

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1283  
Judiciary

(Delegate Wilson)

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Child in Need of Assistance - Guardianship by Local Department - ABLE  
Accounts

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This bill authorizes a local department of social services that has been granted guardianship over a child in need of assistance (CINA) to have control over the property of the child for the purpose of establishing an “Achieving a Better Life Experience” (ABLE) account on behalf of the child.

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Fiscal Summary

**State Effect:** The bill does not directly affect the operations or finances of the Department of Human Services (DHS), as discussed below.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** A CINA is a child who requires court intervention because (1) the child has been abused or neglected or has a developmental disability or a mental disorder and (2) the child’s parents, guardian, or custodian are unable or unwilling to provide proper care and attention to the child.

In making a disposition on a CINA petition, the court must take specified actions, including either not changing the child’s custody status or committing the child on terms the court considers appropriate to the custody of (1) a parent; (2) a relative or other individual as specified, or (3) a local department, the Maryland Department of Health, or both, including

designation of the type of facility where the child is to be placed. The court may also grant limited guardianship to DHS or an individual or both for specific purposes, including medical and educational purposes or for other appropriate services if a parent is unavailable, unwilling, or unable to consent to services that are in the best interest of the child. A guardian appointed pursuant to these provisions has no control over the property of the child unless the court expressly grants that authority.

Pursuant to Chapters 815 and 816 of 2018, when DHS is serving as the representative payee or in a fiduciary capacity for a child who is receiving specified federal benefits and has been committed to the custody of DHS, it must take specified actions, including ensuring 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. The statute provides examples of ways in which the child's benefits may be used or conserved, such as through the establishment of a special needs trust account; establishing an ABLE account is another one of the methods specified.

#### *ABLE Accounts*

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 established a new § 529A of the Internal Revenue Code that permits a state (or a state agency or instrumentality) to establish and maintain another type of tax-advantaged savings program, a qualified ABLE program, under which contributions may be made to an account that is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account. Chapter 39 of 2016 required the Maryland 529 Board, in consultation with the Maryland Department of Disabilities, to establish, administer, manage, and promote the Maryland ABLE Program. State programs must adhere to minimum federal guidelines to be considered qualified ABLE programs under federal law. Eligibility is limited to individuals with significant disabilities for whom the onset of the disability occurred prior to age 26.

**State Fiscal Effect:** Although the bill grants control over the property of a child to a local department of social services if the local department is the guardian of the child and exercises the control to establish an ABLE account on behalf of the child, it does not require a local department to establish such an account. DHS has advised that it has elected to use special needs trust accounts when serving in a fiduciary capacity or as the representative payee; the bill does not alter its ability to continue to use this method.

## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 732 (Senator Zucker, *et al.*) - Judicial Proceedings.

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

**Fiscal Note History:** First Reader - February 27, 2019  
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