

New Law: Termination of Obligation to Pay Child Support

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On Jan. 19, 2016, the New Jersey Legislature enacted a new statute regarding termination of a parent's obligation to pay child support. N.J.S.A. 2A:17-56.67 formally went into effect on Feb. 1, 2017. The new statute applies to all awards of child support, whether entered prior to or subsequent to its enactment, and establishes age 19 as the presumptive age for automatic termination of child support for children of divorced and separated parents.¹ This article summarizes the legislative history of N.J.S.A. 2A:17:56.67, the implementation of the new law, its exceptions and where the new law leads in the future.

Legislative Backdrop for the Enactment of New Child Support Legislation

The enactment of N.J.S.A. 2A:17:56.67 followed years of legislative efforts to join the 48 preceding states that decline to presumptively provide child support for youth over the age of 18 years. The majority of states use age 18 as the age of majority (in cases where the child is still in high school, the age of majority may extend beyond 18). Some states hold no duty to support beyond the age of 18 years,² while other state laws empower their courts to award support beyond the age of majority.³ New Jersey is included among the latter, granting the courts the power to award child support under certain circumstances, including, for example, full-time college enrollment and qualifying disability.⁴ Alternatively, there are a few states that are silent on the issue, having declined to affirmatively enact legislation either relieving or holding parents responsible for college support.

Although New Jersey's new child support law establishes an automatic termination of support upon a child reaching age 19, as discussed herein, there are built-in mechanisms for continuing support for those who are diligent about responding to the court-generated notices. Continuing support beyond the age of 18 is often dubbed 'college support,' as the majority of the cases in which

support is continued presupposes the child is enrolled in college on a full-time basis.

The focus of the legislation is a child's presumptive age for ending child support. Senator Shirley K. Turner, who was interviewed for this article, first introduced the legislation in 2002. Senator Turner recalls the primary motivation behind the initial legislative efforts was to relieve the court's administrative burden of recordkeeping and enforcement due to lack of an established age for emancipation. The child support probation system was faced with an ever-growing docket of cases requiring monitoring and enforcement, as well as a declining collection rate as compared to other states.⁵ Consequently, this has an impact on federal funding, which is based on cost effectiveness. With removal of stale cases from the probation system, it is expected that the state will receive additional federal funding.⁶

Regarding her involvement in the initiation and support for bill S-1046 (2014-2015), Senator Turner states, "it was the right thing to do...considering terminating a child support obligation becomes a more costly endeavor than necessary because many people are intimidated by the court and wind up paying an attorney to represent them." These are valorous motives, but does the burden merely shift from payor to payee to continue support where otherwise appropriate? With 68.6 percent of New Jersey children going on to college,⁷ there remains a strong need for judicial involvement with continuing college-related support.

In considering this legislation, the question arises: What impact does the early termination have upon the payee who continues to support their college student? Might it be said that the payee assumes "the more costly endeavor than necessary because many people are intimidated by the court and wind up paying an attorney to represent them." In this case, one may expect that a payee parent may similarly be intimidated by the court, either failing to initiate a timely action to continue

support prematurely resulting in a lapse of support or instead incurring legal fees choosing to retain an attorney to navigate through the process.

There is likely to be a resulting reduction in the average length of child support probation involvement, and there will potentially be a temporary decline in probation cases. Indeed, this result is favorable to the probation system, and likewise the court system. The burden had been a heavy one. As of year-end 2016, there were approximately 297,541 matters monitored through the New Jersey probation system,⁸ with a steady rise since its original expansion with Title IV-D in year 1975.

The new legislation does not revisit the model established in year 1986,⁹ nor does it revisit the statutory factors for a child support analysis under N.J.S.A. 2A:34-23a. New Jersey continues to follow the income shares approach. This approach is based on the concept that the child should receive the same proportion of parental income that child would have received if the parents stayed together. In an intact family, the income of both parents is generally pooled and is available to benefit all members of the household. Thirty-nine states use the income shares approach.¹⁰ Moreover, New Jersey continues to rely upon the 10 delineated factors for calculating child support for the benefit of youth over age 18.

