seek
18 only part-time or flexible-hour employment outside the home;

19 (ii) The extent to which either party is unable to support herself or himself adequately

1 with consideration given to:

2 (A) The extent to which a party was absent from employment while fulfilling
3 homemaking responsibilities, and the extent to which any education, skills, or experience of that
4 party have become outmoded and his or her earning capacity diminished;

5 (B) The time and expense required for the supported spouse to acquire the appropriate
6 education or training to develop marketable skills and find appropriate employment;

7 (C) The probability, given a party's age and skills, of completing education or training
8 and becoming self-supporting;

9 (D) The standard of living during the marriage;

10 (E) The opportunity of either party for future acquisition of capital assets and income;

11 (F) The ability to pay of the supporting spouse, taking into account the supporting
12 spouse's earning capacity, earned and unearned income, assets, debts, and standard of living;

13 (G) Any other factor which the court expressly finds to be just and proper.

14 (c) (1) For the purposes of this section, "alimony" is construed as payments for the
15 support or maintenance of either the husband or the wife.

16 (2) Alimony is designed to provide support for a spouse for a reasonable length of time
17 to enable the recipient to become financially independent and self-sufficient. However, the court
18 may award alimony for an indefinite period of time when it is appropriate in the discretion of the
19 court based upon the factors set forth in subdivision (b)(2)(ii)(B). After a decree for alimony has
20 been entered, the court may from time to time upon the petition of either party review and alter its
21 decree relative to the amount and payment of the alimony, and may make any decree relative to it
22 which it might have made in the original suit. The decree may be made retroactive in the court's
23 discretion to the date that the court finds that a substantial change in circumstances has occurred;
24 provided, the court shall set forth in its decision the specific findings of fact which show a
25 substantial change in circumstances and upon which findings of facts the court has decided to
26 make the decree retroactive. Nothing provided in this section shall affect the power of the court as
27 subsequently provided by law to alter, amend, or annul any order of alimony previously entered.
28 Upon the remarriage of the spouse who is receiving alimony, the obligation to pay alimony shall
29 automatically terminate at once.

30 (d) (1) In regulating the custody of the children, the court shall provide for the
31 reasonable right of visitation by the natural parent not having custody of the children, except upon
32 the showing of cause why the right should not be granted. The court shall mandate compliance
33 with its order by both the custodial parent and the children. In the event of noncompliance, the
34 noncustodial parent may file a motion for contempt in family court. Upon a finding by the court

1 that its order for visitation has not been complied with, the court shall exercise its discretion in
2 providing a remedy, and define the noncustodial parent's visitation in detail. However, if a second
3 finding of noncompliance by the court is made, the court shall consider this to be grounds for a
4 change of custody to the noncustodial parent.

5 (2) In regulating the custody and determining the best interests of children, the fact that a
6 parent is receiving public assistance shall not be a factor in awarding custody.

7 (3) A judicial determination that the child has been physically or sexually abused by the
8 natural parent shall constitute sufficient cause to deny the right of visitation. However, when the
9 court enters an order denying visitation under this section, it shall review the case at least
10 annually to determine what, if any, action the parent has taken to rehabilitate himself or herself
11 and whether the denial of visitation continues to be in the child's best interests.

12 (4) The court may order a natural parent who has been denied the right of visitation due
13 to physical or sexual abuse of his or her child to engage in counseling. The failure of the parent to
14 engage in counseling, ordered by the court pursuant to this section, shall constitute sufficient
15 cause to deny visitation.

16 (5) No person shall be granted custody of or visitation with a child if that person has been
17 convicted under or pled nolo contendere to a violation of sections 11-37-2, 11-37-4, 11-37-6 or 11-
18 37-8.1 or other comparable law of another jurisdiction and the child was conceived as a result of
19 that violation.

20 (e) In all hearings regarding denial of visitation, the court shall make findings of fact.

21 (f) This chapter does not affect the right of the family court to award alimony or support
22 pendente lite.

23 (g) (1) Notwithstanding the provisions of this section and section 15-5-19, the court,
24 when making decisions regarding child custody and visitation, shall consider evidence of past or
25 present domestic violence. Where domestic violence is proven, any grant of visitation shall be
26 arranged so as to best protect the child and the abused parent from further harm.

27 (2) In addition to other factors that a court must consider in a proceeding in which the
28 court has made a finding of domestic or family violence, the court shall consider as primary the
29 safety and well-being of the child and of the parent who is the victim of domestic or family
30 violence. The court shall also consider the perpetrator's history of causing physical harm, bodily
31 injury or assault to another person.

32 (3) In a visitation or custody order, as a condition of the order, the court may:

33 (i) Order the perpetrator of domestic violence to attend and successfully complete, to the
34 satisfaction of the court, a certified batterer's intervention program;

1 (ii) Order the perpetrator to attend a substance abuse program whenever deemed
2 appropriate;

3 (iii) Require that a bond be filed with the court in order to ensure the return and safety of
4 the child;

5 (iv) Order that the address and telephone number of the child be kept confidential;

6 (v) Order an exchange of the child to occur in a protected setting, or supervised by
7 another person or agency; provided that, if the court allows a family or household member to
8 supervise visitation, the court shall establish conditions to be followed during visitation;

9 (vi) Order the perpetrator of domestic violence to abstain from possession or
10 consumption of alcohol or controlled substances during the visitation; and

11 (vii) Impose any other condition that is deemed necessary to provide for the safety of the
12 child, the victim of domestic violence, or other family or household member.

13 (4) "Domestic violence" means the occurrence of one or more of the following acts
14 between spouses or people who have a child in common:

15 (i) Attempting to cause or causing physical harm;

16 (ii) Placing another in fear of imminent serious physical harm;

17 (iii) Causing another to engage involuntarily in sexual relations by force, threat of force,
18 or duress.

19 (5) In every proceeding in which there is at issue the modification of an order for
20 custody or visitation of a child, the finding that domestic or family violence has occurred since
21 the last custody determination constitutes a prima facie finding of a change of circumstances.

22 (6) The fact that a parent is absent or relocates because of an act of domestic or family
23 violence by the other parent shall not weigh against the relocating or absent parent in determining
24 custody and visitation.

25 (7) A party's absence, relocation, or failure to comply with custody and visitation orders
26 shall not, by itself, be sufficient to justify a modification of a custody or visitation order if the
27 reason for the absence, relocation, or failure to comply is the party's activation to military service
28 or deployment out of state.

29 If there is no existing order establishing the terms of parental rights and responsibilities
30 or parent-child contact and it appears that deployment or mobilization is imminent, upon motion
31 by either parent, the court shall expedite a hearing to establish temporary parental rights and
32 responsibilities and parent-child contact to ensure the deploying parent has access to the child, to
33 ensure disclosure of information, to grant other rights and duties set forth herein, and to provide
34 other appropriate relief. Any initial pleading filed to establish parental rights and responsibilities

1 for or parent-child contact with a child of a deploying parent shall be so identified at the time of
2 filing by stating in the text of the pleading the specific facts related to deployment.

3 SECTION 2. This act shall take effect upon passage.

=====
LC00320
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO DOMESTIC RELATIONS -- DIVORCE AND SEPARATION

1 This act would prevent a perpetrator of a rape, who thereby fathers a child, from custody
2 or visitation with that child.

3 This act would take effect upon passage.

=====
LC00320
=====