

2018 -- H 7726

=====
LC004658
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

—————
A N A C T

RELATING TO DOMESTIC RELATIONS - DIVORCE AND SEPARATION -- CHILD
SUPPORT

Introduced By: Representatives O`Grady, Tanzi, McKiernan, Ajello, and Walsh

Date Introduced: February 28, 2018

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 15-5-16.2 of the General Laws in Chapter 15-5 entitled "Divorce
2 and Separation" is 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 in

1 establishing a child-support order, incarceration may not be treated as voluntary unemployment.

2 (b) The court may, if in its discretion it deems it necessary or advisable, order child
3 support and education costs for children attending high school at the time of their eighteenth
4 (18th) birthday and for ninety (90) days after graduation, ~~but in no case beyond their nineteenth~~
5 ~~(19th) birthday.~~ If, however, any children are attending a two (2) year or four (4) year college and
6 the children still live with the custodial parent, a court, in its discretion, may order the child
7 support extended until age twenty-one (21).

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

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

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

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

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

1 the guardian ad litem;

2 (iv) Communications made to a guardian, including those made by a child, are not
3 privileged and may or may not be disclosed to the parties, the court, or to professionals providing
4 services to the child or the family;

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

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

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

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

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

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

23 (2) After a decree for support has been entered, the court may, from time to time upon the
24 petition of either party, or by the state in accordance with subsection (c)(3) of this section, review
25 and alter its decree relative to the amount of support and the payment of it, and may make any
26 decree relative to it that it might have made in the original suit. The decree may be made
27 retroactive in the court's discretion only to the date that notice of a petition to modify was given
28 to the adverse party if the court finds that a substantial change in circumstances has occurred;
29 provided, that the court shall set forth in its decision the specific findings of fact that show a
30 substantial change in circumstances and upon which findings of facts the court has decided to
31 make the decree retroactive. In modifying the order, incarceration may not be treated as voluntary
32 unemployment that would prevent the motion from being heard or result in a denial of the
33 motion. The child-support order shall continue in full force and effect, by wage withholding, after
34 the youngest child is emancipated, and shall be applied towards any arrearage due and owing, as

1 indicated on the child-support computer system. Upon satisfaction of the arrears due and owing
2 the child-support order shall be automatically suspended and wage withholding terminated
3 without the necessity of returning to family court.

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

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

33 (2) Any order for child support issued by the family court shall contain a provision
34 requiring either or both parents owing a duty of support to a child to obtain health insurance

1 coverage for the child when coverage is available to the parent or parents through their
2 employment without cost or at a reasonable cost. "Reasonable cost" shall be defined in
3 accordance with guidelines adopted by administrative order of the family court in conjunction
4 with the child support guidelines.

5 (3) Any existing child-support orders may be modified in accordance with this subsection
6 unless the court makes specific written findings of fact that take into consideration the best
7 interests of the child and conclude that a child-support order or medical order would be unjust or
8 inappropriate in a particular case.

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

18 (5) In any order for child support containing an arrearage amount owed to the custodial
19 parent, the court shall not allow the arrearage to be waived even if the parties agree on the waiver
20 subsequent to the order.

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

27 (f) In any proceeding to establish support, or in any case in which an obligor owes past-
28 due support, for a child or children receiving public assistance pursuant to chapter 5.1 of title 40,
29 the court or its magistrate, upon a finding that an able-bodied absent parent obligor is
30 unemployed, underemployed, or lacks sufficient income or resources from which to make
31 payment of support equal to the public assistance payment for the child or children, or is unable
32 to pay the arrearages in accordance with a payment plan, may order that parent to perform unpaid
33 community service for at least twenty (20) hours per week through community service
34 placements arranged and supervised by the department of human services or to participate in any

1 work activities that the court deems appropriate. The performance of community service shall not
2 be a basis for retroactive suspension of arrears due and owing.

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

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

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

19 (2) The obligee to a paternity or child-support proceeding shall be required to file with
20 the family court, upon the entry of the order, the appropriate form as provided by family court
21 that includes the full name of the parties, residential and mailing address, telephone number,
22 drivers license number, social security number, and the name, address, and telephone number of
23 the employer. The form shall also include the full order amount and date and amount of
24 arrearages if any, the name of the child(ren), their date of birth, address, social security number,
25 and any other information as required by administrative order.

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

30 (i) In any subsequent child-support-enforcement action between the parties, upon
31 sufficient showing that diligent effort has been made to ascertain the location of such a party, the
32 court may deem state due process requirements for notice and service of process to be met with
33 respect to the party, upon service by first class mail or, where appropriate, by service as specified
34 in the Rhode Island rules of procedure for domestic relations for the family court of Rhode Island,

1 of written notice to the most recent residential or employer address of record.

