Norris McLaughlin & Marcus, P.A.
ATTORNEYS AT LAW

Matrimonial & Family Law Alert

March 2017

The Awful-ly Confusing New Child Support Statute

With the ink hardly dry on the newly-enacted child support statute, 2A:17-56.67, we are receiving increasing numbers of inquiries as to the effect of the new law, and significant concerns over the interpretation of its seemingly ambiguous and confusing language. Although the intent of the statute was a legitimate attempt to eradicate the backlog currently overwhelming our state's probation departments and ensure that the probation departments would continue to receive federal funding, the misinterpretation and misapplication of its language has stirred much debate in our practice. It is imperative for all parents paying support or receiving support to understand the implications of this statute, in order to put to rest any concerns that their child may unilaterally be deemed emancipated by the probation department upon reaching a set age.

To set the record straight, the new child support statute was in no way intended to substantively change our state's laws on emancipation. It was initiated to relieve the probation departments from carrying archaic accounts on behalf of "children" who are now in their late 20's (even 30's), who would otherwise have been deemed emancipated as a matter of law. In our system, before the probation department can terminate the collection of child support and close the relevant account, the department must receive an Order from the court declaring a child emancipated. Without the Order, the probation department does not have the authority to terminate child support unilaterally (which remains true). This meant outdated accounts accrued in our system, causing significant arrears to accumulate on accounts that were not intended to remain active. This negatively influenced the availability of federal funding to our court systems.

A resolution to this financial detriment was for New Jersey to establish a presumptive date when child support ends, in the event no Court Order, settlement agreement or other determination is made to contradict this date. However, this is not accurately reflected in the interpretation of the new law. In fact, a cursory review of the statute might cause the reader to think children are automatically emancipated at age 19 or 23, which is simply not true.

Even a cautious reader might further interpret that a probation officer, alone, will have the authority to review an obligee's documentation and written request to continue child support beyond a child's 19th birthday. It would appear that in this capacity, a probation officer, alone, can determine if an obligee has provided sufficient proof to warrant a continuation of support, and if not, the probation officer can terminate the support obligation as of the child's 19th birthday. This is alarming, and was not intended by the enactment of this law. Perhaps the probation department will take action once a child is 19 years of age in order to confirm that the child is still unemancipated at 19, or to close the account at 23, but that certainly does not mean a child is automatically emancipated.

LAW FIRMS WORLDWIDE MERITAS

NJ: 400 Crossing Boulevard, 8th Floor, Bridgewater, NJ 08807 • P: (908) 722-0700 • F: (908) 722-0755
NY: 875 Third Avenue, 8th Floor, New York, NY 10022 • P: (908) 722-0700 • F: (212) 808-0844
PA: 515 West Hamilton Street, Suite 502, Allentown, PA 18101 • P: (610) 391-1800 • F: (610) 391-1805

www.nmmlaw.com E: info@nmmlaw.com

Parties, who have worked painstakingly and diligently to create settlement agreements on child support and emancipation, are being misled into believing the probation department has the authority to emancipate a child at the age of 19 or 23 under this new law, irrespective of a settlement agreement. A clear distinction is warranted here. Court Orders; settlement agreements; determinations of disabilities, including those determined by the Social Security Administration and those incorporated into settlement agreements as a consideration made by both executing parties when entering into the terms of the agreement; and other determinations made by the court concerning a child's unique situation continue to govern and control emancipation. The new statute was not intended to eradicate the robust body of case law governing emancipation, nor can we allow it to be misapplied where it would do so. Emancipation means a child is self-sufficient and has moved beyond the "sphere of parental influence." We cannot allow a haphazard statute, solely designed to obtain more federal funding, to harm deserving and eligible children.

Under the new statute, if there is no Court Order, judgment, or agreement between parties concerning emancipation, the probation department will administratively close child support accounts when the child reaches the age of 19. At the latest, the probation department will close such accounts when the child reaches the age of 23. The closing of an account is not synonymous with the emancipation of a child, and provided the child remains within the "sphere of parental influence" and cannot be self-supporting, that child will remain unemancipated. The statute merely provides that once the child turns 23, support will be paid directly between the parties rather than through the probation department.

Interested parties can also rest assured that when there is no Court Order, judgment, or agreement governing child support and emancipation, only judges will have the authority to determine whether the evidence is sufficient to permit the continuation of child support. This is not a task for the probation department, and certainly not a determination made by the probation department.
At its heart, this statute is intended as a mechanism to close obsolete accounts that were precluding our state from receiving the appropriate amount of federal funding. It bestows no authority to the probation department to determine the emancipation status of any child. Moreover, this statute does not institute a bright line rule of emancipation at the age of 19 or 23 in contravention of Court Orders, settlement agreements, or any judgments stating otherwise. By providing a more thorough understanding of the intent of this statute, we hope to mitigate any outstanding concern for those who are currently working with the probation department to continue the collection of child support, and for future matters that will be affected by this law.

This article was written by **Jeralyn L. Lawrence**, Chair of the Matrimonial and Family Law Group. If you have any questions regarding the information in this article or any other matrimonial matters, please feel free to contact her by email at jllawrence@nmmlaw.com.