What's more, the new legislation does not expressly overturn the 1982 substantive law enunciated in *Newburg v. Arrigo*,¹¹ which establishes a presumption of emancipation with a consequential termination of the duty to support at age 18 years unless the child is disabled or a full-time student.¹² There remains an argument that child support may be terminated at age 18, in the absence of disability, if indeed other qualifying circumstances are in place, such as graduation from high school without enrollment in higher education. New Jersey case law establishes age 18 as the age of majority.¹³ Instead, in case of a sooner graduation, the burden remains on the payor to bring such application.

In support of this proposition, one may rely upon the New Jersey Supreme Court itself, stating, "in the absence of a clear manifestation to the contrary, we shall not impute to the Legislature an intention to change established law."¹⁴

Implementing the New Law: What is Known

It is clear the implementation of the new child support law will have a large impact on family law practitioners and clients. It has been the longstanding law of

New Jersey that there is no automatic emancipation or termination of child support. This has made New Jersey unique among many other states in the country that provide for automatic termination upon a child reaching the age of majority in the given state. The question now becomes how does the statute effect what is known and how is practiced? In this section, three important questions practitioners may have when incorporating the new statute with common practice will be discussed.

Does the new statute apply to all child support obligations, even if not paid through probation?

The new statute does apply to all child support obligations, even those not paid through probation.¹⁵ However, parties making direct payments have the obligation to be aware of the new statute and make their payments accordingly. This is in contrast to payments made through a county's probation department, which will automatically terminate at age 19, absent the affirmative action of the recipient parent.

Under the new statute, a probation department is required to send two notices to the parties before the termination of child support, with the first notice being sent 180 days prior to the parties' child's 19th birthday.¹⁶ This will give the receiving party the opportunity to make the appropriate application with the court for the continuation of child support if the child meets the enumerated criteria under the statute.¹⁷ The notice will provide the parties with the steps they will have to take in order for child support to continue past the child's 19th birthday. If no application is made by a party within 90 days, a second notice will be sent to the parties.¹⁸ If a party successfully wins an application to extend child support past 19 and until age 23, the probation department is required to send a notice 90 days prior to the termination of the latter date for child support.¹⁹

Does the new statute change the law regarding emancipation? If so, how?

For family law practitioners in New Jersey, there are several events that often necessitate the emancipation of a child. It is not uncommon that in a party's property settlement agreement emancipation would occur if the child marries, joins the army, begins full-time employment, or reaches a specified age. "It [was] firmly established that there [was] no specific age at which the emancipation of a child occurs."²⁰ In fact, "[a]ge alone [was] not dispositive of emancipation."²¹ The court was required to make a fact-sensitive inquiry under the circumstances of each matter.²² Analysis was required by the court to

determine whether the child “moved beyond the sphere of influence and responsibility exercised by a parent and obtains an independent status of his or her own.”²³

Under the new statute, automatic emancipation of a child occurs at age 19, when the child marries, dies or enters military service.²⁴ There are several circumstances under the new statute where child support will not automatically terminate upon a child reaching the age of 19.²⁵ Perhaps one of the most important exceptions is if another age for the termination of child support is specified in a court order.²⁶ This exception creates an avenue for practitioners to extend the term of child support consistent with a statutory analysis and not the mere anniversary of birth.

The change in the law has also created a shift in the burden of the parties. Previously, the burden was on the party paying child support to make an application with the court seeking emancipation. This served the underlying public policy of the state that child support belonged to the child, not the parents. Under the new statute, the burden has shifted to the party receiving child support to stop the automatic termination so long as they meet the enumerated criteria.²⁷ The custodial parent must submit a written request form with supporting documents to the court.²⁸ If a successful application is made, a court's order now is required to list a prospective date of child support termination, most likely the date of the child's 23rd birthday.²⁹ If the payor disagrees with the court's findings, they are required to file a motion with the court.³⁰ This is a clear shift in the burdens of the parties, and appears to weaken the public policy of the state by shifting the burden to the receiving party, at least initially. There is nothing within the statute to state whether or not the written request form is accompanied by a filing fee, which would be an additional cost and burden to the receiving party.