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

3 SECTION 2. Section 15-9-1 of the General Laws in Chapter 15-9 entitled "Support of
4 Children [See Title 16 Chapter 97 - The Rhode Island Board of Education Act]" is hereby
5 amended to read as follows:

6 **15-9-1. Duty of parent to pay support and maintenance to the agency or person**
7 **having custody of the child.**

8 (a) Whenever the department of children, youth and families shall pay for the support and
9 maintenance of any child pursuant to §§ 42-72-13 and 42-72-14, or whenever another
10 department, agency, society, institution, or person having the charge, care, or custody of a child
11 shall pay for the support and maintenance of the child, the court shall order either or both parents
12 owing a duty of support to a child to pay an amount based upon a formula and guidelines adopted
13 by an administrative order of the family court. If, after calculating support based upon court
14 established formula and guidelines, the court, in its discretion, finds the proposed order would be
15 inequitable to the child or either parent, the court shall make findings of fact and shall order either
16 or both parents owing a duty of support to pay an amount reasonable or necessary for the child's
17 support after considering all relevant factors, including, but not limited to:

18 (1) The financial resources of the child;

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

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

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

24 (5) The financial resources and needs of the non-custodial parent.

25 (b) If it deems necessary or advisable, the court may order child support and education
26 costs for children attending high school at the time of their eighteenth (18th) birthday and for
27 ninety (90) days after graduation, ~~but in no case beyond their nineteenth (19th) birthday.~~ If,
28 however, any children are attending a two (2) year or four (4) year college, and the children still
29 live with the custodial parent, a court, in its discretion, may order the child support extended until
30 age twenty-one (21). In addition, the court may order the support of a child with a severe physical
31 or mental impairment to continue ~~until~~ past the twenty-first (21st) birthday of the child; ~~under the~~
32 guidelines set forth in § 15-5-16.2(b).

33 (c) After a decree for support has been entered and upon the petition of either party, the
34 court may review and alter its decree relative to the amount and payment of support. If the court

1 finds that a substantial change in circumstances has occurred, the decree may be made retroactive
2 to the date that notice of a petition to modify was given to the adverse party. In such a case the
3 court shall set forth in its decision the specific findings of fact which show a substantial change in
4 circumstances and why the decree should be made retroactive. Notwithstanding the foregoing, if
5 an order contains an arrearage amount owed to the custodial parent, the court shall not allow the
6 arrears to be waived even if the parties agree on the waiver.

7 (d) Any order for child support issued by the family court shall contain a provision
8 requiring either or both parents owing a duty of support to a child to obtain health insurance
9 coverage for the child when such coverage is available to the parent or parents through their
10 employment without cost or at a reasonable cost. "Reasonable cost" shall be defined in
11 accordance with guidelines adopted by administrative order of the family court in conjunction
12 with the child support guidelines.

13 (e) Any existing child support orders may be modified in accordance with this section
14 unless the court makes specific written findings of fact that take into consideration the best
15 interests of the child and conclude that a child support order or medical order would be unjust or
16 inappropriate in a particular case.

17 (f) In addition, the national medical support notice shall be issued with respect to all
18 orders issued, enforced, or modified on or after October 1, 2002, in accordance with chapter 29 of
19 this title. The notice shall inform the employer of provisions in the child support order for health
20 care coverage for the child and of the method to implement this coverage. In lieu of the court
21 ordering the non-custodial parent to obtain or maintain health care coverage for the child, the
22 court may order the non-custodial parent to contribute a weekly cash amount towards the medical
23 premium for health care coverage paid by the state of Rhode Island and/or the custodial parent.
24 The method to determine a reasonable weekly amount shall be addressed in a family court
25 administrative order pertaining to the child support guidelines.

26 (g) All support orders established or modified in the state on or after October 1, 1998,
27 shall be recorded with the Rhode Island family court/department of administration, division of
28 taxation child support computer enforcement system. The system maintains the official registry of
29 support orders entered in accordance with applicable administrative orders issued by the Rhode
30 Island family court.

31 (h) In any subsequent child support enforcement action between the parties, upon
32 sufficient showing that a diligent effort has been made to ascertain the location of such a party,
33 the court may allow for notice and service of process to be made by first class mail or by service
34 of written notice to the most recent residential or employer address of record, as specified in the

1 Rhode Island rules of procedure for domestic relations for the Family Court of Rhode Island.

2 (i) The department of children, youth, and families shall not seek child support for
3 services to the child which are special education services as defined under state and federal law
4 and pursuant to the regulations of the board of regents for elementary and secondary education
5 governing the special education of students with disabilities, section two, I., 1.0-4.11 and 34
6 C.F.R. Part 300.

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

=====
LC004658
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO DOMESTIC RELATIONS - DIVORCE AND SEPARATION -- CHILD
SUPPORT

1 This act would extend child support obligations for non-custodial parents beyond
2 emancipation if the children are attending a two (2) or four (4) year college and still live with the
3 custodial parent until such children reach the age of twenty-one (21), and would clarify state law
4 concerning the duration of support orders for severely handicapped children past the age of
5 emancipation. This act would also restrict the court's power to modify existing orders of child
6 support with respect to arrearages owed to the custodial parent even if the parties agree to waive
7 such arrearage.

8 This act would take effect upon passage.

=====
LC004658
=====