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## ***Hendricks v. Sanks: One Small Step for the Continued Parental Support of Disabled Children Beyond the Age of Majority in North Carolina***

The cost of raising and caring for a disabled child can be a significant hardship on a family.<sup>1</sup> This hardship is exacerbated for divorced, custodial parents who must rely on court-ordered child support to meet increased childcare expenses.<sup>2</sup> These expenses, unfortunately, do not dissipate once a disabled child reaches the age of majority.<sup>3</sup> In North Carolina, however, the obligation of a parent to support her child usually terminates when the child reaches the age of majority,<sup>4</sup> regardless of whether the child is incapacitated because of a disability.<sup>5</sup> The only exception to the cessation of this obligation arises when the child is enrolled in primary or secondary school and is making satisfactory progress toward graduation—no exception based on the child’s disability exists.<sup>6</sup> In any event, even if the disabled child qualifies for continued support under this education exception, the obligation of the non-custodial parental support ends when the child reaches the age of twenty.<sup>7</sup>

This Recent Development reviews the development and subsequent retrenchment of a parent’s duty to support her disabled

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1. See, e.g., Jiyeon Park et al., *Impacts of Poverty on Quality of Life in Families of Children with Disabilities*, 68 EXCEPTIONAL CHILDREN 151, 152 (2002) (noting that 28% of disabled children, ages three to twenty-one, are living in families whose total income is below the poverty threshold set by the U.S. Census Bureau). In contrast, only 16% of children without disabilities in the same age group live in poverty. *Id.*

2. See Aaron Donovan, *Children’s Long-Term Illnesses Mean a Strain on Families’ Resources*, N.Y. TIMES, Nov. 25, 2001, at 1A-44 (noting that parents of disabled or chronically ill children face increased rates of divorce and are often saddled with financial burdens when expenses are not covered by government programs, such as Medicaid).

3. See Barbara Whitaker, *A Plan for Parents of Disabled Children: Building the Road to Long-Term Care*, Special Needs Planning, at [http://www.specialneedsplanning.com/nad/Plan\\_for\\_Parents\\_of\\_Disabled\\_Children.html](http://www.specialneedsplanning.com/nad/Plan_for_Parents_of_Disabled_Children.html) (last visited May 4, 2002) (on file with the North Carolina Law Review) (discussing financial planning for the long-term care of disabled children).

4. The age of majority is eighteen years in North Carolina. N.C. GEN. STAT. § 48A-2 (2001).

5. § 50-13.4(c) (“Payments ordered for the support of a child shall terminate when the child reaches the age of [eighteen].”).

6. § 50-13.4(c)(2) (establishing a two-year educational exception for the termination of child support at the age of eighteen years).

7. *Id.* (mandating the termination of child support once the child graduates from school, ceases to regularly attend school, or reaches the age of twenty years, regardless of the child’s circumstances).

child past the age of majority in North Carolina.<sup>8</sup> Against this historical backdrop, it examines the recent decision by the North Carolina Court of Appeals in *Hendricks v. Sanks*,<sup>9</sup> which addresses whether a disabled child enrolled in a non-traditional curriculum qualifies for continued parental support past the age of majority under the statutory education exception provided in section 50-13.4(c) of the General Statutes of North Carolina.<sup>10</sup> Finally, this Recent Development argues that North Carolina should reinstate statutory provisions mandating post-majority parental support for disabled children for public policy reasons and to align North Carolina with the majority of jurisdictions providing for such support.<sup>11</sup>

Historically, most jurisdictions, including North Carolina, have followed the common law rule that parents are not obligated to support their adult children.<sup>12</sup> Many jurisdictions, however, provided an exception to this rule for physically or mentally disabled children who, upon reaching the age of majority, were unable to care for themselves.<sup>13</sup> In North Carolina, a parent had a common law obligation to provide the necessary support to his child, who, before and after reaching age twenty-one, is and continues to be insolvent, unmarried, and mentally or physically incapable of sustaining himself.<sup>14</sup> In 1967, the General Assembly codified the common law

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8. See *infra* notes 12–28 and accompanying text.

9. 143 N.C. App. 544, 545 S.E.2d 779 (2001).

10. See *infra* notes 29–43 and accompanying text.

11. See *infra* notes 44–93 and accompanying text.

12. See generally M.C. Dransfield, Annotation, *Parent's Obligation to Support Adult Child*, 1 A.L.R.2d 910 (1948) (citing cases from thirty-seven states, including North Carolina, that adhered to the common law rule that a parent is not obligated to support an adult child).

13. See *id.* (listing cases in fourteen states, including North Carolina, that at one time provided for continued support at common law for disabled children beyond the age of majority); see also 24A AM. JUR. 2D *Divorce and Settlement* § 1007 (2000) (reviewing child support provisions for disabled children beyond the age of majority). See generally Noralyn O. Harlow, Annotation, *Postmajority Disability as Reviving Parental Duty to Support Child*, 48 A.L.R.4th 919 (1986) (reasoning that a disabled child remains a minor in the eyes of the law because the disability prevents the child from becoming emancipated).

