

SENATE BILL 524

D4, O4
SB 914/14 – JPR

5lr1674
CF HB 575

By: **Senators Raskin, Benson, Brochin, Guzzone, Kagan, Kelley, King, Madaleno, Manno, McFadden, Montgomery, and Rosapepe**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 3, 2015

CHAPTER _____

AN ACT concerning

Family Law – Protecting the Resources of Children in State Custody

FOR the purpose of ~~authorizing~~ 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 the Department's custody, to protect and serve the best interest of the child; ~~prohibiting the Department from imposing a debt obligation on a child in the Department's custody or taking any other action that requires the child to pay for the child's own care or custody;~~ requiring the Department, when applying for certain benefits for a child in the Department's custody, to identify a representative payee in consultation with the child's attorney; establishing certain duties of the Department when the Department serves as the representative payee or fiduciary 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 2014 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

Article – Family Law

5-527.1.

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

(B) (1) THE DEPARTMENT ~~MAY~~ SHALL SERVE IN A FIDUCIARY CAPACITY FOR CHILDREN IN THE DEPARTMENT'S 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 THE DEPARTMENT'S 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 THE DEPARTMENT'S CUSTODY.~~

~~(D) (C)~~ WHEN APPLYING FOR BENEFITS UNDER SUBSECTION (C)(2)(ii) OF THIS SECTION VETERANS ADMINISTRATION BENEFITS, SUPPLEMENTAL SECURITY INCOME, OR SOCIAL SECURITY BENEFITS FOR A CHILD IN THE DEPARTMENT'S CUSTODY, THE DEPARTMENT SHALL, IN COOPERATION WITH THE CHILD'S ATTORNEY, IDENTIFY A REPRESENTATIVE PAYEE IN ACCORDANCE WITH THE REQUIREMENTS OF 20 C.F.R. §§ 404.2021 AND 416.621.

~~(E) (D)~~ CONSISTENT WITH FEDERAL LAW, WHEN THE DEPARTMENT SERVES AS THE REPRESENTATIVE PAYEE OR IN ANY OTHER FIDUCIARY CAPACITY 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;

(2) (I) ESTABLISH A PLAN FOR ACHIEVING SELF-SUPPORT (PASS) ACCOUNT FOR THE CHILD;

(II) ENSURE THAT THE CHILD'S RESOURCES, INCLUDING INSURANCE, CASH ASSETS, TRUST ACCOUNTS, AND THE CHILD'S EARNINGS, ARE DEPOSITED INTO THE ACCOUNT; AND

(III) ENSURE THAT WHEN THE CHILD ATTAINS THE AGE OF ~~14~~ 17 YEARS AND UNTIL THE DEPARTMENT NO LONGER SERVES AS THE REPRESENTATIVE PAYEE OR FIDUCIARY, A PERCENTAGE OF THE CHILD'S BENEFITS ARE DEPOSITED INTO THE ACCOUNT OR THE CHILD'S 529A PLAN AS FOLLOWS:

~~1. FROM AGE 14 TO AGE 15, 5%;~~

~~2. FROM AGE 16 TO AGE 17, 10%;~~

~~3. FROM AGE 18 TO AGE 19, 20%; AND~~

~~4. FROM AGE 20 TO AGE 21, 40%;~~

1. FROM AGE 17 TO AGE 18, AT LEAST 40%; AND

2. FROM AGE 18 TO AGE 21, 100%;

(3) 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) 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;

(III) 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

(IV) 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;

(4) PROVIDE AN ANNUAL ACCOUNTING TO THE CHILD AND THE CHILD'S ATTORNEY OF:

(I) THE CHILD'S VETERANS ADMINISTRATION BENEFITS, SUPPLEMENTAL SECURITY INCOME, OR SOCIAL SECURITY BENEFITS; AND

(II) THE CHILD'S PASS ACCOUNT ESTABLISHED UNDER PARAGRAPH (2) OF THIS SUBSECTION; AND

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

~~(F)~~ (E) (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, 2015.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.