



## COMMENTARY

# The Aftermath of N.J.S.A. 2A:17-56.67 and Child Support Termination in New Jersey

by Jeralyn L. Lawrence and Ashley E. Edwards

**E**ffective Feb. 1, 2017, the New Jersey Legislature adopted a new child support termination statute, set forth in N.J.S.A. 2A:17-56.67. By operation of this newly enacted law, child support obligations automatically terminate when a child turns 19, unless a court order or settlement agreement states otherwise, or the recipient of child support affirmatively seeks a continuation and has a legal basis for it. The law is retroactive, and thus applies to all child support orders, regardless of whether the order was issued prior to or after Feb. 1. This new law effectively shifts the burden of justifying continued payments to the parent receiving support on behalf of a child.

This statutory burden shift has effectively left the recipient parent of a financially dependent child in a situation where he or she must affirmatively seek continuation of child support or face child support termination. Prior to enactment of the statute, the parent paying child support was required to continue making payments until he or she obtained an order from the court terminating support. As a result, the basic impact of the statute can be boiled down to the burden shift it now contains. The authors believe that while the statute has been somewhat effective in diminishing the volume of open probation accounts, and thus securing federal funding for the state, it has done so at the cost of providing for children who continue to require their parents' support.

It is important to note, however, that N.J.S.A. 2A:17-56.67 is *not* an emancipation statute, as a brief analysis of the statute's timeline confirms. S-1046 was first introduced on Jan. 30, 2014, and did not contain any reference to emancipation. Approximately one month later, on Feb. 24, 2014, A-2721 (the Assembly version of the bill) was introduced. When the bill was posted to the Assembly Judiciary Committee on March 10, 2014, and voted out of committee, none of the amendments referenced emancipation. But when the bill was subsequently posted to the Senate Judiciary Committee on March 24, 2014, and voted out of committee with amendments, a reference to emancipation appeared for the first time.

The bill was subsequently amended on Dec. 18, 2014, and the reference to emancipation remained. However, a later amendment, on Jan. 29, 2015, removed the reference. On Dec. 3, 2015, a statement to S-1046 was issued and explicitly provided that “[t]he amendments remove the reference to the term ‘emancipation’ in the bill because the bill’s provisions *relate only to the obligation to pay child support, and not to other parental duties, rights and responsibilities. As amended, nothing in the bill would affect the authority of the court to make judicial determinations regarding the legal emancipation of a child.*”<sup>11</sup> (emphasis added). On Dec. 17, 2015, the bill (with amendments) passed in the Assembly by a vote of 68-0-1. It was received in the Senate and ultimately passed on Jan. 7, 2016, by a vote of 36-2. On Jan. 19, 2016, it was signed by the governor.

The history of the statute clarifies that N.J.S.A. 2A:17-56.67 does not deal with emancipation. Any and all references to emancipation were completely removed from the statute’s amendments.

Despite the fact that this law has been in effect for over a year, practitioners continue to receive increasing num-

bers of inquiries regarding the effect of the 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 the state’s probation departments, and to ensure that the probation departments would continue to receive federal funding, the misinterpretation and misapplication of its language has stirred much debate within the practice. All parents paying

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or receiving support need 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.

As previously stated, the new child support statute was in no way intended to substantively change the state’s laws in this regard. Instead, it was initiated to relieve the probation departments from carrying archaic accounts on behalf of ‘children’ who are now in their late 20s (even 30s), who would otherwise have

been deemed emancipated as a matter of law. In New Jersey, a child is deemed emancipated when he or she is self-sufficient and has moved beyond the “sphere of parental influence.”<sup>2</sup> A child’s emancipation is not dictated by probation departments by virtue of the newly enacted statute, but instead remains within the sound discretion of the courts.

According to the July 2017 Division of Family Development *Current Program Statistics*, the total number of child support cases with arrears decreased from 195,023 to 184,888 between July 2016 and July 2017, a reduction of 10,135 cases. The total amount of child support arrears collected by probation departments correspondingly increased from \$13,637,182 to \$15,695,152 between July 2016 and July 2017, representing an increase of \$2,057,970 in total child support arrears collections in a one-year period. Title IV-D collections on current child support obligations also increased from 66.8 to 68.5 percent between July 2016 and July 2017.

While the statistics set forth above illustrate that the statute has effectively decreased the amount of child support arrears, the authors believe it has done so, at least in part, at the cost of supporting children who have attained the age of 19 (or 23) but remain financially dependent on their parents and require continued support.