14. *Wells v. Wells*, 227 N.C. 614, 616, 44 S.E.2d 31, 33 (1947) (addressing whether a father is obligated to support a mentally or physically disabled child beyond the age of twenty-one). At common law, the age of majority was twenty-one years. See *id.* at 617, 44 S.E.2d at 33. The General Assembly abrogated the common law definition of minority in 1971. Act of June 17, 1971, ch. 585, § 1, 1971 N.C. Sess. Laws 510, 510 (codified as amended at N.C. GEN. STAT. § 48A-1 (2001)); see also N.C. GEN. STAT. § 48A-2 (2001) (defining “minor” as anyone who has not turned eighteen years old). Following the enactment of this statute, parents no longer have an obligation to support their children after they reach the age of eighteen years. See *Gates v. Gates*, 69 N.C. App. 421, 427, 317

obligation of parents to support their disabled children beyond the age of majority.<sup>15</sup> This statute authorized a trial court to award custody of and support for a mentally or physically disabled child, even if the child had reached the age of majority.<sup>16</sup>

In 1971, however, the General Assembly took its first step in diluting a parent's obligation to support her disabled child by exempting parents from the financial liability of the care of a child who is a long-term patient at a state owned or operated mental health facility.<sup>17</sup> The General Assembly further amended section 50-13.8 in 1979 by removing the obligation of *support* for a disabled child beyond the age of majority, while retaining the *custody* provisions for such children.<sup>18</sup> After these amendments, section 50-13.4, and not section 50-13.8, governs child support provisions.<sup>19</sup> Although the removal of the statutory obligation of parents to support their disabled children beyond the age of majority created an inconsistency between the child support provisions in section 50-13.4 and the child custody provisions in section 50-13.8, these amendments do not appear to be a legislative oversight.<sup>20</sup>

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S.E.2d 402, 406 (1984), *aff'd per curiam*, 312 N.C. 620, 323 S.E.2d 920 (1985); *Crouch v. Crouch*, 14 N.C. App. 49, 51, 187 S.E.2d 348, 349 (1972).

15. Act of July 6, 1967, ch. 1153, § 2, 1967 N.C. Sess. Laws 1772, 1777 (codified as amended at N.C. GEN. STAT. § 50-13.8 (2001)) (providing at that time, “[f]or the purposes of custody and support, the rights of a person who is mentally or physically incapable of self-support upon reaching his majority shall be the same as a minor child for so long as he remains mentally or physically incapable of self-support”) (emphasis added). See generally 2 SUZANNE REYNOLDS, *LEE'S NORTH CAROLINA FAMILY LAW* § 10.21 (5th ed. 1993) (reviewing the development and subsequent retrenchment of a parent's obligation to support his disabled child past the age of majority in North Carolina).

16. See *Speck v. Speck*, 5 N.C. App. 296, 302-03, 168 S.E.2d 672, 677-78 (1969).

17. Act of April 21, 1971, ch. 218, § 3, 1971 N.C. Sess. Laws 158, 159 (codified as amended at N.C. GEN. STAT. § 50-13.8 (2001)) (amending section 50-13.8 to provide that “no parent may be held liable for the charges made by a facility owned or operated by the State Department of Mental Health for the care, maintenance and treatment of such person who is a long term patient”). The General Assembly repealed this provision in 1979. Act of June 7, 1979, ch. 838, § 29, 1979 N.C. Sess. Laws 1112, 1132 (codified as amended at N.C. GEN. STAT. § 50-13.8 (2001)).

18. 1979 N.C. Sess. Laws at 1132 (deleting the words “and support” from section 50-13.8). The 1979 amendments to section 50-13.8 were included in Senate Bill 124, a general appropriations bill for current operations of state departments. *Id.* at 1112-13.

19. See N.C. GEN. STAT. § 50-13.4 (2001) (governing actions for support of minor children).

20. For example, the General Assembly could have rectified this inconsistency in 1989, but instead chose to amend the catch line of section 50-13.8 to reflect the deletion of the child support provisions. See Act of June 5, 1989, ch. 210, § 1, 1989 N.C. Sess. Laws 461, 461-62 (codified at N.C. GEN. STAT. § 50-13.8 (2001)) (deleting “support” from the catch line). The vote to amend the catch line to section 50-13.8 under Senate Bill number 532 was 44-0 in the Senate. Journal of the Senate of the General Assembly of North Carolina, 1st Sess. 257, 264 (1989). The vote was 87-0 in the House of Representatives.

The General Assembly amended section 50-13.4 in 1983 to allow a court discretion in ordering child support beyond the age of eighteen if the child still attended primary or secondary school.<sup>21</sup> Additional amendments to section 50-13.4(c) enacted in 1993 require such support unless the court, in its discretion, orders the support to cease or finds that the child is failing to make satisfactory progress toward graduation.<sup>22</sup> Thus, in North Carolina, a non-custodial parent's obligation to support her child past the age of majority now depends upon whether the child is enrolled in primary or secondary school and making progress toward graduation, not upon whether the child has an incapacitating disability.<sup>23</sup>

Since 1979, North Carolina case law has upheld the lack of a statutory obligation on the part of parents to support their disabled children beyond the age of majority.<sup>24</sup> For example, in *Yates v. Dowless*,<sup>25</sup> the court of appeals reversed a lower court decision that ordered a parent to pay "continuing ongoing child support without regard to the child's chronological age."<sup>26</sup> Likewise, in *Jackson v. Jackson*,<sup>27</sup> the court of appeals held that the 1979 amendments to section 50-13.8 abrogated a parent's obligation to support his child beyond the age of majority.<sup>28</sup>

*Hendricks v. Sanks*<sup>29</sup> recently required the court of appeals to decide whether the education exception provided in section 50-13.4(c)(2) applies to disabled children enrolled in a non-traditional

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Journal of the House of Representatives of the General Assembly of North Carolina, 1st Sess. 878, 887 (1989).

