

2016 -- S 2836

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO DOMESTIC RELATIONS - DIVORCE AND SEPARATION

Introduced By: Senators Nesselbush, Doyle, and Goldin

Date Introduced: March 23, 2016

Referred To: Senate Judiciary

(by request)

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

11 (1) The financial resources of the child;

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

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

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

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

18 (b) The court may, if in its discretion it deems it necessary or advisable, order child  
19 support and education costs for children attending high school at the time of their eighteenth

1 (18th) birthday and for ninety (90) days after graduation, ~~but in no case beyond their nineteenth~~  
2 ~~(19th) birthday.~~

3 The court may further make appropriate orders of maintenance, support, and education of  
4 any child who has attained eighteen (18) years of age but who has not attained twenty-one (21)  
5 years of age and who is domiciled in the home of a parent, and is principally dependent upon said  
6 parent for maintenance. The court may make appropriate orders of maintenance, support, and  
7 education for any child who has attained twenty-one (21) years of age but who has not attained  
8 twenty-three (23) years of age, if such child is domiciled in the home of a parent, and is  
9 principally dependent upon said parent for maintenance due to the enrollment of such child in an  
10 educational program, excluding educational costs beyond an undergraduate degree.

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

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

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

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

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

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

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

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

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

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

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

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

25 (2) After a decree for support has been entered, the court may from time to time upon the  
26 petition of either party review and alter its decree relative to the amount of support and the  
27 payment of it, and may make any decree relative to it which it might have made in the original  
28 suit. The decree may be made retroactive in the court's discretion only to the date that notice of a  
29 petition to modify was given to the adverse party if the court finds that a substantial change in  
30 circumstances has occurred; provided, that the court shall set forth in its decision the specific  
31 findings of fact which show a substantial change in circumstances and upon which findings of  
32 facts the court has decided to make the decree retroactive. The child support order shall continue  
33 in full force and effect, by wage withholding, after the youngest child is emancipated, and shall  
34 be applied towards any arrearage due and owing, as indicated on the child support computer

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

4 (d) (1) In a proceeding to enforce a child support order, or a spousal support order for a  
5 custodial parent having custody of a minor child, the court or its magistrate may assign to the  
6 obligee such tangible personal property of the obligor that will be sufficient to satisfy the child or  
7 spousal support arrearage owed. The court or its magistrate, after a hearing, shall establish the  
8 amount of the child or spousal support arrearage, and the nature and value of the tangible  
9 personal property. To effect the assignment, the court or its magistrate may order the obligor to  
10 execute and deliver the documents of title which may be necessary to complete the transfer of  
11 title to the property, and may order the obligor to deliver possession of the property to the  
12 obligee. Whenever the obligor fails to comply with the order assigning the property, the order of  
13 assignment shall be regarded as a judgment vesting title to the property in the obligor as fully and  
14 completely as if the obligor had executed and delivered the documents of title.

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

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

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

34 (e) In a proceeding to establish support, the court in its discretion may, after opportunity

1 for a hearing, issue a temporary order for child support payable into the registry of the court and  
2 to be held pending entry of judgment. In the event of a final adjudication requiring no payment or  
3 payments in an amount less than those payments which have been made pursuant to a temporary  
4 order under this section, the defendant shall be entitled to a refund of all or a portion of the  
5 amounts paid.

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

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

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

26 (h) (1) 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 human services child support  
28 computer enforcement system, which maintains the official registry of support orders entered in  
29 accordance with applicable administrative orders issued by the Rhode Island family court. The  
30 support order shall be recorded whether or not services are being provided under the IV-D state  
31 plan.

32 (2) The obligee to a paternity or child support proceeding shall be required to file with  
33 the family court, upon the entry of the order, the appropriate form as provided by family court  
34 which includes the full name of the parties, residential and mailing address, telephone number,

1 drivers license number, social security number and the name, address and telephone number of  
2 the employer. The form shall also include the full order amount and date and amount of  
3 arrearages if any, the name of the child(ren), their date of birth, address and social security  
4 number and any other information as required by administrative order.

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

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

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

16 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 the family court to order child support for children of the parties up  
2 to twenty-one (21) years of age if said children are principally dependent and is domiciled in the  
3 home of a parent and would permit the court to order child support up to twenty-three (23) years  
4 of age for support and education if the child is domiciled in the home of a parent, is principally  
5 dependent on the parent for support and is enrolled in an educational program.

6           This act would take effect upon passage.

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