

SENATE BILL 291

D4, O4
SB 442/17 – FIN

8lr1705
CF 8lr2393

By: **Senators Madaleno, Benson, Brochin, Currie, Feldman, Ferguson, Guzzone, Jennings, Kagan, Kelley, King, Lee, Manno, McFadden, Muse, Norman, Ramirez, Ready, Robinson, Rosapepe, Salling, Smith, Young, and Zucker**
Introduced and read first time: January 22, 2018
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Protecting the Resources of Children in State Custody**

3 FOR the purpose of requiring the Department of Human Services, when applying for
4 certain benefits for a child in the Department’s custody, to identify a representative
5 payee or fiduciary in consultation with the child’s attorney; establishing certain
6 duties of the Department when the Department serves as the representative payee
7 or fiduciary for a child receiving certain benefits; requiring the Department to
8 provide certain notice to the child through the child’s attorney of certain actions
9 taken with respect to certain benefits for the child; providing for the application and
10 construction of this Act; and generally relating to children in State custody.

11 BY adding to

12 Article – Family Law

13 Section 5–527.1

14 Annotated Code of Maryland

15 (2012 Replacement Volume and 2017 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
17 That the Laws of Maryland read as follows:

18 **Article – Family Law**

19 **5–527.1.**

20 **(A) THIS SECTION APPLIES TO CHILDREN COMMITTED TO THE CUSTODY OF**
21 **THE DEPARTMENT.**

22 **(B) WHEN APPLYING FOR BENEFITS UNDER THIS SECTION FOR A CHILD IN**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 THE DEPARTMENT'S CUSTODY, THE DEPARTMENT SHALL, IN COOPERATION WITH
2 THE CHILD'S ATTORNEY, IDENTIFY A REPRESENTATIVE PAYEE OR FIDUCIARY IN
3 ACCORDANCE WITH THE REQUIREMENTS OF 20 C.F.R. §§ 404.2021 AND 416.621.

4 (C) CONSISTENT WITH FEDERAL LAW, WHEN THE DEPARTMENT SERVES AS
5 THE REPRESENTATIVE PAYEE OR IN ANY OTHER FIDUCIARY CAPACITY FOR A CHILD
6 RECEIVING VETERANS ADMINISTRATION BENEFITS, SUPPLEMENTAL SECURITY
7 INCOME, OR SOCIAL SECURITY BENEFITS, THE DEPARTMENT SHALL:

8 (1) USE OR CONSERVE THE BENEFITS IN THE CHILD'S BEST INTEREST,
9 INCLUDING USING THE BENEFITS FOR SERVICES FOR SPECIAL NEEDS NOT
10 OTHERWISE PROVIDED BY THE DEPARTMENT OR CONSERVING THE BENEFITS FOR
11 THE CHILD'S REASONABLY FORESEEABLE FUTURE NEEDS;

12 (2) ENSURE THAT WHEN THE CHILD ATTAINS THE AGE OF 14 YEARS
13 AND UNTIL THE DEPARTMENT NO LONGER SERVES AS THE REPRESENTATIVE PAYEE
14 OR FIDUCIARY, A MINIMUM PERCENTAGE OF THE CHILD'S BENEFITS ARE NOT USED
15 TO REIMBURSE THE STATE FOR THE COSTS OF CARE FOR THE CHILD AND ARE USED
16 OR CONSERVED IN ACCORDANCE WITH ITEMS (3) AND (4) OF THIS SUBSECTION, AS
17 FOLLOWS:

18 (I) FROM AGE 14 THROUGH AGE 15, AT LEAST 40%;

19 (II) FROM AGE 16 THROUGH AGE 17, AT LEAST 80%; AND

20 (III) FROM AGE 18 THROUGH AGE 20, 100%;

21 (3) FOR THE CHILD'S BENEFITS OR RESOURCES THAT ARE BELOW OR
22 NOT SUBJECT TO ANY FEDERAL ASSET OR RESOURCE LIMIT, EXERCISE DISCRETION
23 IN ACCORDANCE WITH FEDERAL LAW AND IN THE BEST INTEREST OF THE CHILD TO
24 CONSERVE THE FUNDS OR USE THE FUNDS FOR SERVICES FOR SPECIAL NEEDS NOT
25 OTHERWISE PROVIDED BY THE DEPARTMENT, INCLUDING CHOOSING ONE OR MORE
26 OF THE OPTIONS LISTED UNDER ITEM (4) OF THIS SUBSECTION;

27 (4) APPROPRIATELY MONITOR ANY FEDERAL ASSET OR RESOURCE
28 LIMITS FOR THE BENEFITS AND ENSURE THAT THE CHILD'S BEST INTEREST IS
29 SERVED BY USING OR CONSERVING THE BENEFITS IN A WAY THAT AVOIDS
30 VIOLATING ANY FEDERAL ASSET OR RESOURCE LIMITS THAT WOULD AFFECT THE
31 CHILD'S ELIGIBILITY TO RECEIVE THE BENEFITS, INCLUDING:

32 (I) APPLYING TO THE SOCIAL SECURITY ADMINISTRATION TO
33 ESTABLISH A PLAN FOR ACHIEVING SELF-SUPPORT (PASS) ACCOUNT FOR THE
34 CHILD UNDER THE SOCIAL SECURITY ACT AND DETERMINING WHETHER IT IS IN
35 THE BEST INTEREST OF THE CHILD TO CONSERVE ALL OR PART OF THE BENEFITS IN