21. Act of March 10, 1983, ch. 54, 1983 N.C. Sess. Laws 34 (codified as amended at N.C. GEN. STAT. § 50-13.4(c) (2001)).

22. Act of July 13, 1993, ch. 335, 1993 N.C. Sess. Laws 1036 (codified at N.C. GEN. STAT. § 50-13.4(c) (2001)).

23. See N.C. GEN. STAT. § 50-13.4(c)(2) (2001).

24. The courts, however, were slow to grasp the fact that section 50-13.8 no longer provided for the continued support of disabled children beyond the age of majority. See, e.g., *Bridges v. Bridges*, 85 N.C. App. 524, 528, 355 S.E.2d 230, 232 (1987) (concluding that North Carolina courts lack the authority to order support for adult children except in cases of mental or physical handicap); *Appelbe v. Appelbe*, 75 N.C. App. 197, 198, 330 S.E.2d 57, 58 (1985) (reaching the same conclusion in dicta).

25. 93 N.C. App. 787, 379 S.E.2d 79 (1989), *aff'd per curiam*, 325 N.C. 703, 386 S.E.2d 200 (1989).

26. *Id.* at 788-89, 379 S.E.2d at 80 (rejecting the argument that "the intention of the legislature in amending [section] 50-13.8 was not to relieve a parent of the obligation to support an adult child who is mentally or physically incapable of self-support.").

27. 102 N.C. App. 574, 402 S.E.2d 869 (1991).

28. *Id.* at 575-76, 402 S.E.2d at 870 (ruling that parents can contract by consent judgment to order the non-custodial parent to continue paying child support past the age of majority, but that such an order "had no legal basis").

29. 143 N.C. App. 544, 545 S.E.2d 779 (2001).

curriculum.<sup>30</sup> In *Hendricks*, the plaintiff-father, John Hendricks, and defendant-mother, Deborah Sanks, were the parents of two children. The younger child, John, III, was born with Down syndrome in 1981.<sup>31</sup> In 1991, a trial court awarded custody of the two children to Hendricks and ordered Sanks to pay child support.<sup>32</sup> In 1999, when John turned eighteen years old, Sanks moved to terminate support for him, although John still attended special education classes at a local high school.<sup>33</sup> The trial court applied the education exception under section 50-13.4(c)(2) and ordered Sanks to continue making child support payments on behalf of John until he reached the age of twenty or graduated from high school, whichever occurred first.<sup>34</sup>

Sanks appealed and argued that because John had reached the age of eighteen, he was not entitled to continued support under section 50-13.4.<sup>35</sup> Where a child is eighteen years old and enrolled in primary or secondary school, the obligor, in this case Sanks, has an affirmative duty when moving to terminate child support to show that the child is not making satisfactory progress toward graduation.<sup>36</sup> Thus, the key question addressed in *Hendricks* became whether John was “making satisfactory academic progress toward graduation within the meaning of [section] 50-13.4(c)(2).”<sup>37</sup>

The court of appeals held that even though John was enrolled in a special education program, he nevertheless was attending school and making satisfactory progress toward a non-traditional graduation,<sup>38</sup> and this progress met the statutory requirements under

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30. *Id.* at 545, 545 S.E.2d at 780. The court also addressed whether a trial court can merely halve the amount due under a prior order where support is mandated and one of the two children earlier provided for is no longer entitled to support. *Id.* This issue is beyond the scope of this Recent Development.

31. *Id.* at 546, 545 S.E.2d at 780.

32. *Id.* The trial court ordered Sanks to pay \$805.50 per month in total child support. *Id.*

33. *Id.* Although John was not making progress toward a traditional graduation, he regularly participated in a non-traditional curriculum and was making satisfactory progress toward a graduation based on John achieving certain goals tailored to his individualized needs and capabilities. *Id.*

34. *Id.* The trial court denied Sanks’s motion to terminate John’s support and set the amount of support at one-half of the total amount Sanks had been paying for both of her children. *Id.*

35. Defendant-Appellant’s Revised Brief at 5–6, *Hendricks* (No. COA00-91). Sanks also relied on *Jackson* to argue that the order requiring her to continue supporting John had no legal basis. *Id.* at 6. The court, although agreeing with the holding in *Jackson*, distinguished the facts in *Hendricks*. See *Hendricks*, 143 N.C. App. at 547, 545 S.E.2d at 781 (noting that the child in question in *Jackson* did not attend school).

36. See *Leak v. Leak*, 129 N.C. App. 142, 148–49, 497 S.E.2d 702, 705–06 (1998).

37. *Hendricks*, 143 N.C. App. at 547, 545 S.E.2d at 781.

38. The trial court found that John was enrolled in a secondary school, was receiving

section 50-13.4(c)(2).<sup>39</sup> The court noted that if John were not mentally disabled and were enrolled in a traditional curriculum, support would continue.<sup>40</sup> The court concluded that “[t]o treat a mentally disabled child any differently than a mainstream child in terms of support obligations would be patently unfair, against public policy and not in keeping with the legislative directive.”<sup>41</sup>

The court of appeals in *Hendricks* correctly interpreted section 50-13.4(c)(2) to allow John, an eighteen-year old disabled child, to continue to receive support until he reached the age of twenty or graduated from his special education program. In this sense, the holding in *Hendricks* is a small step toward providing continued support of disabled children beyond the age of majority in North Carolina by allowing disabled children enrolled in alternative educational programs to continue to receive child support, if only for a limited time. The court could not take a larger step toward providing continued support regardless of age, however, because precedent required the court to interpret section 50-13.4(c)(2) under its plain meaning<sup>42</sup> and to defer to the intent of the legislature.<sup>43</sup>

As evidenced by the court’s decision in *Hendricks*, the court system cannot provide a complete remedy for the continued support of disabled children beyond the age of twenty. This responsibility lies with the General Assembly. This Recent Development argues that the General Assembly should reinstate the obligation of a parent to support a disabled child beyond the age of majority for public policy considerations<sup>44</sup> and to align North Carolina with other jurisdictions.<sup>45</sup>

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all the training available to him in the special needs curriculum at the school, and was progressing in this curriculum. Order of September 27, 1999, at 1–2, *Hendricks* (No. COA00-91).