Does the statute change the presumptive age of emancipation from 18 to 19?

Under previous New Jersey case law, a presumption arose in favor of emancipation once a child reached the age of 18.³¹ Case law held, “[g]enerally, a rebuttable presumption against emancipation exists prior to the attainment of the age of majority which is eighteen.”³² Under the statute, there is an automatic termination of child support when a child reaches the age of 19. The statute does not change the presumption that an adult is emancipated; instead, it cures the systemic problem of aged and dead collec-

tion cases by compelling activity by the party seeking to continue child support under existing law.

Assuming support for the child was continued past the legal age of 18 and administrative age of 19, the final important age under N.J.S.A. 2A:17-56.67 is 23. A parent's “obligation to pay child support shall terminate by operation of law when a child reaches 23 years of age.”³³ Upon reaching age 23, the burden shifts to the child to seek “a court order requiring the payment of other forms of financial maintenance or reimbursement from a parent as authorized by law to the extent that such financial maintenance or reimbursement is not payable or enforceable as child support.”³⁴ If exceptional circumstances exist, such as a mental or physical disability, the court is not prevented from converting the “child support obligation to another form of financial maintenance.”³⁵ Under subsection (e)(2) of the statute, either the parent or child may file such an application with the court.³⁶

The Exceptions: When Child Support Continues Beyond Age 19

When nearing a child's 19th birthday, or upon receipt of a notice of proposed termination of child support,³⁷ a custodial parent seeking a continuation of child support may petition the court to extend the obligation to pay child support until a projected date in the future if the dependent child is: 1) still attending high school or other secondary program; 2) is attending college, vocational or graduate school on a full-time basis; 3) has a physical or mental disability; or 4) by agreement between the parents. In addition, an application to request to extend a child support obligation beyond a child's 19th birthday may be granted by the court upon a finding of ‘exceptional circumstances.’ These exceptions to the automatic termination of child support do not deviate from the customary practice employed by family law practitioners for years preceding the enactment of the new statute.

Under the revised statute, a parent's child support obligation is not relieved during the period “while a child is enrolled full-time in a post-secondary education program.” This aspect of the new statute is somewhat inconsistent with the fact that the New Jersey child support guidelines do not apply once a child commences college. Therefore, the issue of a parent continuing to pay child support for a college-age child remains unsettled. Of course, an exception to the application of the new statute is any agreement reached by the parties to voluntarily

extend the payment of child support beyond the age of 19. As such, it is anticipated that family law practitioners will continue to encourage clients, where applicable, to enter into agreements that anticipate and provide for continuing support of children attending college.

While prior to the enactment of the new child support law there was no specific emancipation age in New Jersey, it was customary for support to terminate upon a child's completion of post-secondary education. Under the new law, child support shall terminate by operation of law when a child reaches age 23. However, the statute also provides that it was not to be construed to "prevent a child who is beyond 23 years of age from seeking a court order requiring payment of other forms of financial maintenance or reimbursement from a parent as authorized by law to the extent that such financial maintenance or reimbursement is not payable or enforceable as child support." Accordingly, once a child reaches the age of 23, he or she may petition the court seeking financial support independent of child support. How the courts will apply this provision of the new statute remains to be seen. In particular, whether there should be financial maintenance for a child over the age of 23 who is still attending college or, possibly graduate school, will be a fact-sensitive determination made on a case-by-case basis.

In the recent unreported case of *J.C. v. A.C.*,³⁸ Judge Lawrence Jones considered a case involving a dispute over whether a non-custodial parent had an obligation to pay child support or other financial maintenance for a child who had just graduated college and had elected to attend graduate school. The child was 22 years of age but was turning 23 prior to the effective date of the new statute. The application was brought by the child's mother and not by the child herself, and it was unclear whether the child independently wanted further financial support from her father. Judge Jones ordered a plenary hearing on the issue of the child's emancipation to determine whether the child objected to emancipation and/or was seeking independent continued financial maintenance from her father. In the case of the latter, Judge Jones determined the child would be required to carry the burden of proof and the court would then determine whether it would be equitable to continue the father's financial obligation. Judge Jones also determined the court may impute an income to the daughter for support or maintenance purposes.

