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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO DOMESTIC RELATIONS -- DIVORCE AND SEPARATION

Introduced By: Representatives Casimiro, Diaz, Tanzi, Donovan, and Vella-Wilkinson

Date Introduced: April 06, 2017

Referred To: House 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.**

4 (a) In granting any petition for divorce, divorce from bed and board, or relief without the
5 commencement of divorce proceedings, the family court may order either of the parties to pay
6 alimony or counsel fees, or 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) The impact of tax liability on the spouse with lower income;

14 ~~(G)~~(H) Any other factor which the court expressly finds to be just and proper.

15 (3) There shall be a rebuttable presumption that indefinite or permanent alimony is
16 required for disabled spouses who have been married for greater than ten (10) years and who have
17 medical proof of their disability.

18 (c) (1) For the purposes of this section, "alimony" is construed as payments for the
19 support or maintenance of either the husband or the wife.

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

34 (d) When issuing an order for alimony, the court shall exclude from its income

1 calculation:

2 (1) Capital gains income and dividend and interest income which derive from assets
3 equitably divided between the parties; and

4 (2) Gross income which the court has already considered for setting a child support order.

5 (e) Nothing in this section shall limit the court's discretion to cast a presumptive child
6 support order under the child support guidelines in terms of unallocated or undifferentiated
7 alimony and child support.

8 (f) In setting an initial alimony order, or in modifying an existing order, the court may
9 deviate from duration and amount limits for general alimony and rehabilitative alimony upon
10 written findings that deviation from traditional analysis is necessary. Grounds for deviation may
11 include:

12 (1) Advanced age, chronic illness, or unusual health circumstances of either party;

13 (2) Tax considerations applicable to the parties;

14 (3) Whether the payor spouse is providing health insurance and the cost of health
15 insurance for the recipient spouse;

16 (4) Whether the payor spouse has been ordered to secure life insurance for the benefit of
17 the recipient spouse and the cost of such insurance;

18 (5) Sources and amounts of unearned income, including capital gains, interest and
19 dividends, annuity and investment income from assets that were not allocated in the parties'
20 divorce;

21 (6) Significant premarital cohabitation that included economic partnership or marital
22 separation of significant duration, each of which the court may consider in determining the length
23 of the marriage;

24 (7) A party's inability to provide for that party's own support by reason of physical or
25 mental abuse by the payor.

26 (8) A party's inability to provide for that party's own support by reason of that party's
27 deficiency of property, maintenance, or employment opportunity; and

28 (9) Any other factor that the court deems relevant and material.

29 (g) In determining the incomes of parties with respect to the issue of alimony, the court
30 may attribute income to a party who is unemployed or underemployed.

31 (h) If a court orders alimony concurrent with or subsequent to a child support order, the
32 combined duration of alimony and child support shall not exceed the longer of:

33 (1) The alimony or child support duration available at the time of divorce; or

34 (2) Rehabilitative alimony beginning upon the termination of child support.

1 ~~(d)~~(i) (1) In regulating the custody of the children, the court shall provide for the
2 reasonable right of visitation by the natural parent not having custody of the children, except upon
3 the showing of cause why the right should not be granted or as provided in subdivision 15-5-
4 16(d)(4). The court shall mandate compliance with its order by both the custodial parent and the
5 children. In the event of noncompliance, the noncustodial parent may file a motion for contempt
6 in family court. Upon a finding by the court that its order for visitation has not been complied
7 with, the court shall exercise its discretion in providing a remedy, and define the noncustodial
8 parent's visitation in detail. However, if a second finding of noncompliance by the court is made,
9 the court shall consider this to be grounds for a change of custody to the noncustodial parent.

10 (2) In regulating the custody and determining the best interests of children, the fact that a
11 parent is receiving public assistance shall not be a factor in awarding custody.

12 (3) A judicial determination that the child has been physically or sexually abused by the
13 natural parent shall constitute sufficient cause to deny the right of visitation. However, when the
14 court enters an order denying visitation under this section, it shall review the case at least
15 annually to determine what, if any, action the parent has taken to rehabilitate himself or herself
16 and whether the denial of visitation continues to be in the child's best interests.

17 (4) No person shall be granted custody of or visitation with a child if that person has been
18 convicted under or pled nolo contendere to a violation of §§ 11-37-2, 11-37-4, or 11-37-8.1 or
19 other comparable law of another jurisdiction, and the child was conceived as a result of that
20 violation; unless after hearing the family court finds that the natural mother or legal guardian
21 consents to visitation with the child, and the court determines that visitation is in the best interest
22 of the child, then the court may order supervised visitation and counseling.

23 (5) The court may order a natural parent who has been denied the right of visitation due
24 to physical or sexual abuse of his or her child to engage in counseling. The failure of the parent to
25 engage in counseling, ordered by the court pursuant to this section, shall constitute sufficient
26 cause to deny visitation.