39. *Hendricks*, 143 N.C. App. at 548, 545 S.E.2d at 781. When applying section 50-13.4(c)(2) to the facts of this case, the court attached significance to evidence that: (1) teachers and school counselors showed attending school was in John’s best interests; (2) he would continue to benefit from the curriculum; and (3) he was making satisfactory progress toward an individualized graduation. *Id.*

40. *Id.* at 547, 545 S.E.2d at 781.

41. *Id.*

42. North Carolina courts must follow the rule that “[w]hen the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give the statute its plain and definite meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein.” *Yates v. Dowless*, 93 N.C. App. 787, 788, 379 S.E.2d 79, 80 (1989) (quoting *In re Banks*, 295 N.C. 236, 239, 244 S.E.2d 386, 388–89 (1978)), *aff’d per curiam*, 325 N.C. 703, 386 S.E.2d 200 (1989).

43. When enacting or amending a statute, “[i]t is always presumed that the legislature acted with care and deliberation and with full knowledge of prior and existing law.” *Id.* (quoting *State v. Benton*, 276 N.C. 641, 658, 174 S.E.2d 793, 804 (1970)).

44. See *infra* notes 46–73 and accompanying text.

Courts generally articulate two public policy rationales for extending the obligation of child support to mentally or physically disabled children beyond the age of majority: (1) the natural obligation of parents to support their children,<sup>46</sup> and (2) the need to “protect the public from the burden of supporting a person who has a parent . . . able to support him.”<sup>47</sup> North Carolina courts have long recognized that “[t]he duty of parents to provide for the maintenance of their children is a principle of natural law.”<sup>48</sup> Under this view, the obligation of parental support continues until the child can provide for his own maintenance.<sup>49</sup> Finding that a disabled child “may have the same need of support, care and maintenance after reaching [the age of majority] as before,” the North Carolina Supreme Court in 1947 held that “the dictates of humanity” require that the obligation to support a disabled child does not terminate at the age of majority.<sup>50</sup> The court also recognized “parents as the most fit and proper persons” to provide support and maintenance for those needs.<sup>51</sup> North Carolina’s strong public policy of holding parents responsible for the support of their children is evidenced by the severe penalties imposed on parents who are delinquent in their support payments.<sup>52</sup> Other jurisdictions also recognize that parents have both a moral and legal duty to support and maintain their mentally or physically disabled children.<sup>53</sup>

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45. See *infra* notes 74–85 and accompanying text.

46. See, e.g., *Crain v. Mallone*, 113 S.W. 67, 68 (Ky. 1908) (holding that the continued support of disabled children beyond the age of majority is the “natural as well as the legal obligation”).

47. *Chun v. Chun*, 235 Cal. Rptr. 553, 556 (Cal. Ct. App. 1987) (interpreting California code as requiring a father to support his emotionally disabled child beyond the age of majority).

48. *Wells v. Wells*, 227 N.C. 614, 616, 44 S.E.2d 31, 33 (1947) (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES 419 (Lewis ed. 1898)).

49. *Id.* at 617, 44 S.E.2d at 33 (quoting 2 KENT ON AMERICAN LAW 190 (O.W. Holmes, Jr. ed., 12th ed. 1878)).

50. *Id.* at 617, 44 S.E.2d at 34 (emphatically answering “No” to the question of whether a father’s obligation to support his disabled child terminated at the age of majority).

51. *Id.* at 617, 44 S.E.2d at 33 (quoting 2 KENT ON AMERICAN LAW 190 (O.W. Holmes, Jr. ed., 12th ed. 1878)).

52. For example, a parent’s failure to pay child support obligations may result in the restriction of the issuance or renewal of a driver’s license, N.C. GEN. STAT. § 20-17(b)(1) (2001); restriction of the issuance or renewal of hunting, fishing, or occupational licensing privileges, § 50-13.12; placement of a lien on real or personal property, § 44-86(b); revocation of probation, § 15A-1344.1(d); or imprisonment for civil contempt, § 5A-21.

53. See, e.g., *Castle v. Castle*, 473 N.E.2d 803, 806 (Ohio 1984) (imposing a duty on parents to support mentally or physically disabled children beyond the age of majority); see also *Feinberg v. Diamant*, 389 N.E.2d 998, 1000 (Mass. 1979) (quoting with approval *Crain v. Mallone*, 113 S.W. 67, 68 (Ky. 1908)).



The second public policy rationale for requiring parents to support their disabled children beyond the age of majority is that society should not be financially responsible for individuals with relatives who are able to support them.<sup>54</sup> In *Hendricks*, the defendant-mother argued that a failure to provide support for a disabled child who reaches the age of majority is not against public policy because a disabled adult is eligible for public benefits.<sup>55</sup> A disabled child may continue to receive Supplemental Security Income (“SSI”) benefits after she reaches the age of eighteen.<sup>56</sup> The SSI payment, however, may be lower than the amount paid to the child during her minority.<sup>57</sup> In any event, these benefits often do not cover all of the expenses associated with caring for a disabled adult child.<sup>58</sup>

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54. This rationale is the basis of the so-called “poor statutes” and also applies to adult children who become disabled post-majority. See Harlow, *supra* note 13, at 929–31 (discussing poor statutes, which, in some jurisdictions, revive the parental duty to support an adult child whose disabilities arise post-majority). *Contra* Beiter v. Beiter, 539 N.Y.S.2d 271, 273 (1989) (interpreting the purpose of New York’s statutory scheme addressing the support of disabled children as limiting the responsibility of the parent and putting the burden on the state).