In making this determination, Judge Jones considered the import of the new child support statute:

...the Act does not expressly set forth why the age of 23, instead of another age, was specified as the mandatory cut-off for "child support" as opposed to other alternate forms of financial maintenance. At least one reasonable interpretation of the statute, however, may include the following logical possibility and conclusion: Specifically, the statute references a possible extension of child support from the age of 19 to 23 because these are the most likely age parameters when a child may be a full time college student pursuing either an undergraduate degree or otherwise enrolled in a similar course of education or training following high school.... Overall, while both prior case law and the new child support statute technically permit a graduate student to seek financial maintenance and contribution from a parent, there is no law requiring or presuming that any such application must be granted, or that a graduate student cannot be emancipated for purposes of mandatory child support or parental maintenance.... To the contrary, fairness and equity more logically require that if an adult child and college graduate is claiming that he or she should not be emancipated, and that a parent should be obligated to continue financially assisting on a mandatory basis, then the burden of proof and persuasion rests on the applicant to demonstrate good cause for a ruling against emancipation and independence rather than the other way around, and to further show why an order for continued maintenance would be appropriate, fair and equitable not just to the student, but also to the applicable parent, under the factual circumstances of the case.

As stated, how and when the exceptions to the new statute will be applied remains to be determined. While the new child support statute provides far greater guidance in certain areas, others remain unsettled.

Shaping the Future Law: What the Statute Does not Address

New Jersey's recent legislation addressing the automatic termination of child support falls short of its intended goals. Indeed, while the new law seeks to impose an absolute cut-off date for child support, at the

same time it allows parents or children to seek some form of support beyond 23 years of age in “exceptional circumstances.” However, not only does the statute fail to address the definition of exceptional circumstances, the statute’s provisions severely limit the circumstances under which support may be sought, and further limits the type of support that can be sought. Attorneys in this state will need to assist their clients in planning ahead, providing mechanisms for ensuring the continued support of their clients’ children.

In seeking to impose a bright line rule for the termination of child support at 23 years of age, the recent legislation does not address circumstances where a child has not completed college before his or her 23rd birthday. This factual scenario may occur through various circumstances, including a child’s brief hiatus in matriculation from high school to college. Moreover, the child’s completion of college may be delayed due to a brief hiatus during college, preventing the child’s graduation within the timeframe prescribed by the New Jersey Legislature. Lastly, college graduation may be delayed due to a child’s change in courses or a declared major, thereby extending the age of the child in completing their college studies.

The new legislation further fails to address voluntary support obligations for children in graduate schools. Recent cases in New Jersey have extended parents’ obligations to pay for graduate schools in unique circumstances. The recent enactment appears, on its face, to limit parties’ ability to contract for obligations to support their children beyond 23 years of age. N.J.S.A. 2A17-56.57 (a) states, in relevant part, “a child support obligation shall terminate by operation of law without order by the court when a child reaches 19 years of age unless: another age for the termination of the obligation to pay child support, *which shall not extend beyond the date the child reaches 23 years of age*, is specified in a court order.”

This limiting language seeks to prevent support beyond the child’s 23rd birthday, notwithstanding agreement by the parties or order by the court. Moreover, section (e) of the new legislation further curtails parties’ abilities to provide support to their children wherein it states: “Nothing in this section 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 as authorized by law *to the extent that such financial maintenance or reimbursement is not payable or enforceable as child support* as defined in N.J.S.A. 2A:17-56.52.”

According to N.J.S.A. 2A:17-56.52, child support is defined as:

the amount required to be paid under a judgment, decree, or order, whether temporary, final or subject to modification, issued by the Superior Court, Chancery Division, Family Part or a court or administrative agency of competent jurisdiction of another state, for the support and maintenance of a child, or the support and maintenance of a child and the parent with whom the child is living, which provides monetary support, health care coverage, any arrearage or reimbursement, and which may include other related costs and fees, interest and penalties, income withholding, attorney’s fees and other relief.

