



**STATEMENT OF THE OHIO STATE BAR ASSOCIATION
IN SUPPORT OF HOUSE BILL 338**

Before the House Civil Justice Committee
Representative Brett Hillyer, Chair

Chairman Hillyer, Vice Chair Mathews, and members of the House Civil Justice Committee: On behalf of the Ohio State Bar Association (“OSBA”), thank you for the opportunity to provide proponent testimony in support of House Bill 338.

House Bill 338 clarifies the law in cases where child support is considered for a disabled child over the age of 18 at the time of their parents’ divorce.

Castle v. Castle (1984) is the Ohio Supreme Court case that first confirmed an ongoing duty of support beyond the age of majority when a child is unable to support themselves due to mental or physical disabilities that existed before the age of majority. The court found that parents have a moral and legal obligation to support their disabled children who are beyond the age of 18 and unable to care for themselves.

The General Assembly later added R.C. §3119.86, which stipulates in (A)(1) that “The duty of support to a child imposed pursuant to a court child support order shall continue beyond the child’s eighteenth birthday only under the following circumstances: (a) The child is mentally or physically disabled and is incapable of supporting or maintaining himself or herself...”

While this language is in line with *Castle*, there is still confusion on how child support is handled in the case of a disabled child who is over the age of 18 at the time of their parents’ divorce. In *Castle*, the child support order originated prior to the disabled child turning 18 and the court considered ongoing support. The outstanding question is on whether child support can be ordered for the first time if the disabled child is over the age of 18 at the time of the divorce, and decisions have varied across appellate districts.

In *Abbas v. Abbas* (7th District, 1998), the court suggests support may be ordered because the child cannot and will not reach “the age of majority” because he or she will not become self-sufficient or self-sustaining at any foreseeable point.

However, in *Geygan v. Geygan* (10th District, 2012), the court had a different interpretation. Since R.C. §3119.86 states “the duty of support...shall *continue* beyond the child’s eighteenth birthday...”, a court has no authority to establish an initial order of child support to commence after a child has reached age eighteen.

In that same year, in *Donohoo v. Donohoo* (12th District, 2012), the court rejected the interpretation in *Geygan v. Geygan* and stated nothing in R.C. §3119.86 technically

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prevents the establishment of support during a divorce after the child's eighteenth birthday and the statute can be interpreted as a codification of Ohio's common law principle that support should continue beyond age eighteen for a child with disabilities.

House Bill 338 will provide clearer guidance in these limited circumstances and ensure that child support for disabled children is handled equitably, regardless of the time of their parents' divorce.

Thank you for the opportunity to present testimony today. I am happy to answer any questions you may have.