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LC001445

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO DOMESTIC RELATIONS -- DIVORCE AND SEPARATION

Introduced By: Representatives Diaz, Slater, Williams, Almeida, and Maldonado

Date Introduced: February 16, 2017

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 15-5-16.2 and 15-5-16.7 of the General Laws in Chapter 15-5
2 entitled "Divorce and Separation" are hereby amended to read as follows:

3 **15-5-16.2. Child support.**

4 (a) In a proceeding for divorce, divorce from bed and board, a miscellaneous petition
5 without the filing of divorce proceedings, or child support, the court shall order either or both
6 parents owing a duty of support to a child to pay an amount based upon a formula and guidelines
7 adopted by an administrative order of the family court. If, after calculating support based upon
8 court established formula and guidelines, the court, in its discretion, finds the order would be
9 inequitable to the child or either parent, the court shall make findings of fact and shall order either
10 or both parents owing a duty of support to pay an amount reasonable or necessary for the child's
11 support after considering all relevant factors including, but not limited to:

12 (1) The financial resources of the child;

13 (2) The financial resources of the custodial parent;

14 (3) The standard of living the child would have enjoyed had the marriage not been
15 dissolved;

16 (4) The physical and emotional condition of the child and his or her educational needs;

17 and

18 (5) The financial resources and needs of the non-custodial parent; provided, that
19 establishing a child support order, incarceration may not be treated as voluntary unemployment.

1 (b) The court may, if in its discretion it deems it necessary or advisable, order child
2 support and education costs for children attending high school at the time of their eighteenth
3 (18th) birthday and for ninety (90) days after graduation, but in no case beyond their nineteenth
4 (19th) birthday.

5 Notwithstanding the foregoing, the court, in its discretion, may order child support, in the
6 case of a child with a severe physical or mental impairment still living with or under the care of a
7 parent, beyond the child's emancipation as defined above. The court shall consider the following
8 factors when making its determination: (1) the nature and extent of the disability; (2) the cost of
9 the extraordinary medical expenses; (3) the ability of the child to earn income; (4) the financial
10 resources of the child; (5) the financial resources of the parents; (6) the inability of the primary
11 caregiver of the child to sustain gainful employment on a full-time basis due to the care
12 necessitated by the child. The onset of the disability must have occurred prior to the emancipation
13 event. If a child support order for a child with a severe physical or mental impairment has been
14 terminated, suspended or expired, the court shall consider the factors in this paragraph and has the
15 discretion to order child support for this child prospectively based upon established child support
16 guidelines. The court may periodically review the case to determine if circumstances warrant the
17 continuation of child support.

18 (c) (1) The court may, if in its discretion it deems it necessary or advisable, appoint an
19 attorney or a guardian ad litem to represent the interest of a minor or dependent child with respect
20 to his or her support, custody, and visitation.

21 (i) In determining whether an appointment should be made, the court shall consider the
22 extent to which a guardian ad litem may assist in providing information concerning the best
23 interest of the child; the age of the child; the wishes of the parents as well as their financial
24 resources; the nature of the proceeding including the level of contentiousness, allegations of child
25 abuse or domestic violence and the risk of harm to the child if a guardian is not appointed; or
26 conflicts of interest between the child and parents or siblings;

27 (ii) The guardian ad litem shall be appointed from a list of persons properly credentialed
28 pursuant to administrative orders of the chief judge of the family court;

29 (iii) The court shall enter an order of appointment stating the specific assignment the
30 optional and mandatory duties of the guardian ad litem, the guardian's access to the child and
31 confidential information regarding the child, and a provision for payment of the costs and fees of
32 the guardian ad litem;

33 (iv) Communications made to a guardian, including those made by a child, are not
34 privileged and may or may not be disclosed to the parties, the court or to professionals providing

1 services to the child or the family;

2 (v) The guardian ad litem shall meet with the child, conduct an investigation and upon
3 request of the court shall prepare an oral or written report that contains the procedural background
4 of the case, identification of all persons interviewed and other sources of information, a statement
5 of the child's emotional, medical, educational and social service needs, the child's wishes and
6 other factors relevant to the court's determination regarding the best interests of the child;

7 (vi) Any written report of the guardian ad litem shall be marked as a full exhibit in the
8 proceedings, subject to cross-examination;

9 (vii) If the guardian ad litem requests confidential health care information and consent is
10 withheld, he or she shall apply to the court for leave to obtain such information after compliance
11 with § 5-37.3-6.1;

12 (viii) The guardian ad litem shall be given notice of and should appear at all proceedings
13 in family court that affect the interests of the child;

14 (ix) A person serving as a guardian ad litem under this section acts as the court's agent
15 and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the
16 guardian ad litem;

17 (x) The chief judge of the family court shall issue, through administrative orders, rules
18 governing the appointment and performance of guardians ad litem in domestic proceedings.

