

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 732

(Senator Zucker, *et al.*)

Judicial Proceedings

Judiciary

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Child in Need of Assistance – Guardianship by Local Department – Financial  
Accounts

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This bill requires a court, on request of a local department of social services that has been granted guardianship over a child in need of assistance (CINA), to issue a separate order granting the local department guardianship authority to establish (1) an individual savings account; (2) an “Achieving a Better Life Experience” (ABLE) account, if unable to establish an individual savings account due to the child’s age, or (3) a pooled special needs trust account. An order must meet specified requirements.

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**Fiscal Summary**

**State Effect:** The bill does not materially affect the operations or finances of the Department of Human Services (DHS).

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** An order issued pursuant to the bill must (1) require that funds deposited to establish an ABLE account be in a Federal Deposit Insurance Corporation-insured portfolio option that most minimizes the risk of capital loss; (2) prohibit the local department from withdrawing funds from any account or trust established under the order; and (3) require the local department to provide prompt notice to a financial institution, including contact information for the child or subsequent guardian of the child, of the termination of the guardianship.

**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.

## *Special Needs Trust*

The Estates and Trust Article expresses the policy of the State to encourage the use of a special needs trust or supplemental needs trust by an individual of any age with disabilities to preserve funds to provide for the needs of the individual not met by public benefits and to enhance quality of life. State agencies that provide public benefits to individuals of any age with disabilities through means-tested programs must adopt regulations that meet specified requirements, including (1) allowing a pooled asset special needs trust to be used for the sole benefit of the beneficiary and (2) allowing an individual to establish or fund an individual account in a pooled asset special needs trust without an age limit or a transfer penalty.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1283 (Delegate Wilson) - Judiciary.

**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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Analysis by: Jennifer K. Botts

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