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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

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

Introduced By: Representatives Diaz, Blazejewski, Slater, McKiernan, and Amore

Date Introduced: January 30, 2019

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  
2 and 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;

17 and

18 (5) The financial resources and needs of the non-custodial parent, provided, that in

1 establishing a child-support order, incarceration may not be treated as voluntary unemployment.

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

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

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

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

1 conflicts of interest between the child and parents or siblings;

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

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

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

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

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

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

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

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

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

29 (2) After a decree for support has been entered, the court may, from time to time upon the  
30 petition of either party, or by the state in accordance with subsection (c)(3) of this section, review  
31 and alter its decree relative to the amount of support and the payment of it, and may make any  
32 decree relative to it that it might have made in the original suit. The decree may be made  
33 retroactive in the court's discretion only to the date that notice of a petition to modify was given  
34 to the adverse party if the court finds that a substantial change in circumstances has occurred;

1 provided, that the court shall set forth in its decision the specific findings of fact that show a  
2 substantial change in circumstances and upon which findings of facts the court has decided to  
3 make the decree retroactive. In modifying the order, incarceration may not be treated as voluntary  
4 unemployment that would prevent the motion from being heard or result in a denial of the  
5 motion. The child-support order shall continue in full force and effect, by wage withholding, after  
6 the youngest child is emancipated, and shall be applied towards any arrearage due and owing, as  
7 indicated on the child-support computer system. Upon satisfaction of the arrears due and owing  
8 the child-support order shall be automatically suspended and wage withholding terminated  
9 without the necessity of returning to family court.

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

28 (d)(1) In a proceeding to enforce a child-support order, or a spousal-support order for a  
29 custodial parent having custody of a minor child, the court or its magistrate may assign to the  
30 obligee such tangible personal property of the obligor that will be sufficient to satisfy the child or  
31 spousal-support arrearage owed. The court or its magistrate, after a hearing, shall establish the  
32 amount of the child- or spousal-support arrearage, and the nature and value of the tangible  
33 personal property. To effect the assignment, the court or its magistrate may order the obligor to  
34 execute and deliver the documents of title that may be necessary to complete the transfer of title

1 to the property, and may order the obligor to deliver possession of the property to the obligee.  
2 Whenever the obligor fails to comply with the order assigning the property, the order of  
3 assignment shall be regarded as a judgment vesting title to the property in the obligor as fully and  
4 completely as if the obligor had executed and delivered the documents of title.

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

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

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

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

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

33 (f) In any proceeding to establish support, or in any case in which an obligor owes past-  
34 due support, for a child or children receiving public assistance pursuant to chapter 5.1 of title 40,

1 the court or its magistrate, upon a finding that an able-bodied absent parent obligor is  
2 unemployed, underemployed, or lacks sufficient income or resources from which to make  
3 payment of support equal to the public assistance payment for the child or children, or is unable  
4 to pay the arrearages in accordance with a payment plan, may order that parent to perform unpaid  
5 community service for at least twenty (20) hours per week through community service  
6 placements arranged and supervised by the department of human services or to participate in any  
7 work activities that the court deems appropriate. The performance of community service shall not  
8 be a basis for retroactive suspension of arrears due and owing.

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

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

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

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

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

1 within five (5) business days of receipt of the amended form.

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

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

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

12 **15-9-1. Duty of parent to pay support and maintenance to the agency or person**  
13 **having custody of the child.**

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

- 24 (1) The financial resources of the child;  
25 (2) The financial resources of the custodial parent;  
26 (3) The standard of living the child would have enjoyed had the marriage not been  
27 dissolved;  
28 (4) The physical and emotional condition of the child and his or her educational needs;  
29 and  
30 (5) The financial resources and needs of the non-custodial parent.

31 (b) If it deems necessary or advisable, the court may order child support and education  
32 costs for children attending high school at the time of their eighteenth (18th) birthday and for  
33 ninety (90) days after graduation, ~~but in no case beyond their nineteenth (19th) birthday.~~ If,  
34 however, any children are attending a two (2) year or four (4) year college and the children still

1 [live with the custodial parent, a court, in its discretion, may order the child support extended until](#)  
2 [age twenty-two \(22\) under the guidelines set forth in § 15-5-16.2\(b\).](#) In addition, the court may  
3 order the support of a child with a severe physical or mental impairment to continue ~~until~~ [past](#) the  
4 twenty-first (21st) birthday of the child [under the guidelines set forth in § 15-5-16.2\(b\).](#)

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

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

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

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

32 (g) All support orders established or modified in the state on or after October 1, 1998,  
33 shall be recorded with the Rhode Island family court/department of administration, division of  
34 taxation child support computer enforcement system. The system maintains the official registry of



1 support orders entered in accordance with applicable administrative orders issued by the Rhode  
2 Island family court.

3 (h) In any subsequent child support enforcement action between the parties, upon  
4 sufficient showing that a diligent effort has been made to ascertain the location of such a party,  
5 the court may allow for notice and service of process to be made by first class mail or by service  
6 of written notice to the most recent residential or employer address of record, as specified in the  
7 Rhode Island rules of procedure for domestic relations for the Family Court of Rhode Island.

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

13 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

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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  
3 the custodial parent until such children reach the age of twenty-two (22), and would clarify state  
4 law 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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