Thus, the new law prohibits parents from agreeing to the payment of monetary support or even healthcare coverage for their children beyond 23 years of age, even if the child remains in college or graduate school.

In addition, by limiting the types of support a child or parent may seek beyond 23 years of age, the New Jersey Legislature prohibited parents from agreeing to maintain health insurance coverage for their children as provided for by the federal government. Specifically, under current healthcare laws, parents may provide healthcare coverage for their children up to the age of 26. The new law, however, prohibits the obligation to pay the child’s healthcare coverage beyond the age of 23.

Aside from the limitations on the type of support a child may seek beyond the age of 23, the new statute does not address the obligation to pay child support arrearages after the child’s 23rd birthday. By limiting the type of support a child may seek beyond 23 years of age in section (e), the law creates a safe harbor for parents who owe child support and restricts the ability to pursue child support arrears that may have accrued prior to the child’s 23rd birthday. Specifically, under N.J.S.A. 17-56.67(e), the type of “financial maintenance or reimbursement” a child over the age of 23 may seek may not include “monetary support, health care coverage, any arrearage or reimbursement...” Thus, the statute appears to prohibit the collection of child support arrearage beyond the age of 23.

Lastly, while the new legislation seeks to leave open a parent’s or child’s ability to convert a child support

obligation to “another form of financial maintenance” due to exceptional circumstances, the law does not specify the types of financial maintenance that are permissible. Are direct payments of a monthly amount acceptable? How does one differentiate a child support obligation imposed prior to a child’s 23rd birthday from an obligation to support a child after the 23rd birthday? Does the financial need of a child change magically once a child reaches the age of 23? Why should a parent’s financial obligation change or be re-characterized simply because a child reaches the age of 23?

Despite the limitations and loopholes created by the new legislation, parents are not without the ability to provide for the obligation to support their children. Just as courts are imbued with the power to create orders “as to the care, custody, education and maintenance of the children, or any of them, as the circumstances of the parties and the nature of the case shall render fit, reasonable and just,” parents similarly are empowered to determine the needs of their children, and their shared sense of obligation to support their children. Indeed, parents are uniquely qualified and vested in the financial protection of their children.

Parents have the right to contract, including the right to agree to provide for the care of the children beyond their 23rd birthdays. This legislation cannot, and does not, limit parents’ abilities to enter into agreements that provide for the support of their children, even if their intentions to support their children are contrary to the limitations imposed by the new law.

Attorneys have a responsibility to assist their clients in fashioning agreements that reflect their wishes and intentions. Further responsibilities include advising clients of the laws in this state, including this law, and helping craft agreements that accomplish their goals. To fulfill these duties, attorneys should negotiate and prepare consent judgments that address the issues raised in this article as part of the overall global resolution of the divorce litigation. These consent judgments should not only provide for the extension of child support obligations beyond a child’s 19th birthday, but also address the possible extension of support beyond a child’s 23rd birthday. Moreover, attorneys should assist their clients to prepare, in advance, for the continuation of child support after the child’s age of 19, specifically formulating a document to be completed and filed once the child graduates from high school. These advanced actions and arrangements will assist the parents in ensuring the financial protection of their children beyond the age limitations imposed by the new legislation. ■

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Endnotes

1. N.J.S.A. 2A:17-56.67, *et seq.* “The bill clarifies certain circumstances under which the obligation to pay child support terminates and provides that such termination would occur by operation of law.” Comments to N.J.S.A. 2A:17-56.67.
2. *Solomon v. Findley*, 167 Ariz. 409 (1991); *Towery v. Towery*, 285 Ark. 113 (1985); *H.P.A. v. S.C.A.*, 704 P. 2d 205 (Alaska 1985); *Ex parte Christopher* (Ala. Oct. 4, 2013); Colo. Rev. Stat. §14-10-115(1.6); *Dalton v. Clanton*, 559 A.2d 1197 (DE 1989); *Nelson v. Nelson*, 548 A.2d 109, 111 (D.C. 1988); *Slaton v. Slaton*, 428 So. 2d 347 (Fla. DCA 1983). See Cal. Fam. Code § 3910; *Noble v. Fisher*, 126 Idaho 885 (1995); Ind. Code § 31-16-6-6(c); Ind. Code § 31-16-6-2.
3. See Conn. Gen. Stat. § 46b-56c (through age 23); O.C.G.A. § 19-6-15e; Hawaii Rev. Stat. § 576E-14; Hawaii Rev. Stat. § 584-18 (if full-time enrollment); Ill Rev. Stat. ch. 750, sec. 750, sec. 5-513; Iowa Code § 598.1(8); Iowa Code §598.1(9); Iowa Code § 598.21f.
4. N.J.S.A. 2A:17-56.67.
5. Payments to States for Child Support Enforcement and Family Support Programs, Department of Health and Human Services, Administration for Children and Families (2015).
6. 42 U.S.C. § 458.

