

2010 -- H 7483

LC01178

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO DOMESTIC RELATIONS -- DIVORCE AND SEPARATION

Introduced By: Representatives E Coderre, Kilmartin, Giannini, Shallcross Smith, and Serpa

Date Introduced: February 11, 2010

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

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

16 (5) There shall be no presumption either in favor of or against shared legal custody or
17 shared physical placement at the time of the trial on the merits, except as provided in subsection
18 15-5-16(g).

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

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

22 (g) ~~(1) Notwithstanding the provisions of this section and section 15-5-19~~ In issuing any
23 temporary or permanent custody order, the family court, ~~when making decisions regarding child~~
24 ~~eustody and visitation~~, shall consider evidence of past or present domestic ~~violence~~ abuse toward
25 a parent as a factor contrary to the best interests of the child. ~~Where domestic violence is proven,~~
26 ~~any grant of visitation shall be arranged so as to best protect the child and the abused parent from~~
27 ~~further harm.~~

28 (1) For purposes of this section, "domestic abuse" shall mean the occurrence of one or
29 more of the following acts between a parent and the other parent:

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

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

32 ~~(2) In addition to other factors that a court must consider in a proceeding in which the~~
33 ~~court has made a finding of domestic or family violence, the court shall consider as primary the~~
34 ~~safety and well being of the child and of the parent who is the victim of domestic or family~~

1 ~~violence. The court shall also consider the perpetrator's history of causing physical harm, bodily~~
2 ~~injury or assault to another person.~~

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

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

6 ~~(ii) Order the perpetrator to attend a substance abuse program whenever deemed~~
7 ~~appropriate;~~

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

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

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

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

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

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

20 ~~(i) Attempting to cause or causing physical harm;~~

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

22 ~~(iii) Causing another to engage involuntarily in sexual relations by force, threat of force,~~
23 ~~or duress.~~

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

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

30 (2) For purposes of this section, "serious incident of domestic abuse" shall mean the
31 occurrence of one or more of the following acts between a parent and the other parent:

32 (i) Attempting to cause or causing serious bodily injury, as defined in subsection 11-5-
33 2(c);

34 (ii) Placing another in reasonable fear of imminent serious bodily injury;

1 (iii) Using a dangerous weapon to cause serious bodily injury or fear of serious bodily
2 injury;

3 (iv) Causing another to engage involuntarily in sexual relations by force, threat of force,
4 or duress;

5 (v) Stalking or cyber-stalking, as provided in subdivisions 15-15-1(6)-(8).

6 (3) The family court’s finding, by a preponderance of the evidence, that a course of
7 conduct or a serious incident of domestic abuse has occurred shall create a rebuttable presumption
8 that it is not in the best interests of the child to be placed in sole custody, joint custody, or shared
9 placement with the abusive parent. Such presumption may be rebutted by a showing of clear and
10 convincing evidence that such custody award is in the best interests of the child.

11 (i) For the purposes of this section, “the abusive parent” shall mean the parent who has
12 engaged in a course of conduct of domestic abuse or a serious incident of domestic abuse.

13 (4) The underlying facts upon which an order or orders under section 15-15-3 or 15-15-4
14 were based may form the basis for a finding by the family court that a course of conduct of
15 domestic abuse or serious incident of domestic abuse has occurred.

16 (5) The court shall, within ninety (90) days, enter written findings of fact to show that the
17 temporary or permanent custody or visitation order best protects the child and the non-offending
18 parent.

19 (6) If ordering visitation with the abusive parent, the court shall provide for the safety and
20 well-being of the child and the safety of the non-offending parent. The court may consider:

21 (i) Ordering an exchange of the child to occur in a protected setting or supervised by
22 another person or agency;

23 (ii) Ordering visitation supervised by another person or agency; provided that, if the court
24 allows a family or household member to supervise visitation, the court shall establish conditions
25 to be followed during visitation;

26 (iii) Ordering the abusive parent to attend and successfully complete, to the satisfaction of
27 the court, a certified batterer’s intervention program;

28 (iv) Ordering the abusive parent to abstain from possession or consumption of alcohol or
29 controlled substances during the visitation and for twenty-four (24) hours preceding visitation;

30 (v) Ordering the abusive parent to attend a substance abuse program whenever deemed
31 appropriate;

32 (vi) Ordering the abusive parent to pay the costs of supervised visitation;

33 (vii) Prohibiting overnight visitation with the abusive parent;

34 (viii) Requiring that a bond from the abusive parent be filed with the court in order to

1 ensure the return and safety of the child;

2 (ix) Ordering an investigation or appointment of a guardian ad litem or attorney for the
3 child;

4 (x) Ordering that the address and telephone number of the non-offending parent and the
5 child be kept confidential; and

6 (xi) Imposing any other condition that is deemed necessary to provide for the safety of
7 the child, the non-offending parent, or other family or household member.

8 (7) If the court finds that a course of conduct or serious incident of domestic abuse has
9 occurred, the court may prohibit contact between the abusive parent and the child. If the abusive
10 parent seeks the right of visitation, the abusive parent shall submit a rehabilitation plan with the
11 motion for visitation and the court shall review the motion to determine what, if any, action the
12 abusive parent has taken toward rehabilitation and whether the denial of visitation continues to be
13 in the child’s best interests.

14 (8) In any custody or visitation proceeding in which the family court finds that a course
15 of conduct or serious incident of domestic abuse has occurred, all court costs, attorney’s fees,
16 evaluation fees, and expert witness fees shall be paid by the abusive parent unless those costs
17 would place an undue financial hardship on that parent.

18 (9) If the non-offending parent takes reasonable steps to protect her or himself from
19 domestic abuse by reducing contact with the abusive parent, this shall not weight against the non-
20 offending parent in a custody or visitation determination and shall not be deemed unwillingness
21 to facilitate the parent-child relationship or to cooperate with the court. It shall not be considered
22 unreasonable for the non-offending parent to request minimal contact with the abusive parent.

23 (10) The fact that a parent is absent or relocates because of domestic abuse by the other
24 parent shall not weigh against the relocating or absent parent in determining custody and
25 visitation.

26 (11) Nothing in this section shall be construed to affect the right of the parties to a
27 hearing under the rules of domestic relations procedure or to affect the discretion of the family
28 court in the conduct of such hearings.

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

=====
LC01178
=====

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

1 This act would expand and further define the grounds by which a family court could
2 grant an award of sole custody and physical placement of a child after the court has made
3 findings that once parent has engaged in a course of domestic abuse and/or domestic violence
4 conduct which affects the best interests of the child.

5 This act would take effect upon passage.

=====
LC01178
=====