55. Defendant-Appellant’s Revised Brief at 7, *Hendricks* (No. COA00-91) (arguing that eligibility for Supplemental Security Income would exist regardless of the child’s attendance at a secondary school). Sanks also argued that receiving child support might actually decrease the amount of assistance to which a disabled child would otherwise be entitled under federal law. *Id.*

56. Soc. Sec. Admin., *Benefits for Children with Disabilities*, available at <http://www.ssa.gov/pubs/10026.html> (August 2001) (last visited August 21, 2002) (on file with the North Carolina Law Review) (explaining that disabled children under the age of eighteen may qualify for SSI benefits if they come from homes with limited incomes and resources, but once a child turns eighteen, the government no longer considers the parents’ income and assets when determining eligibility for SSI benefits).

57. A lower SSI payment rate may apply if a disabled child receiving SSI benefits turns eighteen and continues to live with her parents, but does not pay for food or shelter. *Id.* In addition, an adult disabled child will not qualify for SSI benefits if she has “countable resources” in excess of \$2000 or “countable income” in excess of the Federal Benefit Rate. See Federal Consumer Information Center, *Planning for Your Special Needs Child*, available at [http://www.pueblo.gsa.gov/cic\\_text/children/special-child/special3.html](http://www.pueblo.gsa.gov/cic_text/children/special-child/special3.html) (last visited Aug. 18, 2002) (on file with the North Carolina Law Review). Furthermore, SSI payments are reduced by the amount of any “countable income” received by an SSI recipient. *Id.* To remain eligible for SSI benefits under the current guidelines, a disabled adult is allowed to receive only \$60 of unearned income per quarter and must be incapable of earning more than \$500 per month. See Pamela Forbat, *Serving Special Needs Kids*, REGISTERED REPRESENTATIVE, Sept. 2001, available at LEXIS, News Library, Registered Representative File. If a person lives in a group home, the state typically will take three-fourths of the monthly benefit. *Id.*

58. Under the current Social Security Administration’s Supplemental Security Income program, a disabled child would only receive \$512 per month. See Randy Neumann, *How to Provide for a Disabled Child*, at <http://moneycentral.msn.com/articles/family/kids/1443.asp> (last visited May 4, 2002) (on file with the North Carolina Law Review). The cost of caring for a disabled child can run from \$20,000 to \$75,000 per year. See Humberto

The obligation of parental support should not end for disabled children just because they reach the age of majority. Although legal significance attaches when a child reaches the age of majority,<sup>59</sup> this age is an artificial benchmark for most disabled children.<sup>60</sup> A disabled child most likely will continue to depend on his parent(s) for support after reaching the age of majority.<sup>61</sup> The obligation of parental support should be based on the child's needs and not the simple fact that the child turned eighteen years old.<sup>62</sup>

Although disabled children often continue to need specialized care after they reach the age of majority,<sup>63</sup> public education services are no longer available.<sup>64</sup> Parents of disabled children commonly refer to this period as entering the "black hole."<sup>65</sup> Disabled children and their custodial parents often find that opportunities for specialized daycare and education are limited once the child ages out of the public education system.<sup>66</sup> The responsibility of caring for the child then reverts back to the custodial parent.<sup>67</sup>

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Cruz & Diane Lade, *Special-Needs Kids Rely on Solid Plans*, SUN-SENTINEL (Fort Lauderdale, Fl.), Aug. 21, 2000, at 22, available at LEXIS, News Library, Sun-Sentinel (Fort Lauderdale, Fl.) File (noting also that \$350,000 to \$400,000 will likely be required to fund a special-needs trust to care for a disabled child in the event of their parents' death).

59. For example, the child's eligibility for or level of benefits from state or federal programs may change upon reaching the age of majority. See *infra* notes 60–62 and accompanying text.

60. *Nelson v. Nelson*, 548 A.2d 109, 118–19 (D.C. 1988) (concluding that reaching the age of majority does not diminish a disabled child's need for continued support); see also Whitaker, *supra* note 3.

61. *Id.* at 116 (noting with approval that the D.C. Superior Court concluded that incapacitated adult children, like minors, depend on their parents for support).

62. See Matthew Bogin, *Parental Duties Expanded: D.C.'s Retarded Adults Gain Right to Support*, LEGAL TIMES, Jan. 5, 1987, at 8 (discussing the D.C. Superior Court's decision in *Nelson v. Nelson*).

63. See Whitaker, *supra* note 3.

64. Although North Carolina provides free public education for every child with special needs, state support for such education continues only through the age of twenty-one. N.C. GEN. STAT. § 115C-106 (2001).

65. E-mail from William A. Hatch, Associate, Hutson Hughes & Powell, P.A., (former Assistant General Counsel, Governor's Advocacy Counsel for Persons with Disabilities), to the author (April 8, 2002, 09:53 EST) (on file with the North Carolina Law Review).

66. See Diana Ornitz, *Life Goes On After Gateway*, NEWS & RECORD (Greensboro, N.C.), Jun. 27, 2001, at People & Places pg. 1 (describing the difficulties parents face in finding day programs suitable for severely handicapped children once they are no longer eligible for public school programs because of their age).

