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NJ EMANCIPATION STATUTE WILL CHANGE DURATION OF CHILD SUPPORT

By Robert A. Epstein

New Jersey's new emancipation statute will dramatically impact when and how child support orders will terminate. Signed into law on January 19, 2016, the law is set to take effect on February 1, 2017 (the first day of the 13th month after its enactment) and will apply to all child support orders issued prior to or after its effective date.

By providing greater certainty as to when child support will end, the law is more payor-friendly than the case law established by New Jersey courts. For instance, while the emancipation provisions in many matrimonial settlement agreements already incorporate the age of 23 as a "catch all" for when child support will terminate, the statute, for the first time, codifies this age cap, as detailed below. The statute also alters the rebuttable presumption that child support terminates when a child reaches age 18.

The language and procedural specifics will, in a manner similar to what has and will occur with the amended alimony law, most certainly result in future litigation over what the law's language means and how it should be applied.

The important provisions of the new law are as follows:

Termination of Child Support

The new law provides that, unless otherwise indicated in a court order or judgment, the obligation

to pay child support shall terminate without order on the date a child marries, dies or enters into military service.

Child support shall also terminate automatically when a child reaches 19 years of age unless:

- another age for such termination is specified in a court order, which shall not extend beyond the date the child reaches 23 years of age;
- a written request seeking the continuation of child support is submitted to the court by a custodial parent prior to the child reaching the age of 19; or
- the child receiving support is in an out of home placement through the Division of child Protection and Permanency in the Department of Children and Families.

In response to a notice of proposed termination of child support, a custodial parent, in the following circumstances, may submit a written request with supporting documentation and a projected future date when support will terminate seeking the continuation of child support beyond the date when the child reaches age 19:

- the child is still enrolled in high school or other secondary program;
- the child is a student in a post-secondary education program and is enrolled for the

number of hours or courses the school considers to be full-time attendance during some part of each of any five calendar months of the year; or

- the child has a physical or mental disability as determined by a federal or state agency that existed prior to the child's reaching the age of 19 and requires continued child support.

A custodial parent may also file a motion with the court seeking to extend the obligation to pay child support beyond the date the child reaches 19 years of age due to exceptional circumstances as approved by the court.

Interestingly, if a court orders the continuation of child support beyond the date when the child reaches age 19, the order must also provide "the prospective date of child support termination." If the payor parent disagrees with the court's decision to continue child support beyond the child's reaching age 19, he or she may file an application seeking relief from the obligation.

Probation Notices of Child Support Termination

Matters involving child support obligations administered through the Probation Division will require that both parents receive at least written notices of a proposed termination of child support, each of which shall include information and the request form to facilitate the continuation of child support beyond the date when the child turns age 19. The first notice will be sent 180 days prior to the proposed termination date, and the second at least 90 days prior to the proposed termination date. The second notice, however, shall not be required if a custodial parent's request for continuation is pending or a new date of child support termination has been established.

Age 23 as a "Cap" for Termination

Critically, the new law provides that "the obligation to pay child support shall terminate by operation of law when a child reaches 23 years of

age," except that a child beyond age 23 can still seek an order requiring the payment of other forms of financial maintenance, or reimbursement from a parent, as authorized by law, so long as it is not payable or enforceable as child support. In addition, a court, based on an application from a parent or child, can convert, due to exceptional circumstances (such as a physical or mental disability), a child support obligation to another form of financial maintenance for a child who has reached the age of 23.

Unallocated Child Support for Two or More Children

The new law establishes that if there exists an unallocated child support order (one that does not specify the amount of support for each child) for two or more children, and the obligation to pay for one child terminates, the existing support obligation shall continue. This does not prevent the parties from resolving the issue to avoid the time and expense associated with litigation.

If, however, the support was allocated — rather than unallocated — and support for one child terminates, the amount of child support for the remaining child(ren) shall be adjusted to reflect only the amount allotted for the remaining child(ren).

Arrears Existing at Termination

Under the new statute, if support arrears exist when support terminates, the arrears will remain due and enforceable. The new law provides how payment for arrears will be made if support terminates and there are no other children being supported under the same court order, as the "sum of the recurring child support obligation in effect immediately prior to the effective date of termination plus any arrears repayment obligation in effect immediately prior to the effective date of termination, unless otherwise ordered by the court."

Impact on Foreign Support Orders

The new statute shall not apply to child support provisions contained in orders/judgments entered by

a foreign jurisdiction and registered in New Jersey for modification or enforcement under the Uniform Interstate Family Support Act (UIFSA), or any succeeding law that is substantially similar, or a law or procedure substantially similar to New Jersey's former (and since repealed) Uniform Reciprocal Enforcement of Support Act (URES) and Revised Uniform Reciprocal Enforcement of Support Act.

Support While in College

The law unambiguously provides that it does not require nor relieve a parent from paying "support or other costs while a child is enrolled full-time in a post-secondary education program."

Important Miscellaneous Points

Any party may still seek to terminate child support for any reason other than those provided in the new law. Importantly, the law also confirms that it does not "prohibit the parties from consenting to a specific termination date for child support that does not exceed the date a child reaches 23 years of age, or to any other financial arrangements for a child that are not designated as child support, subject to the approval of the court." This is noteworthy because many practitioners representing the payee parent

have previously argued that "catch all" language in the emancipation section of a settlement agreement terminating child support at age 23 was against public policy.

In addition, a child support payor can petition the court to terminate child support for good cause prior to the child's reaching age 19, or contest the extension of child support beyond the date when the child reaches such age.

This law will have a substantial impact on matrimonial practice, and is certainly more payor-friendly than prior case law — a continuing trend also found in New Jersey's amended alimony premarital agreement laws. Practitioners should consider incorporating new language and references to the law in the emancipation provisions of their settlement agreements. It is imperative that those who have or will have child support obligations understand these changes.

For more information regarding the amendments, or guidance on other family law issues, contact one of the New Jersey attorneys in Fox Rothschild's Family Law Practice Group. You can also visit us on the web at www.foxrothschild.com, and read our blog, New Jersey Family Law.



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