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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO DOMESTIC RELATIONS - EXCHANGE OF INFORMATION - CHILD
SUPPORT

Introduced By: Senators Picard, Felag, Tassoni, and Sosnowski

Date Introduced: January 13, 2010

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 15-22-3 and 15-22-5 of the General Laws in Chapter 15-22
2 entitled "Exchange of Information in Support of Child Support Collection" are hereby amended
3 to read as follows:

4 **15-22-3. Administrative subpoena.** -- (a) The department of administration, division of
5 taxation, and any other state or federal agency taking action to establish paternity, establish or
6 modify child support or medical orders, enforce child support orders or location of individuals for
7 the above, shall be authorized to issue subpoenas as appropriate to the individuals and entities
8 named in this chapter to secure financial and other information relating to the obligor for the
9 purpose of and to the extent necessary for the administration of the child support enforcement
10 program.

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

15 (c)(b) Any entity or individual who fails to reply to an administrative subpoena shall be
16 liable for a civil penalty of one hundred dollars (\$100) for the violation, to be assessed by the
17 department of administration, division of taxation, child support enforcement, or the Rhode Island
18 family court, and shall be required to provide the information and/or comply with the request.

1 **15-22-5. Disclosure of personal data prohibited -- Petition for disclosure -- Motion to**
2 **seal court files -- Determination of harm -- Limited disclosure.** -- (a) A person or agency,

3 including the IV-D agency, seeking personal data which the IV-D agency is prohibited from
4 disclosing because of a history of domestic violence but which could otherwise be disclosed
5 pursuant to section 15-22-1(a), or which the Federal Parent Locator Service established pursuant
6 to title IV, part D of the Social Security Act is prohibited from disclosing because the secretary of
7 the federal department of health and human services has been notified that there is reasonable
8 evidence of a history of domestic violence, may file a petition with the family court to request
9 disclosure of the personal data. The petition shall specify the purposes for which the personal data
10 is required. When a petition is filed under this section, or when the court receives notice from the
11 IV-D agency through a motion to seal the file or otherwise, that the IV-D agency has been
12 notified of a history of domestic violence pursuant to section 15-22-4, the court shall determine
13 whether disclosure of personal data could be harmful to the parent or child before releasing the
14 data to any other person or agency. The parent may provide the information in writing and shall
15 not be required to appear in person to contest the release of information. The court shall also
16 notify the IV-D agency of any petition to disclose files pursuant to this section, and the IV-D
17 agency shall provide the court with any reasonable evidence of a history of domestic violence
18 when it has been provided to the IV-D agency pursuant to section 15-22-4. The court may also
19 request information directly from the Federal Parent Locator Service, from the IV-D agency of
20 another state, and from any other source.

21 (b) (1) In determining whether disclosure of personal data meets the definition of a
22 history of domestic violence and could be harmful to the parent or child, the court shall consider
23 any relevant information provided by the parent or child, any information provided by the IV-D
24 agency or by the IV-D agency of another state, any evidence provided by the person seeking the
25 personal data, whether the address of the parent or child has been impounded, and any other
26 relevant evidence, including information contained in the records of the statewide domestic
27 violence record keeping system. Documentary evidence transmitted to the court by facsimile,
28 telecopier, or other means that do not provide an original writing may not be excluded from
29 evidence on an objection based on the means of transmission. The court may permit a party or
30 witness to be deposed or to testify by telephone, audiovisual means, or other electronic means.

31 (2) The court shall not enter an order to disclose personal data without reviewing all of
32 the information that has been provided to the court and shall not draw an adverse inference from
33 the failure of the parent to appear in person to contest disclosure of information.

34 (3) The court may, upon motion by any party, or the division of taxation, child support

1 enforcement, or on its own, enter an order:

2 (i) Sealing the file and prohibiting any disclosure of confidential information by the court
3 or its agents;

4 (ii) Obliterating location information contained in the court file;

5 (iii) Permitting disclosure by the court or its agents to a specific person or persons;

6 (iv) Prohibiting disclosure by the court or its agents to a specific person or persons; or

7 (v) Removing any restrictions on disclosure by the court and its agents.

8 (4) An order permitting disclosure of personal data may specify the purposes for which
9 the data may be used and may prohibit a person to whom the data is disclosed from making
10 further disclosures to any other person. The court shall notify the IV-D agency of any order
11 entered pursuant to this section. Any person or agency who violates an order issued pursuant to
12 this section may be held in contempt of court and subject to the penalties provided in section 15-
13 22-4(c)(2).