19 (2) After a decree for support has been entered, the court may from time to time upon the
20 petition of either party, or by the state in accordance with subsection (c)(3) of this section, review
21 and alter its decree relative to the amount of support and the payment of it, and may make any
22 decree relative to it which it might have made in the original suit. The decree may be made
23 retroactive in the court's discretion only to the date that notice of a petition to modify was given
24 to the adverse party if the court finds that a substantial change in circumstances has occurred;
25 provided, that the court shall set forth in its decision the specific findings of fact which show a
26 substantial change in circumstances and upon which findings of facts the court has decided to
27 make the decree retroactive. In modifying the order, incarceration may not be treated as voluntary
28 unemployment which would prevent the motion from being heard or result in a denial of the
29 motion. The child support order shall continue in full force and effect, by wage withholding, after
30 the youngest child is emancipated, and shall be applied towards any arrearage due and owing, as
31 indicated on the child support computer system. Upon satisfaction of the arrears due and owing
32 the child support order shall be automatically suspended and wage withholding terminated
33 without the necessity of returning to family court.

34 (3) When the department of human services, office of child support services, becomes

1 aware of the fact, through an electronic data exchange of information with the department of
2 corrections, or by any other means, that the noncustodial parent is or will be incarcerated for one
3 hundred eighty (180) days or more, the department may automatically file a motion to modify or
4 a motion for relief, to be heard before the court via a video conference hearing or other type of
5 hearing. A specific request for the filing of this motion need not be made in writing or otherwise
6 by the incarcerated noncustodial parent, but the parent shall be notified of the hearing and
7 provided a meaningful opportunity to respond. The court shall immediately schedule a hearing to
8 determine the noncustodial parent's ability to pay, taking into consideration the assets and
9 financial resources and the length of the sentence, and shall modify or suspend all child support
10 orders after setting forth in its decision specific findings of fact, which show circumstances upon
11 which the court has decided to modify or suspend all child support orders during the period of
12 incarceration. Upon release, a hearing shall be scheduled to determine the obligor's ability to
13 begin paying child support pursuant to the child support guidelines in effect. This section does not
14 apply to those individuals who are serving a sentence for criminal nonsupport in state or federal
15 prison, or who are found to be in civil contempt for failure to pay child support and incarcerated
16 for that reason.

17 (d) (1) In a proceeding to enforce a child support order, or a spousal support order for a
18 custodial parent having custody of a minor child, the court or its magistrate may assign to the
19 obligee such tangible personal property of the obligor that will be sufficient to satisfy the child or
20 spousal support arrearage owed. The court or its magistrate, after a hearing, shall establish the
21 amount of the child or spousal support arrearage, and the nature and value of the tangible
22 personal property. To effect the assignment, the court or its magistrate may order the obligor to
23 execute and deliver the documents of title which may be necessary to complete the transfer of
24 title to the property, and may order the obligor to deliver possession of the property to the
25 obligee. Whenever the obligor fails to comply with the order assigning the property, the order of
26 assignment shall be regarded as a judgment vesting title to the property in the obligor as fully and
27 completely as if the obligor had executed and delivered the documents of title.

28 (2) Any order for child support issued by the family court shall contain a provision
29 requiring either or both parents owing a duty of support to a child to obtain health insurance
30 coverage for the child when coverage is available to the parent or parents through their
31 employment without cost or at a reasonable cost. "Reasonable cost" shall be defined in
32 accordance with guidelines adopted by administrative order of the family court in conjunction
33 with the child support guidelines.

34 (3) Any existing child support orders may be modified in accordance with this subsection

1 unless the court makes specific written findings of fact that take into consideration the best
2 interests of the child and conclude that a child support order or medical order would be unjust or
3 inappropriate in a particular case.

4 (4) In addition, the national medical support notice shall be issued with respect to all
5 orders issued, enforced, or modified on or after October 1, 2002, in accordance with chapter 29 of
6 title 15. The notice shall inform the employer of provisions in the child support order, for health
7 care coverage for the child, and contain instructions on how to implement this coverage. In lieu of
8 the court ordering the non-custodial parent to obtain or maintain health care coverage for the
9 child, the court may order the non-custodial parent to contribute a weekly cash amount towards
10 the medical premium for health care coverage paid by the state of Rhode Island and/or the
11 custodial parent. The method to determine a reasonable weekly amount shall be addressed in the
12 family court administrative order pertaining to the child support guidelines.

13 (e) In a proceeding to establish support, the court in its discretion may, after opportunity
14 for a hearing, issue a temporary order for child support payable into the registry of the court and
15 to be held pending entry of judgment. In the event of a final adjudication requiring no payment or
16 payments in an amount less than those payments which have been made pursuant to a temporary
17 order under this section, the defendant shall be entitled to a refund of all or a portion of the
18 amounts paid.