67. See, e.g., Alex Wayne, *Program Opens Door for Disabled Adults*, NEWS & RECORD (Greensboro, N.C.), Feb. 11, 2002, at B1 (noting the lack of opportunities for disabled children once they age out of public school programs and describing the opening of a new daycare facility for disabled adults, one of only five in the state); see also N.C. GEN. STAT. § 115C-106 (2001).

Absent support from the non-custodial parent, a custodial parent may be forced to rely significantly on state support.<sup>68</sup> Reliance on state support, however, may put these parents in a vulnerable position.<sup>69</sup> For example, North Carolina's current budget crisis is adversely affecting funding for programs, such as Medicaid, which provide financial assistance for the medical care of the disabled.<sup>70</sup> As a result, some critical services for disabled citizens have been frozen.<sup>71</sup> These proposed cuts do not represent the first time in recent years that North Carolina agencies<sup>72</sup> have been forced to reduce benefits and services for disabled persons. Such changes in legislation often leave families in limbo.<sup>73</sup> Because of the volatility in the funding of services for the disabled, the obligation of a parent to continue support beyond the age of majority should not be entirely removed even if a disabled child receives some public assistance.

Beyond public policy considerations, the General Assembly should reinstate the statutory duty of parents to support their disabled children beyond the age of majority to align North Carolina with the majority of jurisdictions. North Carolina is currently part of a distinct minority of jurisdictions that do not provide for this continued support either through the common law or by statute.<sup>74</sup>

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68. Alan Scher Zagier, *A Beacon of Hope to Parents*, NEWS & OBSERVER (Raleigh, N.C.), Jun. 22, 1999, at A1 (describing the need for state support in raising a disabled child and noting that, at one time, parents moved to North Carolina, in part, because of the superior services available for treating mental retardation and other developmental disabilities).

69. Editorial, *Cruel Silence*, NEWS & OBSERVER (Raleigh, N.C.), May 12, 2002, at A26 (arguing that the state government, even when faced with a budget deficit, should continue to assist families in caring for a handicapped or disabled child).

70. Catherine Clabby, *Medicaid Cuts May Not Need to Run so Deep*, NEWS & OBSERVER (Raleigh, N.C.), Apr. 27, 2002, at A1 (describing projected shortfalls in North Carolina's Medicaid program); Wade Rawlins & Amy Gardner, *N.C. Cupboard is Bare*, NEWS & OBSERVER (Raleigh, N.C.), May 26, 2002, at A1 (describing the current budget crisis in North Carolina and spending cuts in services to the disabled and mentally ill proposed by the Governor and the General Assembly).

71. Clabby, *supra* note 70 (noting that the state has frozen funding for the community alternative program designed to provide non-institutionalized housing for mentally disabled persons).

72. *See, e.g.*, Barbara Barrett, *Durham Mental-Health Services in Peril*, NEWS & OBSERVER (Raleigh, N.C.), Mar. 7, 2000, at B1 (describing cuts in Durham County's services for mentally ill and disabled residents stemming from North Carolina's obligation to repay \$74 million to the federal government for state agencies' improper use of Medicaid monies).

73. *See, e.g.*, James Eli Shiffer, *A Law That Leaves Families in Limbo*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 3, 1997, at A1 (illustrating that cuts in SSI payments and changes in the definition of disability can have a severe impact on families).

74. *See infra* notes 76–85 and accompanying text. As few as seven jurisdictions explicitly do not provide for the continued support of disabled children past the age of

Some of these minority jurisdictions, including North Carolina, abrogated the common law duty of continued support by statute.<sup>75</sup> Other jurisdictions have interpreted their statutes as providing no authority for the continued support of disabled children beyond the age of majority.<sup>76</sup> Some minority jurisdictions, including North Carolina, do, however, provide an education exception for post-majority child support, but do not allow for exceptions due to disabilities.<sup>77</sup>

In contrast to North Carolina's restrictive treatment of disabled children, a majority of states provide for the continued support of a disabled child until the child overcomes the disability or becomes self-sufficient.<sup>78</sup> These jurisdictions fall into one of two general categories: those that impose a statutory duty on parents to continue support for their physically or mentally disabled children beyond the age of

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majority.

75. See, e.g., GA. CODE ANN. § 19-6-15(e) (1999). Georgia courts have found that there is no statutory exception to the general rule that a "father's obligation to provide for the maintenance, protection and education of his child ceases when the child becomes [twenty-one] years of age." *Crane v. Crane*, 170 S.E.2d 392, 393 (Ga. 1969) (noting that the Georgia General Assembly, if it so desired, could make an exception for children who are disabled at birth or become disabled later on and remain so after reaching majority); see also *supra* notes 22–28 describing North Carolina provisions.

76. See *Smith v. Smith*, 447 N.W.2d 715, 716 (Mich. 1989) (concluding that the duty to support a disabled child beyond the age of majority was repealed by the Age of Majority Act); *Meyers v. Meyers*, 383 N.W.2d 784, 789 (Neb. 1986) (holding that child support statute confers no authority to compel parents to support adult children); *Beiter v. Beiter*, 539 N.Y.S.2d 271, 272–73 (1989) (holding that a Family Court Act imposes no duty to support a disabled adult child and a parent's obligation to support a child ceases when the child reaches the age of twenty-one regardless of whether the child is physically or mentally handicapped); *Day v. Gatewood*, No. 02A01-9805-CV-00141, 1999 Tenn. App. LEXIS 285, at \*11 (Tenn. App. Apr. 30, 1999) (finding nothing in Tennessee's domestic relations statutes authorizing a court to exercise jurisdiction over a child who is over eighteen years old). *Contra* W. VA. CODE ANN. § 48-11-103(b) (Michie 2001), amended by Act of March 9, 2002, ch. 101, 2002 W. Va. Acts (stating that nothing in the statute providing for support beyond the age of majority "shall be construed to abrogate or modify existing case law regarding the eligibility of handicapped or disabled children to receive child support beyond the age of eighteen").

