

TERMINATION OF OBLIGATION TO PAY CHILD SUPPORT

By: Debra S. Weisberg, Esq. & Sandra Starr Uretsky, Esq.

On February 1, 2017, a newly enacted child support statute, N.J.S.A. 2A:17-56.67, took effect, which was further memorialized in the Rules of Court, R. 5:6-9, effective September 1, 2017. The statute which directly impacts when and how child support Orders terminate applies to all child support Orders issued prior to and after its effective date.

The child support statute was not intended to modify New Jersey's laws on emancipation, but was rather conceptualized as an attempt to relieve the administrative and financial burdens of the probation department. Previously, the probation department required an Order from the Court to terminate child support before closing a relevant account. Without a Court Order terminating child support, an account would remain open, which resulted in the accrual of outdated accounts to be maintained on behalf of "children" who would have otherwise been deemed emancipated. Regardless, the probation department had to monitor outdated accounts when Orders had not been filed to terminate child support diverting federal funding away from the maintenance of current accounts. Accordingly, New Jersey enacted the statute with the legitimate goal of eliminating probation department back log and heavy financial impositions.

Under the newly enacted statute, the probation department will administratively close child support accounts when the child marries, dies or enters into military service. Child support shall also terminate automatically when a child reaches 19 years of age, unless:

(1) another age for the termination of child support is specified in an Order, which shall not extend beyond the date the child reaches 23 years of age;

(2) 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

(3) 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.

The probation department will issue a Notice of Proposed Child Support Obligation Termination to both parents as to the proposed termination. In response, a custodial parent may submit a written request, on a form and within timeframes promulgated by the Administrative Office of the Courts, with supporting documentation to the Court, including a projected future date when support will terminate, seeking the continuation of child support beyond the date the child reaches 19 years of age in the following circumstances:

(a) the child is still enrolled in high school or other secondary educational program;

(b) 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

(c) the child has a physical or mental disability, as determined by a federal or State government agency, that existed prior to the child reaching the age of 19 and requires continued child support.

A custodial parent may also file a motion or an application 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 may be approved by the Court. If the Court finds that the form and supporting documentation submitted by the custodial parent establish sufficient proof to continue the child support obligation beyond the date a child reaches 19 years of age, the child support obligation shall not be terminated by operation of law when the child reaches the age of

19, and the Court shall issue an Order establishing the prospective date the child support is to be terminated. The payor may, at any time, file a motion or an application with the Court seeking relief from that obligation.

In cases where child support continues beyond the age of 19, child support shall terminate upon operation of law when a child reaches 23 years of age under the statute, regardless of whether or not their settlement agreement or support Order provides for a later termination date or event. However, nothing in the statute shall be construed to (1) prevent a child who is beyond 23 years of age from seeking a Court Order requiring the payment of other forms of financial maintenance or reimbursement from a parent or (2) prevent the Court, upon application of a parent or child, from converting, due to exceptional circumstances including, but not limited to, a mental or physical disability, a child support obligation to another form of financial maintenance for a child who has reached the age of 23. Notwithstanding an Order for financial maintenance, the probation department will not oversee the account as its services expire immediately upon the child 23rd birthday, with the exception of the collection of arrears until they are paid in full.

Presumably, the statute will reduce the number of applications filed in Court given the automatic termination provision and administratively, it should assist with the closure of outdated cases. However, the practical effects of the statute as currently drafted may result in additional litigation not otherwise anticipated when the parties entered into their settlement agreement.

For example, a custodial parent receiving support through the probation department will likely be required to file a motion to continue support or forced to submit information regardless of whether the judgment of divorce or support Order specifies a termination date other than the

child's 19th birthday. Although the date set forth in the Order will govern, the state cannot guarantee the information will be entered into the probation department's system. In fact, information provided to the public on <http://www.njchildsupport.org/> explains that parents may still receive a termination notice and be asked to send in a copy of the Judgment of Divorce or Order containing the termination date, imposing additional burden on the payee. In addition, parents may receive the termination notice because the Judgment of Divorce or Order specifies an event and not a specific age or date of termination, again imposing upon the custodial parent a burden of proof needed to continue child support. Attorneys must carefully complete the Uniform Summary Support Order in an effort to avoid the issue of the probation department not having the relevant information. It may be incumbent upon attorneys to address a termination date for child support in the Uniform Summary Support Order.

Moreover, the new statute establishes that if there exists an unallocated child support Order for two or more child, and the obligation to pay for one child terminates, the existing support obligation shall continue. Here, the payor will have to file an application, if not otherwise agreed by the parties, seeking a reduction of support resulting in additional litigation.

Notably, the statute only applies to cases administered through the probation department. Custodial parents who once relied upon the probation department to monitor their accounts will have to seriously consider whether support should be paid through the probation department given the extra steps that will now be imposed upon them to continue support, even if their settlement agreement specifically calls for specific child support and emancipation dates.

Consider a circumstance in which the parties' settlement agreement provides that child support shall continue until age 24, but under the new statute, the Probation Division will automatically terminate child support at the age of 23. The custodial parent will have to file yet

another application with the Court to enforce the settlement agreement and convert support into another form of financial maintenance or reimbursement if the payor stops paying. If the custodial parent made the decision earlier to receive support directly, they might not be in the position of having to file another application.

There is no doubt that the statute had lofty goals at its enactment to reduce Court backlog. However, the practical effects may result in the filing of more Court applications and motions than before its enactment and raise more questions as to the fact sensitive nature of each case, particularly concerning emancipation. It is important to recognize that the closing of an account through the probation department does not mean that a child is emancipated under the law.

Practitioners must be prepared to address the issues concerning the new statute with our clients and discuss the incorporation of new language and references to the law in the emancipation provisions of their settlement agreements. As with all new statutes, we are forced to anticipate all possibilities and advise our past, present and future clients accordingly.