27 (6)(i) If a child is of sufficient age and has the capacity to form an intelligent preference
28 as to custody or visitation, the court shall consider, and give due weight to, the wishes of the child
29 in making an order granting or modifying custody or visitation. The court shall control the
30 examination of a child witness so as to protect the best interests of the child.

31 (ii) If the child is fourteen (14) years of age or older and wishes to address the court
32 regarding custody or visitation, the child shall be permitted to do so, unless the court determines
33 that doing so is not in the child's best interests. In that case, the court shall state its reasons for
34 that finding on the record. Provided, nothing in this section shall be interpreted to prevent a child

1 who is less than fourteen (14) years of age from addressing the court regarding custody or
2 visitation, if the court determines that is appropriate pursuant to the child's best interests.

3 (iii) If the court precludes the calling of any child as a witness, the court shall provide
4 alternative means of obtaining input from the child and other information regarding the child's
5 preferences.

6 (iv) To assist the court in determining whether the child wishes to express their
7 preference or to provide other input regarding custody or visitation to the court, a minor's counsel,
8 an evaluator, an investigator, a court-appointed special advocate, a mediator, or other party
9 appointed by the court who provides recommendations to the judge shall indicate to the judge that
10 the child wishes to address the court, or the judge may make that inquiry in the absence of that
11 request. A party or a party's attorney may also indicate to the judge that the child wishes to
12 address the court or judge. Provided, nothing in this section shall be construed to require the child
13 to express to the court their preference or to provide other input regarding custody or visitation.

14 (v) The family court shall, no later than January 1, 2018, promulgate a rule of court
15 establishing procedures for the examination of a child witness, and include guidelines on methods
16 other than direct testimony for obtaining information or other input from the child regarding
17 custody or visitation.

18 ~~(e)~~(j) In all hearings regarding denial of visitation, the court shall make findings of fact.

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

21 ~~(g)~~(l) (1) Notwithstanding the provisions of this section and § 15-5-19, the court, when
22 making decisions regarding child custody and visitation, shall consider evidence of past or
23 present domestic violence. Where domestic violence is proven, any grant of visitation shall be
24 arranged so as to best protect the child and the abused parent from further harm.

25 (2) In addition to other factors that a court must consider in a proceeding in which the
26 court has made a finding of domestic or family violence, the court shall consider as primary the
27 safety and well-being of the child and of the parent who is the victim of domestic or family
28 violence. The court shall also consider the perpetrator's history of causing physical harm, bodily
29 injury or assault to another person.

30 (3) In a visitation or custody order, as a condition of the order, the court may:

31 (i) Order the perpetrator of domestic violence to attend and successfully complete, to the
32 satisfaction of the court, a certified batterer's intervention program;

33 (ii) Order the perpetrator to attend a substance abuse program whenever deemed
34 appropriate;

1 (iii) Require that a bond be filed with the court in order to ensure the return and safety of
2 the child;

3 (iv) Order that the address and telephone number of the child be kept confidential;

4 (v) Order an exchange of the child to occur in a protected setting, or supervised by
5 another person or agency; provided that, if the court allows a family or household member to
6 supervise visitation, the court shall establish conditions to be followed during visitation;

7 (vi) Order the perpetrator of domestic violence to abstain from possession or
8 consumption of alcohol or controlled substances during the visitation; and

9 (vii) Impose any other condition that is deemed necessary to provide for the safety of the
10 child, the victim of domestic violence, or other family or household member.

11 (4) "Domestic violence" means the occurrence of one or more of the following acts
12 between spouses or people who have a child in common:

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

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

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

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

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

23 (7) A party's absence, relocation, or failure to comply with custody and visitation orders
24 shall not, by itself, be sufficient to justify a modification of a custody or visitation order if the
25 reason for the absence, relocation, or failure to comply is the party's activation to military service
26 or deployment out of state.

27 ~~(h)~~(m) If there is no existing order establishing the terms of parental rights and
28 responsibilities or parent-child contact and it appears that deployment or mobilization is
29 imminent, upon motion by either parent, the court shall expedite a hearing to establish temporary
30 parental rights and responsibilities and parent-child contact to ensure the deploying parent has
31 access to the child, to ensure disclosure of information, to grant other rights and duties set forth
32 herein, and to provide other appropriate relief. Any initial pleading filed to establish parental
33 rights and responsibilities for or parent-child contact with a child of a deploying parent shall be so
34 identified at the time of filing by stating in the text of the pleading the specific facts related to

1 deployment.

2 [\(n\) The above provisions shall apply to all marital settlement agreements whether or not](#)
3 [the marital settlement agreement is merged into a final decree of divorce.](#)

4 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

1 This act would create guidelines for the family court with respect to the examination of
2 child witnesses in child custody cases. This act would also create a rebuttable presumption of
3 indefinite or permanent alimony for medically disabled spouses married for longer than ten (10)
4 years and will list grounds for the deviation from the traditional analysis for alimony when
5 making an initial alimony determination or a modification.

6 This act would take effect upon passage.

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