

Department of Legislative Services  
 Maryland General Assembly  
 2018 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

Senate Bill 291

(Senator Madaleno, *et al.*)

Judicial Proceedings

Judiciary

Family Law - Protecting the Resources of Children in State Custody

This bill establishes requirements for the management and use of specified benefits, assets, and resources of children in the custody of the Department of Human Services (DHS).

Fiscal Summary

**State Effect:** General fund expenditures increase by \$1.0 million in FY 2019 for staff and to maintain the child’s level of care once specified revenues are no longer available for standard expenses relating to a child’s care. Future years reflect annualization. Revenues are not anticipated to be materially affected.

(\$ in millions)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1.0	1.4	1.4	1.4	1.4
Net Effect	(\$1.0)	(\$1.4)	(\$1.4)	(\$1.4)	(\$1.4)

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

**Local Effect:** None.

**Small Business Effect:** None.

Analysis

**Bill Summary:** Consistent with federal law, when applying for specified benefits for a child in its custody, DHS must, in cooperation with the child’s attorney, identify a representative payee or fiduciary. When DHS serves as the representative payee or in any other fiduciary capacity for a child receiving Veterans Administration (VA) benefits, Supplemental Security Income (SSI), or Social Security benefits, DHS must (1) use or

conserve the benefits in the child's best interest, including using the benefits for special needs not otherwise provided by DHS or conserving the benefits for the child's reasonably foreseeable future needs, and (2) ensure that when the child attains the age of 14, and until DHS no longer serves as the representative payee or fiduciary, that a minimum percentage of the child's benefits are not used to reimburse the State for the costs of care and are instead conserved in accordance with the bill's provisions. The bill specifies that (1) from age 14 through age 15, at least 40% of benefits may not be used to reimburse the State; (2) from age 16 through age 17, at least 80% of benefits may not be used; and (3) from age 18 through age 20, no benefits may be used for State reimbursements.

DHS must 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. DHS must exercise discretion, for benefits or resources below or not subject to any federal asset or resource limit, to conserve or use the funds for services for special needs not otherwise provided by DHS. These options include:

- applying to the Social Security Administration (SSA) to establish a Plan for Achieving Self-Support account for the child and determining whether it is in the best interest of the child to conserve all or part of the benefits in the account;
- establishing an individual development account or a 529A plan for the child and conserving the child's benefits within the accounts 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.

DHS must also provide an annual accounting to the child and the child's attorney of how the child's resources have been used or conserved and provide the child with financial literacy training when the child reaches age 14. DHS 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 SSA regarding an application for benefits; and (3) any appeal or other action requested by DHS regarding an application for benefits.

When DHS serves as the representative payee or otherwise receives VA benefits, SSI, or Social Security benefits on the child's behalf, DHS 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.

**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, 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 SSI 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 DHS 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 be appointed as a representative payee and whenever it receives the funds.

DHS advises that when children receive benefits such as SSI, it uses them to offset the cost of a child's foster care. Funds in excess of the cost of care for individual children are

deposited into trust fund bank accounts and may be used to fund specified authorized purchases or conserved for the child.

**State Revenues:** The bill requires a child's benefits to be used or conserved in the child's best interest, including using the benefits for specialized services not otherwise provided by DHS. DHS advises that the average cost of care per child receiving benefits exceeds the average benefit received per child. Thus, special fund revenues that have in the past been designated as "available for cost of care" are no longer available for that use. Instead, the revenues must be used only for specified purposes, including for services for special needs not otherwise provided by DHS or conserved for the child's benefit. In addition, the bill requires that once a child reaches age 14, specified percentages of the child's benefits must be deposited into specified accounts. Because the bill primarily alters the purposes for which these funds may be used, it is assumed that the bill has no material impact on special fund finances, as DHS still receives the benefit payments on behalf of the child and DHS uses the funds on the child's behalf as specified by the bill or deposits the payments into specified accounts to be conserved for the child.

**State Expenditures:** General fund expenditures increase by \$1,042,238 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. Although there is likely no material effect on special fund finances, general fund expenditures increase to supplant the special funds (as discussed above) that DHS will no longer consider available to be used for a child's standard cost of care. Accordingly, based on data provided by DHS, general fund expenditures increase by \$932,396 in fiscal 2019 and by \$1,243,194 annually thereafter to reflect special fund revenues that are no longer available to DHS to use as cost of care reimbursements for standard foster care expenses.

DHS also advises that it needs additional staff to implement the bill. Accordingly, the estimate also reflects the cost of hiring two full-time administrators to facilitate more stringent monitoring of a child's assets, such as ensuring that appropriate amounts are deposited into a child's account and that benefits are used only for allowed purposes. The estimate includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and the general funds needed to supplant the loss of special funds. The information and assumptions used in calculating the estimate are stated below:

- based on the fiscal 2018 caseload, 289 children in the custody of DHS receive benefits annually;
- DHS reserves the minimum percentages required by the bill for each age group; and
- the average amount of benefits received remains constant.

Positions	2
Salaries and Fringe Benefits	\$94,924
Fund Needed to Supplant Lost Special Fund Revenues	932,396
Operating Expenses	14,918
<b>Total FY 2019 General Fund Expenditures</b>	<b>\$1,042,238</b>

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

DHS also advises that it currently serves as the final payer of the cost of care after all funds have been exhausted. Because the bill alters this structure by requiring the State to instead provide funding before all available resources have been exhausted, federal Title IV-E funds *may* be impacted. Any *potential* impact is not accounted for in this analysis.

### Additional Information

**Prior Introductions:** SB 442 of 2017, a similar bill, received a hearing in the Senate Finance Committee, but no further action was taken. Its cross file, HB 416, was withdrawn. SB 262 of 2016, a similar bill, was recommitted to the Senate Judicial Proceedings Committee. Its cross file, HB 772, was withdrawn. Similar bills were also introduced in 2015 and 2014.

**Cross File:** HB 524 (Delegate Moon, *et al.*) - Judiciary.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Department of Human Services; Department of Legislative Services

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Analysis by: Jennifer K. Botts

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