19 (f) In any proceeding to establish support, or in any case in which an obligor owes past
20 due support, for a child or children receiving public assistance pursuant to chapter 5.1 of title 40,
21 the court or its magistrate, upon a finding that an able bodied absent parent obligor is
22 unemployed, underemployed or lacks sufficient income or resources from which to make
23 payment of support equal to the public assistance payment for the child or children, or is unable
24 to pay the arrearages in accordance with a payment plan, may order that parent to perform unpaid
25 community service for at least twenty (20) hours per week through community service
26 placements arranged and supervised by the department of human services or to participate in any
27 work activities that the court deems appropriate. The performance of community service shall not
28 be a basis for retroactive suspension of arrears due and owing.

29 (g) (1) In any proceeding to establish support for a minor child whose adjudicated parent
30 is a minor (minor-parent), the court or its magistrate may order a grandparent of the minor child
31 to reimburse the department of human services in an amount not to exceed the total amount of
32 cash assistance benefits paid to or for the minor child pursuant to chapter 5.1 of title 40 until the
33 minor-parent reaches the age of eighteen (18), less any payment made to the department by the
34 minor parent.

1 (2) The obligation of reimbursement for the minor child shall be the joint and several
2 responsibility of the minor parent and the grandparent(s) until the minor parent reaches the age of
3 eighteen (18); provided, that each joint obligor shall have a right of contribution against each joint
4 obligor, which right shall be enforceable by an action in the family court.

5 (h) (1) All support orders established or modified in the state on or after October 1, 1998,
6 shall be recorded with the Rhode Island family court department of human services child support
7 computer enforcement system, which maintains the official registry of support orders entered in
8 accordance with applicable administrative orders issued by the Rhode Island family court. The
9 support order shall be recorded whether or not services are being provided under the IV-D state
10 plan.

11 (2) The obligee to a paternity or child support proceeding shall be required to file with the
12 family court, upon the entry of the order, the appropriate form as provided by family court which
13 includes the full name of the parties, residential and mailing address, telephone number, drivers
14 license number, social security number and the name, address and telephone number of the
15 employer. The form shall also include the full order amount and date and amount of arrearages if
16 any, the name of the child(ren), their date of birth, address and social security number and any
17 other information as required by administrative order.

18 (3) After this, each party is required to file an amended form whenever any of the
19 information contained on the original form has been changed in any way, within ten (10) days of
20 the change. The information shall be entered in the child support enforcement computer system
21 within five (5) business days of receipt of the amended form.

22 (i) In any subsequent child support enforcement action between the parties, upon
23 sufficient showing that diligent effort has been made to ascertain the location of such a party, the
24 court may deem state due process requirements for notice and service of process to be met with
25 respect to the party, upon service by first class mail or, where appropriate, by service as specified
26 in the Rhode Island rules of procedure for domestic relations for the Family Court of Rhode
27 Island, of written notice to the most recent residential or employer address of record.

28 [See § 12-1-15 of the General Laws.]

29 **15-5-16.7. Review of child support orders.**

30 (a) For purposes of this section, a "child support order" means a child support order
31 enforceable pursuant to the Rhode Island state plan for support enforcement as further defined in
32 § 15-16-5(a).

33 (b) Every three (3) years from the date the child support order was established or
34 modified, and upon the request of either party, or ~~if there is an assignment under § 40-6-9~~ upon

1 the request of the state [pursuant to §15-5-16.2\(c\)\(3\)](#), the court shall review and, if appropriate,
2 adjust the order in accordance with the child support guidelines if the amount of the child support
3 award under the order differs from the amount that would be awarded in accordance with the
4 guidelines. The adjustment of the order shall be made under this subsection without a requirement
5 for proof or showing of a change in circumstances. [In adjusting the order, incarceration may not](#)
6 [be treated as voluntary unemployment which would prevent the motion from being heard or result](#)
7 [in a denial of the motion.](#) The periodic review of child support orders as provided in this
8 subsection is in addition to the opportunity for review provided in § 15-5-16.2(c).

9 (c) In the case of a request for a review before the three (3) year period, [upon the request](#)
10 [of either party, or upon the request of the state pursuant to §15-5-16.2\(c\)\(3\)](#), the amount of
11 support may, in the court's discretion, be modified if the court finds that a substantial change in
12 circumstances has occurred in accordance with § 15-5-16.2. The court, in its discretion, may
13 modify a child support order retroactively only to the date that notice of a petition to modify was
14 given to the adverse party if the court finds that a substantial change in circumstances has
15 occurred; provided, that the court shall set forth in its decision the specific findings of fact which
16 show a substantial change in circumstances and upon which findings of facts the court has
17 decided to make the decree retroactive.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO DOMESTIC RELATIONS -- DIVORCE AND SEPARATION

- 1 This act would allow the family court to consider the incarceration of an individual be
- 2 taken into consideration for the purposes of a motion to modify a child support order, but would
- 3 provide that such incarceration may not be considered by the court as "voluntary unemployment".
- 4 This act would take effect upon passage.

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