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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

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

Introduced By: Representatives Diaz, McNamara, Slater, Vella-Wilkinson, Perez,
McLaughlin, Alzate, Felix, and Tobon

Date Introduced: January 29, 2021

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 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 non-custodial parent, provided, that in
18 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 support
2 and education costs for children attending high school at the time of their eighteenth ~~(18th)~~ birthday
3 and for ninety (90) days after graduation, ~~but in no case beyond their nineteenth (19th) birthday.~~ If,
4 however, any children are attending a two (2) year or four (4) year college and the children still
5 live with the custodial parent, a court, in its discretion, may order the child support extended until
6 age twenty-two (22). The court shall consider the following factors when making its determination
7 to extend child support beyond the child's eighteenth birthday: (1) The ability of the child to earn
8 income while attending school; (2) The financial resources of the child; (3) The financial resources
9 of the custodial parent and whether they are remarried or have additional income into the
10 household; (4) The ability of either parent, custodial or non-custodial, to pay for the child's entire
11 education; (5) Whether the child attends school outside of the state of Rhode Island.

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

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

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

34 (ii) The guardian ad litem shall be appointed from a list of persons properly credentialed

1 pursuant to administrative orders of the chief judge of the family court;

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

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

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

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

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

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

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

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

26 (2) After a decree for support has been entered, the court may, from time to time upon the
27 petition of either party, or by the state in accordance with subsection (c)(3) of this section, review
28 and alter its decree relative to the amount of support and the payment of it, and may make any
29 decree relative to it that it might have made in the original suit. The decree may be made retroactive
30 in the court's discretion only to the date that notice of a petition to modify was given to the adverse
31 party if the court finds that a substantial change in circumstances has occurred; provided, that the
32 court shall set forth in its decision the specific findings of fact that show a substantial change in
33 circumstances and upon which findings of facts the court has decided to make the decree
34 retroactive. In modifying the order, incarceration may not be treated as voluntary unemployment

1 that would prevent the motion from being heard or result in a denial of the motion. The child-
2 support order shall continue in full force and effect, by wage withholding, after the youngest child
3 is emancipated, and shall be applied towards any arrearage due and owing, as indicated on the
4 child-support computer system. Upon satisfaction of the arrears due and owing the child-support
5 order shall be automatically suspended and wage withholding terminated without the necessity of
6 returning to family court.

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

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

1 executed and delivered the documents of title.

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

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

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

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

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

29 (f) In any proceeding to establish support, or in any case in which an obligor owes past-
30 due support, for a child or children receiving public assistance pursuant to chapter 5.1 of title 40,
31 the court or its magistrate, upon a finding that an able-bodied absent parent obligor is unemployed,
32 underemployed, or lacks sufficient income or resources from which to make payment of support
33 equal to the public assistance payment for the child or children, or is unable to pay the arrearages
34 in accordance with a payment plan, may order that parent to perform unpaid community service for

1 at least twenty (20) hours per week through community service placements arranged and supervised
2 by the department of human services or to participate in any work activities that the court deems
3 appropriate. The performance of community service shall not be a basis for retroactive suspension
4 of arrears due and owing.

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

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

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

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

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

32 (i) In any subsequent child-support-enforcement action between the parties, upon sufficient
33 showing that diligent effort has been made to ascertain the location of such a party, the court may
34 deem state due process requirements for notice and service of process to be met with respect to the

1 party, upon service by first class mail or, where appropriate, by service as specified in the Rhode
2 Island rules of procedure for domestic relations for the family court of Rhode Island, of written
3 notice to the most recent residential or employer address of record.

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

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

8 **15-9-1. Duty of parent to pay support and maintenance to the agency or person having**
9 **custody of the child.**

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

20 (1) The financial resources of the child;

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

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

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

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

26 (b) If it deems necessary or advisable, the court may order child support and education
27 costs for children attending high school at the time of their eighteenth ~~(18th)~~ birthday and for ninety
28 (90) days after graduation, ~~but in no case beyond their nineteenth (19th) birthday.~~ If, however, any
29 children are attending a two (2) year or four (4) year college and the children still live with the
30 custodial parent, a court, in its discretion, may order the child support extended until age twenty-
31 two (22) under the guidelines set forth in § 15-5-16.2(b). but in no case beyond their nineteenth
32 ~~(19th)~~ birthday. In addition, the court may order the support of a child with a severe physical or
33 mental impairment to continue ~~until~~ past the twenty-first (21st) birthday of the child under the
34 guidelines set forth in § 15-5-16.2(b).

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

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

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

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

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

33 (h) In any subsequent child support enforcement action between the parties, upon sufficient
34 showing that a diligent effort has been made to ascertain the location of such a party, the court may

1 allow for notice and service of process to be made by first class mail or by service of written notice
2 to the most recent residential or employer address of record, as specified in the Rhode Island rules
3 of procedure for domestic relations for the Family Court of Rhode Island.

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

8 SECTION 3. 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--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 reside with the
3 custodial parent until such children reach the age of twenty-two (22), 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.

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