14 (5) The court may disclose location information about a parent for the limited purpose of
15 notifying the parent of a proceeding under this section or of any other proceeding in the probate
16 and family court, provided that the information shall not be disclosed to another party unless the
17 court issues an order pursuant to this section permitting the disclosure. A party's absence,
18 relocation, or failure to comply with custody and visitation orders shall not, by itself, be sufficient
19 to justify a modification of a custody or visitation order if the reason for the absence, relocation,
20 or failure to comply is the party's activation to military service and deployment out of state.

21 SECTION 2. Section 15-5-16 of the General Laws in Chapter 15-5 entitled "Divorce and
22 Separation" is hereby amended to read as follows:

23 **15-5-16. Alimony and counsel fees -- Custody of children.** -- (a) In granting any
24 petition for divorce, divorce from bed and board, or relief without the commencement of divorce
25 proceedings, the family court may order either of the parties to pay alimony or counsel fees, or
26 both, to the other.

27 (b) (1) In determining the amount of alimony or counsel fees, if any, to be paid, the
28 court, after hearing the witnesses, if any, of each party, shall consider:

29 (i) The length of the marriage;

30 (ii) The conduct of the parties during the marriage;

31 (iii) The health, age, station, occupation, amount and source of income, vocational skills,
32 and employability of the parties; and

33 (iv) The state and the liabilities and needs of each of the parties.

34 (2) In addition, the court shall consider:

1 (i) The extent to which either party is unable to support herself or himself adequately
2 because that party is the primary physical custodian of a child whose age, condition, or
3 circumstances make it appropriate that the parent not seek employment outside the home, or seek
4 only part-time or flexible-hour employment outside the home;

5 (ii) The extent to which either party is unable to support herself or himself adequately
6 with consideration given to:

7 (A) The extent to which a party was absent from employment while fulfilling
8 homemaking responsibilities, and the extent to which any education, skills, or experience of that
9 party have become outmoded and his or her earning capacity diminished;

10 (B) The time and expense required for the supported spouse to acquire the appropriate
11 education or training to develop marketable skills and find appropriate employment;

12 (C) The probability, given a party's age and skills, of completing education or training
13 and becoming self-supporting;

14 (D) The standard of living during the marriage;

15 (E) The opportunity of either party for future acquisition of capital assets and income;

16 (F) The ability to pay of the supporting spouse, taking into account the supporting
17 spouse's earning capacity, earned and unearned income, assets, debts, and standard of living;

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

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

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

1 (d) (1) In regulating the custody of the children, he 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. The court shall mandate compliance
4 with its order by both the custodial parent and the children. In the event of noncompliance, the
5 noncustodial parent may file a motion for contempt in family court. Upon a finding by the court
6 that its order for visitation has not been complied with, the court shall exercise its discretion in
7 providing a remedy, and define the noncustodial parent's visitation in detail. However, if a second
8 finding of noncompliance by the court is made, the court shall consider this to be grounds for a
9 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) The court may order a natural parent who has been denied the right of visitation due
18 to physical or sexual abuse of his or her child to engage in counseling. The failure of the parent to
19 engage in counseling, ordered by the court pursuant to this section, shall constitute sufficient
20 cause to deny visitation.

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

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

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

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

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

34 (i) Order the perpetrator of domestic violence to attend and successfully complete, to the

1 satisfaction of the court, a certified batterer's intervention program;

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

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

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

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

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

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

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

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

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

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

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

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

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

30 SECTION 3. Section 30-7-2 of the General Laws in Chapter 30-7 entitled "Privileges and
31 Immunities of Militiamen" is hereby amended to read as follows:

32 **30-7-2. Immunity from civil process.** – (a) No person belonging to the militia of the
33 state shall be arrested on any civil process while going to, remaining at, or during the
34 performance of any militia duty or returning from any place at which he or she may be required

1 by competent authority to attend for militia duty.

2 (b) No member of the military who has physical possession and/or custody of his/her
3 child/children shall have any actions taken as a result of said military service used as a basis for a
4 motion to modify said custody and/or physical possession.

5 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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SUPPORT

1 This act provides that if a party is activated for military service and deployment out of
2 state that fact shall not by itself be sufficient to justify a modification of a custody or visitation
3 order.

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