



**HB768 - Family Law - Department of Human Services - Benefits for Children in Custody -
Alterations
April 2, 2026**

Position: FAVORABLE WITH AMENDMENTS

*Maryland Legal Aid submits written and oral testimony on HB0768 at the request of its sponsor,
Delegate Karen Simpson.*

Maryland Legal Aid asks that the Committee report **favorably with amendments** on HB0768, which alters the Department of Human Services (DHS)'s responsibilities as representative payee and fiduciary for certain children in foster care. It also requires DHS to use children's benefits in a manner consistent with the best interests of the child and their unmet, uncovered needs. There is one essential amendment to HB768, however, that should be made to ensure that HB768 fulfills its intent, by ensuring that the funds belonging to the child are not used to reimburse DHS for the cost of their care.

Maryland Legal Aid serves residents in each of Maryland's 24 jurisdictions, providing free legal services to the State's low-income and vulnerable residents in a range of civil legal matters. Maryland Legal Aid is Maryland's largest civil non-profit law firm, representing vulnerable young people in Child in Need of Assistance (CINA) matters across the State. This proposed legislation, if properly amended, will be an important measure to provide financial support and stability to children and young people exiting foster care to adulthood.

Maryland Legal Aid's staff represent thousands of children in CINA and Guardianship ("TPR") proceedings throughout the state. Our attorneys represent children from infancy to young adulthood continuously, while under the jurisdiction of the juvenile court, including when the youth transitions from foster care to adulthood. As a result of its extensive work in the field, Maryland Legal Aid has expertise in matters concerning child welfare and children in foster care.

The purpose of HB 768 is to amend Maryland Family Law § 5-527.1 to clarify DHS' obligations with respect to federal benefits belonging to children in foster care. It requires consultation with the child's attorney in selecting a representative payee, limits the use of a child's funds exclusively to unmet needs beyond what DHS or medical insurance must provide, and ensures that any remaining funds are conserved until the child exits foster care.

The clear and longstanding intent of this statutory framework is to ensure that children, not DHS, benefit materially from their own federal income. As originally introduced, HB 768 advanced that goal explicitly. The bill required DHS to conserve all federal benefits received on behalf of a child, and it categorically prohibited the use of those benefits to reimburse the State for the cost of care. That formulation squarely aligned with the statute's purpose: to protect children's assets and promote their long-term stability and transition to adulthood.

As amended, HB 768 now operates in two phases, with the second phase delayed until fiscal year 2027. In the second phase, HB768 omits a provision that is necessary to ensure that the intent of the bill is effectuated. The amended bill no longer explicitly prohibits DHS from using a child's federal benefits to reimburse itself for foster care costs. This omission of an explicit prohibition on the Department using the child's benefits to reimburse itself places the core intent of the legislation at serious risk.

Current law already establishes minimum conservation requirements for federal benefits received on behalf of children in foster care. Family Law § 5-527.1(c)(2) provides that, beginning at age 14, a "minimum percentage of the child's benefits are not used to reimburse the State for the costs of care," specifying conservation floors of 40% for ages 14–15 and 80% for ages 16–17. Md. Code Ann., Fam. Law § 5-527.1(c)(2)(i)–(ii). The statute is explicit that these percentages are minimums, not caps.

The statute further directs that, for benefits not constrained by federal asset limits, DHS must "exercise discretion ... in the best interest of the child to conserve the funds or use the funds for services for special needs not otherwise provided by the [DHS]." Md. Code Ann., Fam. Law § 5-527.1(c)(3). In short, the General Assembly affirmatively gave DHS discretion to conserve more than the statutory minimum. Despite this discretion, DHS has chosen a different course. On October 1, 2018, immediately following the enactment of § 5-527.1, DHS issued Policy SSA/CW #19-6, entitled Protecting the Resources of Children in Custody.

