

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO DOMESTIC RELATIONS - CHILD SUPPORT

Introduced By: Senators Lynch Prata, Quezada, Ciccone, Calkin, and Conley

Date Introduced: March 02, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 15-5-16.2 and 15-5-16.7 of the General Laws in Chapter 15-5
2 entitled "Divorce and Separation" are 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;
- 17 and
- 18 (5) The financial resources and needs of the non-custodial parent.

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

1 support and education costs for children attending high school at the time of their eighteenth
2 (18th) birthday and for ninety (90) days after graduation, but in no case beyond their nineteenth
3 (19th) birthday.

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

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

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

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

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

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

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

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

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

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

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

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

18 (2) After a decree for support has been entered, the court may from time to time upon the
19 petition of either party [or the state](#), review and alter its decree relative to the amount of support
20 and the payment of it, and may make any decree relative to it which it might have made in the
21 original suit. The decree may be made retroactive in the court's discretion only to the date that
22 notice of a petition to modify was given to the adverse party if the court finds that a substantial
23 change in circumstances has occurred; provided, that the court shall set forth in its decision the
24 specific findings of fact which show a substantial change in circumstances and upon which
25 findings of facts the court has decided to make the decree retroactive. The child support order
26 shall continue in full force and effect, by wage withholding, after the youngest child is
27 emancipated, and shall be applied towards any arrearage due and owing, as indicated on the child
28 support computer system. Upon satisfaction of the arrears due and owing the child support order
29 shall be automatically suspended and wage withholding terminated without the necessity of
30 returning to family court.

31 [When the department of human services, office of child support services, becomes aware](#)
32 [of the fact, through an electronic data exchange of information with the department of](#)
33 [corrections, or by any other means, that the non-custodial parent is or will be incarcerated for one](#)
34 [hundred eighty \(180\) days or more, the department may automatically file a motion to modify, or](#)

1 more commonly referred to, a motion for relief, to be heard before the court via a video
2 conference hearing or other type of hearing. A specific request for the filing of this motion need
3 not be made in writing or otherwise by the incarcerated non-custodial parent. The court shall
4 immediately schedule a hearing to determine the non-custodial parent's ability to pay, taking into
5 consideration the assets and financial resources and the length of the sentence, and shall modify
6 or suspend all child support orders after setting forth in its decision specific findings of fact,
7 which show circumstances upon which the court has decided to modify or suspend all child
8 support orders during the entire period of incarceration. Upon release, the state may file a motion
9 for support if appropriate at the time. A hearing shall be scheduled to determine the obligor's
10 ability to begin paying child support following the obligor's release pursuant to the child support
11 guidelines in effect.

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

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

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

33 (4) In addition, the national medical support notice shall be issued with respect to all
34 orders issued, enforced, or modified on or after October 1, 2002, in accordance with chapter 29 of

1 title 15. The notice shall inform the employer of provisions in the child support order, for health
2 care coverage for the child, and contain instructions on how to implement this coverage. In lieu of
3 the court ordering the non-custodial parent to obtain or maintain health care coverage for the
4 child, the court may order the non-custodial parent to contribute a weekly cash amount towards
5 the medical premium for health care coverage paid by the state of Rhode Island and/or the
6 custodial parent. The method to determine a reasonable weekly amount shall be addressed in the
7 family court administrative order pertaining to the child support guidelines.

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

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

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

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

34 (h) (1) All support orders established or modified in the state on or after October 1, 1998,

1 shall be recorded with the Rhode Island family court department of human services child support
2 computer enforcement system, which maintains the official registry of support orders entered in
3 accordance with applicable administrative orders issued by the Rhode Island family court. The
4 support order shall be recorded whether or not services are being provided under the IV-D state
5 plan.

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

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

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

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

24 **15-5-16.7. Review of child support orders.**

25 (a) For purposes of this section, a "child support order" means a child support order
26 enforceable pursuant to the Rhode Island state plan for support enforcement as further defined in
27 § 15-16-5(a).

28 (b) Every three (3) years from the date the child support order was established or
29 modified, and upon the request of either party, or ~~if there is an assignment under § 40-6-9~~ upon
30 the request of the state, the court shall review and, if appropriate, adjust the order in accordance
31 with the child support guidelines if the amount of the child support award under the order differs
32 from the amount that would be awarded in accordance with the guidelines. The adjustment of the
33 order shall be made under this subsection without a requirement for proof or showing of a change
34 in circumstances. The periodic review of child support orders as provided in this subsection is in

1 addition to the opportunity for review provided in § 15-5-16.2(c).

2 (c) In the case of a request for a review before the three (3) year period, the amount of
3 support may, in the court's discretion, be modified if the court finds that a substantial change in
4 circumstances has occurred in accordance with § 15-5-16.2. The court, in its discretion, may
5 modify a child support order retroactively only to the date that notice of a petition to modify was
6 given to the adverse party if the court finds that a substantial change in circumstances has
7 occurred; provided, that the court shall set forth in its decision the specific findings of fact which
8 show a substantial change in circumstances and upon which findings of facts the court has
9 decided to make the decree retroactive.

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

=====
LC001222
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO DOMESTIC RELATIONS - CHILD SUPPORT

1 This act would establish a procedure for modifying child support orders for incarcerated
2 individuals.

3 This act would take effect upon passage.

=====
LC001222
=====