

## CHANGES IN NEW YORK STATE LAW ON CHILD SUPPORT

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The job of a parent does not simply end when a child reaches a certain age. Despite the aforesaid, as many parties to a divorce or support proceeding know or become aware of during the process, the age of “emancipation” (termination of child support) in New York State for child support purposes pursuant to the Child Support Standards Act is age 21 years (unless otherwise terminated earlier or unless extended by written agreement of the parties). This age-based termination presented a quandary for many, especially those custodial parents caring for adult disabled children over the age of 21.

In response to same, in October 2021, New York State became the 41<sup>st</sup> state to enact legislation to provide child support to custodial parents of adult disabled children (up to age 26 years old) when Governor Hochel signed into law Assembly Bill A00898B, whereby a new section was added to New York’s Domestic Relations Law and the Family Court Act providing that, “a person who would otherwise be chargeable under law with support of a minor child is also chargeable with the support of any such individual until such individual reaches the age of twenty-six, when it shall appear to the satisfaction of the court that the person is developmentally disabled.”

The new law is applicable to custodial parents of adult children between the ages of 21 years to 26 years in situations where the adult child has already been diagnosed with a developmental disability by a medical professional. The adult child must also reside with the custodial parent and the adult child must be “principally dependent” on that custodial parent.

With respect to defining a developmental disability, the courts employ the criteria set forth in New York State’s Mental Hygiene Law §1.03: “(a) (1) the developmental disability is attributable to intellectual disability, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia, Prader-Willi syndrome or autism; (2) is attributable to any other condition of a person found to be closely related to intellectual disability because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of intellectually disabled persons or requires treatment and services similar to those required for such person; or (3) is attributable to dyslexia resulting from a disability described in subparagraph one or two of this paragraph; (b) originates before such person attains age twenty-two; (c) has continued or can be expected to continue indefinitely; and (d) constitutes a substantial handicap to such person’s ability to function normally in society.” Additionally, under the current new law, custodial parents of an adult child who is disabled after reaching the age of 22 will not be able to petition for child support based on the guidelines of the new law.

Moreover, the aforesaid diagnosis of such developmental disability “shall be supported by a diagnosis and accompanying report of a physician, licensed psychologist,

professional nurse, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker authorized to practice under Title 8 of the Education Law, and acting within their lawful scope of practice.”

As to the amount of child support to be awarded for an adult disabled child, while there is a reference to the court referring to the current Child Support Standards Act Guidelines in such cases when determining the amount of such child support, there is also a provision in the new law which provides the court with the ability to review and issue an award based upon other relevant factors, such as the cost of medical expenses.

Lastly, although the new law does not permit retroactivity in cases where a disabled adult child is over the age of 26 years old, it does permit the Court to consider the financial responsibility incurred by the custodial parent in caring for the child and to review what, if any, was previously shared by the custodial and non-custodial parent.

Overall, this law is a victory for custodial parents of disabled adult children in that it acknowledges and addresses the financial support necessary to care for an adult disabled child. Notwithstanding the aforesaid, since the law is still new in enactment, we will look to see and follow relevant court matters to ascertain how the courts will apply such new law and what, if any, weight may be given to other facts, such as severity of disability and other financial resources received by the adult child. As always, the nuances of caselaw help mold the interpretation and application of governing laws.