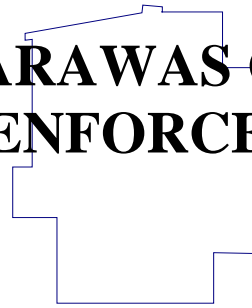


TUSCARAWAS COUNTY CHILD SUPPORT ENFORCEMENT AGENCY



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March 9, 2021

House Committee on
Families, Aging and Human Services
HB 83 Proponent Testimony
Traci A. Berry, Director Tuscarawas County CSEA

Chair Manchester, Vice Chair Cutrona, Ranking Member Liston and Members of the Committee, my name is Traci Berry and I am the Director of the Tuscarawas County Child Support Enforcement Agency (TCCSEA). Thank you for the opportunity to testify as a proponent for HB 83.

In the sponsor testimony, you heard mentioned an appellate court decision that decidedly made it more difficult for relatives caring for children to receive child support services. I would like to spend my time providing you with a little background and more information on Tuscarawas County CSEA v. Sanders (2003-Ohio-5624), not only as the Director of Tuscarawas County CSEA, but as the attorney who took this case to the 5th District Court of Appeals 18 years ago. Prior to the Sanders decision, TCCSEA established administrative child support orders for both parents and third- party caretakers pursuant to well established law.¹

The caretakers (Rybarczyks) were the maternal grandparents of the child. They received voluntary placement of the child through Tuscarawas County JFS's Kinship Care Program. The Sanders were a married couple who were living separately. When they placed their daughter with the caretakers, they each promised to assist with living expenses. When the Sanders failed to financially support their daughter, the caretakers

¹ §3111.29, 3111.46, 3111.78, 3111.80, 2151.231

turned to TCCSEA and requested child support from the parents. They did not seek public assistance but sought financial assistance in the form of child support from the parents of the child. TCCSEA notified the parents and the caretakers of the administrative hearing, provided due process as required and held the support establishment hearing in which all parties appeared and participated. TCCSEA utilized the Ohio Child Support guidelines and issued administrative orders requiring both parents to pay child support to the caretakers. No one objected.

Through its long- time practice, TCCSEA requested the Juvenile Court to adopt the administrative order as its own. Unlike hundreds of cases each year before it, the court declined to adopt the Sanders orders by attaching another county's legal interpretation that ORC §3119.07(C)² prohibits a court or CSEA from establishing a child support order for 3rd party caretakers who are not legal custodians because that section specifically addresses legal custodians. We appealed the court's decision, however the appellate court agreed with the trial court, finding that although many revised code sections allow persons with whom the child resides as well as parents, guardians and legal custodians to petition the courts and CSEA for child support establishment, §3119.07(C) specifically refers only to legal custodians when calculating child support for the parents to pay, barring all other relative caretakers from receiving child support absent legal custody.

§3119.07 is an instructional statute. It tells courts, CSEAs, counsel and anyone calculating child support which child support worksheet to utilize and how to determine which parent pays child support. This statute is 20 years old. It utilizes the terms "residential parent " and "legal custodian" to tell parties which parent is to pay and which parent is to receive child support when one parent is the "residential parent" and "legal custodian" and one parent is not, or when both parents have one of several common children in their home or when neither parent has their common children in their home.

Today's family dynamics have changed. Shared parenting between parents is the standard rather than the exception and kinship care placement is preferable to foster care to avoid ever increasing costs and to provide stability for children. Grandparents

² ORC §3119.07 (A) Except when the parents have split parental rights and responsibilities, a parent's child support obligation for a child for whom the parent is the residential parent and legal custodian shall be presumed to be spent on that child and shall not become part of the child support order, and a parent's child support obligation for a child for whom the parent is not the residential parent and legal custodian shall become part of the child support order, (B) If the parents have split parental rights and responsibilities, the child support obligations of the parents shall be offset, and the court shall issue a child support order requiring the parent with the larger child support obligation to pay the net amount pursuant to the child support order, (C) If neither parent of a child who is the subject of a child support order is the residential parent and legal custodian of the child and the child resides with a third party who is the legal custodian of the child, the court shall issue a child support order requiring each parent to pay that parent's child support obligation pursuant to the child support order

and other relatives are caring for children in increasing numbers for a variety of societal reasons. At the time of the Sanders decision, Tuscarawas County's cases with 3rd party relatives were about 4% of our total caseload. Today, they are 15% of our total caseload. What has not changed is that children deserve and need the financial support of their parents.

To highlight the absurdity of the Sanders decision and its focus of the precise terms of §3119.07 the case stands for the proposition that child support guidelines cannot be utilized where parents have shared parenting because both parents are "residential parents and legal custodians" of the child when exercising parenting time and §3119.07 only allows for the non-residential parent to pay support. This could lead to parents exchanging support on a weekly basis, an obviously ridiculous result.

The Sanders Court strict interpretation of §3119.07 as a "road-block" to support establishment and redirection has led to inconsistencies between counties and courts establishing child support or redirecting payment of child support to relatives. While Sanders only focuses on support establishment, counties and courts within and beyond the 5th district have interpreted this to deny redirection of existing support orders though specifically allowed in ORC §3121.46.³ Tuscarawas County CSEA may redirect an existing child support order to a caretaker only when cash assistance is paid. A relative not receiving cash assistance cannot receive support. As you will see in the testimony from my colleagues, Warren County CSEA can provide all services to establish a child support order and redirect an existing support order to a caretaker in any circumstance. Montgomery County CSEA can do neither. In some counties, it differs between domestic relations and juvenile courts as to whether a caretaker can receive child support. This creates great disparity among grandparents and other relatives who are raising children.

Caretakers should not have to depend on living in the "right" county to receive child support services. HB 83 rectifies this disparity. HB 83 provides a clearly defined, consistent process for all county CSEAs to follow to establish and redirect child support

³ §3121.46(A) When a support order is issued or modified, a withholding or deduction notice described in section [3121.03](#) of the Revised Code is issued, or an order described in division (C) or (D) of section [3121.03](#) of the Revised Code is issued, or at any time after the support order is issued or modified, the court may order the office of child support, or the child support enforcement agency may issue an order requiring the office, to transmit the payments or make them payable to any third person that is either agreed upon by the parties and approved by the court or appointed by the court, with respect to a support order, or is either agreed upon by the parties and approved by the agency or appointed by the agency, with respect to an administrative child support order. Third persons include, but are not limited to, a trustee, a custodian, the guardian of the estate of the child, the county department of job and family services, public children services agency, or any appropriate social agency.

payments to all caretakers who request our services. It calls for an investigation and allows for due process and objection rights. All grandparents and relative caretakers can receive child support services and children can receive the support they deserve.

I will now turn it over to my colleagues Sarah Fields and Amy Roehrenbeck to explain the processes set forth in HB 83 after I answer any questions you may have.

Thank you for your time and attention.