

Department of Legislative Services  
 Maryland General Assembly  
 2014 Session

FISCAL AND POLICY NOTE

House Bill 1270  
 Judiciary

(Delegate Dumais, *et al.*)

Family Law - Protecting the Resources of Children in State Custody

This bill requires the Department of Human Resources (DHR) to serve in a fiduciary capacity for children in its custody. DHR may not impose a debt obligation on a child in its custody or take any other action that requires the child to pay for the child’s own care or custody.

Fiscal Summary

**State Effect:** Special fund revenues decrease by \$2.1 million in FY 2015 and by approximately \$2.8 million annually thereafter, reflecting the loss of reimbursements relating to a child’s benefits that DHR will no longer be able to use for a child’s care. General fund expenditures increase correspondingly in order to maintain the child’s level of care. General fund expenditures increase by an additional \$900,000 in FY 2015 and by \$516,600 annually thereafter for DHR to engage contractual services to screen and review eligibility for benefits.

(\$ in millions)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
SF Revenue	(\$2.1)	(\$2.8)	(\$2.8)	(\$2.8)	(\$2.8)
GF Expenditure	\$3.0	\$3.3	\$3.3	\$3.3	\$3.3
Net Effect	(\$5.1)	(\$6.1)	(\$6.1)	(\$6.1)	(\$6.1)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** DHR may not use a child's resources, assets, and benefits, including Veterans Administration (VA) benefits, supplemental security income (SSI), or Social Security benefits, insurance, cash assets, trust accounts, or earnings for payment or reimbursement for the cost of care for the child.

Consistent with federal law, when DHR serves as the representative payee for a child receiving VA benefits, SSI, or Social Security benefits, DHR must (1) use or conserve the benefits in the child's best interest, including using the benefits for specialized services not otherwise provided by DHR or conserving the benefits for the child's reasonably foreseeable future needs and (2) appropriately monitor any federal asset or resource limits for the benefits and ensure that the child's best interest is served by using or conserving the benefits in a way that avoids violating any federal asset or resource limits that would affect the child's eligibility to receive the benefits. This includes:

- using the benefits for specialized services not otherwise provided by DHR;
- applying to the Social Security Administration (SSA) to establish a program for achieving self support (PASS) for a child under the Social Security Act and determining whether it is in the best interest of the child;
- establishing an individual development account for the child and conserving the child's benefits in that account in a manner that appropriately avoids any federal asset or resource limits;
- establishing a special needs trust for the child and conserving the child's benefits in the trust in a manner that appropriately avoids any federal asset or resource limits; and
- applying any other exclusions from federal asset or resource limits available under federal law and using or conserving the child's benefits in a manner that appropriately avoids any federal asset or resource limits.

DHR must immediately notify the child, through the child's attorney of (1) any application for VA benefits, SSI, or Social Security benefits made on the child's behalf or any application to become representative payee for those benefits on the child's behalf; (2) any decisions or communications from the VA or the SSA regarding an application for these benefits; and (3) any appeal or other action requested by DHR regarding an application for the benefits.

When DHR serves as the representative payee or otherwise receives VA benefits, SSI, or Social Security benefits on the child's behalf, DHR must provide notice to the child, through the child's attorney, of the following before each juvenile court hearing regarding the child: (1) the dates and the amount of benefit funds received on the child's behalf since any prior notification to the child's attorney and (2) information regarding all of the child's assets and resources, including the child's benefits, insurance, cash assets, trust accounts, earnings, and other resources.

The bill's provisions do not affect the authority of a juvenile court to order the parents of a child to pay child support or the authority of DHR to request and receive federal funding under Title IV-E of the Social Security Act for the cost of providing care for a child in its custody.

**Current Law/Background:** A government entity may be designated as the representative payee of a child in out-of-home placement if the child's parent or other relative is not available to serve in that role. As the representative payee, a state is required to manage the child's benefits and to use the benefits for the current maintenance of the child. In recent years, some child welfare advocates have challenged the practice of using these benefits to reimburse states for the cost of providing the care, arguing that the practice amounts to requiring children to pay for their own stay in foster care. Advocates argue that instead, benefits should be invested or otherwise saved for the child's future. Conversely, other advocates and state agencies assert that the use of such funds is critical for agencies operating on tight budgets and that using the funds to pay for the cost of current maintenance is consistent with the purpose of providing the funds. Advocates have also expressed concern that if states were no longer allowed to use the benefits as reimbursement for care, states would simply stop screening children for eligibility. This is of particular concern, as according to the Congressional Research Service, children in foster care often have greater physical and mental health and developmental needs. One study of a nationally representative sample of children placed in out-of-home care estimated that more than 20% had physical or mental health conditions that would likely make them eligible for SSI. However, only an estimated 6% of children in foster care are reported as receiving benefits.

In *Washington State Department of Social and Health Services v. Guardianship Estate of Keffeler*, 537 U.S.371 (2003), the Supreme Court affirmed the right of states to act as representative payees and to use the benefits to reimburse the cost of care. The *Keffeler* decision also noted that absent state assistance, "many eligible children would either obtain no Social Security benefits, or need some very good luck to get them." (*Keffeler*, p. 19). In Maryland, the Court of Appeals held in *In Re Ryan W.*, 434 Md. 577 (2013), that the juvenile court had no subject matter jurisdiction over a local department of social services' allocation of a foster child's federal Old-Age and Survivor's Disability

Insurance benefits, where DHR had been appointed as a representative payee and applied the funds to reimburse itself for the current maintenance cost for the child. It further held that a local department of social services must notify at a minimum the child's counsel whenever it applies to SSA to be appointed as a representative payee and whenever it receives the funds.

**State Revenues:** Special fund revenues decrease by approximately \$2,105,447 in fiscal 2015, which reflects the bill's October 1, 2014 effective date, and by \$2,807,262 annually thereafter. This estimate, as provided by DHR, reflects a three-year average of cost-of-care reimbursements that DHR will no longer be allowed to use for a child's care under the bill.

**State Expenditures:** General fund expenditures increase by approximately \$3,005,447 in fiscal 2015 and by approximately \$3,323,862 thereafter. This estimate assumes that general fund expenditures increase by \$2,105,447 in fiscal 2015 and by \$2,807,262 annually thereafter to supplant the loss of special fund revenues (as discussed above) in order to maintain the child's level of care once the child's benefits are no longer able to be used. In addition, the estimate includes costs associated with DHR's requirement to serve in a fiduciary capacity for children in its care. DHR advises that it requires contractual services in order to appropriately screen children for potential benefits and to conduct annual reviews of a child's eligibility. The cost of contractual services is estimated at \$900,000 in fiscal 2015 and \$516,600 annually thereafter. This estimate, which is based on information provided by DHR, assumes that in the first year of implementation, 300 children are screened at a cost of \$2,300 per application and that a review of eligibility for benefits is conducted for an additional 300 children at a cost of \$700 per application. In future years, the estimate assumes that DHR contracts for initial eligibility screenings on 42 children per year and annual reviews on 600 children. To the extent that contractual costs for screenings and reviews differ from the estimated costs, expenditures increase or decrease accordingly.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 914 (Senator Raskin, *et al.*) - Judicial Proceedings.

**Information Source(s):** Department of Human Resources, Judiciary (Administrative Office of the Courts), Congressional Research Service, Department of Legislative Services

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Analysis by: Jennifer K. Botts

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510