Pursuant to the newly enacted statute, it is the recipient parent who must now demonstrate that his or her child requires continued support. This burden shift is unprecedented in New Jersey, and can, the authors believe, deprive children of the financial support to which they are entitled by law. However, as stated previously, a judicial determination is required to deem a child legally emancipated, regardless of the child’s age. Without an order from the court, the probation department does not have the authority to termi-

nate child support (or financial maintenance) unilaterally. Prior to enactment of the new statute, this meant outdated accounts accrued in the system, causing significant arrears to accumulate on accounts that were not intended to remain active. The voluminous accrual of archaic accounts negatively influenced the availability of federal funding to the 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 the 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 not true.

N.J.S.A. 2A:17-56.67 states, in pertinent part:

- (a) *Unless otherwise provided in a court order or judgment*, the obligation to pay child support shall terminate by operation of law without order by the court on the date that a child marries, dies, or enters the military service. In addition, a child support obligation shall terminate by operation of law without order by the court when a child reaches 19 years of age unless:
- (1) another age for 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*;
  - (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...;
- (b) (1) In response to a notice of proposed termination of child support..., a custodial parent may submit a written request...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...; 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.
- (c) *If the court finds* that the request form and supporting documentation submitted by the custodial parent establish sufficient proof to continue the child support beyond the date a child reaches 19 years of age..., the child support obligation shall not be terminated by operation of law...
- (d) For child support orders that are administered by the Probation Division of the Superior Court, the Probation Division and State IV-D agency shall cooperatively provide both parents with at least two written notices of a proposed termination of child support, which shall include information and the request form to facilitate the continuation of child support beyond the date the child reaches 19 years of age...
- (e) [T]he obligation to pay child support shall terminate by operation of law when a child reaches 23 years of age...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...or
  - (2) prevent the court, upon application of a parent or child, from converting, due to exceptional circumstances includ-

ing, 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.

(emphasis added).

Based on the language of the statute, even a cautious reader might further interpret that a probation officer, alone, will have the authority to review a recipient parent'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 can determine if a recipient parent 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. However, despite the ambiguous language of the statute, a probation officer cannot emancipate a child; the authority to do so continues to remain with the court.

Nonetheless, parties who have worked painstakingly and diligently to create settlement agreements on child support and emancipation may be misled into believing the probation department has the authority to emancipate a child at the age of 19 or 23, regardless of whether or not a settlement agreement or order states otherwise.

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.

The closing of a probation 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 remains unemancipated regardless of his or her age. The statute merely provides that once the child turns 23, support, or “financial maintenance,” will be paid directly between the parties rather than through the probation department.<sup>3</sup> Thus, while the probation account will close, this does not mean the child is emancipated. Parents receiving support on behalf of a child now receive notices from the probation department in the months preceding a child’s 19th (or 23rd) birthday. By virtue of the newly enacted statute, the recipient parent must now affirmatively respond to the notice of proposed termination of child support by completing a “Request for Continuation of Support” form.

In effect, the recipient is required to submit a written request with relevant supporting documentation, demonstrating that the child in question requires continued support. This requires a fact-sensitive analysis in which *courts* will consider a child’s enrollment in college, special needs, disability, or other extenuating circumstances when determining whether or not the child in question requires continued support. The recipient also must submit a projected future date for termination of child support, which must be on or before the child’s 23rd birthday. However, interested parties can rest assured that when there is no court order, judgment, or agreement

governing child support and emancipation, only judges have the authority to determine whether the evidence is sufficient to permit the continuation of child support.

At its heart, the statute is intended as a mechanism to close obsolete accounts that were precluding the 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. The 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 judgments stating otherwise, or in cases where a child requires support beyond his or her 23rd birthday due to disability, special needs, or other extenuating circumstances.

There exist many fact-sensitive situations where continuation of child support (or financial maintenance) beyond a child’s 23rd birthday will be appropriate and necessary. Providing a more thorough understanding of the applicability of the statute, hopefully will mitigate any concerns 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 the law. ♪

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## Endnotes

1. See Statement to [Second Reprint] of S-1046 with Assembly Floor Amendments (Proposed by Assemblyman Gusciora), adopted Dec. 3, 2015.
2. See *Bishop v. Bishop*, 287 N.J. Super. 593, 598, 671 A.2d 644, 646 (Ch. Div. 1995): “[E]mancipation of a child occurs when the fundamental dependant relationship between parent and child is terminated. When a child moves beyond the sphere of influence and responsibility exercised by a parent and obtains an independent status on his or her own, generally he or she will be deemed emancipated.”
3. Notably, the language of the statute clarifies that, while the account closes at age 23, the probation department nonetheless remains responsible for collection of any accrued child support arrears beyond the child’s 23rd birthday.