77. N.C. GEN. STAT. § 50-13.4(c)(2); see also DEL. CODE ANN. tit. 13, § 501 (1999) (providing a duty of support up to the age of nineteen for a child over the age of eighteen who is a student in high school and is likely to graduate); GA. CODE ANN. § 19-6-15(e) (1999) (providing a duty of support up to the age of twenty for a child who has reached the age of majority and is enrolled and attending secondary school).

78. See generally Laura Wish Morgan, SupportGuidelines.com, *The Duty to Support Adult Disabled Children*, available at <http://www.SupportGuidelines.com/articles/art200003.html> (last visited May 4, 2002) (on file with the North Carolina Law Review) (stating that most jurisdictions impose an obligation on parents to support their disabled children beyond the age of majority).

majority<sup>79</sup> and those that continue to impose the duty under the common law rule.<sup>80</sup>

Statutes adopted by some jurisdictions providing for the continued support of disabled children beyond the age of majority codify verbatim the common law rule.<sup>81</sup> North Carolina fit into this category before it abrogated the parental duty of such support.<sup>82</sup> On the other hand, jurisdictions that continue to follow the common law rule<sup>83</sup> generally hold that the presumption of emancipation upon attaining majority may be overcome by evidence that the adult child is incapable of supporting himself due to a physical or mental disability.<sup>84</sup>

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79. *See id.* (providing a state-by-state survey of parental support obligations for disabled children beyond the age of majority). At least thirty states have adopted statutes that require continued support for disabled children beyond the age of majority. *Id.*

80. *See id.* (noting that at least ten jurisdictions, including the District of Columbia, continue to follow the common law rule).

81. *See, e.g.,* MO. ANN. STAT. § 452.340(4) (West Supp. 2002) (codifying the common law rule that “[if] the child is physically or mentally incapacitated from supporting himself and insolvent and unmarried, the court may extend the parental support obligation past the child’s eighteenth birthday”). Other jurisdictions have adopted statutes that provide for the continued support of disabled children beyond the age of majority by defining “minor child” or “child” to include disabled children of any age that are incapable of supporting themselves. *See, e.g.,* MINN. STAT. ANN. § 518.54(2) (West 1990) (including in the definition of “child” someone who is incapable of self-support because of a physical or mental condition); NEV. REV. STAT. ANN. 125B.200(2)(c) (Michie 2001) (including under the definition of “minor child” a person who is “[u]nder a legal disability”); OHIO REV. CODE ANN. § 3109.01 (Anderson 2000) (defining the “age of majority” to exclude those persons under a legal disability); UTAH CODE ANN. § 78-45-2(6)(c) (Supp. 2001) (defining “child” to include “a son or daughter of any age who is incapacitated from earning a living and . . . is not able to support self by own means”). Some jurisdictions do not address the continued support of disabled children beyond the age of majority directly, but recognize a parental duty to support an adult child who is incapable of supporting themselves under so called “poor statutes.” *See, e.g.,* IDAHO CODE § 32-1002 (Michie 1996) (codifying the reciprocal duty of parents and children to support family members who are unable to support themselves); OKLA. STAT. ANN. tit. 10, § 12 (West 1998) (requiring a parent to support a child who is unable to maintain himself by work); OR. REV. STAT. § 109.010 (1999) (requiring parents “to maintain their children who are poor and unable to work to maintain themselves”). Likewise, a few jurisdictions define the parental obligation of support of an adult child in broad terms that could include indigent, as well as mentally or physically disabled, children. *See, e.g.,* CAL. FAM. CODE § 3910(a) (West 1994) (providing that parents have a responsibility to maintain “a child of whatever age who is incapacitated from earning a living and without sufficient means”); HAW. REV. STAT. § 580-47(a) (Supp. 2000) (providing for support for an “incompetent adult child”).

82. *See supra* notes 15–23 and accompanying text.

83. *See, e.g.,* *Lattera ex rel. Commercial Nat’l Bank v. Treaster*, 844 P.2d 724, 732 (Kan. Ct. App. 1992) (explaining that a parent has no legal duty to support a child beyond the age of majority, unless that child is physically or mentally unable to maintain and support herself); *Feinberg v. Diamant*, 389 N.E.2d 998, 1000 (Mass. 1979) (following the common law rule obligating a parent to care for an adult child incapable of self-support).