That policy states unequivocally: "As the representative payee for children in foster care, DHS/LDSS has determined that it is generally in the best interests of the child to use federal benefits received to pay for the child's cost of care."¹ As implemented statewide, this policy effectively treats the statutory minimum conservation levels as the maximum amount DHS will conserve, and authorizes DHS to take every remaining dollar permitted by statute to reimburse itself for foster care costs. Nothing in Family Law § 5-527.1 requires that outcome. To the contrary, the statute limits recoupment only by requiring that a minimum portion of a child's benefits "are not used to reimburse the State."²

By removing language that prohibits DHS from using children's federal benefits to reimburse itself, the amended version of HB 768 could be read to leave intact the precise practice the bill was designed to address. Without that explicit prohibition, DHS policy, not legislative intent, might continue to govern, and children in foster care may continue to lose their federal income to State recoupment. As a result, the amended bill risks codifying the problem rather than solving it. The absence of clear statutory language barring reimbursement invites continued diversion of children's federal benefits and undermines the Legislature's commitment to helping foster youth build financial stability for adulthood.

¹ Md. Dep't of Human Servs., SSA/CW #19-6, at 2 (Oct. 1, 2018).

² Md. Code Ann., Fam. Law § 5-527.1(c)(2).

Given that the intent of HB 768 is to ensure that children in foster care receive and retain their federal benefits, the bill should be amended to explicitly prohibit DHS from using those benefits to reimburse itself for the cost of care. Without that language, the statute will remain subject to an administrative interpretation that prioritizes Department reimbursement over children's futures, an outcome that is neither required by law nor consistent with the purpose of Family Law § 5-527.1.

Given the current published policy and practice of DHS of taking all funds of the youth up to the statutory limit to reimburse itself for the cost of care, the omission of this language restricting the ability of DHS to use the funds of the child to reimburse itself for the cost of care could jeopardize not only the intent of the Bill, but also the conservation of benefits for youth secured by the original enactment of Family Law § 5-527.1. DHS's published policy suggests that without the statutory limit, DHS may seek to use all of the youth's funds to reimburse itself for the cost of care. Therefore, we strongly urge passage of HB768, with an amendment such that Section 2 includes a provision that [DHS] shall not use the child's benefits to reimburse the State for the cost of care.

The challenges facing youth who exit foster care without permanent family connections are well-documented. Studies show that 22% to 30% of former foster youth experience homelessness during their transition to adulthood, compared to an estimated 4% lifetime prevalence among the general population. Additionally, one in five youth formerly in foster care have not earned a high-school diploma, vocational certificate, or license by age 21, according to the KIDS COUNT® Data Center.³ By age 26, the earnings of youth aging out of foster care are 50% lower, and their employment rates 20% lower, than similarly educated peers.⁴ These statistics highlight the significant barriers confronting these young adults and underscore the importance of preserving and appropriately using their financial resources.

Given these substantial challenges, ensuring that foster youth's benefits are used for their present unmet needs, or conserved for their future, is not only fiscally responsible but essential to supporting their long-term stability, development, and success as independent adults. Strengthening the conservation of foster youth's federal benefits is fiscally responsible, promoting stability and self-sufficiency for youth transitioning from foster care. Youth who exit foster care with greater financial stability are better positioned to achieve economic self-sufficiency in adulthood and are less likely to need to rely on public benefits.⁵

³ Annie E. Casey Found., What Happens to Youth Aging Out of Foster Care (Feb. 25, 2025), <https://www.aecf.org/blog/what-happens-to-youth-aging-out-of-foster-care>.

⁴ Anthony Bald, Joseph J. Doyle Jr., Max Gross & Brian A. Jacob, Economics of Foster Care, 36 J. Econ. Persp. 223 (2022).

⁵ Mark E. Courtney et al., Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26, at 10–12, 48–50 (Chapin Hall at the Univ. of Chi. 2011), <https://www.chapinhall.org/research/midwest-evaluation-of-the-adult-functioning-of-former-foster-youth/>.

Commented [KG1]: Can you add a sentence or two elsewhere in here about why this is the fiscally responsible course? I assume there is a point to be made -- in addition to the excellent point in the preceding paragraph about the challenges youth exiting foster care face, -- about how allowing these youth to have some financial support at the start of adulthood likely means less reliance on future financial social supports?

Maryland Legal Aid urges the Committee to issue a FAVORABLE WITH AMENDMENTS report on House Bill 768 and urge its ultimate passage. If you have any questions, please contact: Erica I. LeMon, Advocacy Director for Children's Rights at elemon@mdlabor.org (410) 951-7648 or (410) 935-0937.