7. http://www.higheredinfo.org/dbrowser/index.php?su_bmeasure=63&year=2010&level=nation&mode=data&state=0.
8. Statistic based on Interview of Pete McAleer, Communications Manager, Office of Communications and Community Relations, NJ Administrative Office of the Courts (6/01/2017).
9. See N.J. Ct. R. 5:6A.
10. Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming, Guam, and Virgin Islands.
The approaches can be broken down into three main models—Income Shares, Percentage of Income, and the Melson Formula.
Cf. The Percentage of Income Model, followed by 14 states, sets support as a percentage of only the non-custodial parent’s income, while the custodial parent’s income is not considered.
Cf. The Melson Formula, followed by 3 states, is a more complicated version of the Income Shares Model, which incorporates several public policy judgments designed to ensure that each parent’s basic needs are met in addition to the children’s.
11. *Newburg v. Arrigo*, 85 N.J. 479 (1980).
12. *Id.*
13. See *Ort v. Ort*, 428 N.J. Super. 290, 296-97 (Ch. Div. 2012) (reviewing many statutes defining who is and isn’t an adult).
14. *Oches v. Twp. of Middletown Police Dep’t*, 155 N.J. 1, 5 (1998) (citing *State v. Dalglish*, 86 N.J. 503, 512 (1981)).
15. N.J.S.A. 2A:17-56.67(1)(d).
16. *Id.*
17. *Id.*
18. *Id.*
19. N.J.S.A. 2A:17-56.67(1)(e).
20. *Bishop v. Bishop*, 287 N.J. Super. 593, 597 (Ch. Div. 1995).
21. *L.D. v. K.D.*, 315 N.J. Super. 71, 75 (Ch. Div. 1998); see also *Bishop v. Bishop*, 287 N.J. Super. at 597.
22. N.J.S.A. 9:17B–3.
23. *Filippone v. Lee*, 304 N.J. Super. 301, 308 (citing *Bishop*, 287 N.J. Super. at 598).
24. N.J.S.A. 2A:17-56.67(1)(a).
25. N.J.S.A. 2A:17-56.67(1)(a)(1)-(3).
26. N.J.S.A. 2A:17-56.67(1)(a)(1).
27. N.J.S.A. 2A:17-56.67(1)(b)(1)(a)-(c);(1)(b)(2);(c).
28. N.J.S.A. 2A:17-56.67(1)(b)(1).
29. N.J.S.A. 2A:17-56.67 (1)(c).
30. *Id.*
31. *Bishop*, 287 N.J. Super. at 597; see also *Newburgh v. Arrigo*, 88 N.J. at 543.
32. *Bishop*, 287 N.J. Super. at 597.
33. N.J.S.A. 2A:17-56.67(1)(e).
34. N.J.S.A. 2A:17-56.67(1)(e)(1).
35. N.J.S.A. 2A:17-56.67(1)(e)(2).
36. *Id.*
37. Child support obligations which are administered by the Probation Division require that both the payor and the payee receive written notification of a proposed termination of child support at least 180 days prior to the proposed date of termination. See N.J.S.A. 2A:17-56.67(1)(d).
38. *J.C. v. A.C.*, Superior Court of New Jersey, Ocean County, Chancery Division (Oct. 7, 2016).