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To: The Ohio Senate Judiciary Committee
From: Kendra L. Carpenter, Esq., on behalf of the Ohio State Bar Association
Date: June 15, 2024
Re: HB 338 (SB 176)

Chairman Manning, Vice Chairwoman Reynolds Mathews, Ranking Member Hicks-Hudson, and members of the Ohio Senate Judiciary Committee, I appreciate the opportunity to provide testimony on behalf of the Ohio State Bar Association. in support on HB 338, which is the same legislation passed by the Senate in SB 176 on June 12, 2024.

My name is Kendra Carpenter. I have practiced law for over 23 years; I am certified as a family law specialist through the Ohio State Bar Association; and I serve as the chair of the Family Law Committee for the Ohio State Bar Association.

Throughout my practice in family law, I have had several cases that involve the payment of child support for adult disabled children, meaning those children who were determined to have a disability defined by R.C. 3109.01(A)(1)(a) prior to reaching the age of majority (age 18, per R.C. 3109.01(A)(1)(b)). Some of the children turned 18 prior to the first request for child support, some have not. There is great need for this legislation, as there is divide among the courts as to when a court has jurisdiction to extend child support for a disabled child beyond the age of 18.

Originally, R.C. 3119.86 was codified based upon the Ohio Supreme Court's holding in *Castle v. Castle*, which was a first impression for the Court. *Castle* consolidated two appeals. One from the Second District (Montgomery County), and the other from the First District (Hamilton County). Both involved children who had mental and physical disabilities that arose prior to them turning 18, and in both cases, there was an initial request for child support prior to the children reaching age 18.

While the Ohio Supreme Court stated that parents had a moral and legal duty to support their disabled child, the case simply conferred jurisdiction upon Ohio courts to do so. It did not make support mandatory. Despite this ruling, the Ohio appellate courts have disagreed on how to apply *Castle* based upon when the initial request for child support occurs. Some courts will consider child support for a *Castle* child no matter when the first request was made. Others find they are without jurisdiction to consider child support if the first request was made after a child turns age 18. Yet, this is not always feasible, particularly in cases of divorce.

The majority of appellate courts, which includes the Sixth, Seventh, Eleventh, and Twelfth Districts, permit a trial court to consider a first request for child support if the disabled child turned 18 prior to the request. Whereas, the minority, which includes the Fifth and Tenth

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The Ohio Senate Judiciary Committee
June 15, 2024
HB 338 (SB 176)

Districts, does not confer jurisdiction upon a trial court unless the first request for support is made prior to the age of 18. There is scant case law from Third, Fourth, and Ninth Districts that suggests these districts follow the majority. The only case I could locate from the Eighth District is not helpful, because the parents agreed to continue child support.

To illustrate the growing problem, I represented a Wife in a divorce case filed in Delaware County (Fifth District). The parties had two children that were high on the autism spectrum; there was no question that they qualified as "disabled." However, at the time that my client filed for divorce and made the first request for child support, the youngest child was 13 and the other child was 19. This meant that child support could be ordered for the 13-year-old and extended beyond his eighteenth birthday, but the same was not true for the 19-year-old. Because the divorce was filed after his eighteenth birthday, the Delaware County trial court would not take jurisdiction over child support for this adult disabled child.

In another case that I had recently in Franklin County (Tenth District), the parties filed for divorce and had a 25-year-old adult who was born with a genetic abnormality that caused severe cognitive and physical impairment. The magistrate, on principle alone, granted mother temporary child support. Yet, the trial judge swiftly overturned the order based upon the Tenth District's ruling in *Geygan v. Geygan*, 10th Dist. 2010-Ohio-1965, whereby a court is want of jurisdiction if the request is made after attaining age 18.

I illustrate these cases not for the need to issue child support for disabled children, but only for the need to permit the trial court to consider if child support order is appropriate. As it stands now, a married parent who is considering divorce, but may not be ready to file, is now pressured to file if they have a 17-year-old disabled child. This may prematurely cause the termination of a marriage that may otherwise have been saved. This legislation as supported by the Ohio State Bar Association can prevent this and also remedy the divide among Ohio appellate courts and ensure that families across all Districts with disabled children can obtain child support or at the very least have their voices heard no matter when a request is made.

In closing, I want to impress upon you that the introduced amendments to the "Castle" Revised Code is jurisdictional only. The purpose of the amendments is to confer jurisdiction to all Ohio courts so they may consider child support for a "Castle" child no matter when the first request for child support is made. It does not serve as a mandate for a court to order a parent to pay child support for her or his disabled child.

Thank you,



Kendra L. Carpenter