1 THE PASS ACCOUNT;

2 (II) ESTABLISHING A 529A PLAN FOR THE CHILD AND
3 CONSERVING THE CHILD'S BENEFITS IN THAT ACCOUNT IN A MANNER THAT
4 APPROPRIATELY AVOIDS ANY FEDERAL ASSET OR RESOURCE LIMITS;

5 (III) ESTABLISHING AN INDIVIDUAL DEVELOPMENT ACCOUNT
6 FOR THE CHILD AND CONSERVING THE CHILD'S BENEFITS IN THAT ACCOUNT IN A
7 MANNER THAT APPROPRIATELY AVOIDS ANY FEDERAL ASSET OR RESOURCE LIMITS;

8 (IV) ESTABLISHING A SPECIAL NEEDS TRUST FOR THE CHILD
9 AND CONSERVING THE CHILD'S BENEFITS IN THE TRUST IN A MANNER THAT IS
10 CONSISTENT WITH FEDERAL REQUIREMENTS FOR SPECIAL NEEDS TRUSTS AND
11 THAT APPROPRIATELY AVOIDS ANY FEDERAL ASSET OR RESOURCE LIMITS;

12 (V) IF THE DEPARTMENT DETERMINES THAT USING THE
13 BENEFITS FOR SERVICES FOR CURRENT SPECIAL NEEDS NOT ALREADY PROVIDED
14 BY THE DEPARTMENT IS IN THE BEST INTERESTS OF THE CHILD, USING THE
15 BENEFITS FOR THOSE SERVICES;

16 (VI) IF FEDERAL LAW REQUIRES CERTAIN BACK PAYMENTS OF
17 BENEFITS TO BE PLACED IN A DEDICATED ACCOUNT, COMPLYING WITH THE
18 REQUIREMENTS FOR DEDICATED ACCOUNTS UNDER 20 C.F.R. § 416.640(E); AND

19 (VII) APPLYING ANY OTHER EXCLUSIONS FROM FEDERAL ASSET
20 OR RESOURCE LIMITS AVAILABLE UNDER FEDERAL LAW AND USING OR CONSERVING
21 THE CHILD'S BENEFITS IN A MANNER THAT APPROPRIATELY AVOIDS ANY FEDERAL
22 ASSET OR RESOURCE LIMITS;

23 (5) PROVIDE AN ANNUAL ACCOUNTING TO THE CHILD AND THE
24 CHILD'S ATTORNEY OF HOW THE CHILD'S RESOURCES, INCLUDING VETERANS
25 ADMINISTRATION BENEFITS, SUPPLEMENTAL SECURITY INCOME, AND SOCIAL
26 SECURITY BENEFITS, HAVE BEEN USED OR CONSERVED IN ACCORDANCE WITH THIS
27 SECTION; AND

28 (6) PROVIDE THE CHILD WITH FINANCIAL LITERACY TRAINING WHEN
29 THE CHILD HAS ATTAINED THE AGE OF 14 YEARS.

30 (D) (1) THE DEPARTMENT SHALL IMMEDIATELY NOTIFY THE CHILD
31 THROUGH THE CHILD'S ATTORNEY OF:

32 (I) ANY APPLICATION FOR VETERANS ADMINISTRATION
33 BENEFITS, SUPPLEMENTAL SECURITY INCOME, OR SOCIAL SECURITY BENEFITS
34 MADE ON THE CHILD'S BEHALF OR ANY APPLICATION TO BECOME REPRESENTATIVE

1 PAYEE FOR THOSE BENEFITS ON THE CHILD'S BEHALF;

2 (II) ANY DECISIONS OR COMMUNICATIONS FROM THE
3 VETERANS ADMINISTRATION OR THE SOCIAL SECURITY ADMINISTRATION
4 REGARDING AN APPLICATION FOR BENEFITS DESCRIBED UNDER ITEM (I) OF THIS
5 PARAGRAPH; AND

6 (III) ANY APPEAL OR OTHER ACTION REQUESTED BY THE
7 DEPARTMENT REGARDING AN APPLICATION FOR BENEFITS DESCRIBED UNDER
8 ITEM (I) OF THIS PARAGRAPH.

9 (2) WHEN THE DEPARTMENT SERVES AS THE REPRESENTATIVE
10 PAYEE OR OTHERWISE RECEIVES VETERANS ADMINISTRATION BENEFITS,
11 SUPPLEMENTAL SECURITY INCOME, OR SOCIAL SECURITY BENEFITS ON THE
12 CHILD'S BEHALF, THE DEPARTMENT SHALL PROVIDE NOTICE TO THE CHILD
13 THROUGH THE CHILD'S ATTORNEY OF THE FOLLOWING BEFORE EACH JUVENILE
14 COURT HEARING REGARDING THE CHILD:

15 (I) THE DATES AND THE AMOUNT OF BENEFIT FUNDS RECEIVED
16 ON THE CHILD'S BEHALF SINCE ANY PRIOR NOTIFICATION TO THE CHILD'S
17 ATTORNEY; AND

18 (II) INFORMATION REGARDING ALL THE CHILD'S ASSETS AND
19 RESOURCES, INCLUDING THE CHILD'S BENEFITS, INSURANCE, CASH ASSETS, TRUST
20 ACCOUNTS, EARNINGS, AND OTHER RESOURCES.

21 (E) THIS SECTION MAY NOT BE CONSTRUED TO AFFECT ANY ADDITIONAL
22 NOTICE REQUIRED BY A STATE COURT.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2018.