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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

RELATING TO DOMESTIC RELATIONS -- DIVORCE AND SEPARATION

Introduced By: Senator F. Lombardi

Date Introduced: March 22, 2024

Referred To: Senate Judiciary

(Dept. of Human Services)

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 and  
2 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; and

17 (5) The financial resources and needs of the noncustodial parent, provided, that in  
18 establishing a child support order, incarceration may not be treated as voluntary unemployment.

19 (b) The court may, if in its discretion it deems it necessary or advisable, order child support

1 and education costs for children attending high school at the time of their eighteenth (18th) birthday  
2 and for ninety (90) days after graduation, but in no case beyond their nineteenth (19th) birthday.

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

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

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

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

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

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

34 (v) The guardian ad litem shall meet with the child, conduct an investigation, and upon

1 request of the court, shall prepare an oral or written report that contains the procedural background  
2 of the case, identification of all persons interviewed and other sources of information, a statement  
3 of the child's emotional, medical, educational, and social service needs, the child's wishes, and  
4 other factors relevant to the court's determination regarding the best interests of the child;

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

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

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

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

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

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

32 (3) When the department of human services, office of child support services, becomes  
33 aware of the fact, through an electronic data exchange of information with the department of  
34 corrections, or by any other means, that the noncustodial parent is or will be incarcerated for one

1 hundred eighty (180) days or more, the department may automatically file a motion to modify or a  
2 motion for relief, to be heard before the court via a video conference hearing or other type of  
3 hearing. A specific request for the filing of this motion need not be made in writing or otherwise  
4 by the incarcerated, noncustodial parent, but the parent shall be notified of the hearing and provided  
5 a meaningful opportunity to respond. The court shall schedule a hearing to determine the  
6 noncustodial parent's ability to pay, taking into consideration the assets and financial resources and  
7 any benefits the noncustodial parent may be receiving, the length of the sentence, and shall modify  
8 or suspend all child support orders, after setting forth in its decision specific findings of fact that  
9 show circumstances upon which the court has decided to modify or suspend all child support orders  
10 during the period of incarceration. Upon the obligor's release, the department of human services,  
11 office of child support services, shall file a motion for support, and a hearing shall be scheduled to  
12 determine the obligor's ability to begin paying child support pursuant to the child support  
13 guidelines in effect. ~~This section does not apply to those individuals who are serving a sentence for~~  
14 ~~criminal nonsupport in state or federal prison, or who are found to be in civil contempt for failure~~  
15 ~~to pay child support and incarcerated for that reason.~~ Nothing herein prevents or otherwise prohibits  
16 the court from denying any such motion if an obligor is serving a sentence for criminal nonsupport  
17 in state or federal prison or is otherwise incarcerated after having been found to be in willful civil  
18 contempt for failure to pay child support.

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

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

1 guidelines.

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

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

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

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

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

1 parent.

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

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

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

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

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

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

30 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

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- 1           This act would permit state child support agencies to bring actions under the child support
- 2 statute on behalf of a noncustodial parent who is incarcerated and unable to pay child support.
- 3           This act would take effect upon passage.

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