HOUSE BILL 1270

D4, O4 4lr2459
CF SB 914

By: **Delegates Dumais, Anderson, Bobo, Carter, Clippinger, Cluster, Eckardt, Gaines, Glass, Gutierrez, Hough, James, K. Kelly, Lee, Luedtke, McDermott, Mitchell, Oaks, Rosenberg, Smigiel, Valderrama, Valentino–Smith, Waldstreicher, M. Washington, Wilson, and Zucker**
Introduced and read first time: February 7, 2014
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Family Law – Protecting the Resources of Children in State Custody

FOR the purpose of requiring the Department of Human Resources to serve in a fiduciary capacity for children in its custody; requiring the Department, in any action, service, or decision on behalf of a child in its custody, to protect and serve the best interest of the child; prohibiting the Department from imposing a debt obligation on a child in its custody or taking any other action that requires the child to pay for the child's own care or custody; prohibiting the Department from using certain resources, assets, and benefits of a child in its custody for payment or reimbursement for the cost of care for the child; establishing certain duties of the Department when the Department serves as the representative payee for a child receiving certain benefits; requiring the Department to provide certain notice to the child, through the child's attorney, of certain actions taken with respect to certain benefits for the child; providing for the construction of a certain provision of this Act; providing for the application of this Act; and generally relating to children in State custody.

BY adding to
Article – Family Law
Section 5–527.1
Annotated Code of Maryland
(2012 Replacement Volume and 2013 Supplement)

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

Article – Family Law

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

5–527.1.

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

(B) (1) THE DEPARTMENT SHALL SERVE IN A FIDUCIARY CAPACITY FOR CHILDREN IN ITS CUSTODY.

(2) AS A FIDUCIARY, IN ANY ACTION, SERVICE, OR DECISION ON BEHALF OF A CHILD, THE DEPARTMENT SHALL PROTECT AND SERVE THE BEST INTEREST OF THE CHILD.

(C) (1) THE DEPARTMENT 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.

(2) THIS SUBSECTION DOES NOT AFFECT:

(I) THE AUTHORITY OF A JUVENILE COURT TO ORDER THE PARENTS OF A CHILD TO PAY CHILD SUPPORT FOR THE CHILD UNDER § 3–819(L) OF THE COURTS ARTICLE; OR

(II) THE AUTHORITY OF THE DEPARTMENT 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.

(D) THE DEPARTMENT MAY NOT USE A CHILD'S RESOURCES, ASSETS, AND BENEFITS, INCLUDING VETERANS ADMINISTRATION BENEFITS, SUPPLEMENTAL SECURITY INCOME, OR SOCIAL SECURITY BENEFITS, INSURANCE, CASH ASSETS, TRUST ACCOUNTS, OR EARNINGS FOR PAYMENT OR REIMBURSEMENT FOR THE COST OF CARE FOR THE CHILD.

(E) CONSISTENT WITH FEDERAL LAW, WHEN THE DEPARTMENT SERVES AS THE REPRESENTATIVE PAYEE FOR A CHILD RECEIVING VETERANS ADMINISTRATION BENEFITS, SUPPLEMENTAL SECURITY INCOME, OR SOCIAL SECURITY BENEFITS, THE DEPARTMENT SHALL:

(1) USE OR CONSERVE THE BENEFITS IN THE CHILD'S BEST INTEREST, INCLUDING USING THE BENEFITS FOR SPECIALIZED SERVICES NOT OTHERWISE PROVIDED BY THE DEPARTMENT 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, INCLUDING:

(I) USING THE BENEFITS FOR SPECIALIZED SERVICES NOT OTHERWISE PROVIDED BY THE DEPARTMENT;

(II) APPLYING TO THE SOCIAL SECURITY ADMINISTRATION 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 TO CONSERVE SOME OR ALL OF THE BENEFITS IN THE PASS;

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

(IV) 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

(V) 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.

(F) (1) THE DEPARTMENT SHALL IMMEDIATELY NOTIFY THE CHILD, THROUGH THE CHILD'S ATTORNEY, OF:

(I) ANY APPLICATION FOR VETERANS ADMINISTRATION BENEFITS, SUPPLEMENTAL SECURITY INCOME, 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;

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.