

**STATEMENT OF THE OHIO STATE BAR ASSOCIATION
IN SUPPORT OF SENATE BILL 176**

Before the Senate Judiciary Committee

Senator Nathan Manning, Chair

Chairman Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and members of the Senate Judiciary Committee: On behalf of the Ohio State Bar Association (“OSBA”), thank you for the opportunity to provide proponent testimony in support of Senate Bill 176.

My name is Todd Kotler. I have been an attorney for nearly twenty-five years. My practice in that time has focused largely in family law and work as a guardian ad litem. Additionally, since 2007, I have represented children with special needs and their families in educational due process actions. I join my colleagues in supporting this bill as being necessary to clarify the jurisdictional question created by the appeals courts split.

Senate Bill 176 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 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.

Senate Bill 176 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.