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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 768

Department of Human Services - Benefits for Children in Custody - Alterations

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 3/10/26

The Maryland Office of the Public Defender (OPD) respectfully requests that the Committee issue a favorable report on **House Bill 768** which revises the responsibilities of the Department of Human Services (DHS or “the Department”) when serving as representative payee and fiduciary for children committed to its custody. **It requires DHS to use those benefits in the child’s best interests to meet current unmet needs.**

This testimony is provided by OPD’s Parental Defense Division (PDD) which represents parents and legal guardians from all 24 counties in Maryland who have experienced, or are at risk of, having children separated from their parents by an arm of the government. Our multidisciplinary legal team—composed of dedicated attorneys, experienced social workers, and parent advocates with lived-experience in the DHS system—ensures that families receive high-quality legal representation during their Child in Need of Assistance (CINA) and Termination of Parental Rights (TPR) cases.

Under current Maryland practice, when a child in foster care is eligible for Social Security or survivor benefits, the Department may apply to serve as the child’s representative payee. In that role, the Department can use the child’s federal benefits to reimburse itself for foster care costs, rather than reserving those funds to address the individual child’s needs. House Bill 768 addresses several significant concerns arising from that practice.

Ending the “Foster Care Tax.”

As noted in national reporting and Congressional Research Service analysis, children who receive Social Security or survivor benefits are often the only children required to contribute their own income toward the cost of their foster care.¹ In effect, orphaned children and children

¹ Congressional Research Service, *Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions*, CRS Report R46975, at *Pros and Cons for the Use of SSI/Social Security Benefits by Child Welfare Agencies* section, page 33, (Nov. 18, 2021) (available at, <https://www.congress.gov/crs-product/R46975>), (noting that proponents of reserving SSI/Social Security benefits for children argue that applying those benefits solely to reimburse foster care costs “amounts to asking children to pay for their own stay in foster care”).

with significant disabilities subsidize the system responsible for their protection. House Bill 768 ends that inequitable practice.

Prioritizing Unmet Needs.

The bill defines “unmet needs” to include specialized medical equipment, assistive technology, educational supports, extracurricular activities, and tuition. These are not luxuries; they are critical supports that allow children to develop academically, socially, and emotionally. Directing benefits toward these needs ensures that the funds are used to enhance the child’s well-being, not merely to offset governmental expenditures.

Building a Financial Foundation for Independence.

Youth aging out of foster care frequently face a steep financial cliff. Conserving benefits for the child’s best interest creates a modest but meaningful financial cushion, funds that can be used for a security deposit, transportation, tools for employment, or post-secondary training. Preserving these resources also reduces the risk of homelessness and instability during the transition to adulthood.

Strengthening Fiduciary Accountability.

House Bill 768 reinforces the Department’s fiduciary obligations. It requires the Department to first consider whether a suitable relative or trusted adult can serve as representative payee before the Department assumes that role itself. This reduces the inherent conflict that arises when the same entity responsible for a child’s care also controls and expends the child’s income.

Conclusion

Social Security and survivor benefits are earned entitlements that belong to the child. House Bill 768 ensures those funds are used for the child’s present well-being and future stability. It is a measured reform grounded in fairness, fiduciary integrity, and Maryland’s commitment to protecting its most vulnerable children.

For these reasons we urge the Committee to issue a favorable report on House Bill 768.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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