84. *See, e.g.,* *Streb v. Streb*, 774 P.2d 798, 800 (Alaska 1989) (holding that a parent’s

North Carolina has several options to remedy the current inequities imposed by section 50-13.4 and to align itself with the majority of jurisdictions that mandate parental support of disabled children beyond the age of majority. Several jurisdictions that have adopted statutes providing for the continued support of a disabled child beyond the age of majority also include an education exception, similar to the provisions in existing section 50-13.4(c)(2), for children attending school and making progress toward graduation.<sup>85</sup> The General Assembly could amend current section 50-13.4(c)(2), which contains an education exception, to allow an additional exception for the support of children beyond the age of majority who are unable to support themselves because of a physical or mental disability. Such an amendment would return the status of disabled children to its position before the General Assembly abrogated the right to continued support in the late 1970s and early 1980s.<sup>86</sup>

The General Assembly could also adopt guidelines to determine whether a disabled child is eligible for continued support beyond the age of majority.<sup>87</sup> Many jurisdictions that continue to follow the common law rule have developed such guidelines. For example, before ordering continued support of a disabled child, Alabama courts must determine that (1) the child is not capable of earning an income sufficient to provide for her reasonable living expenses and (2) the child's mental or physical disability is the cause of her inability to earn that income.<sup>88</sup> The first prong of this test is similar to the

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duty of support continues after the child reaches the age of majority if the child is incapable of self-support because of a physical or mental disability). One jurisdiction, in the absence of any statutory authority, allows for the continued support of disabled children beyond the age of majority under "special circumstances." See *Martin v. Martin*, No. FA9400567925, 2001 Conn. Super. LEXIS 3254, at \*4-6 (Conn. Super. Ct. Nov. 13, 2001) (interpreting presumptive child support guidelines to allow for continued support to disabled children beyond the age of majority under special circumstances).

85. See, e.g., IOWA CODE ANN. § 598.1(9) (West 2001) (providing for parental support of a child "between the ages of eighteen and nineteen years who is engaged full-time in completing high school graduation" and "may include support for a child of any age" who cannot support himself because of a disability); S.C. CODE ANN. § 20-7-420(17) (Law. Co-op. Supp. 2001) (providing support for a child "making satisfactory progress toward completion of high school, not to exceed the nineteenth birthday"); VA. CODE ANN. § 20-124.2(C) (Michie 2000) (providing support for a full-time high school student until the child reaches the age of nineteen or graduates, whichever comes first).

86. See *supra* notes 15-23 and accompanying text.

87. See, e.g., *Ex parte Cohen*, 763 So. 2d 253, 256 (Ala. 1999) (adopting a two-part test for determining whether a disabled child is entitled to support beyond the age of majority).

88. *Id.* (directing the trial court on remand to determine whether a child who broke his neck after graduating high school and remained a quadriparetic is unable to support himself and thus entitled to post-minority support). As in Alabama, the duty to support a

common law rule for continued support of a disabled child beyond the age of majority. The second prong of the test offers protection against a parent's obligation to support children who choose not to earn a sufficient income, but whose mental or physical disability does not limit their earning capacity, i.e., an indigent adult child who is not disabled.<sup>89</sup> If the General Assembly were concerned that indigent adult children would sue their parents for support, it could limit support to those children with disabilities that existed before they reached the age of majority. Several jurisdictions provide for such a limitation.<sup>90</sup>

By amending section 50-13.4(c)(2) to provide for the support of disabled children past the age of majority, the General Assembly would also reconcile the current child support provisions with the child custody provisions in section 50-13.8. As these two sections are currently written, custody of disabled children beyond the age of majority is addressed without providing any means for continued support.<sup>91</sup> The creation of these inconsistent sections does not appear to be a legislative oversight. The General Assembly has had several chances to remedy this inconsistency but failed to do so each time.<sup>92</sup>

In an ideal world, the obligation of a parent to continue supporting a disabled child once that child reaches the age of majority would be "so well secured by the strength of natural affection" that it

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disabled child beyond the age of majority in Maryland arises "when the child has insufficient resources and, because of mental or physical infirmity, insufficient income capacity to enable him to meet his *reasonable* living expenses." *Presley v. Presley*, 500 A.2d 322, 328 (Md. Ct. Spec. App. 1985). Missouri courts have adopted a test similar to the second prong of the Alabama standard by holding that to require support for a disabled child beyond the age of majority, the trial court must find a causal relationship between the adult child's inability to support herself and that child's mental or physical disability. *See Missouri ex rel. Albert v. Sauer*, 869 S.W.2d 853, 855 (Mo. Ct. App. 1994).

89. Adoption of these guidelines may quell fears that parents would be obligated to support indigent children who are not disabled but choose not to support themselves. Such fears represent a criticism of California's broad statutory language. *See Leslie Parrilla, Support Orders for Adult Sons Rankle Parents*, VENTURA CO. STAR, Aug. 18, 2001, LEXIS, News Library, News Group File (criticizing recent California cases in which parents were held responsible for the support of their indigent or disabled adult children as opening the doors to adult children suing their parents for support).

90. *See, e.g.*, TEX. FAM. CODE ANN. § 154.302(2) (Vernon Supp. 2002) (limiting support under circumstances where "the disability exists, or the cause of the disability is known to exist, on or before the [eighteenth] birthday of the child"); *Cohn v. Cohn*, 1996-NMCA-No. 16409, 934 P.2d 279, 281 (N.M. Ct. App. 1996) (holding that parents have a continuing duty to support an adult child if the child was disabled before reaching the age of majority).

91. *See supra* notes 18-19 and accompanying text.

92. *See supra* note 20 and accompanying text.

would not have to be enforced by human laws.<sup>93</sup> Unfortunately, that is not always the case. All too often, the court system is called upon to resolve child support issues. These issues become even more critical when they involve a disabled child who is incapable of self-support. The current North Carolina statutory scheme does not provide the court system with the necessary authority to order parents to provide continued support of a disabled child beyond the age of majority, when these children and their custodial parents are often the most in need of such support. The North Carolina General Assembly should remedy this injustice by amending section 50-13.4 to require such support.

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93. *Wells v. Wells*, 227 N.C. 614, 616, 44 S.E.2d 31, 33 (1947) (quoting 2 KENT ON AMERICAN LAW 190 (O.W. Holmes, Jr. ed., 12th ed. 1873)).