

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2002

—————
A N A C T

RELATING TO DIVORCE AND SEPARATION -- DOMESTIC VIOLENCE

Introduced By: Senators Gallo, Paiva-Weed, and Revens

Date Introduced: January 29, 2002

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

30 (d) (1) In regulating the custody of the children the court shall provide for the reasonable
31 right of visitation by the natural parent not having custody of the children except upon the
32 showing of cause why the right should not be granted. The court shall mandate compliance with
33 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 is not 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 to visitation. When the court
9 enters an order denying visitation under this section, it shall review the case at least annually to
10 determine what, if any, action the parent has taken to rehabilitate himself or herself and whether
11 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 to 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 cause
15 to deny visitation.

16 (e) In all hearings regarding denial of visitation, the court ~~makes~~ shall make findings of
17 fact.

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

20 (g) (1) Notwithstanding this section and section 15-5-19, the court, when making
21 decisions regarding child custody and visitation, shall consider evidence of past or present
22 domestic violence, ~~if proven, as a factor not in the best interest of the child.~~ Moreover, where
23 domestic violence is proven, any ~~award of joint custody or any grant of visitation shall be~~
24 ~~arranged so as to best protect the child and the abused parent from further harm.~~ In addition to
25 other factors that a court must consider in a proceeding in which the court has made a finding of
26 domestic or family violence, the court shall consider as primary the safety and well-being of the
27 child and of the parent who is the victim of domestic or family violence. The court shall also
28 consider the perpetrator's history of causing physical harm, bodily injury or assault to another
29 person.

30 (2) In a visitation or custody order, as a condition of the order, the court may: (i) order
31 the perpetrator of domestic violence to attend and successfully complete to the satisfaction of the
32 court, a certified batterer's intervention program; ~~as a condition of the order.~~ (ii) ~~The court may~~
33 ~~also~~ order the perpetrator to attend a substance abuse program whenever deemed appropriate; ~~;~~
34 (iii) ~~may~~ require that a bond be filed with the court in order to ensure the return and safety of the

1 child; ; (iv) and may order that the address and telephone number of the child be kept
2 confidential ; (v) order an exchange of the child to occur in a protected setting, or supervised by
3 another person or agency; provided that, if the court allows a family or household member to
4 supervise visitation, the court shall establish conditions to be followed during visitation; (vi) order
5 the perpetrator of domestic violence to abstain from possession or consumption of alcohol or
6 controlled substances during the visitation; and (vii) impose any other condition that is deemed
7 necessary to provide for the safety of the child, the victim of domestic violence, or other family or
8 household member.

9 (3) Domestic violence means the occurrence of one or more of the following acts
10 between spouses or people who have a child in common:

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

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

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

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

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

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

=====
LC01650/SUB A/2
=====

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

1 This act would redefine the consideration of domestic violence in custody and visitation
2 issues. It allows the consideration of such actions in award of custody and visitation. It would also
3 prohibit the drawing of any presumptions from a parent's relocation in determining custody and
4 visitation.

5 This act would take effect upon passage.

=====
LC01650/SUB A/2
=====

